

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SW corner of Main St. and Stocksdale Ave.		
33 feet W of the c/l of Reisterstown Road	*	DEPUTY ZONING
4 th Election District		
2 nd Councilmanic District	*	COMMISSIONER
(516 Reisterstown Road)		
	*	FOR BALTIMORE COUNTY
S & J Management, Inc.		
<i>Legal Owner</i>	*	CASE NO. 2010-0119-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal property owner, S & J Management, Inc. Petitioner requests Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) and pursuant to Section 502.3 of the B.C.Z.R. to extend the period for utilization of the Special Exception granted in Case No. 08-163-SPHXA to five years from the date of the final Order. The subject property and requested relief are more fully described on the site plan drawing which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief was Arnold Jablon, Esquire on behalf of Petitioners S & J Management, Inc. and WaWa Markets. Also appearing in support of the requested relief was Bruce Rice with WaWa Markets and David Martin with Martin & Phillips Design Associates, Inc., the Landscape Architect who prepared the site plan. Mr. Martin has been recognized and accepted as an expert witness on land use, development and zoning in Baltimore County before the Zoning Commissioner and was accepted as an expert in the instant matter. Appearing as interested citizens were Mary Molinaro and George Harman with the Reisterstown-Owings Mills-Glyndon Coordinating

Council (hereinafter referred to as “ROG”), an umbrella organization that represents the interests in these communities in a number of civic, economic, and land use matters throughout the area. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is an irregular-shaped parcel containing approximately 81,457 square feet or 1.87 acres, more or less, and zoned B.R.-A.S. (0.96 acre), B.R. (0.31 acre), and D.R.3.5 (0.60) acre). The property is located on the west side of Reisterstown Road, where that road becomes known as Main Street, and is bordered by Stocksdale Avenue to the north and Owings Avenue to the west in the Reisterstown area of Baltimore County. The property is comprised of six parcels, and is improved with several dwellings and a trailer. Visually, the property appears to be a mishmash of commercial and residential uses, including rental apartments and a used car lot, though with no apparent consistency.

The instant property was the subject of requests for various relief in Case No. 08-163-SPHA, which included the request for (1) a special exception to permit a fuel service station in combination with a convenience store and carry out restaurant; (2) a special hearing to (a) confirm payment for fuel service may be made in the BR zone while the fuel service is located in the B.R.-A.S. Zone; (b) permit business parking in a residential zone for customers and employees; and (c) to confirm that a private road is permitted to bisect a RTA buffer to connect adjoining developments; and (3) in the alternative to the special hearing relief, a variance to permit a private road to bisect the RTA buffer. The relief was granted with certain conditions in an Order dated March 14, 2008.

Subsequently, a Protestant, Robert Begleiter, who appeared at the hearing and within the 30 day appeal period required by law, filed an appeal to the County Board of Appeals. On or

about July 21, 2008, Petitioner S & J Management, Inc. entered into and executed an “Agreement and Declaration of Covenants” (hereinafter referred to as the “Agreement”) with ROG and Mr. Begleiter, a copy of which was marked and accepted into evidence as Petitioner's Exhibit 2. By this Agreement, amongst its terms and conditions, Petitioner is obligated to abide by certain conditions delineated therein and Mr. Begleiter agreed to withdraw and dismiss his appeal. ROG also agreed not to oppose Petitioner's approval as granted in Case No. 08-163 SPHXA and, further, would not oppose the development of the subject site for the uses described therein.

On August 14, 2008, the County Board of Appeals entered its Order of Dismissal, which was also marked and accepted into evidence as Petitioner's Exhibit 3. The Order by this Deputy Zoning Commissioner issued in Case No. 08-163-SPHXA thereupon became final and binding on that date. As to the instant special hearing request, Section 502.3 of the B.C.Z.R. provides in pertinent part as follows:

A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have specified therein shall thereafter be void...After a final order granting a special exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the special exception is not thereby extended for a period of more than five years from the date of the final order granting same.

A special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence.

The decision and order granting the special exception in Case No. 08-163-SPHXA did not specify a longer time period for utilization. Therefore, by default, the period of utilization is two years. Petitioner by this petition is requesting an extension to five years.

The original Order granting the relief was dated March 14, 2008. If no appeal had been taken, this order would have become final and the utilization date would expire on March 14, 2010. As a result of the dismissal of the appeal, the order became final, and the date for utilization was extended to August 14, 2010.

Mr. Jablon, on behalf of Petitioner and of WaWa, the lessee of the instant property, which intends on building the fuel service station in combination with the convenience store and carry out restaurant, proffered and Mr. Martin confirmed, that if Mr. Martin were to testify he would explain that Petitioner and WaWa have made every effort to secure the necessary building permits to initiate construction. Their efforts at securing permits began August 11, 2008, prior to the decision of the Board of Appeals, and continue today. Mr. Martin presented a spreadsheet setting forth the dates of various submittals to the County, which was marked and accepted into evidence as Petitioner's Exhibit 3. Mr. Martin testified that the process leading to the securing of building permits is time consuming and intensive. This requires not only County approval but also State Highway Administration ("SHA") approval. From the engineering of design work, to fire flow tests for water pressure, to grading and storm water management plans, erosion and sediment control construction plans, to SHA storm drain plans, every effort has been made to facilitate utilization of the special exception. Mr. Martin on behalf of Petitioner and WaWa has made every good faith effort to secure the requisite County agencies approvals. While he believes that there is a good chance building permits can be issued before August of 2010, certainly no construction can begin prior to the issuance of permits. And certainly nothing can

be guaranteed. Mr. Jablon expresses doubt that construction, even if permits were issued prior to August of 2010, could begin prior to the expiration date. This exposes Petitioner to the possibility the special exception it was granted would become null and void even though it has made good faith efforts to comply.

In addition, Mr. Rice confirmed that the economic downturn has negatively impacted all development activity planned by WaWa. While WaWa has committed to develop the instant site, WaWa is proceeding cautiously and prudently, as any business would in the current economic uncertainty. Mr. Jablon cautions and Mr. Rice is concerned there is not enough time left to utilize the special exception by August of 2010. Petitioner is therefore requesting that the time period for utilization be increased from two years to five, as permitted by Section 502.3.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. There were no negative comments.

Ms. Molinaro and Mr. Harman were not opposed to the request, but asked that any relief granting the extension include two conditions. Number one is the request of this Commissioner to include the aforementioned Agreement as a condition of approval. They want County Code Enforcement to have the ability to enforce its terms and conditions, if necessary. Mr. Jablon, on the behalf of Petitioner, does not object. Number two is a commitment to have the existing buildings on the subject property removed as quickly as possible. Mr. Jablon explained, and Mr. Rice confirmed, that there is every intention of removing them. However, the lease is contingent on obtaining all necessary building permits. If for whatever reason, building permits cannot be obtained, the lease would be null and void. Petitioner currently has at least one of the buildings on site -- a single-family dwelling -- rented and is receiving income. Once all necessary building permits are issued, and within a reasonable time therefrom, the buildings will be removed.

Considering all the testimony and the evidence presented, I find that the request to extend the time period for utilization of the special exception granted in Case No. 08-163-SPHXA is reasonable, which is the standard required by Section 502.3 of the B.C.Z.R. Based on the evidence and testimony, I determine that the period of utilization of the special exception in Case No. 08-163-SPHXA should be for a period of five years, to be extended from August 14, 2010 to August 14, 2013.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 17th day of December, 2009, that Petitioner's request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) and pursuant to Section 502.3 of the B.C.Z.R. to extend the period for utilization of the Special Exception granted in Case No. 08-163-SPHXA to August 14, 2013, five years from the date of the final Order on August 14, 2008, be and is hereby **GRANTED**, subject to the following conditions:

1. Petitioner may apply for its 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 such time as the 30-day appellate process from 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. The Agreement and Declaration of Covenants, dated July 21, 2008 by and between S & J Management, Inc. and Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG) and Robert Begleiter, accepted into evidence as Petitioner's Exhibit 2, be and is hereby incorporated herein by reference as a condition to the approval granted herein.
3. Petitioner shall remove all existing buildings within a reasonable time after all necessary building permits have been secured.

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