

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
NE Corner Reisterstown Road (MD Rt. 140),	*	ZONING COMMISSIONER
52' S of Owings Mills Boulevard		
<b>(Garrison Forest Plaza)</b>	*	OF
2 <sup>nd</sup> Council District	*	BALTIMORE COUNTY
4 <sup>th</sup> Election District		
	*	
Garrison Forest Associates, L.P.		
Petitioner	*	<b>Case No. 2010-0253-SPHA</b>
* * * * *		

**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 the owner and long-term ground lessee of the subject property, Garrison Forest Associates Limited Partnership, by its Commercial Real Estate Director, Bruce I. Levine, and their attorneys, David H. Karceski, Esquire and Arnold E. Jablon, Esquire, with Venable, LLP. The Petitioner requests a special hearing to approve an amendment to the site plan approved in prior Case No. 99-391-SPHA. In addition, the Petitioner requests the following relief: **(1)** from Section 409.8.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit existing parking spaces in an off-street parking facility for a non-residential use to be as close as 3 feet to a right-of-way of a public street in lieu of the required 10 feet, unless it is confirmed that the parking spaces are non-conforming; **(2)** from Section 409.4 of the B.C.Z.R. to allow existing off-street parking spaces with direct access to vehicular travelways; **(3)** to permit existing interior landscaping to be 2% of the parking lot area in lieu of 7% as required by the Baltimore County Landscape Manual, unless it is confirmed that the interior landscaping of 2% is non-conforming; **(4)** to permit an existing 0-foot wide landscape strip adjacent to residentially zoned property in lieu of 15 feet as required by the Baltimore County

Landscape Manual, unless it is confirmed that this 0-foot wide landscape strip is non-conforming, and (5) to permit existing 5-foot wide parking lot islands from face of curb to face of curb in lieu of 9 feet as required by the Baltimore County Landscape Manual, unless it is determined that these 5-foot wide islands are non-conforming. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.<sup>1</sup> Petitioner's Exhibit 2 serves as a key to easily identify the locations on the shopping center property where variance relief is requested.

Appearing at the requisite public hearing in support of these petitions were David Karceski, Esquire and Arnold Jablon, Esquire, with Venable, LLP, attorneys for Petitioner, and Kenneth J. Colbert, P.E., with Colbert Matz Rosenfelt, Inc., the engineer who prepared the site plan(s) for this shopping center. Dino LaFiandra, Esquire, appeared on behalf of his client, Whale LLC, owner of another commercial property located on the opposite side of Owings Mills Boulevard from the subject property. There were no Protestants or other interested persons present.

Testimony and evidence revealed that the subject property consists of approximately 10.36 acres, more or less, split-zoned B.M. (Business, Major) and B.L.-A.S. (Business, Local – Automotive Services) and is the site of the Garrison Forest Plaza shopping center, which contains numerous retail, restaurant and other commercial uses. The site has been a shopping center since the late 1960s and Petitioner desires to fill a vacancy in the center with a standard restaurant. Specifically, an existing pad site, labeled on Petitioner's Exhibit 1 as “#10391 VACANT PROPOSED RESTAURANT,” was formerly occupied by Tweeter, a consumer

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<sup>1</sup> At the onset of the public hearing in this case, Petitioner withdrew from consideration by this Commission a parking variance originally filed as part of the Petition for Variance. Petitioner explained that the project engineer made certain minor revisions to the site plan originally filed and, in doing so, was able to eliminate the need for the variance involving the number of required parking spaces. The public hearing proceeded on the remaining list of five (5) requested variances.

electronics retailer no longer in business due to recent economic conditions that affected this particular retail market. It is this pad site that Petitioner desires to lease to a standard restaurant operator.

By way of brief history, a prior parking variance was granted for the shopping center in Case No. 99-301-SPHA. As noted above, Mr. Colbert was able to make minor modifications to the site plan originally filed in this case, to obviate the need for the additional parking variance that was made a part of the Petition for Variance. With these changes to the Petitioner's Exhibit 1, the remaining requested zoning relief relates to layout for the off-street parking that serves the shopping center and the existing landscaping on the shopping center property.

It was explained during the hearing that the uniqueness of the shopping center justifies the requested variances. As made clear by the evidence and testimony presented, Petitioner explained that the Garrison Forest Plaza was developed in the late 1960s, which development predated the adoption of the provisions of the Parking Regulations contained in Section 409 of the B.C.Z.R. and the current Baltimore County Landscape Manual from which variance relief is requested. In fact, this shopping center was developed in accordance with a different set of Zoning Regulations that pertained to off-street parking lots at that time as well as a different Landscape Manual that contained altogether different requirements for landscaping in shopping center parking lots. It is this site's development history together with the current configuration of the off-street parking and site landscaping that render the property unique in the context of this case. Petitioner further indicated, from its perspective, that a strict interpretation of the applicable parking regulations and relevant provisions of the Landscape Manual would create a practical difficulty requiring Petitioner to make changes to the layout of the existing parking and site landscaping that would result in a substantial reduction in the overall number of parking

spaces now provided at the site. With regard to any adverse impact, the layout for off-street parking spaces and arrangement of landscaped areas, as shown and indicated on Petitioner's Exhibit 1, are not cause for concern.

After due consideration of the testimony and evidence presented, it is clear that Petitioner has 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 due to its development history and existing site conditions and requiring Petitioner to adhere strictly to the requirements of the B.C.Z.R. and County Landscape Manual would cause a practical difficulty. Finally, I find that no adverse impact will result if the requested relief is granted. It is also important to note that no reviewing County agency issued an adverse Zoning Advisory Committee (ZAC) comment.

The Petition for Special Hearing seeks approval to amend the site plan approved in Case No. 99-391-SPHA. As explained above, these changes to the site plan do not involve the addition of any more gross leasable area to the shopping center. The changes to the prior site plan relate generally to the layout of off-street parking spaces with the goal of maximizing the number of parking spaces Petitioner is able to provide on site. Thus, the special hearing relief should be granted to amend the previously approved site plan to reflect these plan changes.

Mr. LaFiandra, on behalf of his client Whale, LLC, noted that he had discussions with Petitioner prior to this public hearing and that his client does not object to approval of the requested zoning relief, provided certain conditions are made a part of this Commission's Order. These conditions were read into the record at the public hearing, and I will incorporate them as part of my Order in this case.

Pursuant to the advertisement, posting of the property and public 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 for Baltimore County this 17<sup>TH</sup> day of September 2010 that the Petition for Special Hearing for approval of an amendment to the site plan approved in prior Case No. 99-391-SPHA, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief as follows: **(1)** from Section 409.8.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit existing parking spaces in an off-street parking facility for a non-residential use to be as close as 3 feet to a right-of-way of a public street in lieu of the required 10 feet, unless it is confirmed that the existing parking spaces are non-conforming; **(2)** from Section 409.4 of the B.C.Z.R. to allow existing off-street parking spaces with direct access to vehicular travelways; **(3)** to permit existing interior landscaping to be 2% of the parking lot area in lieu of 7% as required by the Baltimore County Landscape Manual, unless it is confirmed that this interior landscaping of 2% is non-conforming; **(4)** to permit an existing 0-foot wide landscape strip adjacent to residentially zoned property in lieu of the 15 feet as required by the Baltimore County Landscape Manual, unless it is confirmed that this 0-foot wide landscape strip is non-conforming, and **(5)** to permit existing 5-foot wide parking lot islands from face of curb to face of curb in lieu of 9 feet as required by the Baltimore County Landscape Manual, unless it is determined that these 5-foot wide islands are non-conforming, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; subject to the following conditions:

1. The Petitioner may apply for their necessary permits and be granted same upon the receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the thirty (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.

2. Petitioner will provide an area on the site for employee parking with enough parking spaces for one full shift of restaurant employees. This area will be located remotely from the restaurant pad (near Shell Station, Safeway, Bank of America, etc.) Restaurant employees will be instructed to park in this location. There is no penalty for non-employees parking in this area.
3. Petitioner will install a fence in the median of Owings Mills Boulevard, provided Petitioner is able to obtain all necessary approvals and permits from Baltimore County. With approval by the County, Petitioner will then work with Whale, LLC to determine the specific location for the fence, which shall extend no farther than the subject property's frontage on Owings Mills Boulevard. If not permitted by Baltimore County, Petitioner and Whale, LLC will work in good faith to agree upon an alternate location for a fence of the same length. Installation of the fence shall be at Petitioner's expense.
4. Petitioner will install up to ten (10) signs on the subject property instructing restaurant employees and customers not to park on the Whale Property. Additionally, with the consent of Whale, LLC, Petitioner will install up to ten (10) signs on the Whale Property in locations selected by Whale, LLC notifying parkers on the Whale Property that parking on the Whale Property is for customers of the Whale Property, or a like message, to be determined by Whale, LLC.
5. For as long as the pad site, labeled "#10391" on the site plan, is used for a standard restaurant or, if another tenant space in the center of the same or greater size is converted to standard restaurant use, upon request by Whale LLC, Petitioner will utilize at least one security personnel who shall have the following responsibilities:
  - a. Subject to subsections (e), (f) and (g) below, monitor the parking lots of the Whale property for the sole purpose of identifying any parkers that are parking on Whale property and walking over to the subject property;
  - b. Timely report the parkers identified in (a), above, to a designated agent of Whale, LLC;
  - c. Upon further request by Whale, LLC or its agent, Petitioner or its agent will call a licensed trespass tower to have the cars identified in (a), above, towed from the Whale property;
  - d. The signage required by Baltimore County Code (B.C.C.) to notify parkers of the towing potential may be combined with the signs provided in (3), above, or, at the discretion of Whale, LLC, Petitioner shall provide additional signage meeting the code requirements for the Whale property;

- e. If requested, the security personnel will undertake these responsibilities starting at 5:00 PM and concluding at 10:00 PM;
- f. Beginning October 1<sup>st</sup> through December 31<sup>st</sup>, Whale, LLC can request a maximum of 45 days for monitoring. Each individual request is for a period of three (3) days with no time limitation between calls. The maximum number of requests by Whale, LLC is 15 for a total of 45 days for monitoring during this period; and
- g. Beginning January 1<sup>st</sup> through September 30<sup>th</sup>, Whale, LLC can request a maximum of 15 days for monitoring/towing.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 409.6 of the B.C.Z.R. to permit 597 off-street parking spaces in lieu of the required 751 parking spaces, be and is hereby DISMISSED AS MOOT.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County