

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
SW corner of Reisterstown Road and	*	DEPUTY ZONING
Cherry Valley Road		
4 th Election District	*	COMMISSIONER
4 th Councilmanic District		
(11604 Reisterstown Road)	*	FOR BALTIMORE COUNTY
Delight Manor Farm, LLC	*	
<i>Legal Owners</i>		
Giant of Maryland, LLC		
<i>Contract Lessee</i>	*	Case No. 2010-0184-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by James J. Sylvia, Vice President, Real Estate, on behalf of Giant of Maryland, LLC, the contract lessee (hereinafter “Petitioner”), and Delight Manor Farm, LLC c/o Turnpike Associates LLC, the legal owners of the subject property. Special Hearing relief is requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to amend the site plan approved in Case No. 94-12-A. Variance relief is also requested as follows:

- From Section 409.6.A.2 of the B.C.Z.R. to permit a total of 361 off-street parking spaces in lieu of the required 472 parking spaces; and
- From Section 405.4.A.2.b of the B.C.Z.R. to allow a minimum landscape transition area width of 0 feet in a rear yard abutting non-residentially zoned land in lieu of the required 6 feet, and 7.4 feet abutting a public right-of-way in lieu of the required 10 feet; and
- From Section 450.4.3 of the B.C.Z.R. to allow a freestanding directional sign with a height of 12 feet in lieu of the permitted 6 feet; and
- From Section 405.2.A of the B.C.Z.R. to allow a setback a minimum of 83 feet from a residentially zoned property in lieu of the required 100 feet.

The subject property and requested relief are more fully described on the two-page redlined site plan that was marked and accepted into evidence as Petitioner's Exhibits 1A and 1B.

Appearing at the requisite public hearing in support of the requested relief on behalf of legal owner Delight Manor Farm, LLC c/o Turnpike Associates LLC were Daniel Klein and William Berman, and on behalf of Petitioner Giant of Maryland, LLC was Fred Clowes, Director of Real Estate. David Karceski, Esquire and Arnold Jablon Esquire appeared as attorneys for Petitioner. Also appearing in support of the requested relief was C. Dean Smith, a professional engineer with Vanasse Hangen Brustlin, Inc., the firm that prepared the site plan. Also appearing at the hearing was Debbie Risper from Councilman Kenneth N. Oliver's Office, as well as interested citizens George Harman and Mary Molinaro with the Reisterstown-Owings Mills-Glyndon Coordinating Council.

At the outset of the hearing, Mr. Karceski submitted the redlined site plan and explained that the redlined plan shows a sidewalk connection extending in a perpendicular fashion from the existing sidewalk along Reisterstown Road. As explained below, this section of sidewalk was added to the site plan at the request of the Office of Planning through its Zoning Advisory Committee ("ZAC") comment.

In addition to explaining the redlined changes, Mr. Karceski and Mr. Jablon proceeded by way of a combination of proffer and testimony from Petitioner's witnesses, which included the testimony of Dean Smith, Petitioner's engineer. His resume was marked and accepted into evidence as Petitioner's Exhibit 3 and he was offered and accepted as an expert in the field of professional engineering, with particular knowledge of the Zoning Regulations. The testimony and evidence revealed that the subject property, known as Cherry Valley Shopping Center, is comprised of approximately 6.658 acres situated at the southeast corner of the intersection of

Reisterstown Road and Cherry Valley Road, in the Reisterstown area of Baltimore County. The subject property is zoned B.L. (Business, Local), as is shown and indicated on the redlined site plan and the aerial photograph/zoning map that was marked and accepted into evidence as Petitioner's Exhibit 4. As explained by Mr. Karceski and Mr. Smith, the aerial photograph and the site photographs that were marked and accepted into evidence as Petitioner's Exhibits 5A through 5L help demonstrate some of the unique aspects of the property. These include the following: its frontage on three different public roadways, Reisterstown Road, Cherry Valley Road, and Nicodemus Road; its unusual shape, due in part to the alignment of these surrounding roadways; and the irregular configuration of certain zone lines pointing in a "finger" like shape at the subject property. Additionally, it was noted that there is a significant grade change along the property's Reisterstown Road frontage as well as disparities in grade between the bed of this road and the property itself, specifically at the location proposed for the fueling facility. These changes in grade limit visibility into the site for motorists traveling in both directions along Reisterstown Road.

The property is presently improved with a main shopping center building, containing approximately 81,498 square feet of gross floor area, and two stand alone pad sites used by a muffler shop and a bank, approximately 3,608 square feet and 225 square feet in size, respectively. The anchor tenant is a Giant grocery store, and there are numerous other tenant spaces within the shopping center occupied by retailers, office uses, restaurants, and a health club; the center was accurately described as a suburban convenience shopping center. The aforementioned photographs accepted into evidence as Petitioner's Exhibits 5A through 5L provide a clear depiction of the shopping center, the site's access points, its off-street parking, and the character of the surrounding area.

At this juncture, Petitioner proposes to construct a new fuel service station along the property's Reisterstown Road frontage, as shown on the redlined site plan. The second page of the site plan (Petitioner's Exhibit 1B) shows the details of the facility's layout, which includes five fuel pump dispensers and a small attendant's kiosk situated under a fuel canopy. The facility would have a vehicular connection to the site's off-street parking by an internal access drive that serves the overall shopping center. Color elevation drawings that were marked and accepted into evidence as Petitioner's Exhibits 7A through 7C provide visual representations for the canopy, kiosk, and a typical fuel pump dispenser, and include a sign detail for the canopy for illustrative purposes.

Mr. Karceski went on to explain how the proposed fueling facility is permitted on this shopping center property. Section 405.2 of the B.C.Z.R. governs the locations where fuel service stations are permitted. For example, where an individual property or lot is zoned such that it has a certain overlay district (e.g., an "A.S." or "Automotive Services" overlay district), a fuel service station is permitted by special exception. Section 405.2 also permits a fueling facility by right under certain circumstances, as in this case, where the use is proposed within a planned shopping center, which is a defined term in Section 101 of the B.C.Z.R. A note on the redlined site plan indicates that the Office of Planning approved the Cherry Valley Shopping Center as a planned shopping center in June of 2009, as required by the B.C.Z.R. A copy of a plan approved by Planning for this purpose was marked and accepted into evidence as Petitioner's Exhibit 2. Hence, the proposed fueling facility is permitted in this instance and does not require a special exception.

Although the use described above is permitted by right, in planning the most appropriate layout and placement of the fuel service station, Petitioner's counsel and engineer identified certain variances required for the proposed fueling facility, which are the subject of this hearing. First, Mr. Karceski explained that the parking regulations contained in Section 409 of the B.C.Z.R. require a total of 472 parking spaces for the site and that 361 spaces will be provided. It was noted that the shopping center now benefits from a prior parking variance of 77 spaces granted in Case No. 94-12-A, and that, while Petitioner seeks a new variance of 111 parking spaces in this case, the difference between the prior variance and this new parking variance is only 34 spaces. A copy of the order issued in Case No. 94-12-A was marked and accepted into evidence as Petitioner's Exhibit 10. Second, Petitioner explained that a single freestanding directional sign is proposed along Reisterstown Road at an access point next to the proposed fueling facility and referred to in the signage detail accepted into evidence as Petitioner's Exhibit 7A. This sign location is consistent with the directional purpose of the sign. The detail shows that the sign is proposed to be 12 feet tall, in lieu of the maximum permitted 6 feet, but that it will contain both the fuel prices and a 7.89 square foot sign face area devoted to the "Giant" brand logo and a directional arrow. For directional signage such as the proposed sign, a maximum sign face area of 8 square feet is permitted by right so only the height variance is required for this combination fuel pricing and directional sign.

Third, Section 426 of the Zoning Regulations contains requirements for landscape transition areas ("LTA") around the perimeter of a fueling facility, which are to be 10 feet in width along a public roadway and 6 feet in width next to non-residentially zoned land. As shown on the first page of the redlined site plan (Petitioner's Exhibit 1A), more than the required 6 foot wide LTAs will be provided on both sides of the fueling facility; however, an LTA width of 7.4 feet is

proposed along the site's Reisterstown Road frontage and a 0 foot LTA is proposed along the rear of the fueling facility, which is internal to the site and faces a building wall of the on-site Giant grocery store. Fourth, due to the irregular configuration of zoning lines that extend towards the site from the opposite side of Reisterstown Road, Mr. Karceski explained that a setback variance for the fueling facility to be located 83 feet from a residentially zoned property in lieu of the required 100 feet is requested. The need for this variance is due to the location of residential zone lines around the bed of a road, which connects to Reisterstown Road on the opposite side of the street from the shopping center.

Further testimony and evidence indicated that the specific need for the variances is generated by the uniqueness of the property. With regard to the parking, LTA and sign variances, it is the property's irregular configuration together with the site conditions and constraints identified through the expert testimony and evidence provided by Mr. Smith that renders the site unique. It should be noted that in Case No. 94-12-A, then-Zoning Commissioner Lawrence E. Schmidt granted a prior parking variance and a variance from on-site vehicular circulation requirements finding that special conditions exist peculiar to this shopping center. With regard to the requested setback variance, it is the irregular shape of the property in combination with the unusual configuration of "finger" shaped zoning lines that extend in the direction of the subject property that render the site unique. In Mr. Smith's expert opinion, all of these unique characteristics of the site require special consideration for the requested variances.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record in this case. Comments were received from the Department of Environmental Protection and Resource Management, dated February 2, 2010, which indicate that development of the property must comply with the Forest Conservation Regulations. The comments from the

Office of Planning dated February 19, 2010 indicated that Planning does not oppose the Petition for Variance and that, from Planning's perspective, the addition of the proposed fueling facility will "enhance the service and vitality of this portion of the Reisterstown Road corridor." The Office of Planning did request that the following conditions be placed upon the grant of any relief: installation of additional landscape plantings along the site's Reisterstown Road and Cherry Valley Road frontages to supplement already existing landscaping; installation of "ornamental" fencing with brick piers between the fueling facility area and Reisterstown Road; and installation of a pedestrian connection from Reisterstown Road into the subject property. The Planning Office also suggested that tenants of the shopping center encourage their employees to park in less desirable parking spaces closest to the property's road frontages. In addition to Planning's comments, Ms. Molinaro and Mr. Harman raised a concern for any site lighting that would be used for the fueling facility and questioned whether there would be sufficient parking for patrons of the center with the addition of the fueling facility.

Petitioner's witnesses, Mr. Clowes and Mr. Smith, and Mr. Berman, for the legal owner, addressed the Office of Planning's requests as well as the concerns raised by the Reisterstown-Owings Mills-Glyndon Coordinating Council. Mr. Smith prepared the redlined site plan with the goal of satisfying Planning; the pedestrian connection provided on the plan from Reisterstown Road into the site accomplishes not only the connection Planning wanted but also shows it in the location preferred by Planning (next to the fueling facility). Mr. Smith also prepared fence details for illustrative purposes only that were marked and accepted into evidence as Petitioner's Exhibits 9A and 9B, and testified that Petitioner is willing to install a fence in the area requested by Planning, provided the site's existing conditions and the fuel facility improvements permit it. Specifically, the fence would be painted aluminum and have brick clad piers spaced approximately

40 feet apart, as shown on the fence details, and, as requested by Planning, it would be installed only for the length of the fuel facility area along Reisterstown Road.

Petitioner explained that the site's existing grades along Reisterstown Road and other site conditions, including underground utility lines, storm water management devices (both existing and those required for the fueling facility), existing mature trees, and the location of any County easement areas may impede installation of the fence; however, Petitioner will assess the above to determine if installation of a fence is possible. With regard to additional landscaping, again, site photographs accepted into evidence as Petitioner's Exhibits 5A through 5L show existing landscaping along the site's Cherry Valley and Reisterstown Road frontages, and it appears the site is now well-maintained and well-landscaped. Nevertheless, Petitioner agreed to prepare a supplemental landscape plan for these two road frontages, with the understanding that the same impediments to installation of the fence may exist with regard to any additional landscaping. Petitioner will determine where additional landscaping is possible along these road frontages and pay particular attention to making landscape enhancements in front of the fuel facility area. A landscape plan will be provided to Planning and the County's landscape architect, Avery Harden, for review and approval.

Petitioner also addressed Ms. Molinaro and Mr. Harman's concerns related to the site's off-street parking and site lighting for the fueling facility. With regard to parking, Mr. Smith conducted a parking analysis for Petitioner, the results of which were marked and accepted into evidence as Petitioner's Exhibits 11 and 12. Consistent with these exhibits, Mr. Smith and Mr. Berman, for the legal owner, testified that there now exists more than adequate off-street parking within the shopping center and that, if the fueling facility is approved in the location shown on the redlined site plan, there will continue to be more than enough parking for patrons of the center and

the tenants' employees. They further explained that the legal owner and Giant (the anchor tenant) would not propose this center improvement if it would create any parking issues for their customers. For the benefit of the center's patrons, Petitioner and the legal owner agreed to encourage Giant's employees and other employees that work at the center to use the off-street parking spaces closest to property's road frontages, rather than using the spaces that Ms. Molinaro and Mr. Harman identified as more desirable. Additionally, Mr. Smith addressed the new site lighting that would be installed in connection with the fueling facility. The lights to be installed under the canopy will be recessed, and, as a result, this lighting will be directed in a downward direction so as not to be directed off-site. Additionally, no floodlights will be installed within the fuel facility area. Petitioner did agree to prepare a photometric (or lighting) plan for review and approval by Avery Harden, the County's landscape architect, and also to provide a copy of this plan by mail to the Ms. Molinaro and Mr. Harman at the same time the plan is submitted to Mr. Harden for review.

As part of the Order in this case, I will impose conditions on the relief granted that relate to the requests made by the Office of Planning, provided, of course, that the existing site conditions and any site improvements made for construction of the fueling facility permit fulfillment of the conditions. Additionally, I will require that a photometric (or lighting) plan be provided to Ms. Molinaro and Mr. Harman and also be approved by the County's landscape architect.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. As to the request for special hearing, by virtue of the instant variance relief and the site plan accepted into evidence as Petitioner's Exhibits 1A and 1B, Petitioner simply desires to update the previously approved site plan from the 1993 zoning case. The special

hearing is also required by the Zoning Review Office in order to provide a consistent paper trail and properly account for all zoning relief associated with the property.

As to the Petition for Variance, having heard the testimony and evidence, I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. I agree with Petitioner that the variance requests are driven by the unusual shape of the property, irregular zoning lines near the site, and site constraints identified during expert testimony, and conclude that the property is unique in a zoning sense.

I also find that a strict interpretation of the B.C.Z.R. would impose a practical difficulty and unreasonable hardship upon Petitioner. Regarding the parking variance, although the B.C.Z.R. requires 472 parking spaces, Petitioner's witness, Mr. Smith, and Mr. Berman on behalf of the property owner opined that the parking regulations require more parking than is actually needed at the site. Having the benefit of a historical perspective on the parking situation and a parking study conducted by Mr. Smith is also instructive here. Both Mr. Smith and Mr. Berman, who has assumed the daily property management responsibilities for this center, confirmed that they have not observed any parking problems and that, with the addition of the fueling facility, there will still be more than adequate parking. Petitioner also confirmed that the fueling facility by itself does not generate the need for any additional parking spaces and that this parking variance is for only 34 spaces more than that approved in Case No. 94-12-A. Moreover, there are no adjacent properties available to supplement the shopping center's on-site parking, which contributes to the practical difficulty in meeting the parking requirements. This evidence certainly demonstrates a practical difficulty for Petitioner.

As for the sign variance, in my view, the limited visibility into the site necessitates the requested directional sign in order to provide adequate direction for motorists. Mr. Karceski noted that typically, a fuel service station on a stand-alone site would be permitted to have one 25-foot tall enterprise sign (per public road frontage) and several wall-mounted enterprise signs by right for on-site buildings, which would help provide adequate identification for the use; however, in this instance, I believe that the fueling facility layout and its location within the shopping center does not allow for the installation of freestanding or wall-mounted signs normally associated with fuel service stations and, as a result, installation of the proposed directional sign is the only practical and appropriate substitute.

With regard to the requested landscape transition area and setback variances, Petitioner testified and I agree that the location selected by Petitioner for the fueling facility is the only viable location on the property. As shown on the redlined site plan, it will be located as close as possible to the Giant tenant space without disrupting on-site vehicular circulation patterns or pedestrians' use of the shopping center, as it would in other locations. This location, although the most appropriate one, necessitates the requested LTA and setback variances due to the center's existing conditions and the off-site zone lines. While Petitioner managed to far exceed the LTA requirements on the two sides of the fueling facility, the shopping center's already existing landscape buffer area parallel to Reisterstown Road, the proximity of the building to Reisterstown Road, and the site's existing grades, limit Petitioner's ability to meet the LTA requirements on all four sides of the fueling facility. A practical difficulty has clearly been demonstrated for this variance as well. As for the setback variance, there is simply no way to locate the fueling facility as provided on the redlined site plan, without the need for the variance from the zone lines that surround a roadway on the opposite side of Reisterstown Road.

Finally, I find that the variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. As the evidence showed, the parking variance only affects the subject site and the amount of parking that is to be provided will adequately serve the site. The setback variance is generated only by residential zone lines that surround a roadway on the opposite side of Reisterstown Road. In fact, on either side of these residential zone lines are commercially-developed properties, and the particular road zoned a residential classification leads to a residential use that is more than 400 feet removed from the subject site. One of the LTA variances is for only 2.6 feet of the required 10-foot wide LTA along Reisterstown Road, which is minimal. Additionally, this LTA is parallel to a highly traveled commercial corridor. The other LTA variance is internal to the shopping center and without any adverse impact to any surrounding properties. The requested sign, as designed, will also have no adverse impact on the surrounding uses along this well-traveled commercial corridor. In my judgment, Petitioner made the proper decision to request a modest directional sign and has taken care to propose the minimal amount of signage necessary to provide adequate identification and direction for the fueling facility. In fact, Petitioner specifically elected to combine the “Giant” brand logo and the directional arrow with the fuel pricing on the same sign, so as to avoid the installation of multiple freestanding signs. Thus, I find that all the variances can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered by the parties, I find that Petitioner’s special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 25th day of March, 2010 that Petitioners' Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to amend the site plan approved in Case No. 94-12-A be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance requests as follows:

- From Section 409.6.A.2 of the B.C.Z.R. to permit a total of 361 off-street parking spaces in lieu of the required 472 parking spaces; and
- From Section 405.4.A.2.b of the B.C.Z.R. to allow a minimum landscape transition area width of 0 feet in a rear yard abutting non-residentially zoned land in lieu of the required 6 feet, and 7.4 feet abutting a public right-of-way in lieu of the required 10 feet; and
- From Section 450.4.3 of the B.C.Z.R. to allow a freestanding directional sign with a height of 12 feet in lieu of the permitted 6 feet; and
- From Section 405.2.A of the B.C.Z.R. to allow a setback a minimum of 83 feet from a residentially zoned property in lieu of the required 100 feet,

be and are hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Prior to the issuance of any permits, Petitioner shall submit a landscape plan for review and approval by the Office of Planning and Avery Harden, Landscape Architect for Baltimore County, the purpose of which is to supplement the landscape plantings that now exist along the subject property's Reisterstown Road and Cherry Valley Road frontages. Landscape plantings shall be installed along these two road frontages, with enhancement (beyond that which is required by the County's Landscape Manual) along the Reisterstown Road side in front of the proposed fuel service station only, to the extent permitted by the site's existing conditions and any improvements made in connection with the fuel station.

4. Prior to the issuance of any permits, Petitioner shall submit a photometric (or lighting) plan for review and approval by Mr. Harden, Landscape Architect for Baltimore County. At the same time Petitioner submits said plan to Mr. Harden, Petitioner shall provide a copy of the plan to Mary Molinaro and George Harman for review by the Reisterstown-Owings Mills-Glyndon Coordinating Council.
5. Petitioner shall install an aluminum fence along Reisterstown Road in front of the fuel service station area only, to the extent permitted by the site's existing conditions and any improvements made in connection with the fuel station. Said fence shall be approximately four (4) feet in height and incorporate brick clad piers approximately 40 feet apart, consistent with the fence details accepted into evidence as Petitioner's Exhibits 9A and 9B.
6. Petitioner and the legal owner shall initiate discussions with the tenants of the Cherry Valley Shopping Center to encourage employees of the businesses to use parking spaces closest to the property's Reisterstown Road and Cherry Valley Road frontages, leaving the more desirable and centrally located spaces for patrons of the shopping center.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz