

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SW/Side of Reisterstown Road, 55' SE		
of c/line of Cherry Valley Road	*	OFFICE OF ADMINISTRATIVE
4 th Election District		
3 rd Councilmanic District	*	HEARINGS FOR
(11604 Reisterstown Road)		
	*	BALTIMORE COUNTY
DKA Associates, LLLP c/o Metropolitan		
Management Co., <i>Legal Owner</i>	*	
Giant of Maryland LLC, <i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2011-0297-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the Petitioner, Giant of Maryland, LLC through one of its Senior Managers of Construction, Scott Haley, and its attorney, Charles B. Marek, III of Smith, Gildea and Schmidt, LLC. The Petition was also consented to by the property owner, DKA Associates, LLC by William Berman, its agent and authorized signatory. Petitioner requested a variance to permit 11 wall-mounted enterprise signs for the existing Giant supermarket in lieu of the permitted 1 pursuant to B.C.Z.R. Section 450.4 Attachment 1.5a. The subject property and requested relief are more particularly described on the site plan and sign elevations submitted which were accepted into evidence and marked as Petitioner's Exhibits 1 and 2 respectively.

Appearing at the public hearing in support of the Petition were Ronald Brumbaugh, Senior Manager of Construction for Giant, Mark Johnston of Gutcheck, Little and Weber, the civil engineer for the project, and Alan Nethen of Gable Signs. Charles B. Marek, III represented the Petitioner at the hearing. Appearing as Protestants on behalf of Reisterstown Owings Mills Glyndon Coordinating Council were George Harman and Noel Levy.

A combination of proffer and elicited testimony, which included cross-examination from the Protestants, testimony and exhibits were accepted into the record of the case. The site is approximately 7 acres and is zoned BL. The property is improved with the existing Cherry Valley Center, a multi-tenant retail facility, with frontage on Reisterstown Road, Cherry Valley Road and Nicodemus Road. The center has access from both Reisterstown Road and Cherry Valley Road. Testimony revealed that Giant has a total of twelve (12) stores in Baltimore County and employs roughly 1200 people. The chain is an important economic driver of the County, as well as the State of Maryland, and works with local businesses and farms.

Giant is going through a global reimagining of its stores, whereby the longstanding “big G” signage is being replaced with a “fruit-bowl” type logo and associated Giant lettering. As part of this change over from the old trademark to the new, Giant is upgrading not only the sign package, but also has allocated a significant sum to upgrade the interior of these stores. This reimagining to the “fruit-bowl” logo and associated signage will take place not only in Baltimore County, but across Maryland, Virginia, Delaware and the other markets of Giant.

Testimony also focused on the aspects particular to the property that make it appropriate for variance relief. The shape and layout of the property is unique, which shape is influenced by the fact the site had frontage on three different roadways, Reisterstown Road, Cherry Valley Road and Nicodemus Road. In addition, there is a significant grade change along the property’s Reisterstown Road frontage, which can be seen in the street level photographs submitted at the hearing. The steep grade increase along the main area commercial thoroughfare, which is magnified by the street trees and other vegetation, significantly restrict visibility into the site for motorists travelling in both directions along Reisterstown Road. Lastly, due to the fact that Reisterstown Road is a high speed thoroughfare, this reduces the amount of time a driver would

have to glimpse the store through any visibility windows into the center. I find that all of these characteristics combine to make this property unique.

The property in the instant matter was also the subject of Zoning Case No. 94-12-A, which granted a variance for 406 parking spaces in lieu of the required 483 spaces (B.C.Z.R. Section 409.6.A.4) and access aisle widths of 14 feet and 20 feet in lieu of the required 22 feet (B.C.Z.R. Section 409.4.C). Subsequently, the property was the subject in Zoning Case No. 2010-0184-SPHA, which granted additional variance relief from (i) B.C.Z.R. Section 409.6.A.2 to permit a total of 361 off-street parking spaces in lieu of the required 472, (ii) B.C.Z.R. Section 495.4.A.2.b to permit 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, (iii) B.C.Z.R. Section 450.4.3 to permit a freestanding directional sign with a height of 12 feet in lieu of the permitted 6 feet, and (iv) B.C.Z.R. Section 405.2.A to permit a setback a minimum of 83 feet from a residentially zoned property in lieu of the required 100 feet. These previously granted variances are also evidence that the site has been evaluated and was determined to be unique in each case.

These peculiar aspects of the unique property work in concert to create a practical difficulty for the supermarket, which is the inability to adequately alert the customers to their presence in the center as well as their multitude of services. This leads to decreased economic vibrancy of the store and the center as a whole because Giant is the anchor tenant. In addition, due to the consolidation of uses under one roof, these stores with large building footprints (i.e. big box) are unable to adequately advertise their services. I believe that the granting of the variance is able to remedy this practical difficulty. Allowing multiple signs will give customers an opportunity to recognize the store from more points along their drive.

Moreover, the testimony and evidence also showed that the granting of the variance would be in the spirit and intent of the zoning regulations. The sign regulations do attempt to allow stores to adequately advertise their services, and I believe that this relief is in keeping with that and other goals of the signage regulations. Also, customer recognition and identification of the stores is important as this reimagining is occurring not just in Baltimore County, but throughout all of Giant's operation across counties and states, including Maryland, Virginia, Delaware and the District of Columbia. Furthermore, Giant could in fact erect one larger sign of 420 square feet by right, while the 11 proposed signs are smaller and utilize only 402 square feet.

The testimony also bears that the granting of the variance will be in the interest of the public. The new sign package will utilize light-emitting-diode (LED) technology for illumination, thereby reducing the energy consumption by roughly ninety percent (90%) when compared to the traditional back-lit neon signage. The signage will also assist the flow of traffic as it will alert customers to the presence of the store and give them the time they need to properly and safely adjust their driving to accommodate their supermarket trip.

Pursuant to the advertisement, posting of the property and public hearing on the Petitions held, and for the reasons set forth above, the Petition for Variance should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge of Baltimore County, this 26th day of May, 2011 that the Petition for Variance from Section 450.4 Chart 1.5.a to permit 11 wall-mounted enterprise signs as shown on Petitioner's Exhibit 2, be and is hereby GRANTED, subject to the following restriction:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

