

IN RE: **PETITIONS FOR SPECIAL HEARING \*  
AND VARIANCE**

S/S Baltimore National Pike (U.S. Route 40)\*  
52' E centerline of Geipe Road  
**(6323 Baltimore National Pike) \***

1<sup>st</sup> Election District \*

1<sup>st</sup> Council District \*

Piekarski Properties, LLC, *Legal Owner* \*

40 Geipe, LLC, *Contract Purchaser* \*

Petitioners \*

\* \* \* \* \*

BEFORE THE  
ZONING COMMISSIONER

OF  
BALTIMORE COUNTY

**Case No. 2009-0141-SPHA**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Piekarski Properties, LLC, the owner, and 40 Geipe, LLC, contract purchaser, by and through their attorney, David H. Karceski, Esquire with Venable LLP. Petitioners request a special hearing from Section 409.10.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve three (3) stacking spaces, not including the space next to the transaction station, for a pharmacy drive-up window. Additionally, Petitioners request, pursuant to Section 409.6.A.2 of the B.C.Z.R, a variance to allow 61 parking spaces in lieu of the required 73 parking spaces. The subject property and the requested relief are more particularly described on the redlined site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of these petitions were David H. Karceski, Esquire and Kedrick N. Whitmore, Esquire, attorneys for the Petitioners; Daniel Klein, managing member of 40 Geipe, LLC, contract purchaser; Kenneth J. Colbert, P.E., with Colbert Matz Rosenfelt, Inc., the engineer who prepared the site plan, and Peirce Macgill, a Commercial

Revitalization Specialist representing the Department of Economic Development. There were no Protestants or other interested persons present.

Testimony and evidence revealed that the subject property is located directly south of Baltimore National Pike (Route 40), in close proximity to the intersection of Route 40 and Rolling Road in the Catonsville area of Baltimore County. The property is bounded on its south and east sides by the existing 40 West Shopping Center. Geipe Road borders the western edge of the property, proceeding south from an intersection with Route 40 and then looping east around the 10.4± acre 40 West Shopping Center and the subject property to connect with Rolling Road southeast of the tract.

The property at issue is a rectangular shaped parcel containing a net area of 1.38 acres, more or less, zoned B.R.-C.C.C. (Business, Roadside – Commercial, Community Core). The site is currently improved with an auto body shop known as Pie's Auto Body Specialists, Inc. and a truck cap and trailer sales facility t/a Cap World. *See* Petitioners' Exhibit 4A. 40 Geipe, LLC proposes to raze the existing buildings and erect a 14,409± square foot Walgreens drugstore on the property, complete with a customer drive-through lane for its pharmacy services. As illustrated on the redlined site plan, the proposed Walgreens will be set back from its main road frontage, Route 40, about 120 feet, and off-street parking will be located in front of the building, on its west side, and behind the building in the vicinity of the building's drive-through lane. Access to the site now exists on the property's Route 40 and Geipe Road frontages. There are two (2) existing entrances on Route 40 and three (3) existing entrances on Geipe Road. As part of the redevelopment proposal, Petitioners intend to eliminate one (1) access point on Route 40 and two (2) access points on Geipe Road, leaving only one (1) ingress and egress point on Route 40 and one (1) on Geipe Road. As noted above, an aerial photograph, submitted as Petitioners'

Exhibit 3, shows that Geipe Road loops around the subject property and the 40 West Shopping Center, creating an “island” that integrates the subject site with this larger neighboring commercial area.

Turning next to Petitioners’ Exhibit 5, one of the County’s revitalization district maps, the site is shown as part of the Baltimore National Pike Revitalization District. According to Article 26 of the Baltimore County Code (B.C.C.), the County encourages redevelopment of properties located within established revitalization districts. Photographs submitted as Petitioners’ Exhibits 4A through 4C show the existing conditions of the site and demonstrate that it is an excellent candidate for redevelopment. In addition, Mr. Macgill testified that his department supports Petitioners variance and special hearing requests, and that the proposed redevelopment furthers the County’s goal of commercial redevelopment in this revitalization area.

The requested variance relief pertains to off-street parking for the proposed Walgreens. Petitioners are seeking approval for a total of 61 parking spaces in lieu of the required 73 spaces. The parking regulations require that five (5) spaces be provided for every 1,000 square feet of gross floor area contained within a retail building. Because the proposed Walgreens will have 14,409± square feet of gross floor area, Petitioners are required under the parking regulations to provide 73 parking spaces. Therefore, Petitioners have requested a variance to provide 12 fewer parking spaces than required by the parking regulations.

It was explained during the hearing that the unique features of this site justify the requested variance. As made clear by the evidence and testimony presented, the site cannot be examined in isolation, but must be considered a functional part of the larger commercial “island” containing all that area between Rolling Road, Route 40, and Geipe Road. As noted, this island-

shaped area is also zoned B.R.-C.C.C. in its entirety and contains approximately 11.38<sub>±</sub> acres of land. Mr. Colbert conducted a study of the area surrounding the subject site, which revealed that this integrated layout is unique and not found elsewhere on Route 40 in the vicinity of the site. Furthermore, the configuration of this “island,” as evidenced by plats marked Petitioners’ Exhibit 7A and 7B, was effectively created in 1961 and 1963 with the recordation of these plats, lumping the properties together and integrating them in an enclave fashion from the surrounding area. The interconnected nature of the site with the larger B.R.-C.C.C. zoned “island” as a whole is further advanced by Petitioner’s intention to install a vehicular access drive and sidewalk between the subject site and the 40 West Shopping Center. This will allow for a cross-flow of customers between the properties. The subject property will, therefore, operate as an integral part of a larger commercial area making it unique with respect to the requested parking variance.

Petitioners then explained that the uniqueness of the property would result in a practical difficulty in complying with the parking regulations, if interpreted strictly. As stated, cross-flow of customers between this site and the other adjacent commercial uses will be made possible by Petitioners proposed driveway and sidewalk connection. Additionally, Petitioners plan a drive-through pharmacy window at the rear of the property, which will provide customers another way to patronize the store without using any of its off-street parking. With these site features, a strict interpretation of the applicable parking regulations would require Petitioners to install more parking spaces than necessary for the proposed development. This practical difficulty is further demonstrated by a letter from Walgreens’ Senior Real Estate Manager Matthew Harris, (Exhibit 10), explaining that in Walgreens’ experience no more than 30 to 40 parking spaces are typically needed for their stores during peak shopping hours. Petitioners explained that the proposed building is smaller than a standard Walgreens building, meaning that even less than 30 to 40

parking spaces may be necessary. These facts demonstrate that less parking is required by Walgreens to operate at this location than the parking regulations otherwise contemplate.

With regard to any adverse impact, the site photos collectively presented as Petitioners' Exhibit 4 show that the property is presently improved with commercial, automotive-related uses, and that Petitioners proposed retail use would be a much more attractive alternative. Additionally, Petitioners will be required to prepare a landscape plan in accordance with the County's Landscape Manual for review and approval by the County's Landscape Architect Avery Harden prior to issuance of a building permit. This landscaping together with the proposed elimination of an existing access point on Route 40 represents the opportunity for a further upgrade of the site from Route 40, the site's main road frontage. It is Petitioners position that redevelopment of the site will be an improvement within this revitalization district rather than resulting in any adverse impact.

Zoning Advisory Committee (ZAC) comments issued by certain reviewing County agencies were received by this Commission and are made a part of this case file. Comments were received from the Department of Environmental Protection and Resource Management (DEPRM), dated December 23, 2008, which indicate that the property must comply with the Forest Conservation Regulations. The State Highway Administration (SHA) provided comments, dated December 5, 2008, requesting that certain conditions be placed upon approval of the requested relief. Specifically, SHA addressed entrances to the site along Geipe Road and Route 40, and that Petitioners be required to obtain a permit from SHA prior to constructing improvements within the Route 40 right-of-way. Beyond these, no substantive comments were received.

After due consideration of the testimony and evidence presented, it is clear that Petitioners have met the standards set forth in B.C.Z.R. Section 307, and that the variance relief should be granted. The subject property is unique because of its location within the “island” created by the loop of Geipe Road, and its integration with the 40 West Shopping Center. It is also clear that, based on the unique features of the site, requiring Petitioners to adhere strictly to the requirements of the B.C.Z.R. would cause a practical difficulty. Finally, I find that no adverse impact will result if the requested relief is granted. As evidenced by the existing site photos (Petitioners’ Exhibit 4) and the sample Walgreens building elevations (Petitioners’ Exhibit 9), Petitioners redevelopment of this site will result in an attractive retail use that will benefit the surrounding area and be consistent with the goals of the County’s revitalization districts.

Turning to the special hearing, Petitioners seeks a determination in accordance with Section 409.10.A, which allows the Zoning Commissioner to determine the appropriate number of stacking spaces for the use’s drive-through lane. Here, Petitioners request that three (3) stacking spaces be approved to serve its pharmacy drive-through. Walgreens’ letter (Petitioners’ Exhibit 10) indicates that, in its experience, three (3) stacking spaces will be sufficient for the pharmacy drive-through. I find, based on the testimony offered by Petitioners that relates to this request and Petitioners’ Exhibit 10, that the proposed number of stacking spaces is appropriate for this use, and that in combination with the stacking space bypass lane provided on the site plan the drive-through lane will function properly. I am, therefore, persuaded that three (3) stacking spaces is an appropriate number at this site.

Pursuant to the advertisement, posting of the property, and hearing on these petitions held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 5<sup>th</sup> day of February, 2009 that the Petition for Special Hearing seeking a determination pursuant to Section 409.10.A of the B.C.Z.R. for a finding that three (3) stacking spaces, not including the space next to the transaction station, for a pharmacy drive-up window, are sufficient, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 409.6.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 61 parking spaces in lieu of the required 73 parking spaces, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following conditions:

1. The Petitioners may apply for their necessary permits and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. The re-development of this site must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Prior to constructing improvements within the Baltimore National Pike (Route 40) right-of-way, the Petitioners shall obtain an access permit in compliance with the ZAC comment submitted by Steven D. Foster, Chief, Engineering Access Permits Division of the State Highway Administration, dated December 5, 2008.

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SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County