

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E/Side of York Road, 150' SE of c/line		
of Schilling Road	*	OFFICE OF ADMINISTRATIVE
8 th Election District		
3 rd Councilmanic District	*	HEARINGS FOR
(11399 York Road)		
	*	BALTIMORE COUNTY
Stonehenge, LLC by KIMCO Realty Corp.,		
<i>Legal Owner</i>	*	
Giant of Maryland LLC, <i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2011-0295-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the Petitioner, Giant of Maryland, LLC through one of its Senior Managers of Construction, Scott Haley, and its attorney, Charles B. Marek, III of Smith, Gildea and Schmidt, LLC. The Petition was also consented to by the property owner, Stonehenge, LLC by Mary Millsap, its agent and authorized signatory. Petitioner requested a variance to permit 10 wall-mounted enterprise signs for the existing Giant supermarket in lieu of the permitted 1 pursuant to B.C.Z.R. Section 450.4 Attachment 1.5a. The subject property and requested relief are more particularly described on the site plan and sign elevations submitted, which were accepted into evidence and marked as Petitioner’s Exhibits 1 and 2 respectively.

Appearing at the public hearing in support of the Petition were Ronald Brumbaugh, Senior Manager of Construction for Giant, Mark Johnston of Gutcheck, Little and Weber, the civil engineer for the project, and Alan Nethen of Gable Signs. Charles B. Marek, III represented the Petitioner at the hearing. There were no Protestants or other interested persons present at the hearing.

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 currently improved with a retail shopping plaza, in close proximity to Hunt Valley Mall, and is located along the existing commercial corridor of York Road. The site can be accessed from both York Road and Shawan Road as the latter effectively dead ends into the center. The site is approximately 12.02 acres and is zoned BR. Testimony revealed that Giant has a total of 12 stores in Baltimore County and employs roughly 1200 people. The chain is an important economic driver of the County, as well as the State of Maryland, and works with local businesses, farms and charities.

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 its stores. This reimagining of the “fruit-bowl” logo and associated signage will take place not only in Baltimore County, but across Maryland, Virginia, Delaware and the other markets of Giant.

Testimony also focused on the aspects particular to the property that make it appropriate for variance relief. The property features a significant grade change between York Road and the parking lot at the southwest corner of the property of approximately 20 feet, which decreases as drivers proceed north along York Road. As one moves east across the site, the grade slopes further downwards, thereby reducing visibility. This effect could be seen from the street level photos entered as evidence in the case. The site is also located at the intersection of the two main commercial thoroughfares in Hunt Valley, York and Shawan Roads. With both the Hunt Valley Mall and the I-83 and Shawan Road interchange nearby, significant car traffic is created for the area that requires drivers to closely monitor the road with less attention to spare for signage.

Finally, the property in question is buffered by mature vegetation along the street that exacerbates the property's visibilities conditions. All these features combine to evidence the site's uniqueness.

As further evidence of uniqueness, the property in the instant matter was the subject of Zoning Case No. 04-402-A, which granted a variance from B.C.Z.R. Section 409.6 to permit a total of 456 spaces in lieu of the required 505 spaces. It was also the subject of Zoning Case No. 05-270-SPHA, which awarded variance relief to permit 406 parking spaces in lieu of the required 523 parking spaces. Thereby, on multiple occasions this property was deemed to be unique by the Office of Administrative Hearings.

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, due to the consolidation of uses under one roof, these stores with large building footprints (i.e. big box) are unable to adequately advertise their services. I believe that the granting of the variance is able to remedy this practical difficulty. Allowing multiple signs will give customers an opportunity to recognize the store's signage from a greater number of points along their drive than if just one sign were permitted.

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 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 signage regulations. Furthermore, 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, including Maryland, Virginia, Delaware and the District of Columbia. Lastly, if Giant were to follow strictly the regulations and

erect only 1 sign, it would be permitted a maximum of 594 square feet. The 10 signs proposed altogether only utilize 397 square feet, far less than what would be permitted by right.

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 90% when compared to the traditional back-lit neon signage. 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.

Pursuant to the advertisement, posting of the property and public hearing on the Petitions held, and for the reasons set forth above, the Petition for Variance should be granted.

THEREFORE, IT IS ORDERED by this Administrative Law Judge for Baltimore County, this 26th day of May, 2011 that the Petition for Variance from Section 450.4 Chart 1.5.a to permit 10 wall-mounted enterprise signs as shown on Petitioner's Exhibit 2; be and is hereby GRANTED, subject to the following restriction:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their 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.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK:pz