

**IN RE: PETITIONS FOR SPECIAL HEARING \* BEFORE THE**  
**AND VARIANCE \* DEPUTY ZONING**  
 E side of Merritt Blvd.; 238 feet N of the \*  
 c/l of German Hill Road \*  
 12<sup>th</sup> Election District \* COMMISSIONER  
 7<sup>th</sup> Councilmanic District \*  
 (1115-1211 Merritt Blvd.) \* FOR BALTIMORE COUNTY  
 \*  
**James Sylvia, Senior Vice President,**  
**Dundalk Acquisition, LLC**  
*Petitioner* \* **Case No. 2010-0104-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 Sylvia, Senior Vice President, Real Estate, on behalf of the legal owner of the property, Dundalk Acquisition, LLC. Petitioner is requesting Special Hearing relief 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. 04-145-XA. Petitioner is also requesting Variance relief as follows:

- From Section 409.6.A.2 of the B.C.Z.R. to permit a total of 469 off-street parking spaces in lieu of the required 601 parking spaces<sup>1</sup>; and
- From Section 450.4.3 of the B.C.Z.R. to allow a freestanding directional sign with a sign face area of 9.2 square feet in lieu of the permitted 8 square feet and a height of 12 feet in lieu of the permitted 6 feet.

The subject property and requested relief are more fully described on the four page redlined site plan that was marked and accepted into evidence as Petitioner’s Exhibits 1A through 1D.

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<sup>1</sup> As will be referenced further in this Order, Petitioner submitted a redlined Petition for Variance, which seeks variance relief to permit a total of 470 off-street parking spaces in lieu of the required 602 parking spaces.

At the requisite public hearing, David H. Karceski, Esquire and Christopher Mudd, Esquire with Venable LLP appeared as attorneys for Petitioner. Also appearing in support of the requested relief were Rubin Bard, Director of Real Estate for Giant Food, Laura Duggan with Keypoint Partners, the property manager for the subject property, and Dean Smith and Lee Ann Gudorp with Vanasse Hangen Brustlin, Inc., the engineers who prepared the site plan to accompany the zoning relief. Upon receipt of his resume, which was marked and accepted into evidence as Petitioner's Exhibit 3, Mr. Smith was offered and accepted as an expert in the field of professional engineering, with particular knowledge of the Zoning Regulations. There were no Protestants or other interested persons in attendance.

At the outset of the hearing, Mr. Karceski submitted a redlined Petition for Variance that was marked and accepted into evidence as Petitioner's Exhibit 2. This redlined Petition clarified that the parking variance request was to permit a total of 470 off-street parking spaces in lieu of the required 602 parking spaces; despite this redline change, the requested parking variance is for the same number of parking spaces as originally requested. Additionally, Mr. Karceski explained that there were a few minor redlined changes to the site plan relating to the proper identification of an existing tenant and slight adjustments to the proposed improvements.

In addition to explaining the redlined changes, Mr. Karceski proceeded by way of a combination of a proffer and testimony from Petitioner's witnesses. The testimony and evidence revealed that the subject property, known as the Merritt Manor Shopping Center, is comprised of approximately 10.67 acres, situated at the northeast corner of the intersection of Merritt Boulevard and German Hill Road, in the Dundalk area of Baltimore County. The subject property is zoned B.L. (Business, Local), as is shown and indicated on the aerial photograph/zoning map that was marked and accepted into evidence as Petitioner's Exhibit 5. As explained by Mr. Karceski, the

redlined site plan and Petitioner's Exhibit 5 help demonstrate some of the unique aspects of the property. These include: its diamond or "kite" shape; the noticeable portions of property immediately adjacent to the intersection of Merritt Boulevard and German Hill Road and along the northern boundary of the property that appear to have been "cut out" from the overall site, and are under separate ownership; and the location of a 100 year floodplain, which runs through the property and effectively separates the northeastern corner of the property from the remainder of the site. Additionally, it was noted that there is a significant grade change along Merritt Boulevard, just south of its intersection with German Hill Road, which, together with the irregular shape of the property, limits visibility into the site for motorists traveling northbound along Merritt Boulevard.

The property is presently improved with a main shopping center building containing approximately 84,354 square feet of gross floor area and a stand alone pad site used by a bank. The anchor tenant is a Gold's Gym health club, and there are numerous other tenant spaces within the shopping center occupied by retailers, office uses, and restaurants; the center was accurately described as a suburban convenience shopping center. Photographs of the subject property, marked and accepted into evidence as Petitioner's Exhibit 6, 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 Merritt Boulevard frontage, as shown on the redlined site plan. Petitioner's Exhibit 1B of the site plan shows a detail of the facility's layout, which includes six fuel pump dispensers, a small attendant's kiosk, and customer restroom, all situated under a fuel canopy. The facility will have two vehicular access points connecting it to the off-street parking and the internal access

drives that serve the overall shopping center. Petitioner's Exhibit 1C provides elevations for the canopy, kiosk, and a typical fuel pump dispenser, and includes 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 allowed. For example, where an individual property or lot is zoned such that it has a certain overlay district (e.g., an "AS" 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 Merritt Manor Shopping Center as a planned shopping center in June, 2009, as required by the B.C.Z.R. 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, Mr. Karceski and Mr. Smith, Petitioner's engineer, identified certain variances required for the proposed fueling facility, which are the subject of this hearing. Mr. Karceski explained that the parking regulations contained in Section 409 of the B.C.Z.R. require a total of 602 parking spaces for the site and that 470 spaces will be provided. Additionally, Petitioner proposes a single freestanding directional sign along an internal access drive within the center's parking field and presented Petitioner's Exhibit 1D, which contains a detail for the proposed sign. This sign location is in close proximity to both of the fueling facility's access points within the center, 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 9.2 square foot sign face area

devoted to the “Giant” brand logo and a directional arrow, in lieu of the permitted 8 square feet. As a result, Petitioner requires additional variance relief for the proposed directional sign.

Further testimony and evidence indicated that the specific need for the variances is generated by the uniqueness of the subject property. With regard to the parking variance, it is the property’s irregular shape together with the identified site constraints that render it unique. I should note that in 2004 in Case No. 04-145-XA, then-Deputy Zoning Commissioner John V. Murphy granted a prior parking variance, citing the irregular shape of the property and, in particular, the unique “cut-outs” on the northern and southern edges of the site. With regard to the sign variance, again the property is unique due to its shape, and in combination with its relationship to the surrounding roadways and the intervening property at the intersection of Merritt Boulevard and German Hill Road. Additionally, it is at this intersection that a significant change in grade occurs, which limits visibility into the site. According to Mr. Smith, these factors require special consideration for the single directional sign proposed to provide adequate direction for motorists desiring to enter the site.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comment from the Office of Planning dated October 14, 2009 indicates that Office does not oppose Petitioner’s requests. The remaining comments also indicate no opposition or other recommendations concerning the requested relief.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. As to the request for special hearing, but virtue of the instant variance relief and the site plan accepted into evidence as Petitioner’s Exhibits 1A through 1D, Petitioner simply desires to update the previously adopted site plan from the 2004 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 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 and its site constraints identified during the testimony, and conclude that the subject 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 a total of 602 parking spaces, Petitioner's witnesses, Dean Smith and Laura Duggan, 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 is also instructive here. In particular, Ms. Duggan, who has been the property manager for this site for over four years, confirmed that she has never observed any parking problems and that, with the addition of the fueling facility, there will still be more than adequate parking. Mr. Smith also confirmed that the fueling facility by itself would not generate the need for any additional parking spaces. Moreover, in Case No. 04-145-XA, the Deputy Zoning Commissioner specifically found, as remains the case today, that there were no adjacent properties available to supplement the shopping center's onsite parking, which contributed 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 any onsite related 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 a shopping center does not allow for installation of freestanding or wall-mounted enterprise signage and, as a result, installation of a directional sign is the only practicable substitute.

Finally, I find that the variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such 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 will be provided will adequately serve the site. Additionally, the requested sign, as designed, will 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 directional arrow with the fuel pricing on the same sign, so as to avoid the installation of multiple signs. Thus, I find that the variance requests 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, 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 11<sup>th</sup> day of December, 2009 that Petitioner’s Special Hearing request in accordance

with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve an amendment to the site plan approved in Case No. 04-145-XA be and is hereby **GRANTED**; and

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

- From Section 409.6.A.2 of the B.C.Z.R. to permit a total of 470 off-street parking spaces in lieu of the required 602 parking spaces; and
- From Section 450.4.3 of the B.C.Z.R. to allow a freestanding directional sign with a sign face area of 9.2 square feet in lieu of the permitted 8 square feet and a height of 12 feet in lieu of the permitted 6 feet, be and are hereby **GRANTED** in accordance with the site plan accepted into evidence as Petitioner's Exhibits 1A through 1D.

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.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz