

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(6336 York Road)		
9 th Election District	*	OFFICE OF
5th Council District		
Wyanness Associates c/o Kimco Realty Corp.*		ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2022-0006-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Special Hearing and Variance filed by the Petitioner, Wyanness Associates, c/o Kimco Realty Corp., for the property located at 6336 York Road. The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to amend the prior approvals and development plans associated therewith, as noted in the Zoning History on the site plan. (Petitioner’s Exhibit 1). The Variance is from BCZR § 409.6.A.2, to permit 392 off-street parking spaces in lieu of the required 427 spaces when individual uses within a shopping center are calculated separately. Although 525 parking spaces are required, the prior variance relief granted in Case No. 93-198-SPHA provided a variance of 98 parking spaces.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan and redlined site plan were marked and accepted into evidence as Petitioners’ Exhibit 1.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and from Development Plans Review (“DPR”). Neither agency opposed the requested relief. There were no protestants or interested persons in attendance.

Gregory Reed appeared in support of the Petition on behalf of Kimco Realty Corporation. Michael Gesell, of Bohler Engineering also attended along with Michael Workosky of Wells and Associates. Adam Baker, Esq. of Rosenberg Martin Greenberg, LLP represented the Petitioner.

Because there were no protestants or interested community members in attendance the undersigned allowed counsel to proffer the Petitioner's case. Mr. Baker explained the site and the requested relief in detail. The subject property is the York Road Plaza shopping center on the county / city line. It is approximately 6.75 acres and is zoned BL-CCC. The site fronts York Road and is surrounded on all other sides by established residential neighborhoods. Referencing the Zoning History notes on the site plan, Mr. Baker explained that the site has been the subject of numerous prior zoning cases. He specifically explained that in Case No. 93-198 a parking variance had been granted to allow 427 spaces in lieu of the required 525. He further explained that Kimco is replacing an existing takeout restaurant in the shopping center with a sit-down restaurant, and that BCZR § 409.6.A.2 therefore requires a greater number of parking spaces. Mr. Baker then explained that there are presently 392 spaces serving the shopping center and that they are requesting approval of this number of spaces. Mr. Baker proffered that the engineer, Mr. Gesell, would testify that the requested variance is within the spirit and intent of BCZR § 409.6.A.2, and that the requested relief will not harm the public health, safety or welfare. He would also state that the site is unique in a zoning sense because of its dimensions, and the fact that there is no space at all behind the anchor building. In fact, as noted above, it is surrounded on all sides by residences, with no option of adding any more parking spaces. Further, a corner of the parking lot is actually across the Baltimore City line so those spaces cannot be counted toward the number required by the BCZR.

Finally, Mr. Baker submitted a Parking Study prepared by Mr. Workosky (Petitioner's

Exhibit 3). As described in this Study, the proposed variance will not, in Mr. Workosky's expert opinion, adversely impact the existing conditions or the surrounding residential neighborhoods. In the conclusion of his Study he explains that "[b]ased on occupancy counts at the existing shopping center . . . augmented with previously collected data at similar facilities, a minimum of 280 to 290 parking spaces would be required to adequately serve this site. Thus the existing parking supply of 386 spaces would adequately accommodate the peak parking demand with a surplus of 96 to 115 spaces."

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

As noted in the Zoning History on the site plan, the subject property has previously been found to be unique in several previous zoning cases. Since there has been no substantive change in site conditions I am bound by those prior decisions. Moreover, I would, in any event, agree that the property is unique in a zoning sense. It straddles the city/county line and is tightly bordered on three sides by established residential areas. There is literally no place to add any parking. Nor is more parking needed. Second, if the variance relief were denied the Petitioner would suffer practical difficulty and hardship because their new tenant could not move in. Finally, I find that the variance can be granted within the spirit and intent of the BCZR and without harm to the public health, safety or welfare.

THEREFORE, IT IS ORDERED, this **4th** day of **April 2022**, by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing from the Baltimore County

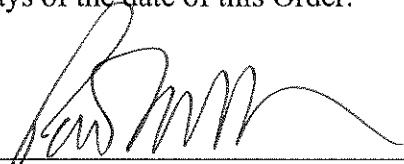
Zoning Regulations ("BCZR") § 500.7 to amend the prior approvals and the development plans associated therewith, as noted in the Zoning History on the attached plan is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance if necessary from the BCZR § 409.6.A.2, to permit 392 off-street parking spaces in lieu of the required 427 spaces is hereby **GRANTED**

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

April 4, 2022

Adam Baker, Esquire – abaker@rosenbergmartin.com
Rosenberg Martin Greenberg, LLP
25 S. Charles Street, 21st Floor
Baltimore, MD 21201

RE: Petition for Special Hearing & Variance
Case No. 2022-0006-SPHA
Property: 6336 York Road

Dear Mr. Baker:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), “a person aggrieved or feeling aggrieved” by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,


PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
Enclosure



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 6336 York Road, Baltimore, MD 21212 which is presently zoned BL CCC
 Deed References: 04678/00293 10 Digit Tax Account # 0 9 2 3 9 5 0 2 0 1
 Property Owner(s) Printed Name(s) Wyanness Associates c/o Kimco Realty Corp

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

please see attached

2. ☐ a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3. ☒ a **Variance** from Section(s)

See Attached

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
 (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Adam Baker - Rosenberg Martin Greenberg LLP

Name- Type or Print

Signature

25 S. Charles Street, 21st FL Baltimore MD
 Mailing Address City State

21201 / 410-727-6600 / abaker@rosenbergmartin.com
 Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Wyanness Associates c/o Kimco Realty Corp

Name #1 - Type or Print Name #2 - Type or Print

Signature #1 Gregory Reed Signature #2

500 North Broadway, Ste. 201 Jericho, New York
 Mailing Address City State

11753 / 410-684-2000 /
 Zip Code Telephone # Email Address

Representative to be contacted:

Adam Baker - Rosenberg Martin Greenberg LLP

Name - Type or Print

Signature

25 S. Charles Street, 21st FL Baltimore MD
 Mailing Address City State

21201 / 410-727-6600 / abaker@rosenbergmartin.com
 Zip Code Telephone # Email Address

CASE NUMBER 2022-0006- Filing Date 1/10/2022 Do Not Schedule Dates: Reviewer PS

SPHA

REV. 10/4/11

Attachment to Zoning Petition for 6336 York Road

1. Special Hearing to amend the prior approvals and the development plans associated therewith, as noted in the Zoning History on the attached Plan.
2. Variance from Section 409.6.A.2 of the Baltimore County Zoning Regulations to permit 392 off-street parking spaces in lieu of the required 427 spaces when individual uses within a shopping center are calculated separately. Although 525 parking spaces are required, the prior variance relief granted in Case No. 93-198-SPHA provided a variance of 98 parking spaces.

2022-0006-SPHA

ZONING DESCRIPTION
TAX MAP 80, PARCEL 176
THE LAND OF
WAYNESS ASN C/O KIMCO REALTY CORPORATION
LIBER 4678 FOLIO 293
9TH ELECTION DISTRICT
BALTIMORE COUNTY, MD

BEGINNING AT A POINT ON THE WESTERLY RIGHT-OF-WAY LIMITS OF YORK ROAD (MD ROUTE 45) (VARIABLE WIDTH RIGHT-OF-WAY), WHICH IS 86 FEET NORTH OF THE INTERSECTION OF SAID YORK ROAD (MD ROUTE 45) AND SCHWARTZ AVENUE (VARIABLE WIDTH RIGHT-OF-WAY), THENCE FOLLOWING SAID WESTERLY RIGHT-OF-WAY LIMITS AND WITH THE DIVISION LINE BETWEEN YORK ROAD (MD ROUTE 45) ON THE EAST AND THE LAND OF WAYNESS ASN (LIBER 4678, FOLIO 293) ON THE WEST;

1. THENCE NORTH 01 DEGREES – 06 MINUTES – 30 SECONDS EAST, 238.07 FEET TO A POINT, THENCE;
2. CONTINUING NORTH 01 DEGREES – 06 MINUTES – 30 SECONDS EAST, 201.44 FEET TO A POINT, THENCE;
3. CONTINUING NORTH 71 DEGREES – 37 MINUTES – 10 SECONDS WEST, 118.97 FEET TO A POINT, THENCE;
4. CONTINUING NORTH 71 DEGREES – 37 MINUTES – 10 SECONDS WEST, 481.01 FEET TO A POINT, THENCE;
5. CONTINUING SOUTH 24 DEGREES – 52 MINUTES – 10 SECONDS WEST, 440.11 FEET TO A POINT, THENCE;
6. CONTINUING SOUTH 67 DEGREES – 01 MINUTES – 06 SECONDS EAST, 175.20 FEET TO A POINT, THENCE;
7. CONTINUING SOUTH 67 DEGREES – 01 MINUTES – 06 SECONDS EAST, 412.16 FEET TO A POINT, THENCE;
8. CONTINUING NORTH 89 DEGREES – 59 MINUTES – 56 SECONDS EAST, 205.23 FEET TO THE POINT OF BEGINNING.

CONTAINING 319,598 SQUARE FEET OR 7.34 ACRES.



ZONING ADVISORY COMMITTEE AGENDA
ROOM 123, COUNTY OFFICE BUILDING
DISTRIBUTION MEETING January 17, 2022
FORMAL OR INFORMAL RESPONSE DUE AT January 24, 2022 Meeting

* Agenda Only
+ Agenda and Petition
& Agenda and Plat
Agenda, Petition and Plat

Distribution:

* Administrative Law Judge, Commissioner (Paul M. Mayhew), MS #4103, dwiley@baltimorecountymd.gov; dmignon@baltimorecountymd.gov
* PAI, Zoning Review H.O. Hearing File (Kristen Lewis), klewis@baltimorecountymd.gov
* PAI, Zoning Review DRC/ZAC Meeting File (Jeff Perlow), JPerlow@baltimorecountymd.gov
* PAI, Development Management (Lloyd Moxley), MS # 1105, lmoxley@baltimorecountymd.gov
* PAI, Code Enforcement (Lisa Henson), MS # 1105, lhenson@baltimorecountymd.gov
* PAI, Building Inspection (Matt Gawel), mg@baltimorecountymd.gov
* Economic Development Commission, Business Develop. (Stanley Jacobs), MS # 4300, sjacobs@baltimorecountymd.gov
* Highways (Tom Hargis), MS #1003 thargis@baltimorecountymd.gov
* Neighborhood Improvements (Marcia Williams), MS #4201, myneighborhoodimprovement@baltimorecountymd.gov
* County Council, District 3, (Tom Bostwick), MS #2201, council1@baltimorecountymd.gov
* tbostwick@baltimorecountymd.gov
* Mike Ruby (Newspaper), mildmanneredcomm@aol.com
+ People's Counsel, rwheatley@baltimorecountymd.gov
+ IF CRITICAL AREA, Maryland Office of Planning (Joseph Griffiths), joseph.griffiths@maryland.gov
+ Kathy Are, kare@baltimorecountymd.gov
& State Highway Administration, Access Permits Division (Steven Autry), SAutry@mdot.maryland.gov
& Fire Department (Inspector Muddiman), MS # 1102F, dmuddiman@baltimorecountymd.gov
& PAI, Development Plans Review (Vishnu Desai), vdesai@baltimorecountymd.gov
People's Counsel (Peter Zimmerman), MS #4204 pzimmerman@baltimorecountymd.gov
Planning Office (Jenifer Nugent), MS # 4101, jnugent@baltimorecountymd.gov; Henry Ayakwah hayakwah@baltimorecountymd.gov; Taylor Bensley tbensley@baltimorecountymd.gov
DEPS (Jeff Livingston) – 2 copies of each, MS # 4400, jlivingston@baltimorecountymd.gov; Steve Ford, sford@baltimorecountymd.gov
IF FLOODPLAIN, Maryland Department of the Environment, kevin.wagner@maryland.gov
Public Works (Terry Curtis), MS #1315, tcurtis@baltimorecountymd.gov
* IF ELDERLY HOUSING, Community Development, MS #1102M
* IF TOWER, Tower Coordinator, c/o OIT, MS #2007
IF HELICOPTER, Police Department, Aviation Unit (Officer Taylor or Sgt. Wines)
IF PAWN SHOP, Police Department, Burglary/Pawn Unit (Det. Kropfelder), MS #1102E

The attached information is being forwarded to you for comment. Your comments should reflect any conflicts with the codes, standards, or regulations of your office or department. Development representatives that attend the meeting should be prepared to submit their agency's response as either "no comment", "written comment" or "more review time required" within one week at the next meeting. If no written response is received within two weeks, it is assumed that your agency has "no comment". All written comments must reference the ZAC item number. All comments received will be compiled and included in the zoning/development file for review and consideration by the hearing officer during the course of the upcoming zoning/development hearing.

If your agency or section is not represented at the meeting, you should return your written comments to the Department of Permits and Development Management (PDM), Room 111, County Office Building, 111 West Chesapeake Avenue, Towson, MD 21204 (Mail Stop #1105), Attention: Kristen Lewis

If you have any questions regarding a particular zoning petition, please contact the Zoning Review Planner (see initials after item number) at 410-887-3391.

Revised 07/7/2021

ZAC AGENDA

Case Number: 2022-0006-SPHA **Reviewer:** Rosalie Johnson
Existing Use: COMMERCIAL **Proposed Use:** COMMERCIAL
Type: SPECIAL HEARING, VARIANCE
Legal Owner: Wyaness Associates c/o Kimco Realty Corp.
Contract Purchaser: No Contract Purchaser was set.

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 9 **Council Dist:** 5

Property Address: 6336 YORK RD

Location: Property located on the West side of York Rd., 100 FT. North of the Northwest intersection of York Rd. and Schwartz Ave.

Existing Zoning: BL-CCC **Area:** 6.75 ACRES

Proposed Zoning:

SPECIAL HEARING:

BCZR 500.7: To amend the prior approvals and the development plans associated therewith, as noted in the Zoning History on the attached plan.

VARIANCE:

BCZR 409.6.A.2: To permit 392 off-street parking spaces in lieu of the required 427 spaces when individual uses within a shopping center are calculated separately. Although 525 parking spaces are required, the prior variance relief granted in Case No. 93-198-SPHA provided a variance of 98 parking spaces.

Attorney: Adam Baker

Prior Zoning Cases: 1993-0198-SPHA

Concurrent Cases: None

Violation Cases: None

Closing Date:

Miscellaneous Notes:
