

IN RE: <b>PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION AND VARIANCE</b>		
N/Side Liberty Road (Md. Rte. 26), NW	*	ZONING COMMISSIONER
Corner of Liberty and Rolling Roads		
<b>(8212 Liberty Road)</b>	*	FOR
2 <sup>nd</sup> Election District	*	BALTIMORE COUNTY
4 <sup>th</sup> Council District		
	*	
Anna B. Beaty, et al, <i>Legal Owners</i>		
Macro Holdings, LLC, <i>Contract Lessee</i>	*	<b>Case No. 2010-0116-SPHXA</b>
<i>Petitioners</i>		

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the property owners<sup>1</sup> and the contract lessee, Macro Holdings, LLC. Petitioners request special hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a modified parking plan pursuant to Section 409.12.B of the B.C.Z.R. In addition, Petitioners request special exception relief to approve a drive-in restaurant pursuant to Section 230.3 of the B.C.Z.R. Finally, Petitioners request a variance, in the alternative in the event the modified parking plan is not approved as part of the special hearing request, to permit 394 parking spaces in lieu of the required 500 pursuant to B.C.Z.R. Section 409.6.A.2, and to permit the drive-through lane to cross the principal pedestrian access to the facility pursuant to B.C.Z.R. Section 409.10.B. The subject property and requested relief are more fully described on the two-page site plan, which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief were Sean

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<sup>1</sup> The shopping center at 8212 Liberty Road is held in trust by Raymond H. Beaty, Anna B. Beaty, and Jacqueline Anne Mickiewicz.

Martin and David Crocetti, representatives of Macro Holdings, LLC, the contract lessee, who were represented by Sebastian A. Cross, Esquire, of Gildea and Schmidt, LLC. Also present at the hearing were Adam Volanth and Joseph J. Ucciferro, P.E. of Bohler Engineering, the civil engineers/land development consultants who prepared the plan; Kenneth W. Schmid of Traffic Concepts, Inc., who prepared a parking study; Mark McFadden with the Liberty Road Business Association and John F. McPhaul, President of the Liberty Road Community Council, participated at the hearing and submitted letters of support. *See* Petitioners' Exhibit 6. The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated November 16, 2009 which indicated support for the relief requested under the subject petitions. Area Planner David Green also testified in support of the project, as did Pierce McGill from the Baltimore County Department of Economic Development.

Testimony and evidence offered revealed the subject property is in the Randallstown area of western Baltimore County, consisting of a shopping center containing 6.6 acres, more or less, improved with approximately 93,400 square feet of enclosed retail space. The site is split zoned B.L.-A.S. and B.L. and is in the commercial corridor of Liberty Road and surrounded by other business uses. The shopping center has been operating since 1972, with no significant improvements being made to the site since that time. The petition before me is for an approximate 1,645 square foot development for a drive-in restaurant to be placed in the front portion of the existing shopping center parking lot. As the development is classified as a "drive-in" restaurant, it requires a special exception. It should be noted that this special exception would not be necessary if a drive-through restaurant (per B.C.Z.R. Section 230.1) were

requested; however, the operation falls under the older 1967 definition of drive-in<sup>2</sup>, due to the unique characteristic that some cars park outside and food is taken out to these parked cars, rather than a drive “through” delivery lane. Other than this food delivery occurring to parked cars, the characteristics of this operation are basically identical to other fast-food restaurants which, again, are permitted in the underlying zone. The proposed operation is the same as other operations in Baltimore County and Randallstown and meets all bulk regulations including setbacks and drive aisles. Testimony and evidence disclosed that this operation would have no greater detrimental impact than other “fast food” operations in similarly zoned property in the County or the surrounding commercial corridor of Randallstown. Furthermore, this proposed restaurant was supported by the relevant community groups, Office of Planning and the Department of Economic Development. It is also of note that Marco Holdings has proposed significant upgrades including landscaping and increased pervious surface to the proposed pad site and the remaining shopping center in response to contacts with the Office of Planning. This capital investment and improvement to an aged facility is the type of revitalization desired by Baltimore County, particularly in the Randallstown Revitalization District. Mr. Ucciferro further opined that the proposed Sonic Drive-In Restaurant would conform to and meet all of the criteria set forth in B.C.Z.R. Section 502.1 as interpreted by the Court of Appeals in *People’s Counsel for Baltimore v. Loyola College*, 406 Md. 54, and, if granted, would be consistent with the properties’ zoning classifications and within the spirit and intent of the B.C.Z.R.

Special hearing relief is also requested as set forth above to approve a modified parking plan, to accommodate the proposed parking for the restaurant in the parking field for the shopping center. In support of this request, Petitioners submitted as Exhibit 7 a parking survey

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<sup>2</sup> A Drive-In Restaurant is defined in B.C.Z.R. Section 101 as: “A retail outlet where food and beverages are sold to a substantial extent for consumption by customers in parked motor vehicles”.

prepared by Traffic Concepts, Inc., which demonstrated that currently during peak hours, only 40% of the existing parking is utilized. Testimony from Ken Schmid, who prepared the survey, included his opinion that the parking field as proposed would not cause a detriment to surrounding traffic or interior circulation. This site is an older center which is limited in terms of available space to provide for parking. As such, a modified parking plan is proper for this type of redevelopment of an older center. Two stores sharing the parking lot include a grocery store and an Ollie's outlet. The uses will be a mix restaurant and retail and based on his expertise, Mr. Schmid sees this as an overlapping of uses for parking purposes. Specifically, he indicated that although some customers will patronize the Sonic Restaurant and shopping area separately, very often, customers that visit the property will patronize both the retail area and the restaurant all at once. As a practical matter, this overlapping of uses will reduce the actual number of parking spaces required to support these uses. In his opinion, Mr. Schmid believes the number of parking spaces provided will be sufficient to meet the needs of the uses and the modified parking plan as shown on the site plan meets the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. For all of these reasons, I believe that the relief requested should be granted. Having ruled on the propriety of the special hearing relief, I find the variance request, filed in the alternative, is rendered moot.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 5<sup>th</sup> day of January 2010, that the Petition for Special Hearing, pursuant to Section 409.12.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a modified parking plan with

the drive-through lane crossing the principal pedestrian access to the facility pursuant to B.C.Z.R. Section 409.10.B, be and is hereby GRANTED, and

IT IS FURTHER ORDERED that the Petition for Special Exception to permit the use of the described property for a drive-in restaurant pursuant to B.C.Z.R. Section 230.3 as shown on Petitioners' Exhibit(s) 1 (site plan), 9 (landscape plan), and 10 (building elevations), be and is hereby GRANTED, subject to the following restriction:

- Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its 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.

IT IS FURTHER ORDERED that the Petition for Variance, filed in the alternative, to permit 394 parking spaces in lieu of the required 500 spaces pursuant to B.C.Z.R. Section 409.6.A.2, is hereby DISMISSED as MOOT.

Any appeal of this decision shall be taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

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WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County