

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

N/S Fork Road, 166' W of c/line of * BEFORE THE
Harford Road ZONING COMMISSIONER
(12607 Fork Road) * FOR

11th Election District * BALTIMORE COUNTY
3rd Council District *

Creta Enterprises, LLC * Case No. 2010-0361-SPHA
Petitioner *

* * * * *

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 of the subject property, Creta Enterprises, LLC, by William Marvelis, its managing member, through their attorney, John B. Gontrum, Esquire. The Petitioner requests a special hearing for parking to support a restaurant use in a R.C.5 zone, pursuant to Section 409.8.B of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, variance relief is requested from B.C.Z.R. Sections 259.3.C.2.a and 303.2 to permit a front yard setback of 12 feet in lieu of the required 15 feet and 87 feet respectively; from Section 259.3.C.2b to permit a side yard setback of 2 feet in lieu of the required 15 feet; from Section 409.8.A.2 to permit parking on turf cells in lieu of the required durable and dustless parking surface; from Section 409.A.6 to permit parking spaces separated by visible markers other than striping; from Sections 259.3.C.7.b, 259.3.C.7.c and 450.4 (4 Attachment 1:3) to permit two (2) freestanding illuminated signs in lieu of the one freestanding sign permitted, and lastly, from Section 259.3.C.7.b to permit an existing, illuminated sign of 55 square feet per side in lieu of the permitted 25 square feet and to permit a proposed, illuminated sign with manual changeable copy containing 32 square feet per side in lieu of the permitted 25 square feet per side in a C.R.

district. 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.

Appearing at the requisite public hearing in support of the requests were William and Effie Marvelis, on behalf of the owner; Jeffrey J. Deegan, P.E. of Wilson Deegan & Associates, Inc, the consultant who prepared the site plan for the property, and nearby residents; namely, Bobby and Pam Prigel, Stephen G. Kiel and Darrell Edwards, Vice Chairman of the Greater Long Green Community Association. John B. Gontrum, Esquire, of Whiteford, Taylor & Preston, LLP appeared on behalf of the Petitioner. Mike Pierce, a resident of Kingsville, appeared as an interested person. Electronic mail correspondence was also received from the Greater Kingsville Civic Association, Inc. asking for a delay in the closing of the record for its input. The record was left open, and this input was received September 21, 2010 from Ila Christenbury as was correspondence from Carol Trella, the Long Green Valley Association Secretary.

Testimony and evidence offered disclosed that the subject property consists of approximately one (1) acre located on the northwest side of Fork Road approximately 166 feet west of the center line of Harford Road. On the eastern side of the property is the commercially zoned and used Fork Plaza strip center. To the north and western sides of the site are residential properties. Across Fork Road from the site is the Fork Veterinary Clinic, a beauty salon and the Fork Post Office. The subject site has been used commercially for many years as a delicatessen and now as the Sunshine Grill restaurant. The front two thirds of the property is zoned B.L-C.R. The C.R. district is a commercial district applied in the rural areas to modify and ameliorate some of the more urban aspects of the commercial zones. The rear portion of the site is the rural, residential zone R.C.5.

The restaurant facility is located in close proximity to Fork Road on the eastern side of the property. *See* Photo Exhibit 3. Access to the restaurant is from the western side, and there is parking along the western property line extending to the rear and across the R.C.5 zoning line. The parking area currently is paved. As the site plan indicates, underneath the parking area is an extensive septic treatment and reservation area. The private well and private septic services serve as a deterrent to major site development.

The restaurant has been very popular with the community. The building has existed in its current configuration for many years. The current owner has put on a porch and foyer on the side adjacent to the parking lot with accessibility for wheelchairs. There is an existing sign supported by two (2) posts, which look like they have been in place for quite a few years.

The owner is seeking to continue the front entrance improvement across the entire front of the building and to add on to the side of the building closest to the Fork Plaza as depicted on Petitioner's Exhibit 1. Additional kitchen space is sought in the rear of the building. Testimony indicated that kitchen storage is very crowded and that there is a need in keeping with good management and safety to expand this area. No variances are needed with respect to that extension. The extension of the front building area from its current bump out and the expansion on the side drive the need for front and side yard variances. Testimony and Exhibit 1 indicate that although expansion might otherwise be possible to the building without variances to the west side and to the rear such expansion either intrudes into the access area for the parking or interferes with the ramps used for disabled access or interferes with the private septic area. The site just does not permit the expansion in the areas that would not require a variance.

The front yard variance was initially sought in the alternative, for although B.C.Z.R. Section 259.3.C.2 requires that the setback be not less than 15 feet from the street right-of-way

line, Section 303.2 requires averaging for this setback. A much greater setback would be required under Section 303.2 because of the fact that the Fork Plaza has parking in front of its building on Fork Road and because the residential structure to the west of the property like Fork Plaza is set well off of Fork Road. The C.R. (Commercial, Rural District) zoning regulations, however, state that the maximum setback that can be required in the C.R. district is the averaging of the setbacks of adjacent buildings. Applying both Section 303.2 and Section 259.3.C.2 would mean that the average setback of 87 feet would be both the minimum and the maximum setback, which in this case makes little sense. The whole building at 12607 Fork Road is within the setback. One of the cardinal rules of interpretation is to read sections together in order to effectuate a reasonable outcome. In this case, the overlay district is intended to create additional standards to the normal standards of the B.L. zone, and it makes sense that the 15 foot minimum front yard setback, stated in Section 259.3.C.2.a, is the applicable setback.

In either event, it was also suggested that the only right-of-way which currently exists for Fork Road is the paving itself since the County claims no deeded public right-of-way. The Petitioner and its engineer have assumed a 30 foot prescriptive right-of-way despite the fact that the paving is only 22 feet wide. If the paving width is considered, then the Petitioner meets the 15 foot setback requirement of the C.R. district for the proposed addition. Baltimore County only maintains the paved portion of the right-of-way. The 30 foot right-of-way may be assumed by the County for some purposes, but there is no showing that it actually exists. The closest point of the porch of the existing building is now 9.6 feet from the 30 foot right-of-way and is still closer than 15 feet to the edge of paving. The proposed addition will sit back over 2 feet further from the right-of-way. Based on the fact that the Petitioner is requesting an extension and enclosure of the porch area and will be 15 feet from the paved area, and based on the site

issues pertaining to the desire to provide convenient access for disabled patrons, I find that peculiar conditions do pertain to this site that make compliance with the front setback requirements a practical difficulty, if indeed they are not already met given the right-of-way of the paved portion of the road claimed by the County.

The side yard variance requested by Petitioner will have an impact on no one but for the Fork Plaza. It does not interfere with adequate light or air and abuts the rear of the existing High's market. The Petitioner desires to increase its seating by this rather small addition for economic reasons given the future cost of the installation of a special nitrogen septic removal treatment facility. Cost is certainly not a factor in granting a variance, but the alternatives for adding the seating are few given the site constraints and the desire and necessity to provide as much parking as possible. It is apparent from the testimony and site plan that the site requires ample parking that meets or exceeds County requirements, for there is no opportunity for on-street parking. The proposed 512 square feet seating addition is not large, will have little or no impact on adjoining properties and will not create any visual issues. It should be noted that Mr. Pierce, who was present to hear the testimony and view the exhibits, stated that he had no issues with the setback variances requested. The Greater Kingsville Civic Association concurred in its comments.

Mr. Pierce likewise had no problems with the parking variances being requested. The variances were originally sought because the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) was requiring removal of a substantial amount of the paving, for which no permit had been obtained. There are limitations on the amount of paving that can be placed on property without grading permits or storm water management waivers, and over the years, whether by the current owner or a series of owners, these limits have

been exceeded. In addition, no permission was sought to put a commercial parking area in the R.C.5 zoning classification. This area of the property drains to the rear of the site. Subsequent to the filing of the Petitions before me, and prior to the hearing, agreements were reached with the neighbors to the rear of the site on the filing for a storm water management waiver. DEPRM has indicated that it is willing to grant a waiver to storm water management for the site subject to certain conditions. If this waiver is ultimately granted, the Petitioner has agreed to abandon the variance requests pertaining to the parking lot.

Testimony from the neighbors in attendance evidence the fact that the Sunshine Grill has become something of a community amenity. *See* Greater Long Green Community Association's letter of support – Petitioner's Exhibit 4. It is the only sit down restaurant of any kind serving this area of Baltimore County. Consequently, it has become quite popular for both its breakfasts and dinners. Parking is very important. There are 71 spaces designated on the site plan. Elimination of the parking area from the R.C.5 zone by no means makes sense. According to the site plan at least 20 parking spaces exist within the R.C.5 zone, and at least another four (4) spaces would be impacted. This would not be sufficient to adequately serve the existing use. It would force patrons either onto the narrow strip along Fork Road or infringe upon neighboring properties as trespassers. No neighbor objects to the use of the R.C.5 zone for the parking. The necessity for its use is obvious. The existing restaurant needs it and not because of an addition of 512 square feet. It also is clear that the use of the area is not constant. Most mornings and evenings patrons will park closer to the restaurant, and the parking is sufficient in the B.L. zone. Testimony from Mr. Marvelis, however, was clear that there are times when all of the parking is necessary, and Mr. Pierce agreed. Parking in the R.C.5 zone is permitted with a use permit, and

there is no evidence of any kind that granting it would be injurious to the public health, safety or general welfare.

I am aware of the Office of Planning's comment on this site plan and petition. While appreciative of their view – that because the C.R. overlay was not extended to the R.C.5 area in 2008 that parking was not favored by the Councilman at that time. At the same time the County Council was considering many issues of zoning and may well have been aware that a public hearing would be required prior to the consideration of a use permit for the parking. Furthermore, the site plan presented does not call for parking over the entire R.C.5 zoned area. Without meaning to speculate, it is clear to me that had the Council and the Office of Planning had the same opportunity as I did to hear the testimony, understand that the neighbors did not object and indeed were working with Petitioner to provide sufficient parking, then I believe that it would have found as I do that the provision of parking in the R.C.5 area as shown and as limited on the site plan is appropriate. I would note further that this is the last expansion of parking that may occur on this site. DEPRM will either require storm water management for any additional paving, which can not be provided on the site, and which would not be permissible off-site, or will grant its waiver, which is conditioned on the open area in the rear of the site remaining open and pervious. The restaurant exists as a permitted use, and the parking should accommodate that use.

Section 409.A.2 of the B.C.Z.R. requires a durable and dust free surface for parking. Turf cells are a relatively recent technological development intended to allow porous surfaces that are solid enough for parking and driving. They appear to be durable and with less frequent use are not prone to dust creation. While such a surface may not be suitable for all parking areas, in areas such as this where use is occasional, they would appear to be a very reasonable

alternative. Given the site constraints and their proposed location on this site a variance to allow their use is most appropriate. Similarly, it is clear that typical striping is not possible on grass, but it is not difficult to delineate parking spaces by other measures. In the Chesapeake Bay Critical Area (CBCA) and in Coastal Bay critical areas, such measures are common where paving is not encouraged. If, indeed, the storm water management waiver is not granted and the paving has to be removed, these measures will be sufficient. With that being said, it is clear that the parking and setback relief should be granted.

The most troublesome issues presented at the hearing pertained to the sign variances requested. Indeed, Mr. Pierce, who has received some well-deserved notoriety for his diligence as an advocate for the sign regulations, was in attendance to listen and give testimony on these requests in particular. As noted above, he made a point of stating that the other variance requests appeared reasonable.

Testimony at the hearing pertained to two (2) signs and sign locations. The existing lighted sign for the Sunshine Grill is located on two (2) poles directly in front of the restaurant. *See Photo Exhibit 2.* Prior to its use by the restaurant, it was used by the Fork Delicatessen and its presence on the site is of indeterminate duration. Of more recent vintage on the poles are the starburst symbol for the Grill and an arrow indicating when the restaurant is open containing 15 square feet per side. No one really objected to the continuation of this sign. As Mr. Pierce noted, in this particular instance the size of the sign, the fact that it is internally lighted, and its placement are justified.

What created the real problematic issue was the request for a second sign located on the road frontage adjacent to the western property line which would be internally lighted and provide for manual, changeable copy. *See Photo Exhibit 3.* Such a sign had existed for quite some time

on the site until in response to a zoning violation notice the sign was removed. The sign served the purpose of advertising specific events at the restaurant as well as being a quasi-community bulletin board.

Interestingly, all parties agreed that in this particular case the manual changeable copy sign served a legitimate community purpose. Particularly troubling were the requests for two (2) sign locations and the square footage of the variances. It was agreed at the hearing to allow the record to remain open for the parties to confer and to see if a suitable compromise could be reached. In addition, the parties agreed to submit the compromise to the Baltimore County Office of Planning for its input and comment. This was done. A copy of the Agreement and sign plan is attached hereto for reference as Parties Joint Exhibit A. In this regard, I wish to commend Mr. Pierce for taking his time to work with Petitioner and making his considerable familiarity with the sign regulations available to the Petitioner. I truly appreciate his willingness to come up with a solution for the benefit not only of the Petitioner but also of the greater community.

Prior to reviewing the compromise it would perhaps be useful to review the regulations and the relief the Petitioner has sought. Section 250.3.C.7 contains sign requirements in addition to those contained in Section 450. There may be only one (1) wall mounted sign of no more than 8 square feet and only one (1) freestanding sign of no more than 25 square feet per side. The section does not mention other types of signs otherwise permitted in the commercial zones. Read in the context of Section 450, which allows more than one (1) freestanding sign and more than one (1) wall-mounted enterprise sign in B.L. zone, this section does not intend to limit the classes of signs to only enterprise signs, nor does it appear to preclude other structural types of signs not mentioned. Instead, if a business in a C.R. district chooses to put up a freestanding or a

wall-mounted enterprise sign it must abide by these requirements or obtain a variance. Section 450.7.B forbids electronic changeable copy signs in the C.R. district, but only a manual changeable copy sign is being sought, which presumably is otherwise permitted. Illumination of signs is not permitted unless granted by the Zoning Commissioner after a hearing.

Petitioner sought relief from Sections 259.3.C.7.b, 259.3.C.7.c and 450.4 (4 Attachment 1:3) to permit two (2) freestanding illuminated signs in lieu of the one (1) freestanding sign permitted; from Section 259.3.C.7.b to permit an existing, illuminated sign of 55 square feet per side in lieu of the permitted 25 square feet and to permit a proposed, illuminated sign with manual changeable copy containing 32 square feet per side in lieu of the permitted 25 square feet per side in a C.R. district. A total of 87 square feet per side of signage was initially requested. Despite the fact that the current C.R. regulations only permit a freestanding sign of only 25 square feet per side, the existing freestanding sign containing 50 square feet per side has existed without protest for many years and possibly predates the C.R. sign regulations adopted in Bill No. 89-1997. In any event, the existing sign on the poles on the front of the building have never been the subject of any enforcement proceeding nor have they been the subject of complaint. Section 450.7.B.2 only permits up to 50% of the area of an enterprise sign to be devoted to changeable copy.

The Petitioner has agreed to abandon the variance request for two (2) freestanding signs and has agreed to limit the square footage of the proposed signage. Instead, the one (1) freestanding sign now on the property would be modified so that the existing illuminated 5 by 7 foot sign would remain, but the starburst symbol and open arrow would be removed. In place of the starburst and the open symbol, which contain approximately 15 feet per side, would be a

manual changeable copy sign of approximately the same size. *See page 4 – proposed sign – Joint Exhibit Agreement.*

The parties have agreed that the approximately 50 square feet per side currently existing is a reasonable square footage, and I would note that such square footage has existed for quite some time. The parties also agreed that an additional 5 square feet may be devoted to adding a street address to the sign. Section 450.2.C.10 exempts from the square footage of an enterprise sign the street address if it does not exceed 30% of the sign's area. These agreements would all fall within the variances requested. In addition, the parties have agreed to two (2) conditions pertaining to the illumination of the signs. The illumination may be no brighter than that necessary to allow the sign to be read by a person with normal vision and the lighting must be turned off within one (1) hour after the business closes and turned on no sooner than one (1) hour before it opens. The parties further agreed that the sun symbol may be placed in the window near or above the foyer, which would be illuminated when the business is open. Because its location on the side of the building above the foyer sits well back on the building and faces the side of the property, it is doubtful that it would qualify as a sign that can be seen and read from the road. It also is questionable whether it would count as an enterprise sign. If the lettering on the sign is visible from Fork Road, it may be no more than 3 square feet without a variance.

The parties, however, have also agreed to an alternative sign arrangement. This would require the elimination of the existing free-standing sign and permit the construction of a projecting wall sign. A projecting sign is defined in Section 450.5.B.6, is permitted in the B.L zone and is not otherwise restricted by the C.R. overlay district. Section 450 allows projecting wall signs to be twice the length of the wall to which the signs are affixed. Regardless of what the regulations may permit, however, there appears to be an attempt to restrict the size of the sign

to no more than 50 square feet. No variances would appear to be necessary for this type of sign. The restrictions in the agreement would conform the projecting sign to the current zoning regulations. Also, not to be overlooked in the Agreement is a set of conditions and restrictions as to location of signs, height, lighting, etc. which would apply to all signs.

The Agreement also permits an interior window sign of up to 3 square feet would also be permitted on the façade facing Harford Road. Section 450.5.B.10 defines an enterprise window sign as “An enterprise sign mounted on the interior of an enclosed structure that is visible from the exterior of the structure.” In Section 450 (4 Attachment 1:3), an “enterprise sign” is defined to mean “an accessory sign which displays the identity and which may otherwise advertise the products or services associated with the individual organization.” Section 450 (4 Attachment 1:2.1) permits enterprise window signs in a B.L. zone provided that such signs are limited to no more than three (3) in number and no more than 3 square feet in size on any one sign; furthermore, such signs are only permitted on a window or door that is not a front façade. Consequently, the limitation in the Agreement would not appear to require any further variances.

After review of the Agreement and the attached drawing of the proposed freestanding sign, the Office of Planning stated that it could agree to the proposed signs as limited. The Greater Kingsville Civic Association in its letter dated September 21, 2010, stated it did not oppose the setback and parking requests but still had concerns with the sign variances. They requested a dark background for the backlit sign and suggested that the variance for the existing freestanding sign be limited to 35 square feet. They believed that the changeable copy sign was not part of the otherwise permitted enterprise sign. The Long Green Valley Association opposed all sign variances in its letter of September 21, 2010.

After consideration of all of the testimony, evidence and exhibits, including the Agreement discussed above, I find that the amended sign relief attempts to restrict the signage to the intent of the zoning regulations in the B.L. zone and C.R. overlay district. But for the Agreement the Petitioner could (without a variance) construct on the property a projecting, non-illuminated, enterprise sign of up to 100 square feet (twice the length of the front wall of approximately 50 feet). For whatever reason, such signs are not limited in the C.R. district beyond the limitations imposed by Section 450. The Agreement calls for a much smaller sign albeit with a variance for square footage only. No other variances are necessary or required. The permission to illuminate the sign does not call for a variance, only a hearing to determine whether such illumination would be consistent with the public interest (Section 450.3.C.7.c). Furthermore, the Agreement really perpetuates a sign configuration and size that basically has remained unchanged for many years without objection. Although I appreciate the Greater Kingsville Civic Association's concern about whether the changeable copy portion of the freestanding sign is "an integral part of an otherwise permitted enterprise . . . sign", I believe that given the fact that changeable copy is limited in size to no more than the existing sign area, is constructed on the same freestanding poles as the existing signage and is illuminated by the same wiring that such sign is an integral part of the signage as a whole. On its own removed from the Sunshine Grill sign the changeable copy would have no meaning. I also see no point in requiring the property owner to purchase an all new sign to identify its premises when the existing sign has served its purpose without complaint. There is both benefit and protection to the community contained within the restrictions of the Agreement. In exchange for the amended variance relief sought for the proposed signage area, Petitioner has foregone its right to the broader law the signage regulations might otherwise provide.

Ultimately, however, the sign variance request for more square footage must stand or fall based on zoning variance criteria, not on the presence of an Agreement. In this case the existence of the sign and the structure for quite a few years, the fact that this area is not particularly well lit, the fact that it is a destination type use, and the only one of its kind anywhere in the vicinity, all indicate that there is justification for a sign that can be easily seen and read from a distance. A 25 square foot sign at this site given the use and the circumstances of the site simply is not reasonable, a point on which all parties to the hearing agreed. Keeping the sign restricted to approximately the current square footage instead of the square footage initially requested by the Petitioner and restricting the Petitioner to one such sign whether free-standing or projecting is also reasonable. There is no need for both type signs. I also agree with the conditions in the Agreement as reasonable conditions to impose as a condition for the variance granted and the illumination of the sign.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of October 2010, that the Petition for Special Hearing seeking approval pursuant to Section 409.8.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit commercial parking in the R.C.5 zoned portion of the site, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from B.C.Z.R. Section 259.3.C.2.a to permit a front yard setback of 12 feet in lieu of the required 15 feet and from B.C.Z.R. Section 259.3.C.2.b to permit a side yard setback (east side) of 2 feet in lieu of the required 15 feet be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from B.C.Z.R. Section 409.8.A.2 to permit parking on turf cells in lieu of the required durable and dustless parking surface and from Section 409.A.6 to permit parking spaces separated by visible markers other than striping, be and is hereby GRANTED, subject to the following condition:

ADVISORY: The Petitioner may apply for a waiver of the storm water management regulations to permit the existing paving on the site to remain. In the event that a final, unappealable waiver is granted allowing the paving to remain then this variance shall terminate, and the Petitioner shall continue to provide a durable and dust free surface properly striped under the applicable zoning regulations.

IT IS FURTHER ORDERED that the Petition for Variance, as filed, seeking relief from B.C.Z.R. Section 259.3.C.7.b to permit two (2) freestanding signs is hereby DISMISSED; and the Variance request from B.C.Z.R. Section 259.3.C.7.b is hereby MODIFIED to allow a freestanding sign of 55 square feet per side in lieu of the permitted 25 square feet per side including a manual, changeable copy area of no more than 15.3 square feet per side, and is hereby GRANTED; and the Variance from B.C.Z.R. Section, 259.3.C.7.c to permit an illuminated freestanding sign, is also hereby GRANTED, subject to the following restrictions:

1. The Petitioner may as an alternative to the freestanding enterprise sign relief granted, *but not in addition to such signage relief*, construct a single, illuminated projecting sign, extending no more than five feet from the building with a maximum of 50 square feet per face.
2. All illuminated signs on the premises shall be turned off within one (1) hour after the business closes and may not be turned on more than one (1) hour before it opens.
3. The illumination in any freestanding or projecting sign shall not be more than that necessary to be read by a person with normal eyesight.
4. No part of the empty space existing between the freestanding enterprise sign and the changeable copy sign shall be considered part of the overall square footage but only those rectangular physical elements of the signage shall be considered.

5. Any address affixed to either the freestanding or the projected sign shall be no more than 5 square feet and shall be included in the 55 square feet per side variance granted.
6. The illuminated sunburst and a single illuminated window sign of no more than 3 square feet on the building front shall be permitted, provided that neither sign advertises a specific product brand name.
7. Notwithstanding the variances granted herein all present and future signs on the site are subject to the B.C.Z.R. sign regulations in effect as of this date and as may be from time to time amended or modified.
8. No flashing interior or exterior sign may be placed on the site visible from any public right-of-way.
9. Temporary signs may only be used with a permit in accordance with B.C.Z.R. Section 450. No other temporary wall or window signs will be used except those in or near the foyer intended to be visible by persons on foot and not visible from any public right-of-way.
10. A maximum of three (3) official, standard sized flags will be permitted on site representing national or local governments. No other flags will be permitted.
11. The Petitioner may apply for any required building 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.
12. The decision in this case is not legal precedent that may be cited in any other zoning case involving restaurant use in a C.R. District.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.) and filed within thirty (30) days of this Order.

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

September 16, 2010

Mr. William J Wiseman, III
Zoning Commissioner
105 W Chesapeake Ave
Towson, MD 21204

Re: Case 2010-361-SPHA, Sunshine Grill, 12607 Fork Rd

Dear Mr. Wiseman,

As a result of several discussions regarding the subject case, the undersigned have agreed to the following described sign variances and conditions as first discussed in the hearing of August 24. The intent is to allow:

- continued use of the existing 19 ft high structure and the 5'x7' portion of the freestanding sign, with the permitted addition of a small manual changeable copy sign, both illuminated;
- possible future alternative use of a projecting sign instead of the freestanding sign;
- moving of the existing "sun" logo sign to the side facade, also illuminated; and
- a small window sign on the opposite side, such as an "Open" sign, since this issue is somewhat ambiguous in the present BCZR.

In addition, the agreement establishes a number of conditions regarding illumination and other potential signs to avoid the possibility of future disagreements.

We have provided text as it may appear in the final order.

In devising these variances and conditions, we make note of the following provisions of the BCZR:

1. The Sign Code regulations in the BCZR §450 limit this BL-zoned premise to one free-standing sign, 25 ft height. It limits any changeable-copy portion to 50% of the total sign and prohibits ECC and any type of flashing. A wall sign must be turned off when the business is closed. Interior, permanent window signs require a permit and are limited to 3 sq ft each and 3 per building, not on side (but this is unclear in the BCZR due to faults in Bill 106-08)
2. The CR district regulations in §259.3 also limit to one freestanding sign, a maximum of 25 sq ft per side. Limits to 1 wall sign, 8 sq ft. No sign illuminated without approval by the Zoning Commissioner.
3. The BCZR §450.2.C.10 exempts from the size limits that part of an enterprise sign that displays the address, provided it is less than 30% of the whole sign.
4. Sunshine Road is a 30-ft wide right-of-way at this point (according to the deed for the adjoining Fork Plaza), thus the edge of the right-of-way is 15 ft from the centerline. There is no specific requirement in the BCZR for the setback from the right-of-way, but a sign may not overhang the right-of-way.
5. §450 also defines a "projecting sign", max 25 ft high, not above the eaves or parapet, no less than 10 ft above the curb, at least 1 ft measured horizontally from vertical plane of curb face, extending no more than 4 ft from wall, maximum area unclear. It is not clear how or if §259.3 affects or restricts this.

PARTIES
JOINT EXHIBIT

Therefore, we have agreed to the following:

(For help in reading this agreement, variances are shown underlined in red and conditions for variances are shown with dashed underlines in blue. Comments shown in [square bracket] are for explanation and would not be included in the final order.)

That Sunshine Grill may be granted variances to erect either one of the following enterprise signs:

- One freestanding sign maximum 50 sq ft per face; or
- One projecting wall sign, maximum 50 sq ft per face, allowed to extend more than 4 ft from wall provided that it complies with other requirements for a projecting sign;

provided that either sign shall be setback no less than 1 ft from the edge of the 30 ft right-of-way and no less than 1 ft from the existing vertical curb face and shall maintain a 10 ft clearance with the ground;

at least 5 sq ft of which shall be used for a decorative Greek key pattern;

may contain a manual changeable-copy portion of up to 15 sq ft; and [code would allow 50% of 50 sq ft]

either sign may be illuminated with the following conditions:

- The illumination is no brighter than is necessary to be read by a person with normal eyesight
- It is turned off within one hour after the business closes and is turned on no sooner than one hour before it opens.

The area of the sign face may be calculated as the sum of two separate, non-contiguous rectangles each encompassing a physical element of the sign so that a space between them is not included in the calculation.

Sunshine Grill is allowed and encouraged to add their street address to the above sign, however limited to an additional 5 sq ft. [Without this condition, it could be an additional 20 sq ft for the address for a total sign of 70 sq ft.]

Also, the existing "sun" logo may be used on the side facade above or near the foyer, also illuminated but only when the business is open. It is of an irregular shape which is enclosed in a single rectangle of about 5' x 5' which would normally be calculated as being 25 sq ft, however, its actual effective area is significantly less.

Also, one illuminated window sign of no more than 3 sq ft is allowed on the facade facing Harford Rd provided that it does not advertise a specific product brand name and is turned off when the business is closed.

With all variances in this agreement being conditional on the following provisions of the BCZR being acknowledged and complied with:

- All present and future signs on this parcel are subject to current sign regulations in BCZR §259.3 and §450 as modified by future legislation and these variances and further restricted by this agreement, not to §413 which was repealed in 1997. [This is needed to ensure that the Zoning office does not issue any future permits according to the old §413 as they have continued to do since 1997 in other cases, for example, additional illuminated, oversized wall signs without approval by the Zoning Commissioner.]
- No flashing interior or exterior sign may be visible from the road.

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- Temporary signs may only be used with a permit in accordance with BCZR §450 (for 60 days total per year). No other temporary wall or window signs will be used except for those in or near the foyer intended to be read by persons on foot. [This is needed since the exemption in §450 is being used by other businesses to fill the windows with advertising.]
- The exemption for "flags" will not be used except for, at most, three official national or local flags. [This is needed to prevent the use of strings of pennants or "feather" flags with stars and stripes, claimed to be US flags, as is common at some businesses.]

The undersigned agree that the above represents our best results at an agreeable resolution and further agree that this letter itself carries no legal force or implications following the issuance of a final order by the Zoning Commissioner regarding this case.

Further, this letter does not represent an agreement by any community association.

We have also enclosed a constructed picture of what the resulting freestanding sign might look like.

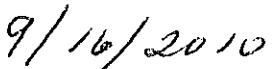
Please feel free to call either of us if you have questions regarding this matter. We appreciate your desire and accommodation to reach a jointly agreed resolution in this case.

Regards,



William Marvelis
12607 Fork Rd
Fork, MD 21051
443-956-9076

Michael Pierce
7448 Bradshaw Rd
Kingsville, MD 21087
410-817-4795

Example free-standing sign with changeable copy portion.

