

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W/S Merritt Boulevard (Md. Rt. 157), 710'		
SW of c/line of German Hill Road	*	ZONING COMMISSIONER
(1400 Merritt Boulevard)		
12 th Election District	*	OF
7 th Council District		
	*	BALTIMORE COUNTY
VEI Dundalk, LLC, <i>Owners</i>		
Giant of Maryland, LLC, <i>Lessee</i>	*	Case No. 2011-0040-A
Petitioners		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the Petitioner, Giant of Maryland, LLC through one of its senior managers of construction, Juan Carlos Vivas, and their attorney, Charles B. Marek, III, Esquire of Gildea and Schmidt, LLC. The Petition was also signed by the property owner, VEI Dundalk, LLC by its Vice President and managing member Bradley S. Glaser. Variance relief is requested from the Baltimore County Zoning Regulations (B.C.Z.R.) – Table of Sign Regulations – Attachment 1 (Chart) as follows: **(1)** Section 450.4 Chart 1.5(d) to permit eleven (11) wall-mounted enterprise signs for the existing Giant supermarket in lieu of the one (1) permitted; **(2)** Section 450.4 Chart 1.5(d), to allow a wall-mounted enterprise sign for a bank tenant with a shared customer entrance and shared commercial space in lieu of the required separate customer entrance and separate commercial space, and **(3)** Sections 450.4 Chart 1.7(b) and 1.5(b), for retention of a freestanding joint identification sign and a freestanding enterprise sign on the same frontage of a shopping center in lieu of the one (1) permitted joint identification sign. The subject property and requested relief are more particularly described on the site plan and sign package elevations, which were submitted into evidence and marked as Petitioners’ Exhibits 1 and 2 respectively.

Appearing at the requisite public hearing in support of the requests were Ronald Brumbaugh, Senior Manager of Construction for Giant, Mark A. Johnston of Gutschick, Little & Weber, P.A, the civil engineering firm that prepared the site plan(s) for the project, and Warren Weaver of Gable Signs. Charles B. Marek, III, Esquire represented the Petitioner at the hearing. There were no Protestants or other interested persons present.

As a preliminary issue, Mr. Marek noted that there had been a previous hearing focusing on signage that was part of the requested relief for this hearing. Specifically Case No. 84-327-A was a case that requested a variance to permit certain Pizza Hut signage at the center. This relief was granted allowing the freestanding enterprise sign for the Pizza Hut and some additional wall mounted signage. Due to the fact that a variance had been approved to allow the freestanding sign for the Pizza Hut PAD site, it was argued that the relief requested in regards to the freestanding joint identification signage was unnecessary. The existing freestanding joint identification sign is within the specifications required by the B.C.Z.R. in terms of number, size, height, etc. In light of this, it was agreed that the variance relief dealing with this particular aspect of the site was unnecessary and should be dismissed.

Continuing with the other aspects of the relief requested, Mr. Marek proffered the evidence presented at the hearing, and the proffer and exhibits were accepted into the record of the case. The property in question is the “German Hill” shopping plaza near the intersection of German Hill Road and Merritt Boulevard. The center has two (2) entrances on Merritt Boulevard. The site is approximately 9.9 acres and is zoned B.M.-C.C.C. The center is improved with a multi-tenant retail building and a stand-alone PAD site Pizza Hut. The Giant supermarket is the largest tenant in the center and considered the “anchor” store. In addition to being the anchor store, testimony revealed that Giant has a total of twelve (12) stores in

Baltimore County and employs roughly 1,200 people. The chain is an important economic driver of the County, as well as the State of Maryland, and works with local businesses and farms.

Giant is going through a global reimagining of its stores, whereby the longstanding “big G” signage is being replaced with a “fruit-bowl” type logo and associated Giant lettering. As part of this change over from the old trademark to the new, Giant is upgrading not only the sign package, but also has allocated a significant sum to upgrade the interior of these stores. This reimagining to the “fruit-bowl” logo and associated signage will take place not only in Baltimore County, but across Maryland, Virginia, Pennsylvania and the other markets of Giant.

This particular Giant is also subletting interior space for PNC Bank. This space is granted to PNC from Giant and not from the landlord for the multi-tenant retail building. This bank space is not divided and exclusive of the general supermarket space, which is becoming more common in the supermarket arena. While Giant does not operate the space, it does want to provide this convenience banking to its clients as a time saving benefit of shopping at its stores.

Testimony also focused on the aspects specific to the property that make it appropriate for variance relief. The shape of the property is unusual for the area because of its significant depth. While it is clear that this area was originally planned to have two parcels, both a parcel fronting Merritt Boulevard, an alley and then a rear parcel away from Merritt Boulevard (as shown on Petitioners’ Exhibit 6). Because these surrounding parcels have developed in this fashion and have improvements with minimal setbacks, as seen in Petitioners’ Photo Exhibits 5A-E, the view into the subject site is constrained. Given that Merritt Boulevard is a high speed State thoroughfare, customers further have reduced time and opportunity to view the site.

Additionally this center has two separate and distinct parcels that are under unrelated ownership and control. The Pizza Hut site, which sits along Merritt Boulevard and shares parking with the multi-tenant retail building, acts as a significant obstruction to the view of the Giant. Furthermore, this finding is bolstered by the fact that a variance has previously been requested and approved for the center in Case No. 84-327-A.

These peculiar aspects of the property work in concert to create a practical difficulty for the supermarket, which is the inability to adequately alert the customers to their presence in the center as well as their multitude of services. This leads to decreased economic vibrancy of the store and the center as a whole. In addition the store, due to the consolidation of uses under one roof, these stores with large building footprints (i.e. big box) stores are unable to adequately advertise their services. I believe that the granting of the variance will allow the Petitioner a remedy vis-à-vis this practical difficulty. Allowing multiple signs will give customers an opportunity to recognize the store from various points along their drive and not just one vantage point.

Moreover, the testimony and evidence also showed that the granting of the variance would be in the spirit and intent of the zoning regulations. The wall mounted signage permitted at this center, without relief, would be one sign that is 464 square feet (two times the length of the wall to which the signage is affixed). The wall mounted sign package would be 320 square feet or only sixty-nine percent (69%) of the size permitted as of right. Furthermore, the sign regulations do attempt to allow stores to adequately advertise their services, and I believe that this relief is in keeping with that and other goals of the sign regulations. Lastly customer recognition and identification of the stores is important as this reimagining is occurring not just in Baltimore County, but throughout all of Giant's operation across counties and states.

The testimony also bears that the granting of the variance will be in the interest of the public. The new sign package will utilize light-emitting-diode (LED) technology for illumination, thereby reducing the energy consumption by roughly ninety percent (90%). The freestanding signage will also assist the flow of traffic as it will alert customers to the presence of the store and give them the time they need to properly and safely adjust their driving to accommodate their supermarket trip. Given this is a heavily trafficked area and high speed traffic flow, this will be a benefit. Therefore, the variance to permit eleven (11) wall mounted signs should be granted.

Legal argument was made during the hearing that the relief requested that related to the wall mounted signage was duplicative. Giant is proposing eleven (11) wall mounted signs, including the PNC sign. It also requested a sign for an interior bank sub-tenant with no customer entrance and no separate commercial space. Granting both of these variance requests would lead to the allowance of twelve (12) wall mounted signs (ten dedicated to the Giant and two for its bank tenant), which is one more bank sign than shown on Exhibit 2. The requirement of a separate commercial entrance and separate commercial space are only factors considered in determining the maximum number of signs permitted by right in a multi-tenant retail building and not a regulation that relates to the content of the sign. Consequently, the variance relief requesting an additional sign for an interior bank tenant with no customer entrance has been rendered moot by the granting of other relief and should be dismissed.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the existing store having been determined to be a single commercial building, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of October 2010 that the Petition for Variance seeking relief from Section 450.4 Chart 1.5(d) of the Baltimore County Zoning Regulations (B.C.Z.R.) – Table of Sign Regulations – to permit eleven (11) wall-mounted enterprise signs for an existing Giant supermarket in lieu of the one (1) permitted, in accordance with the Petitioners’ Exhibits 1 and 2, be and is hereby GRANTED, subject to the following restriction:

ADVISORY: The Petitioner is advised that it may apply for any required sign permits and be granted same upon receipt of this Order; however, the 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, the relief granted herein shall be rescinded.

IT IS FURTHER ORDERED that the portion of the Variance Petition requesting approval to permit a wall-mounted enterprise sign for an interior bank tenant, and to permit the retention of a freestanding joint enterprise sign on the same frontage, be and are hereby DISMISSED AS MOOT.

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

WJW:dlw

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