

APPLICANT:
Mac Murphy, LLC

REQUEST: Variance to disturb the
Natural Resource District and modify
Board of Appeals Case No. 5158

HEARING DATE: October 19, 2011

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5751

ZONING HEARING EXAMINER'S DECISION

APPLICANT: MacMurphy, LLC

LOCATION: 725 Pulaski Highway, Joppa, Maryland
Tax Map: 65 / Grid: 3B / Parcel: 83
First (1st) Election District

ZONING: B3 / General Business District

REQUEST: A variance, pursuant to Section 267-62E of the Harford County Code, to disturb the Natural Resource District (NRD) in the B3/General Business District and to modify previous Board of Appeals Decision in Case No. 5158.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is a commercially zoned (B3/General Business District) and used 1.34 acre improved lot at the intersection of U.S. Route 40, Pulaski Highway, and Pine Road in the Joppa area.

The present improvement on the property is a two story, approximately 5,260 square foot concrete and metal building. Gary Reisling, who identified himself as Manager of the Applicant, stated that the property is presently used for restaurant supply purposes. The Applicant and/or its affiliates own a series of restaurants in Harford and Baltimore County and the subject property is used to prepare food for sale in those restaurants. No retail activity is conducted or proposed at the subject property.

In January 2011 the Applicant purchased the property as its location on Pulaski Highway provided it with good access to its restaurant locations. The Applicant's representatives were not aware of any environmental issues on the property when it was purchased.

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Seeking to maximize use of the property and to expand their food service business, the Applicant proposes to add a one-story, 4,190 square foot addition to the existing building to the Pine Road and rear sides. The proposed addition will be used for storage and refrigeration. Additionally, a freestanding 'freezer pump' is to be installed on a 20 x 20 foot concrete pad to the southeast side of the building. The freezer pump is used to freeze food very quickly and is used to help prevent food spoilation. Mr. Reisling explained that the freezer pump could not be located to the front of the building due to existing electrical wires and utility installations. It cannot be placed on the west side of the building because of an existing stream and other significant natural resource features, and the rear of the building is similarly encumbered. The freezer pump itself will be located relatively close to an existing Harford County pumping station on the subject property, and to the east of the building close to the east property line. The freezer pump operates most efficiently if located close to the building. Accordingly, the Applicant has determined that the only practical spot for such a freezer pump is as proposed. Mr. Reisling stated that all conditions proposed by the Harford County Department of Planning and Zoning are acceptable.

Next for the Applicant testified Douglas Kopec who identified himself as a principal of CNA Engineers, who was offered and accepted as an expert in planning and zoning.

Mr. Kopac is familiar with the site and testified that generally the subject property is significantly encumbered by wetlands, wetland buffer, and a Natural Resource District buffer. These features are shown on the site plans that accompanied the variance request filed by the Applicant. Generally most of the wetlands and associated buffers lie to the west and south of the building.

Mr. Kopac explained that approximately 2,125 square feet of non-tidal wetlands were disturbed by a prior owner of the property. This area was to have remained undisturbed by virtue of a variance granted in Board of Appeals Case No. 4004, decided in 1990. The 1990 decision granted the variance to allow the original disturbance of the property in order to construct the building, associated parking and storm water management facilities.

A subsequent 2,125 square feet disturbance was approved by Board of Appeals Case No. 5158 decided in 2002. However, that decision prohibited the former property owner from using this 2,125 square feet area for storage or parking. Approximately 1,400 feet of this area of disturbance is now proposed by the Applicant to be further disturbed by the Applicant's proposed addition. While the Applicant has attempted to minimize impact, according to Mr. Kopac, construction will nevertheless result in 1,419 feet of disturbance. Of this approximately 700 feet will consist of expanded building coverage.

As the area is already disturbed, Mr. Kopac's opinion is that the requested variance will result in no further additional disturbance or further adverse impact. The 20 x 20 foot pad for the freezer pump will also be located on disturbed lands and as a result no additional impact is to be expected.

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Next for the Harford County Department of Planning and Zoning testified Shane Grimm. Mr. Grimm identified the parcel as containing significant Natural Resource District area. A Harford County sewage pumping station is located on the property, and a storm water management facility is also located on the property, to the east or Pine Road side.

Mr. Grimm stated that because of the limited available parking on the property, there are few traditional retail service uses which can be made of the property. The Applicant's proposal is a good adaptation of the property and will result in a reuse of property which has significant development constraints.

The Harford County Department of Planning and Zoning Staff Report states, inter alia:

“The proposed use of the building for food preparation and storage is an appropriate adaptive reuse of a vacant building which would be difficult to utilize for other permitted uses in the B3/General Business District due to the inability to provide additional parking. The proposed addition to the building and the freezer pump facility will not adversely impact the stream or non-tidal wetlands. The proposed additional disturbance is minimal given the limited development potential of the subject property. In addition, the Applicants are proposing 700± square feet of landscaping to mitigate the previous disturbance.”

Accordingly, the Harford County Department of Planning and Zoning recommends approval with conditions.

No testimony or evidence was given in opposition. Both the Maryland Department of the Environment and Soil Conservation were solicited for comments, with no response received.

APPLICABLE LAW:

Section 267-62D of the Harford County Code states:

“Conservation requirements. The following conservation measures are required within this district:

- (1) All permitted uses shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation. When developing Site Plans, consideration shall be given to maintaining the existing drainage-ways within the Natural Resource District.*

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- (2) *Clearing or removal of natural ground cover and vegetation in preparation for development of permitted uses shall be minimized. Site development shall be clustered or designed in such a manner to preserve large contiguous tracts of woodland. Clearing of woodlands shall not reduce the area coverage of trees below 70%. Trees within the buffer may be harvested to remove diseased, insect-damaged or fire-damaged trees to salvage the same or reduce potential stream blockage due to fallen timber.*
- (3) *Sensitive environmental areas, including significant/special natural features, and significant wildlife habitats shall not be disturbed during any development.”*

Section 267-62E of the Harford County Code states:

“Variances. The Board may grant a variance to Subsections C or D upon a finding by the Board that the proposed development has been designed to minimize adverse impacts to the Natural Resource District to the greatest extent possible. Prior to rendering approval, the Board shall request advisory comments from the Director of Planning, the Soil Conversation District and the Maryland Department of the Environment.”

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. *Except as provided in Section 267-63.H (Chesapeake Bay Critical Area Overlay District, variances), variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject parcel is extensively encumbered by wetlands, including an unnamed tributary to Foster Branch, and associated Natural Resource District buffers. Of this roughly 1-1/3 acre parcel, at least fifty percent (50%) is so encumbered. Furthermore, a fairly large compound encloses a Harford County pumping station, and a large storm water management facility is on-site. This is in addition to an existing two-story concrete and metal 5,200 square foot building. A good part of the building, the pumping station, and a part of the storm water management facility are also built within the Natural Resource District buffer. These facilities were either approved as of right or as a result of the 1990 zoning variance case.

The previous owner had, in violation of the 1990 decision, disturbed approximately 2,125 square feet of space to the rear of the building on which he apparently parked cars and other vehicles. This was in the Natural Resource District buffer and associated wetlands and was not to have been disturbed. The 2002 decision by the Board of Appeals approved the new disturbance but prohibited parking of equipment in that area.

The Applicant now proposes what has been termed an “adaptive reuse” of the subject parcel, with the goal of using the property for a food service business to supply an existing restaurant chain. The property will not be open to the public and will function as a food processing and storage plant. The Applicant envisions no adverse impacts to the adjoining parcels or to the adjoining roadways and, in fact, it appears the use is one which should have no negative impact on the area. It would appear, as suggested, to be a good reuse of a parcel which presents a significant number of development and environmental issues.

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In order to fully service their restaurant business, the Applicant proposes a one-story 4,190 square foot addition to the south and east side of the existing building, and the construction of a 20 x 20 foot concrete pad for a freezer pump. The addition will impact not only a Natural Resource District buffer but also an area in which Board of Appeals Case No. 5158 had prohibited further development. Accordingly, this modification is requested. The concrete pad will also disturb the Natural Resource District and wetland buffers, although it must be pointed out that these buffers are already significantly impacted by the existing onsite improvements, including a Harford County pumping station. Accordingly, the total variance requested by the Applicant would result in a disturbance of 1,419 square feet of area which, in fact, had earlier been disturbed and approved by Board of Appeals Case No. 5158. Of the total new disturbance, about 645 feet will be landscaped and the remaining 774 square feet will be disturbed by the building encroachment.

Quite apparently, this is a difficult site, one which has significant environmental constraints, but one which supports a fairly large building and associated uses, including fairly extensive parking, a quite large storm water management facility and a Harford County pumping station. Much of the property is in wetlands and associated buffers and will remain so. The additional impact proposed by the Applicant is, for the most part, confined to an area which had been disturbed by an earlier owner. It is quite apparent that the overall integrity of the site will not be harmed by the expansion of the variance proposed by the Applicant and may, due to the Applicant's proposed landscaping, very well be benefitted by it.

It is accordingly found that the proposed expansion of the commercial uses on this site have been designed to minimize adverse impacts to the Natural Resource District to the greatest extent possible. Neither the Soil Conservation District nor the Maryland Department of the Environment have submitted adverse comments. The Department of Planning and Zoning has submitted favorable comments.

It is, therefore, found that due to the topographical conditions of this property the Applicant has suffered a hardship, that is, its inability to engage in a quite modest expansion of its existing physical plant. The variance proposed, that is, the disturbance of about 774 feet of property which had earlier been disturbed, is the minimum relief necessary in order to enable the Applicant to overcome its hardship.

CONCLUSION:

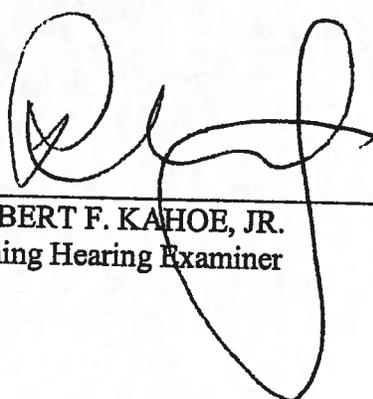
Accordingly, it is recommended that the requested variance and modification to variance be approved subject to the following conditions:

1. The Applicant's shall obtain all necessary permits and inspections for the construction of the proposed addition and freezer pump facility.

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2. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval along with a cost estimate. A landscaping surety agreement and bond in the form of a letter of credit shall be submitted to the Department prior to building permit application.
3. Architectural renderings of the proposed addition shall be submitted to the Department of Planning and Zoning for review and approval prior to building permit application.
4. A sediment and erosion control plan shall be submitted to the Department of Public Works for review and approval.

Date: December 19, 2011



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on January 19, 2012.