

PETITION OF JOHN D.
LEAHY, JR., et al.,
FOR JUDICIAL REVIEW

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IN THE

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CIRCUIT COURT

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FOR

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BALTIMORE COUNTY

IN THE MATTER OF THE
APPLICATION OF BELAIR
ROAD WHITE MARSH JOINT
VENTURE FOR VARIANCE

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CASE NO. 03-C-01-007020

COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY

Zoning Case No.: ~~003A~~-00-309-A

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OPINION AND ORDER OF COURT

Belair Road White Marsh Joint Venture ("White Marsh"), filed a zoning petition for three zoning variances to construct a fuel service station within a planned shopping center in the White Marsh area of Baltimore County. This shopping center is referred to as the White Marsh Retail Center ("Retail Center"), owned by White Marsh, with BJ's Membership Wholesale Club ("BJ's") as the anchor tenant. Specifically, White Marsh requested the following variances from the Baltimore County Zoning Regulations ("B.C.Z.R."): (1) a variance from Section 405.2.A to permit the proposed fuel service station to be located on a lot within zero feet from residentially-zoned property in lieu of the required 100 foot setback; (2) a variance from Section 409.6 to allow 492 parking spaces to be provided in lieu of the required 582 spaces; and (3) a variance from Section 405.4.B to waive the requirement to provide restrooms on the fuel service station lot. Applicant did not believe the first of these was required, and so argued.

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On March 3, 2000, the Deputy Zoning Commissioner of Baltimore County conducted a hearing on the variance requests. In an Order dated April 14, 2000, the Deputy Zoning Commissioner granted the variances from B.C.Z.R. Section 409.6 (parking spaces) and Section 405.4.B (restrooms) and dismissed as moot the variance request from B.C.Z.R. Section 405.2.A (residential setbacks).

On May 12, 2000, Protestants filed an appeal from this decision to the County Board of Appeals for Baltimore County ("C.B.A."). The C.B.A. considered the requested relief in a *de novo* proceeding on December 27, 2000. On June 5, 2001, the Board of Appeals rendered its Opinion, granting the variance from B.C.Z.R. Section 409.6 (parking spaces), dismissing as moot the variance request from B.C.Z.R. Section 405.2.A (residential setbacks), and denying, in a 2-1 vote, the variance from B.C.Z.R. Section 405.4.B (restrooms). On July 5, 2001, Protestants petitioned the Circuit Court for judicial review, arguing that: (1) the Retail Center is not a "planned shopping center;" (2) the fuel service station is a prohibited "use in combination;" and (3) the setback variance is not moot.

BJ's is a warehouse-style retail store that sells both food and non-food merchandise. See Transcript of Proceedings before Board of Appeals, dated December 27, 2000 ("T."), p. 16. In order to purchase items at BJ's, one must have a membership card, which can be purchased for \$40.00. (T.18).

BJ's operates fuel service stations at a number of its locations. These stations are open to the public, although members receive a discount on their gasoline purchases. (T. 20). As of the date of the hearing, BJ's had 32 such fuel service stations. (T. 20, 44).

approximately 2 acres, and Lot 3, approximately 18 acres, on which BJ's is located. (T. 53, 123-125).

The proposed 18,000 square foot fuel service station will be sited between 300-500 feet away from Lot 3's boundary lines (south - 382.8 feet, northeast - 486.6 feet, and north - 326.2 feet). (T.65). Lot 3 is surrounded almost entirely by BR zoned properties with the exception of an area of DR 5.5 zoning located along a portion of its northeastern boundary. There is also residentially-zoned property located directly to the south zoned DR 3.5 that, while not adjacent to Lot 3, is within 100 feet of its southern boundary. (T. 59-61).

White Marsh Run runs along the Retail Center's northern and northeastern boundaries. (T.62). Consequently, a significant floodplain area and forest buffer area exist along these boundaries. (T. 62). Because of this designation, residential development is prohibited in these areas. (T. 62-63). To the south of the site, the Maryland State Highway Administration owns a two-hundred (200) foot right-of-way for White Marsh Boulevard. (T. 63). This right-of-way area and the steep slopes on either side of the boulevard also preclude residential developments to the south of the property. (T. 63-64).

QUESTIONS PRESENTED

- I. Did the Board of Appeals properly determine that the White Marsh Retail Center is a "planned shopping center" and that the proposed fuel service station is permitted by right?
- II. Did the Board properly reject Protestants' contention that the proposed fuel station involves an impermissible "use in combination?"
- III. Did the Board properly dismiss the setback variance as moot?
- IV. If the setback variance is not moot, does the Board of Appeals have the authority to grant a variance on remand?

SCOPE OF REVIEW

The scope of judicial review is narrow. The Court must affirm the zoning board decision where it is fairly debatable with respect to the agency's findings of facts and inferences drawn therefrom. See Board of Physicians Quality Assurance v. Banks, 354 Md. 59, 67-69 (1999); Board of County Comm'rs. v. Holbrook, 314 Md. 210, 218 (1988); Eger v. Stone, 253 Md. 533, 542 (1969); Snowden v. City of Baltimore, 224 Md. 443, 448 (1961).

The scope of review is likewise narrow with respect to the application of law to the facts and/or to mixed questions of law and fact. Stover v. Prince George's County, 132 Md. App. 373, 380-82 (2000); Caucus Distributors v. Maryland Sec. Comm'r., 105 Md. App. 25, 32-35 (1995); Maryland State Police v. Lindsey, 318 Md. 325, 333-35 (1990); Baltimore Lutheran H.S. v. Employment Sec. Admin., 302 Md. 649, 663 (1985); Ramsay, Scarlett & Co. v. Comptroller, 302 Md. 825, 837 (1985). Even with regard to matters of legal interpretation, the scope of review remains narrow. In Banks, *supra*, the Court focused on matters of legal interpretation. Judge Eldridge wrote:

"Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts . . . Furthermore, the expertise of the agency in its own field should be respected . . . (legislative delegations of authority to administrative agencies will often include the authority to make 'significant discretionary policy determinations.')" 354 Md. at 69. (Citations omitted).

Accordingly, where there is room for interpretation, the courts "ordinarily give some weight" to agency construction of the statute. Magan v. Medical Mutual Liab. Ins. Co., 331 Md. 535, 546 (1993). In Magan, Judge McAuliffe wrote:

"The degree of weight to be given an administrative interpretation varies according to a number of factors, including whether the interpretation has resulted in a contested adversary proceeding or rule-making process, whether the interpretation has been publicly established, and the consistency and length of the administrative interpretation or practice. *Comptroller v. John C. Louis Co.*, 285 Md. 527, 544-45 (1979)."

In administrative proceedings in Maryland concerning the grant of a variance or special exception, the "substantial evidence" and "fairly debatable" standard is applicable. E.g., Schultz v. Pritts, 291 Md. 1 (1981); Turner v. Hammond, 270 Md. 41 (1973). The "fairly debatable" standard was defined in Eger v. Stone, 253 Md. 533, 538 (1969):

"If the issue before an administrative body is 'fairly debatable,' that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the Court will not substitute its judgment for that of the administrative body, even if the administrative body came to a conclusion which the Court would not have reached on the evidence."

See also Germenko v. County Bd. of Appeals of Baltimore County, 257 Md. 706, 711 (1970). Accord Ginn v. Farley, 43 Md. App. 229 (1979); Board of County Comm'rs for Prince George's County v. Meltzer, 239 Md. 144 (1965).

In Prince George's County v. Meininger, 264 Md. 148, 152 (1972), it was held that the "substantial evidence" requirement in a case of denial was satisfied by little more than a "scintilla of evidence" because the burden of proof is on the appellant. The zoning agency's decision should be affirmed unless there is "no evidence at all" to support the decision. Rockville Fuel & Feed Co. v. Board of Appeals, 257 Md. 183, 193 (1970). These and other cases indicate that an administrative appellant has a very heavy burden to demonstrate as arbitrary an agency finding that the applicant did, or did not sufficiently prove his case.

The Court, in reviewing this case, will, of course, be mindful of its limited role in the zoning process. In Maryland, a court will not overturn zoning decisions which are "fairly debatable." Cox v. Prince George's County, 86 Md. App. 179 (1991); Montgomery County v. National Capital Realty Corporation, 267 Md. 364 (1972); County Council v. Prestwick, 263 Md. 217 (1971). The fairly debatable rule and its corollary, the substantial evidence rule, mean that the court will not substitute its judgment for the zoning agency's but will sustain any decision which has a reasonable basis in the record. Kirkham v. County Council, 251 Md. 273 (1968), accord, Southland Corp., 7-Eleven Stores v. Mayor & City Council of Laurel, 75 Md. App. 375 (1988).

An agency's decision must be reviewed in the light most favorable to the agency. Coscan Washington, Inc. v. Maryland National Capital Park and Planning Comm'n., 87 Md. App. 602 (1991); Courtney v. Board of Trustees, 285 Md. 356, 362 (1979). A decision of an agency is *prima facie* correct and carries with it the presumption of validity. Cox, *supra* at 187. A court cannot reject the conclusion of an administrative agency if "a reasoning mind reasonably could have reached the factual conclusion the agency reached." Bullock v. Pelham Wood Apartments, 283 Md. 505 (1978), quoting Dickinson-Tidewater v. Supervisor, 273 Md. 245, 256 (1974).

The Court of Appeals has also made very clear that an administrative agency must be afforded great deference.

"The heart of the fact finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. 'The Court may not substitute its judgment on the question of whether the inference drawn is the right one or whether

a different inference would be better supported. The test is reasonableness, not rightness.”

People's Counsel for Baltimore County v. Mangione, 85 Md. App. 738, 751 (1991), quoting Snowden v. Mayor and C.C. of Balto., 224 Md. 443, 448 (1961).

Therefore, this Court must give due deference to the right of an administrative agency, such as the C.B.A., to draw reasonable inferences from the facts and circumstances presented before it. Eg., Board of County Comm'rs v. Holbrook, 314 Md. 210, 218 (1988); Mangione, *supra*. The appellate court must also assume the truth of all of the evidence and all of the favorable inferences to support the factual conclusions of the trier of fact. Mercedes-Benz of N. Am., Inc. v. Garten, 94 Md. App. 547 (1993).

DISCUSSION

The opinion of the C.B.A. sets forth a fair and succinct summation of the evidence contained in the record of its proceedings, and this Court will not recount it here. Suffice it to say, the Court has reviewed both the opinion and significant portions of the transcripts thoroughly and finds that the record contains substantial evidence to support the findings of fact made by the C.B.A. Protestants urge the Court, however, to find the C.B.A. erred as a matter of law in concluding that the Retail Center is a “planned shopping center”, that the setback requirement does not apply to the subject site, and that the proposed fuel service station is not a prohibited “use in combination.”

Fuel service stations in Baltimore County are subject to compliance with Section 405 of the Baltimore County Zoning Regulations. B.C.Z.R. Section 405 dictates where fuel service stations are permitted within the County, regulates the appearance of such stations, and provides performance standards for stations. According to Section 405.2.A., fuel service

stations are permitted by right only in planned shopping centers, a planned industrial parks, or a planned drive-in clusters. Otherwise, fuel service stations may only be permitted on specially-zoned property with a special exception granted in accordance with B.C.Z.R.

Section 502.1. B.C.Z.R. Section 405.2.B.

Specifically, with regard to planned shopping centers, Section 405.2.A provides that:

[a] fuel service station is permitted by right subject to Section 405.4, provided that no part of the lot is within 100 feet of a residentially zoned property and is integrated with and located: 1. In a planned shopping center of which at least 20% has been constructed at the time the building permit for the fuel service station is issued, but not to exceed one station for each 60,000 square feet of gross floor area of the planned shopping center.

According to B.C.Z.R. Section 101, a planned shopping center is defined as:

[a]n integral retail shopping development for which an overall plan has been approved by the Office of Planning and which: is under common ownership or control; has a site of at least three acres in net area; has vehicular access to physically separate buildings on the site by means of interior service drives or ways; and has no more than two points of vehicular access from the site to public streets, except as follows:

A planned shopping center may have one additional vehicular access point to a public street for each 250 feet of street frontage thereon in excess of 500 feet; and

A planned shopping center may have a great number of vehicular access points than as defined above if an overall plan for such center has been approved by the Office of Planning before the adoption of this definition, provided that the number of vehicular access points is not further increased after the adoption of this definition.

Protestants contend that the Board of Appeals improperly determined that the Retail Center is a "planned shopping center," as that term has been defined by B.C.Z.R. Section 101, and improperly concluded that the proposed fuel service station is permitted by right under B.C.Z.R. Section 405.2.A.1. Protestants presented no testimony on this point, but center their arguments on the definitions of statutory terms.

Protestants contend that the Retail Center is not an "integral retail shopping development," and argue that, because BJ's advertises itself as a "Wholesale Club," it is not a retail store. The testimony before the Board of Appeals demonstrates that BJ's fits the dictionary definition of "retail." (T. 18-19, 115-116).¹ While BJ's markets itself as a "Wholesale Club," this term simply reflects its pricing strategy. BJ's sells consumer items directly to the ultimate consumer. That these consumers sometimes buy in bulk and that sales are made from a no-frills warehouse does not change the fact that BJ's is a retail operation. The evidence on this point is clear.

Even though the Board of Appeals described BJ's as a "*warehouse-style* retail store" rather than a "*normal* retail store," the Board ultimately found, nonetheless, that it was a "*retail store.*" (emphasis added). Because this factual finding is supported by sufficient evidence (in fact, there is no evidence to the contrary), the Court accepts this finding.

Protestants contest the Office of Planning's approval of the White Marsh Retail Center as a "planned shopping center." On October 14, 1999, Jeffrey Long, Section Chief for the Department of Development Review of the Office of Planning, and Arnold Keller, Director of the Office of Planning, reviewed the overall development plan for the Retail Center and approved it as a planned shopping center. (T. 54-55, 142-144). Mr. Long testified at the hearing before the C.B.A. that the Office of Planning has not rescinded that approval. (T. 144). Relying on this evidence, the only evidence presented on the issue, the C.B.A.

¹B.C.Z.R. Section 101 directs that, when a word is not defined therein, the word shall be given "the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged."

properly found that the requisite approval from the Office of Planning confirms the status of the Retail Center as a planned shopping center.

The record of the proceedings before the C.B.A. contains substantial supporting evidence, and it properly found that Lot 3, on which BJ's is located, is part of a planned shopping center as that term is defined under B.C.Z.R. Section 101.

Protestants also contest whether the Board's finding that the Retail Center is under common ownership or control was appropriate. White Marsh presented substantial evidence on this issue, which was not refuted by Protestants. Specifically, White Marsh presented the testimony of Edmund F. Haile, professional engineer from Daft-McCune-Walker, Inc., who prepared the original plan for development of the White Marsh Retail Center. Because of his site-specific knowledge and his vast experience with development of shopping centers throughout Baltimore County, Mr. Haile was able to provide persuasive testimony on the issue of common ownership or control of the Retail Center. (T. 46-85).

Mr. Haile explained that the Retail Center was originally developed under unified ownership. (T. 52). Subsequently, lots of record were created and "separated out" for the Bob Evans restaurant and the Burger King restaurant. (T. 52-53). Separate ownership of these pad sites does not change the unity of a shopping center. Further, common ownership at the Retail Center has not been completely destroyed because two of the lots of record, housing at least seven retailers, are still owned by White Marsh. (T. 125).

George Drummey, Vice President of BJ's, and Jack Cannella, Vice President of Heritage Properties, confirmed Mr. Haile's testimony regarding "common control" of the Retail Center and explained that all tenants and lot owners, including Bob Evans and Burger

King, are required to participate in certain elements of the overall center, including the requirements for parking, signage, and storm water management. (T. 26-27, 125-128).

Protestants offered no evidence that the Retail Center was not under common ownership or control. Based on the testimony and evidence produced by White Marsh, the Board properly found that the Retail Center was under common ownership or control as required by B.C.Z.R. Section 101. There is no basis for the court to disturb these findings.

Protestants contend that because Wholesale Club Drive – the street that connects the Retail Center to Belair Road – is a public street, it cannot be considered an “interior service drive or way” for the purpose of satisfying the definition of “planned shopping center.”

Protestants offer no support for this interpretation of B.C.Z.R. Section 101.

Wholesale Club Drive’s status as a County road does not alter its ability to qualify as a “way” under the “planned shopping center” definition. Mr. Haile testified that, because Wholesale Club Drive is “interior” to the Retail Center and serves only to provide access to the Retail Center, it necessarily qualifies as an “interior service drive or way.” (T. 57). Mr. Haile noted that there is no restriction in the Zoning Regulation that “an interior service drive or way” must be a private road: “[i]t’s only a route of access for vehicular traffic.” (T. 57).

Based upon the testimony of Mr. Haile and its own analysis of the relevant regulations, the C.B.A. properly ruled that Wholesale Club Drive is a “way that provides vehicular access to the physically separate buildings in the retail center as well as to BJ’s Wholesale Club.”

The C.B.A.’s interpretation of the applicable law is entitled to be given considerable deference.

Protestants further argue that, even if the Retail Center meets the definition of a planned shopping center, the proposed fuel service station is still not permitted because it is not "integrated with" that planned shopping center as required by B.C.Z.R. Section 405.2.A.

The Baltimore County Council has determined that planned shopping centers are appropriate locations for fuel service stations. B.C.Z.R. Section 405.2.A.1. Planned shopping centers draw large volumes of commercial traffic onto their sites. White Marsh suggests that the requirement that fuel service stations be "integrated with" a shopping center was intended to ensure that there be some vehicular or pedestrian connection between the center, where the traffic already exists, and the station. Requiring this connection helps to serve the population already on site and to reduce the number of trips and the volume of traffic on already congested highways and streets.

Although Protestants argue that the C.B.A. made no specific finding that the fuel service station site will be integrated with the Retail Center, the exhibits and testimony contained in the record make it evident that the proposed fuel station will, in fact, be incorporated into and become part of the Retail Center. It is undisputed that the fuel service station will be accessible to BJ's customers and employees. Additionally, the station will be fully accessible to the customers and employees of the rest of the Retail Center. (T. 20). The C.B.A. at least found implicitly for the Applicant on this issue.

The C.B.A. properly concluded that the fuel service station, as proposed, was permitted as a matter of right in this planned shopping center.

Protestants argue that the proposed fuel service station is an impermissible "use in combination" under B.C.Z.R. 405.4.E. Section 405.4.E permits certain uses "in combination

with" a fuel service station, upon proof of entitlement to a special exception, including convenience stores, car washes, service garages, and restaurants. However, for a special exception to be required, the above-recited uses must constitute a use "in combination with" with the fuel service station.

The term "in combination with" is not defined by the Zoning Regulations. Webster's, though, defines "combination" to mean "the result or product of combining: a union or aggregate made by combining one thing with another." "Combine" is further defined as "to cause (as two or more things or ideas) to mix together: mingle, blend." Applying these definitions to B.C.Z.R. Section 405-4-E, a "use in combination" seems to require some physical or operational connection of the uses.

Mitchell Kellman, accepted as a zoning expert for Baltimore County, testified that Section 405.4.E would require some physical connection for the proposed fuel service station to be considered a "use in combination" with the auto service activities performed by the BJ's store, which activities are permitted by right in this zone under B.C.Z.R. Section 236.1. (T. 165). Based upon the testimony presented by George Drummey that the BJ's service garage activities would take place in a separate and distinct structure from the service garage and that the fuel service station would operate independently from the service garage, Mr. Kellman found the necessary connection or "combination" to be missing. (T. 164-165). According to Baltimore County's current policies, the fuel service station and the service garage would be considered separate principal uses located on the same lot of record. (T. 165-166). The site plan confirms that the fuel service use and the service garage use would be physically separated from each other.

The Board found Mr. Kellman's testimony to be instructive and correctly interpreted Section 405.4.E as requiring a "connection" or "combination" of the uses before a special exception is needed. Finding the fuel service station to be a "self-contained operation," the Board found that no special exception was, therefore, required. The Circuit Court will affirm the Board's decision.

White Marsh petitioned for a variance from B.C.Z.R. Section 405.2.A to allow the proposed fuel service station to be located on a "lot" that is within zero feet of residentially-zoned property in lieu of the required 100 foot setback. This request was because White Marsh did not know if the Zoning Commissioner and the Board of Appeals would agree that the 18,000 square foot fuel service station area was a "lot," or if they might conclude that the entirety of Lot 3 had to be more than 100 feet from a residential zone.

Protestants argue that "lot" should be interpreted to mean "lot of record" as that term has been defined by B.C.Z.R. Section 101. Under their interpretation, because Lot 3, indisputably a lot of record, is within 100 feet of a residentially-zoned property, the Zoning Regulations would require a variance from the 100 foot setback requirement to be granted in order for the fuel service station to be permitted anywhere on Lot 3.

Section 101 does not define "lot." Webster's defines "lot" as "[a] measured parcel of land having fixed boundaries and designated on a plot or survey; a parcel of land in fact used for, intended for, or appropriated to a common purpose." Applying this definition in the context of B.C.Z.R. Section 405, it is reasonable to conclude that "lot" refers to the 18,000 square foot fuel service station area and not the entirety of Lot 3.

This interpretation is supported by the analysis conducted by the Deputy Zoning Commissioner, who considered the provisions of Section 405.4 of the B.C.Z.R. to aid him in reaching the same conclusion later reached by the C.B.A. In essence, the Deputy Zoning Commissioner found that the "lot" referred to in Section 405.2.A.1 is the functional equivalent of the fuel service station "site" repeatedly referred to in Section 405.4. This Court agrees with that conclusion.

With the definition of the term "lot" established, the C.B.A. properly ruled that White Marsh's variance request is unnecessary because the "lot" in this case is not the entire BJ's site contained in the tract boundary, but is rather the area set aside by BJ's for its fuel service station site, which is considerably more than 100 feet from the nearest residentially zoned property.

In a recent decision, the Court of Appeals discussed the meaning of the word "lot" in the context of the Baltimore County Zoning Regulations. Friends of the Ridge v. Baltimore Gas & Elec. Co., 352 Md. 645, 650-656, 724 A.2d 34 (1999). Having considered the meaning in light of any references found in the Zoning Regulations themselves and in relevant case law, the court of Appeals determined that, "[i]n zoning, the term lot normally is generic and used interchangeably to describe parcels, tracts, *pieces or sections of land*." Id at 655 (emphasis added). The Court noted that the Baltimore County Zoning Regulations "[do] not define lots to include only lots delineated on plats in approved subdivisions" and that "[z]oning is concerned with dimensions and uses of land or structures, not with any particular description 'lot,' 'parcel,' or 'tract' applicable to or necessary for conveyancing." This is the interpretation argued by White Marsh and accepted by the C.B.A.

Applicant argues that should the Court find that the setback variance is not moot, the C.B.A. could grant it on remand, a position disputed by Protestants. In the light of the Court's affirmance of the C.B.A. on mootness, however, it is not necessary to decide this issue.

Finally, in a global attack on the C.B.A., Protestants argue that it failed to explain adequately its findings and the bases thereof, and thus failed to provide the necessary "roadmap" of its decision and order. The Court is not so persuaded.

At the hearing before the C.B.A., White Marsh adduced substantial evidence of its entitlement to the requested relief. The Board of Appeals properly applied the Baltimore County Zoning Regulations and found that such evidence supported granting the relief under those regulations. Therefore, this Court will affirm the decision of the C.B.A. to allow White Marsh to construct a fuel service station within its Retail Center.

IT IS SO ORDERED this 2nd day of January, 2002.



Christian M. Kahl

CMK:emh

cc: John H. Zink, III, Esquire
Patricia A. Malone, Esquire
Robert D. Sellers, Esquire

10/19/01

FILE

RE: PETITION OF

John D. Leahy, Jr.

Charles E. Warns, II

William A. Knell, Sr.

Earl Ingram

FOR JUDICIAL REVIEW OF
THE DECISION OF THE COUNTY
BOARD OF APPEALS OF
BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION
OF BELAIR ROAD WHITE MARSH JOINT
VENTURE FOR A VARIANCE ON PROPERTY
LOCATED ON THE N/E END OF WHOLESALE
CLUB ROAD, 740' E OF C/L BELAIR ROAD
(4201 WHOLESALE CLUB ROAD)
14TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

Case No.: 00-309-A Before the County
Board of Appeals of Baltimore County

* IN THE

* CIRCUIT COURT

* FOR

* BALTIMORE COUNTY

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* CIVIL NO.: 03-C-01-007020

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APPELLANTS' MEMORANDUM

John D. Leahy, Jr., Charles E. Warns, II, William A. Knell, Sr., and Earl Ingram,
Appellants, by their attorney, Robert D. Sellers, submit this Memorandum in support of their
Appeal of the decision of the County Board of Appeals dated June 5, 2001 in the above case.

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STATEMENT OF THE CASE

This case involves Appellees' request for the zoning relief necessary to add a third principal use, a fuel service station, to their property on Wholesale Club Drive which is zoned BR. Currently there are two uses on the property, a BJ's Wholesale Club/discount store and a Tuffy's automobile service garage, both housed in the same building.

Appellees requested a variance from Baltimore County Zoning Regulations (BCZR) §405.2.A for a fuel service station in a planned shopping center within 0 feet of residentially zoned property; a variance from BCZR §409.6 to allow fewer parking spaces for the wholesale club; and a variance from BCZR §405.4.B to waive the requirement to provide restrooms at a fuel service station. The Zoning Commissioner ruled that the first relief requested was unnecessary and granted all other requested relief.

Appellants appealed to the County Board of Appeals. The case was heard de novo on December 27, 2000, deliberated on February 14, 2001 and a written decision issued June 5, 2001. That decision was similar to that of the Zoning Commission as to the first two zoning requests but in a split decision the Board denied the request to waive the requirement to provide restrooms. Other matters raised by Protestants/Appellants were resolved in favor of Appellees. An issue regarding standing was resolved by the Board in favor of the Protestants/Appellants and an additional Protestant/Appellant who is a resident of Baltimore County living in the area of the subject property and who is a member of the wholesale club was added as a party during the proceedings of the Board.

Appellants filed a timely appeal of the decision of the Board of Appeals to this court and contend that the Board committed numerous errors in their interpretation and application of the relevant definitions and zoning regulations.

STANDARD OF REVIEW

A reviewing court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. Where the issues raised are the proper interpretation of the statutes, the proper application of definitions and other conclusions of the law, the court's role is to determine if the administrative decision properly applies that law. United Parcel Service, Inc. v. People's Counsel for Baltimore County, 336 Md. 569, 576-577, 650 A.2d 226, 230(1994). Where questions of law are raised, the court's review of an agency decision "is expansive, that is, the appellate court may substitute its judgment for that of the [administrative agency]." Concerned Citizens of Great Falls, Maryland v. Constellation-Potomac, LLC, 122 Md.App. 700, 731, 716 A.2d 353, 368 (1998). It is a fundamental right of a party before an administrative agency to know the facts relied upon by the agency in reaching its decision and to permit meaningful judicial review. Bucktail, LLC v. County Council of Talbott County, 352 Md. 530, 553, 723 A.2d 440, 451 (1999). It is not permissible for the agency "simply to parrot general statutory requirements or rest on broad conclusory statements." Bucktail at 553. In this case, the facts are virtually undisputed. The questions raised by Appellants involve the application of definitions and statutory interpretation to those facts. The case law is quite clear that the reviewing court owes no deference to the administrative agency conclusions of law and may substitute its own judgment on those questions.

STATEMENT OF THE FACTS

Belair Road White Marsh Joint Venture has requested zoning relief in the instant matter on behalf of BJ's Wholesale Club (hereinafter BJ's). BJ's desires to construct a fuel service station on the parking lot at its store located at 4201 Wholesale Club Drive, which is part of the Whitemarsh Retail Center. Whitemarsh Retail Center consists of approximately 21 acres zoned

BR which was subdivided in 1990 creating four lots for commercial uses. The road running through the Center is known as Wholesale Club Drive and was dedicated to and accepted by Baltimore County in 1994 and is a public street. Two of the four lots are occupied by a Bob Evans Restaurant and BurgerKing respectively, and those lots have been sold in fee to those entities.

The fuel service station will be located on BJ's parking lot and will consist of six multiple product dispensers providing 12 fueling stations and a small kiosk. In addition to the use as a wholesale club/discount store, the BJ's at this location also contains an automobile service garage housed within the BJ's building and trading as Tuffy's Auto Service Center.

QUESTIONS PRESENTED

1. Whether the Board of Appeals' finding that the "use area" set aside on the site plan is the legal equivalent of a lot and therefore that a variance from BCZR, §405.2.A to allow a fuel service station to be located on a lot within 100 feet of residentially-zoned property in lieu of the required 100 feet was unnecessary and dismissed as moot is based on a proper interpretation of the zoning regulations?

2. Whether or not a variance from BZCR §405.2.A is permitted by the regulations?

3. Whether the Board of Appeals finding that the site meets the definition of a "planned shopping center" is a proper interpretation of the zoning regulations?

4. Whether the Board found that the use as proposed is "integrated" with the shopping center as required by the zoning regulations?

5. Whether the proposed combination of uses is permitted at all under the BCZR?

6. Whether or not a special exception is required for the proposed combination of uses at the site?

DISCUSSION

1. Whether the Board of Appeals' finding that the "use area" set aside on the site plan is the legal equivalent of a lot and therefore that a variance from BCZR, §405.2.A to allow a fuel service station to be located on a lot within 100 feet of residentially-zoned property in lieu of the required 100 feet was unnecessary and dismissed as moot is based on a proper interpretation of the zoning regulations?

Appellants sought a variance from the operation of BCZR §405.2.A.1. The Board ruled that a variance was not required and dismissed the request as moot. Opinion p.10. That section provides:

"405.2 Locations in which fuel service stations are permitted.

A. A fuel service station is permitted by right subject to Section 405.4, provided that no part of the lot is within 100 feet of a residentially zoned property and is integrated with and located:

1. In a planned shopping center of which at least 20% has been constructed at the time the building permit for the fuel service station is issued, but not to exceed one station for each 60,000 square feet of gross floor area of the planned shopping center;...."

The record lot on which BJ's is located clearly lies within 100 feet of residentially zoned land for hundreds of feet on both the east and south sides. Petitioners' Exhibit 10. Because BCZR §405.2.A requires that "no part of the lot [be] within 100 feet of a residentially zoned property", Appellees have "created" a "lot" for the fuel station by drawing "use" lines around a rectangular area on the parking lot where the fuel station is proposed. T. 76-78. Those lines only appear on the site plan accompanying the petition, which states "Use division lines shown for illustrative purposes only." Petitioners' Exhibit 1. The "lot" defined by those lines is not described in any deed or lease or other document anywhere, recorded or otherwise. T. 76,77. There is no provision for or mention of "use" lines anywhere in the BCZR or County Code.

The Board ruled that the lot set aside by Appellees complied with BCZR §405.2.A. Opinion p.7. The Board found that a definition of “lot” is not found in the BCZR, and pursuant to BCZR § 101 used the “ordinarily accepted definition” contained in Webster’s Third New International Dictionary which is “a measured parcel of land having fixed boundaries and designated on a plot or survey; a parcel of land in fact used for, intended for, or appropriated to a common purpose.” But there is a definition of “lot of record” in BCZR §101 and even a cursory review of that definition indicates that it is elementary to separate the part of the definition which pertains to “lot” and the part of the definition which pertains to “of record.” It is absolutely clear that a “lot” is to be created only as provided under county law and that it becomes a “lot of record” when recorded.

The Board’s definition does not require that the “lot” be lawfully or formally created under county law although most individuals would believe that part of the ordinarily accepted definition. It is clear that the “use lot” created by Appellees is not a legal lot for any purpose. “Subdivision” is defined in the Baltimore County Code in §26-1 as “the division of a lot, tract, or parcel of land into two (2) or more lots, sites or other divisions of land for the purpose... of sale or building development....” Petitioners’ creation of the “use lot” is a subdivision of a lot for the purpose of building and is therefore “development” as defined in §26-168(p). One may not create a “lot,” “subdivide” or “develop” land without complying with the development regulations in Title 26 of the County Code. County Code §26-166(a). That has not occurred here and Appellees “use lot” is not a lot at all under County law and cannot possibly satisfy §405.2.A. See excerpts from County Code attached in the Regulations and Statutes Extract.

The Board's conclusion that one can create a "lot" by drawing a rectangle on a piece of paper intended to be used for one purpose only and never to be otherwise formalized, legalized or recorded is clearly erroneous and would lead to absurd results. The word "lot" appears in the BCZR no less than 337 times. One can only imagine the ridiculous results which would occur if "lot" meant whatever one drew on a zoning site plan in order to comply with or circumvent various sections of the BCZR.

2. Whether or not a variance from BCZR §405.2.A is permitted by the regulations?

The Board of Appeals found that a variance from BCZR §405.2.A was not necessary because the boundaries of the fictitious use lot were the required distance from residentially zoned property. It should however be noted that if relief from the 100 foot condition precedent contained in that section is required because the "use area" is not a "lot", it cannot be granted by way of a variance. BCZR §307 sets out the authority and guidelines under which variances can be granted in Baltimore County and provides "power to grant variances from height and area regulations, and from off-street parking regulations and from sign regulations." BCZR §307 goes on in very express terms that there is "no power to grant any other variances." BCZR §307. See excerpts from BCZR attached in the Extract.

The plain meaning of §405.2.A.1, its location within the statutory scheme and the commonly accepted meaning of "area" all make it clear that the 100 foot requirement is a condition precedent to be met before a use is permitted and that it is not an area regulation controlling the location on a lot of a permitted use. The intent of the County Council in enacting §405.2.A. is indicated by the heading "Locations in which fuel service stations are permitted." This is a regulation which permits a use in certain locations. All zones are subject to other specific sections entitled "Area Regulations." See BCZR §232, §235, §238, §243, §250, §255

among others. In this case the area setbacks in §238 for BR zones apply in addition to the more specific “setbacks” for fuel service stations found in §405.4.A.2. It is unlikely that the County Council imposed not one, nor two ,but three different sets of area regulations for fuel service stations, codified in 3 different places within the BCZR and especially so since both the 100 foot pre-condition of §405.2.A. and the area setbacks of §405.4.A.2 were imposed by the same legislation, Bill No. 172-93. It is clear that the 100 foot pre-condition is not an “area” regulation and it cannot be varied by the express terms of BCZR §307.

Furthermore, the plain language of the section is not that of an “area” regulation. It does not control the location on a lot of a use , rather it grants the right to a use “provided” that the lot meets certain criteria. It is clearly the language of a condition precedent. Parallel language is used in the immediately following §405.2.B.1 which allows “Fuel service stations ... by special exception ... 1. Within the urban-rural demarcation line (URDL), in C.C.C., A.S. or I.M. Districts, “provided” no part of the lot is in an M.R. Zone. Clearly that language would not permit it to be varied.

Should the Court find that such a variance can be granted, then it is a use variance, not an area variance, in that it restricts the right to use the land for a purpose not permitted absent the variance. In order to grant a use variance the standard to be applied is that of “undue hardship” not “practical difficulty.” Anderson v. Board of Appeals, 22 Md.App. 28, 37-38, 322 A.2d 220, 227 (1974). Undue hardship is the denial of any reasonable and significant use of the property. Belvoir Farms Homeowners Assn. v. John C. North, II, 355 Md.259, 734 A.2d 227 (1999). Because there already exist on the property both a BJ’s Wholesale Club and an automotive repair facility it would be impossible to argue that a reasonable use of the property was denied.

3. Whether the Board of Appeals finding that the site meets the definition of a “planned shopping center” is a proper interpretation of the zoning regulations?

Fuel service stations require special exceptions in virtually every location within the County; in every zone and even in industrial (IM) districts and automotive service (AS) districts. BCZR §405.2.B. Only in 3 well defined instances set out in §405.2.A are fuel service stations permitted as a matter of right. Those instances are a “planned drive-in cluster”, an “approved planned industrial park”, and in a “planned shopping center” which controls the instant matter. Appellants maintain that the proposed site does not need the definition of a “planned shopping center.”

The definition which must be applied is found in BCZR §101 as follows:

“SHOPPING CENTER, PLANNED -- An integral retail shopping development for which an overall plan has been approved by the Office of Planning and which: is under common ownership or control; has a site at least three acres in net area; has vehicular access to physically separate buildings on the site by means of interior service drives or ways; and has no more than two points of vehicular access from the site to public streets except as follows:

A planned shopping center may have one additional vehicular access point to a public street for each 250 feet of street frontage thereon in excess of 500 feet; and

A planned shopping center may have a greater number of vehicular access points than as defined above if an overall plan for such center has been approved by the Office of Planning before the adoption of this definition, provided that the number of vehicular access points is not further increased after the adoption of this definition. EN [Bill No. 40-1967]”

Taken in the order they appear in the definition the various elements and the Board’s findings are discussed below. All quoted definitions are from Webster’s Third New International Dictionary as required in the BCZR.

“**Integral retail shopping development**” – Integral means “an entire thing”, a totality, a whole. Retail means “to sell in small quantities” or “the sale of commodities and goods in small

quantities to ultimate consumers – opposed to wholesale.” There was no evidence before the Board that the proposed location consists of totally or predominantly retail shopping or that there is any integral or unifying element to it. Two of the lots have been sold in fee and are used for restaurant purposes and there is a small “strip” of businesses located on Lot 2B. T. 24,53,82. The Board’s Opinion is devoid of any description of the “uses” present in that strip and no evidence that it contains “retail” uses. The overwhelming amount of shopping area is BJ’s Wholesale Club. Petitioners’ Exhibit 3 indicates 6,600 sq. feet and 3,278 sq. feet of restaurant use, 117,000 sq. feet of “discount store” use and only 19,200 sq. feet of “retail” use is present.

BJ’s Wholesale Club is exactly that, a wholesale club and not a traditional retail store. Petitioners’ own witnesses testified repeatedly how and why BJ’s was different from traditional retail stores. Mr. Drummey testified that BJ’s was different from a “traditional retailer” like Walmart. The “shoppers come less frequently, but they tend to spend more so they don’t visit our facilities as frequently....” T. 18,19. He testified that BJ’s was unique in that “People tend to come less often but spend more” and “Where someone may go to a Walmart 6 or 7 times per month, they may go to BJ’s 2 or 3 times a month.” T. 29.

Mr. Kellman, a zoning compliance specialist and former employee of the Baltimore County Zoning Office, when asked why the use of the property and the BJ’s structure itself was unique testified that “Those BJ’s type stores weren’t your typical retail type use and, therefore, I don’t think it requires as much parking as the standard retail type use. A lot of storage in those buildings.” T. 98.

Mr. Cornelius, Petitioners’ traffic expert testified that wholesale clubs “generate different types of traffic characteristics and parking characteristics than a typical retail center.” Furthermore, he testified that “club stores generate about 35% less traffic than a typical retail

store of the same size.” T. 115,116. Mr. Cornelius’ testimony is corroborated by Petitioners’ Exhibit 3 where parking requirements for those “discount store” and “retail” uses were calculated at significantly different rates.

The overwhelming weight of Appellees’ own witnesses’ testimony is that BJ’s Wholesale Club is not a “retail” use. It is a wholesale club/discount store/membership warehouse. A 35% difference in traffic generation indicates that the use is significantly different from traditional retail uses. In fact the differences between the BJ’s Wholesale Club use and traditional retail was the sole justification offered by all Appellees’ witnesses to support the proposition that less parking is needed. There is no evidence in this record that this location is predominantly “retail” but rather there is extensive testimony and evidence from the Appellees themselves that it is not.

The Board deals with this issue in the most conclusory manner. They make absolutely no findings regarding what is sold at any site in the shopping center other than the BJ’s Wholesale Club. There is nothing in the Board’s opinion which indicates that the balance of the use at the shopping center is retail or that it is integrated with the BJ’s Wholesale Club. The Board also states no fact on which to base their conclusion that the BJ’s Wholesale Club use is “retail” but instead apparently without question accept the conclusions of Mr. Haile, Mr. Drummey and Mr. Cannella. Opinion p.4, 5.

“Overall plan approved by the Office of Planning” –Petitioners’ Exhibit 7 contains a notation signed by Jeffrey Long from the Office of Planning that “confirms” that the site is a “planned shopping center” but, when called to testify before the Board, Mr. Long was very clear that when he had been requested to review the plan he had not been given accurate information, particularly about the public ownership of Wholesale Club Drive. His testimony was that with that knowledge the Office of Planning now “probably” seek a special hearing to make a

determination whether or not this site was a planned shopping center. T. 142,143,144. The “approval” by the Office of Planning under these circumstances is no approval at all yet the Board apparently found that even under those circumstances the center was “approved” by the Planning Office.

“Under common ownership or control” – The Board makes no express finding as to this element but does include a discussion of several relevant factors. The center was originally under unified ownership and sometime thereafter the restaurant sites, Lots 1 and 2A of the original sub-division were sold in fee and there is therefore no common ownership, nor has there been in quite some time. T. 53. The issue then becomes whether there is common “control” at this location consistent with the concept of a planned shopping center. On this issue, the Board appears to adopt several conclusions as to matters of law from Appellees’ expert, Mr. Haile, by stating that Mr. Haile “in his expert opinion” testified that “the retail center was under common control.” Mr. Haile’s opinion on that matter is entitled to no weight because it has nothing whatsoever to do with his expertise as a civil engineer. Additionally, the meaning of non-technical words or phrases is not a proper subject for expert testimony. McLaine, Maryland Evidence, §702.1. Furthermore the basis for his opinion is demonstrably wrong.

He testified that parking, landscaping requirements and storm water management requirements applied to the entire site and provided the necessary control to satisfy the definition. T. 50. Mr. Haile could not be more wrong. Landscaping requirements, parking requirements and storm water management requirements to which he refers are imposed by county development and zoning regulations and not owner or landlord imposed control. The Board also mentioned testimony of Mr. Drummey and Mr. Cannella regarding BJ’s lease and a signage agreement but it is not clear whether they found that those facts establish the element of

common control. In any event the lease terms in evidence as Petitioners' Exhibits 5A and 5B do not indicate common control over the entire tract. The lease only applies to the "demised premises" illustrated on Petitioners' Exhibit 5C which is limited to the BJ's site. A careful reading of the lease paragraphs introduced does not indicate any significant overall control at all. The portions dealing with the pylon sign demonstrate at most a mutual cost sharing arrangement, not control. Paragraph 5 imposes a burden on the Landlord not to place two specific competing or undesirable uses at the site. It grants no "control" over the BJ's which makes up most of the site, and in Paragraph 6 it is the tenant who has "control" over the Landlord's actions. It should also be noted that nowhere in the Board's opinion do they find who possesses or exercises this "control."

Those are the only matters discussed by the board and necessarily must be the only matters considered by this Court when determining whether the "finding" that the center was under common ownership or control was a proper conclusion of law. Almost every factor mentioned by the Board in the discussion of this issue is a county imposed requirement which applies to every proposed development in Baltimore County, commercial or residential. Furthermore, to the extent there is any control imposed by those requirements, it is control by the county and not by a common owner or landlord. For every sub-division, residential or commercial, county development regulations require various written easements and agreements to provide for shared access, signage and the control of storm waters. If those types of agreements constitute the "control" required by the definition then every sub-division of commercial property could meet the definition. To find that there is common ownership or control at this site would mean that there is common ownership or control on every site, commercial or residential, which has been developed and subdivided in Baltimore County in the

past three decades. That would render the definition meaningless. It cannot be properly construed in that manner.

Rather, the type of control contemplated by the definition is that commonly associated with shopping centers such as Owings Mills Mall, White Marsh Mall, Westview Shopping Center, etc. In those true "planned shopping centers," there is control by owners or management over the hours of operation, joint advertising campaigns, shared maintenance of parking facilities and other improvements, access to common areas, and architectural continuity which is intended to further a unified integrated conceptual plan that is more than lot lines drawn on a Plat and one shared sign. There is absolutely nothing in the Board's Opinion which indicates that there is any unifying control typical of a true planned shopping center at this location. It is a 4 lot subdivision of commercially zoned land with ordinary access, sign and storm water management agreements.

"Three acres in net area" --this site clearly meets this requirement.

"Vehicular access to physically separate buildings on the site by means of interior service drives or ways" -- It is uncontested that the bed of Wholesale Club Drive was dedicated to and accepted by Baltimore County in 1994. Protestants' Exhibit 2. The Board found that a public road such as Wholesale Club Drive can also be a "way" because the definition of "street" in the County Code includes the word "way." Opinion p.6. According to Mr. Long, however, the Office of Planning does not necessarily agree. T. 147. While a "way" may sometimes be a street, the usage here requires an interpretation which makes sense when considering the definition as a whole. To find as the Board did writes out of the definition the words "interior" and "service drives" and ignores completely the County Council's use of the words "public streets" in the very next line of the definition and in the following paragraphs. BCZR §101. Considering the definition in its entirety, they must have intended some difference in meaning

between “interior service” drives or ways and “public streets.” The Board ignores that distinction and more important, finds only that Wholesale Club Drive is a way. There is no finding or discussion that the way is “interior” to anything or has any characteristics of a service road. This court has no way to know if those words in the definition were even considered by the Board in their decision.

All five elements of the definition discussed above are connected by the conjunction “and” necessary to find that the proposed location is a planned shopping center. The Board’s Opinion stretches four of those elements to the breaking point using contortions of ordinarily accepted meanings and twisting common sense.

Under the Board’s interpretation of the five elements, virtually every subdivision of commercially zoned land would be a planned shopping center. It need not be an integrated retail oriented shopping area. Planning Office approval can be based on incomplete or erroneous information. County imposed development regulations and requirements create the “common control.” A public street dedicated and transferred in fee to the county is considered an “interior service drive or way.”

The issue of what is or is not a planned shopping center is paramount because it carries with it the fuel service station use as a matter of right when that right exists virtually nowhere else, not even in automotive service (AS) districts. In addition to permitting fuel sales as a right, a site considered a planned shopping center also need not comply with §405.3 which for all other sites requires that any abandoned gas stations in the vicinity be considered before permitting a new one. The concept of a planned shopping center in locating a fuel station is therefore an enormously powerful one circumventing the special exception protections and the “need”

analysis provided by the consideration of abandoned stations. It must therefore be strictly construed to carry out the intent of the County Council. The Board "found" certain of the necessary elements in a very conclusory manner and did not address others at all. The definitions are matters of law and this court can and should make the proper findings.

4. Whether the Board found that the use as proposed is "integrated" with the shopping center as required by the zoning regulations?

BCZR §405.2.A also provides that a fuel service station is permitted "provided that" it "is integrated with and located" in a planned shopping center. The use of the words "integrated with" in addition to "located in" clearly demonstrates that the Council had something more in mind than just a gas station somewhere within the property lines of a planned shopping center. The regulations contemplate that the fuel sales will service the entire shopping center by requiring that the fuel station be "integrated with" and not just plopped onto a parking lot for the benefit of one business.

The Board makes no finding of this essential element at all. In fact the failure to consider this element is made clear in the Opinion at page 6 where the Board states: "Based upon the finding that the White Marsh Retail Center is a planned shopping center, the proposed fuel service station is permitted as a matter of right under BCZR §405.2.A." That is an inaccurate statement of the law. The BCZR is crystal clear that the fuel service station is not permitted as a right unless it is "integrated with" the planned shopping center. Nowhere does the Board find that the proposed use will be integrated with the center

The evidence in this matter shows that the fuel service station is integrated, if at all, only with the BJ's Wholesale Club. It has no association or connection with any other part of the commercial center. A close examination of Petitioners' photos, Exhibits 12A-H shows this clearly. The fuel service location can not be seen at all from Belair Road or from any of the

restaurants or from the strip center, nor can the restaurants or strip center be seen from the fuel area. The fuel site is not accessible from those establishments except by an auto trip out onto a public road (Wholesale Club Drive) and then down the BJ's private drive, a distance of almost 1000 feet. Petitioners' Exhibit 2. The fuel site is also separated from the most of the "shopping center" by a very wide and intrusive easement containing huge power line towers and it is much lower in elevation. There is no architectural, spatial or visual integration with the other commercial uses nor is the site even in the same proximity.

According to Mr. Drummey, 95% of the gas customers will be BJ's members. T.20. He said "...it's a service our members want, and to enhance our business at the club." T. 21.

Emphasis added. The sale of fuel will be "integrated" only with BJ's. There is no evidence that any significant number of gas customers will come from those patronizing the restaurants and the strip center on the upper part of the site. It is not situated to attract them and not intended to. In fact the BJ's lease states that no adjacent land shall be "integrated" with their leased area and that BJ's can require a fence be built if "persons having business upon other land adjacent to or near" the leased premises use their outside area. Petitioners' Exhibit 5B, paragraph 6. The Board makes no finding whatsoever that the fuel use would be integrated with the entire shopping center because there is no evidence on which to base that finding. In fact there is overwhelming evidence to the contrary.

5. Whether the proposed combination of uses is permitted at all under the BCZR?

BCZR 102.1 states "No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations" There is well settled authority on that point that the BCZR statutory scheme as a whole establishes uses

and combinations of uses permitted by right or by special exception. Any use other than those permitted and being carried on by right or by special exception is prohibited. Kowalski v. Lamar, 25 Md.App. 493, 334 A.2d 536 (1975).

In addition to the list of uses permitted by right or by special exception for each zone, a very extensive section of additional regulations regarding the location and site standards for fuel service stations are contained in BCZR §405. The intent of those regulations is plainly stated in BCZR §405.1.D, which states “it is the intent of this section to permit fuel service stations in accordance with the goals of the master plan and duly adopted community plans by requiring performance standards that will regulate their location and appearance as well as the additional uses which may be developed at such sites”. (Emphasis added)

BCZR §405.4.D and E regulate the uses permitted in conjunction with a fuel service station. Given that §405.4.D states that “only” the “Ancillary” uses listed there are permitted by right with a fuel station and nothing similar to a wholesale club/discount store use is listed, and that wholesale club/discount store does not appear in §405.4.E as a use which may be combined with fuel sales by special exception, the BCZR does not allow the combination of fuel sales with a wholesale club/discount store under any circumstances in any zone. Unless expressly permitted by right or by special exception, a use or combination of uses is not permitted at all. Appellants’ argument on this point was not addressed by the Board at all in the Opinion.

6. Whether or not a special exception is required for the proposed combination of uses at the site?

If this combination of uses is permitted at all, it is absolutely clear that BCZR §405.4.E requires a special exception to combine a service garage with a fuel service station whether or not any other uses are present. Appellants produced uncontradicted evidence that extensive and

complex automotive service and repair was being provided at the BJ's Wholesale Club through their Tuffy Auto Service Center. Protestants' Exhibit 1. In addition to that documentary evidence, Mr. Warns testified from direct observation and inquiry "that the automotive services provided on the site included brakes, mufflers, air conditioning, fuel injection, cooling systems, tires, batteries, tune-ups" and that the same day of the hearing he got an estimate on a front brake job and "head gasket replacement" which he testified was "major work involving dismantling the top part of an engine...." and that BJ's was "a full service repair facility." T.152,153. Those automotive repair services far exceed the automotive services allowed by right as an ancillary use in conjunction with any fuel service station. Section 405.4D defines ancillary vehicle repair as "minor vehicle repair or diagnostic services including but limited to the installation of mufflers, small auto parts and accessories" and which "must remain accessory to the fuel service station operation."

On the BJ's site there are multiple service bays offering extensive automotive repair including major engine work to which BJ's now wants to add 12 fueling stations. The site is already being used as a service garage as defined in BCZR §101. When a service garage use is combined with a fuel service station use, BCZR §405.4.E .4 requires a special exception. Here both of those principal uses are owned and managed by BJ's, on a single lot of record which also contains the BJ's Wholesale Club building. There will be a shared access road, shared parking requirements, shared advertising, shared employees and shared restrooms.

The Board "found" that the service station is "a self-contained operation and not a use in combination with a service garage" and therefore "it is permitted as a matter of right..." Opinion p.7. This finding was based on the testimony of Mr. Kellman and his interpretation of the relevant BCZR sections that a service garage must be "attached" to the fuel service station in

order to be a use in combination and because the customers will pay for their gas at a kiosk located on the fuel service station "lot." Opinion p.7.

The worth and opinion of an expert is no greater than the value of the facts upon which it is based. Consumer Protection Division v. Luskin's, Inc., 120 Md.App. 1, 706 A.2d 102 (1998). Mr. Kellman's opinion on which the Board relied was not based on any facts because it was an opinion on a matter of law, i.e. the appropriate interpretation of a "use in combination." Expert testimony is inappropriate when the expert can add nothing to what the fact finder already knows or could infer. The meaning of non-technical words or phrases is not a proper subject for expert testimony. McLaine, Maryland Evidence, §702.1.

This "requirement" imposed by Mr. Kellman's interpretation is an opinion and not a fact, and the Board's reliance upon it because it was "uncontradicted" is nonsense. A review of all of BCZR §405 makes it clear. Nowhere is there a requirement or mention that uses must be "attached" or conducted out of the same building to be considered a "use in combination." To the contrary the stated intent of §405 is to regulate "...additional uses which may be developed at such sites" BCZR 405.1.D. Separate structures are clearly contemplated. "Any structure on the site that is converted to an ancillary use or to a use in combination" BCZR 405.4.C.1.a.

Most instructive on this issue is the list of "uses in combination" set out in BCZR 405.4.E. Those uses are convenience stores, various types of car wash facilities, including self-service car washes, vehicle rental and restaurants. Under Mr. Kellman's interpretation, to be considered a "use in combination," they must be "attached" by a "physical connection" to a fuel service station or operated out of the same structure.

The Board in adopting that interpretation would allow absurd results which would render the intended regulation impossible. Unless the buildings were physically attached or customers

paid for their gas and food at the same place, a fuel station and a restaurant sharing a site would not be a “use in combination.” If a self-service car wash was paid for by coin or token deposited into a machine at the car wash, that car wash would not be a use in combination with a fuel station that shared the site. That result cannot be the Council’s intent.

The BCZR contemplates no such distinction. The site is one lot of record, with common ownership, management, shared access, parking, and shared restrooms. Mr. Drummey’s testimony was that 95% of the fuel service customers would be BJ’s Wholesale Club members.

T. 20. One can hardly imagine a situation where two uses are more in combination!

Petitioners’ sale of fuel at this site will clearly result in a “use in combination with a service garage” as contemplated by the BCZR. Section 405.1.D sets out the stated intent to regulate “additional uses which may be developed at such [fuel] sites.” Given the absolutely clear intent of the County Council to control and regulate uses combined with fuel service stations, the Board’s adoption of Mr. Kellman’s unsupported and illogical opinions on matters of law undermine the entire statutory scheme. Anyone hoping to add a car wash, service garage, automobile rental, etc., to a fuel station site could draw a “use line” across their lot to “separate” the uses and keep the structures from touching and thereby circumvent the §405.4.E requirement for a special exception for the combination of uses. That result would be absurd.

CONCLUSION

Appellees’ request to add fuel sales to this location must be denied because it is not allowed by the BCZR. The lot is indisputably within 100 feet of residentially zoned property. The Board’s conclusion that a fictitious “use” lot somehow cures that situation effectively thwarts the intention of the regulation and cannot be affirmed. No variance can be granted from

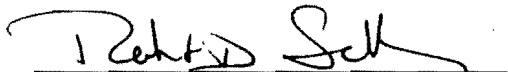
that distance because it is not an “area” regulation. If however a variance can be granted it is a “use” variance and requires a finding of such undue hardship that the land can be put to no useful purpose which is not the case here.

The site is clearly not a “planned shopping center” as demonstrated by Appellees own testimony. They justify providing less parking spaces because they are a significantly different use than retail but the Board finds that the site is a “retail” shopping center. The “approval” of the Office of Planning is based on inaccurate information but the Board finds that the approval is valid. After selling and retaining no control over the restaurant lots and entering into a long term lease where BJ’s and not the owners of the center, seems to have most of the control, the Board finds that the lease and ordinary easements and agreements typical of all development establish the necessary “common control” element. Appellees dedicated the bed of Wholesale Club Drive to Baltimore County (shifting the costs for its maintenance to the taxpayers) but the Board finds that public street to be an “interior service drive.”

Not every subdivision of commercially zoned land is a planned shopping center but the Board’s Opinion in this case would have that effect. Weighing whether a fuel service station may be placed in a location as a matter of right, thereby circumventing all protections to the community offered by the special exception process, requires that the regulations be interpreted in a way which gives effect to all the definitions and regulations and carries out the stated intentions of the County Council. For the reasons stated, the Board’s findings and conclusions ignore common sense, twist logic and undermine the clear intention of the County Council and the BCZR and must be reversed.

The Board has not properly applied many of the relevant definitions and regulations in this case. This Court can and should substitute its judgment to preserve the clear intentions of the

Council in regulating fuel service stations. On other issues the Board relies on broad conclusory statements that parrot the general statutory requirements. Some issues and arguments were not decided at all by the Board. For all the reasons stated above the decision of the Board of Appeals should be reversed.



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Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October, 2001, a copy of the foregoing Memorandum was mailed first class, postage prepaid, to John H. Zink, III and Patricia A. Malone, Venable, Baetjer and Howard, L.L.P., 210 Allegheny Ave., P.O. Box 5517, Towson, Md. 21204, attorneys for Petitioners/Appellees.



Robert D. Sellers

9/7/01
RC
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF :

JOHN D. LEAHY, JR.
8101 Belair Road
Baltimore, MD 21236

CHARLES E. WARNS, II
8485 Honeygo Blvd.
Baltimore, MD 21236

WILLIAM A. KNELL, SR.
7533 Belair Road
Baltimore, MD 21236

EARL INGRAM
3617 Double Rock Lane
Baltimore, MD 21234

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF THE APPLICATION OF
BELAIR ROAD WHITE MARSH
JOINT VENTURE

FOR A VARIANCE ON PROPERTY LOCATED
ON THE NORTH EAST END OF WHOLESALE
CLUB ROAD, 740' E OF CENTERLINE BELAIR
ROAD (4201 WHOLESALE CLUB ROAD)

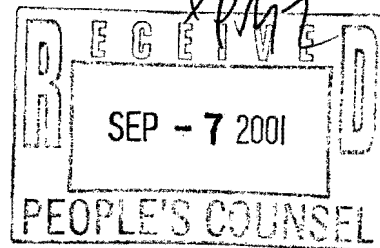
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

CASE NO. 00-309-A

**PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence S. Wescott, C. Lynn Barranger, and Richard K. Irish,
constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for
Judicial Review directed against them in this case, herewith return the record of proceedings had



in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY**

No. 00-309-A

January 27, 2000	Petition for Variance filed by Patricia A. Malone, Esquire, on behalf of Belair Road White Marsh Joint Venture c/o Heritage Properties, Inc.; to allow a fuel service station in a planned shopping center, to be located on a lot that is within 0 ft. of a residentially zoned property in lieu of the required 100 ft.; to allow 492 parking spaces to be provided in lieu of the required 582 parking spaces; and to waive the requirements of providing restrooms.
February 16	Certificate of Posting.
February 17	Publication in newspaper.
February 25	Entry of Appearance filed by People's Counsel for Baltimore County
February 25	ZAC Comments.
March 3	Hearing held before the Zoning Commissioner
April 14	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Variance is Granted in pt. & Dismissed as moot in pt.
May 12	Notice of Appeal filed by Robert D. Sellers, Esquire, on behalf of John D. Leahy, Jr., Charles E. Warns, II., and William A. Knell, Sr.
December 27	Hearing held before the Board of Appeals.

Petitioner's Exhibit Nos. 1A-Site Plan
1B-Detail of service area
2-aerial photo of area
3-CRG Dev. Plan - Refinement -Alt. B
4-93-336-A -Sign Variance Case
5A-Lease Pg. 34
5B-Lease Pg. 35
5C-Lease Plan
6-BJ Wholesale Standards
7-Haile Resume
8-Approved Plan
9-Sec. 26-168 (yy) Street Def.
10-copy of '96 zoning map 200' scale
11-Kellman Resume
12A-I -Photo Series 12/19/00

(Petitioner's Exhibits cont'd) 13-Cornelius Resume
 14A-SWM Cost Sharing Agreement
 14B-Access Easement Agreement
 14C-Declaration of Sign Easement

Protestant's Exhibit Nos. 1-Flyer of Auto Services (copy was to be
 submitted by Mr. Sellers)
 2-County Highway Deed

January 29 2001 Protestants' Memorandum in Lieu of Closing Argument filed by Robert Sellers, Esquire.
 Petitioners' Memorandum in Support of Petition for Variance and Motion for Reconsideration (in which a Motion is made to dismiss appeal filed by Protestant's) filed by Robert Hoffman, Esquire, on behalf of Petitioners .

February 14 Public Deliberation concluded by the Board.

June 5 Majority Opinion and Order issued by the Board of Appeals; Petition for Variance. Motion to Dismiss is DENIED; Petition for Variance is Dismissed as moot in part, GRANTED in part and DENIED in part. Concurring/Dissenting Opinion issued by Ms. Barranger.

July 5 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Robert D. Sellers, Esquire, on behalf of John D. Leahy, Jr., Charles E. Warns, II, William A. Knell, Sr., and Earl Ingram.

July 9 Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.

July 11 Certificate of Notice sent to interested parties.

September 6, 2001 Transcript of testimony filed.

September 6, 2001 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.


Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c: Robert D. Sellers, Esquire
Patricia A. Malone, Esquire
~~People's Counsel for Baltimore Counsel~~

7/11/01

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF :

JOHN D. LEAHY, JR.
8101 Belair Road
Baltimore, MD 21236

CHARLES E. WARNS, II
8485 Honeygo Blvd.
Baltimore, MD 21236

WILLIAM A. KNELL, SR.
7533 Belair Road
Baltimore, MD 21236

EARL INGRAM
3617 Double Rock Lane
Baltimore, MD 21234

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
No. 3-C-01-7020

IN THE MATTER OF THE APPLICATION OF
BELAIR ROAD WHITE MARSH
JOINT VENTURE

FOR A VARIANCE ON PROPERTY LOCATED
ON THE NORTH EAST END OF WHOLESALE
CLUB ROAD, 740' E OF CENTERLINE BELAIR
ROAD (4201 WHOLESALE CLUB ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

CASE NO. 00-309-A

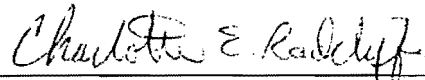
* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure,
Lawrence S. Wescott and Richard K. Irish, constituting the County Board of Appeals of
Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the

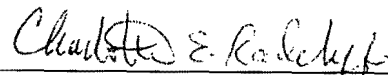
representative of every party to the proceeding before it; namely, Robert D. Sellers, Esquire, Robert D. Sellers & Associates, P.A., 401 Washington Avenue, Suite 303, Towson, Maryland 21204, Counsel for Petitioner; John D. Leahy, Jr., 8101 Belair Road, Baltimore, Maryland 21236, Charles E. Warnes, II, 8485 Honego Boulevard, Baltimore, Maryland 21236, William A. Knell, Sr., 7533 Belair Road, Baltimore, Maryland 21236; Earl Ingram, 3617 Double Rock Lane, Baltimore, Maryland 21234, Petitioners; Patricia A. Malone, Esquire and VENABLE, BAETJER AND HOWARD, LLP, 210 Allegheny Avenue, Towson, Maryland 21285-5517, Counsel for Belair Road White Marsh Joint Venture & B.J.'s Wholesale Club; Jack Cannella, Belair Road White Marsh Joint Venture c/o Heritage Properties, 515 Fairmount Avenue, Towson, Maryland 21286; Phil Woodyatt & Jay Ledul., B.J.'s Wholesale Club, 1 Merer Road, Natick, MA 01760; and, Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.



Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Rm. 49-Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Robert D. Sellers, Esquire, Robert D. Sellers & Associates, P.A., 401 Washington Avenue, Suite 303, Towson, Maryland 21204, Counsel for Petitioner; John D. Leahy, Jr., 8101 Belair Road, Baltimore, Maryland 21236, Charles E. Warnes, II, 8485 Honego Boulevard, Baltimore, Maryland 21236, William A. Knell, Sr., 7533 Belair Road, Baltimore, Maryland 21236; Earl Ingram, 3617 Double Rock Lane, Baltimore, Maryland 21234, Petitioners; Patricia

A. Malone, Esquire and VENABLE, BAETJER AND HOWARD, LLP, 210 Allegheny Avenue, Towson, Maryland 21285-5517, Counsel for Belair Road White Marsh Joint Venture & B.J.'s Wholesale Club; Jack Cannella, Belair Road White Marsh Joint Venture c/o Heritage Properties, 515 Fairmount Avenue, Towson, Maryland 21286; Phil Woodyatt & Jay Ledul., B.J.'s Wholesale Club, 1 Merer Road, Natick, MA 01760; and, Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; this 11th day of July, 2001.



Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

7/11/01

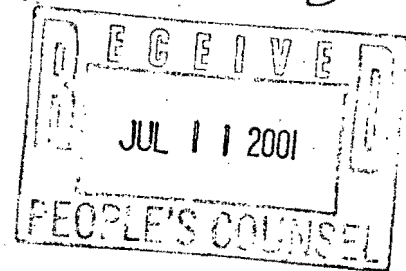
P.C. NOT INV.?

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182



July 11, 2001

Patricia A. Malone, Esquire
VENABLE BAETJER AND HOWARD LLP
210 Allegheny Avenue
Towson MD 21285-5517

RE: CCt Civil Action No. 3-C-01-7020
Belair Road White Marsh Joint Venture
Zoning Case No. 00-309-A

Dear Ms Malone:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on July 5, 2001 in the Circuit Court for Baltimore County for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-01-7020.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court for Baltimore County.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

c: Jack Canella /Belair Road White Marsh Joint Venture
Phil Woodyatt & Jay Ledul /B.J.'s Wholesale Club
Mickey Cornelius /The Traffic Group
✓ People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence M. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM



6/5/01
IN THE MATTER OF
THE APPLICATION OF
BELAIR ROAD WHITE MARSH JOINT VENTURE
/PETITIONER FOR VARIANCE ON PROPERTY
LOCATED ON THE N/E END WHOLESALE CLUB
ROAD, 740' E OF C/L BELAIR ROAD
(4201 WHOLESALE CLUB ROAD)

14TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 00-309-A

* * * * *

MAJORITY OPINION

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner (DZC), granting Petitioner's request for variance from the *Baltimore County Zoning Regulations* (BCZR), § 409.6 regarding parking spaces, allowing 492 parking spaces to be provided in lieu of the required 582 parking spaces; granting of the variance from BCZR § 405.4B to waive the requirements providing restrooms; and dismissing the request for variance from § 405.2A to allow a fuel service station to be located in a lot that is within 0 feet of a residentially zoned property in lieu of the required 100 feet as being moot.

The hearing was held before the Board on December 27, 2000, and a public deliberation was held on February 14, 2001. The Petitioner was represented by Robert A. Hoffman, Esquire, and VENABLE, BAETJER & HOWARD, LLP, and the Protestants were represented by Robert Sellers, Esquire.

Facts

B.J.'s Membership Wholesale Club, a chain of warehouse-style retail stores, sells both food and non-food merchandise. Along the eastern seaboard, there are currently 118 B.J.'s stores in operation. George Drummey, Vice President and Director of Real Estate and Proposed Development, testified before the Board that B.J.'s has been adding fuel service stations to a number of the clubs to compete with its major competitors, namely, Costco and Sam's Club. To date, nearly 32 stores provide fuel service to customers. About 95 percent of the gasoline sales are

attributable to members rather than non-members. Member customers typically pay at the pump by presenting their B.J.'s membership card. Members are able to purchase gasoline at a slightly cheaper rate than non-members.

B.J.'s desires to construct a fuel service station at its store located at 4201 Wholesale Club Drive as part of the White Marsh Retail Center. White Marsh Retail Center consists of four commercial lots within a planned shopping complex. The road servicing the center is known as Wholesale Club Drive. In addition to B.J.'s Wholesale Club, there are also exists other commercial entities such as Bob Evans' Restaurant, a Burger King restaurant, and a strip of retail stores located along Wholesale Club Drive. Bob Evans' and Burger King properties have, in fact, been sold off to those entities.

Within the retail center is White Marsh Run, a major drainage course that follows the retail center's northern and northeastern boundaries. Along the northern and northeastern boundaries of the retail center there is a significant floodplain area, and also forest buffers protect the floodplain area. By designation, the floodplain area and those buffers are non-buildable areas that prohibit residential development. To the south of the site, the State Highway Administration owns a 200-foot right-of-way for White Marsh Boulevard. Residential development is also precluded on both sides of the right-of-way as well as the steep slopes located on both sides of it. The fuel service station will be a separate building from the existing B.J.'s store. Mr. Drummey testified that the separation of the buildings will divide customer store traffic from customer fuel service traffic.

Issues

1. The Petitioners move to dismiss the Protestants' appeal for failure to comply with the Board's mandatory procedure to perfect an appeal in that the notice of appeal did not state the names and addresses of the Protestants thereon. In addition, the Petitioners moved to

dismiss the appeal because the Protestants did not have standing to appeal the decision of the Deputy Zoning Commissioner.

2. Whether or not the White Marsh Retail Center is a Planned Shopping Center.
3. Whether or not the requested variance from § 405.2A to allow a fuel service station in a planned shopping center to be located on a lot that is within 0 feet of a residentially zoned property in lieu of the required 100 feet is moot.
4. Whether or not the variance requested by Petitioners to allow 492 parking spaces in lieu of the required 582 parking spaces should be granted.
5. Whether or not the variance from § 405.4B of the BCZR requiring all service stations to provide a restroom facility should be granted.

Decision

Issue No. 1. The Petitioners move to dismiss the Protestants' appeal for failure to comply with the Board's mandatory procedure to perfect an appeal in that the notice of appeal did not state the names and addresses of the Protestants thereon. In addition, the Petitioners moved to dismiss the appeal because the Protestants did not have standing to appeal the decision of the Deputy Zoning Commissioner.

While the Board recognizes that the Protestants have failed to comply with the strict letter of the Board's regulations requiring that names and addresses be stated on the appeal, the Board notes that the Protestants were represented by Mr. Sellers below, and that their names and addresses do appear in the hearing before the Deputy Zoning Commissioner. Therefore, no one was prejudiced on appeal by not having the names and addresses listed on the appeal.

With respect to the second part of the Motion to Dismiss because the Protestants are or would be competitors of the B.J.'s service station operation, the law is very liberal with respect to allowing Protestants to participate in matters before the Board of Appeals. The record in this matter does not indicate exactly how far away the Protestants' service stations were from the proposed service station at B.J.'s warehouse. In addition, there was very little testimony with respect to the

business conducted by the various Protestants and what effect B.J.'s selling of gasoline to their customers would have on the business of the Protestants.

While it is possible that the Protestants would not have standing in a further appeal before the Circuit Court, the Board is not prepared at this time to deny the Protestants /Appellants' appeal in this matter before the Board.

Issue No. 2. Whether or not the White Marsh Retail Center is a "Planned Shopping Center."
Section 101 of the BCZR states, in pertinent part:

Shopping center, planned – An integral retail shopping development for which an overall plan has been approved by the Office of Planning; and which is under common ownership; has a site of at least 3 acres in net area; has vehicular access to physically separate buildings on the site by means of interior service drives or ways; and has no more than two points of vehicular access from the site to public streets, except as follows:

A planned shopping center may have one additional vehicular access point to a public street for each 250 feet of street frontage thereon in excess of 500 feet; and

A planning shopping center may have a greater number of vehicular access points than as defined above if an overall plan for such center has been approved by the Office of Planning before the adoption of this definition, provided that the number of vehicular access points is not further increased after the adoption of this definition.

On October 14, 1999, Jeffrey Long, Section Chief of the Department of Development Review of the Office of Planning, and Arnold F. "Pat" Keller, Director of the Office of Planning, reviewed the site plan and approved the retail center as a planned shopping center. Mr. Long testified before the Board that he and Mr. Keller did not analyze whether Wholesale Club Drive was a public road. He did not know whether or not the fact that it was a public road would affect his decision with respect to the approval of the shopping center as a planned shopping center, but he did not rescind his approval.

Edmund F. Haile, Professional Engineer and Land Surveyor responsible for the original CRG plan and site plan, testified on behalf of the Petitioner. He explained that the retail center was originally proposed as a planned shopping center under unified ownership. Some time thereafter, the Bob Evans' Restaurant and the Burger King restaurant were separated out. This is not unusual, according to Mr. Haile, since certain lots within other shopping centers, such as Owings Mills, White Marsh, Hunt Valley, and Towsontown Centre, have been separated out. Separate ownership does not change the character of the shopping center. Mr. Haile testified that, in his expert opinion, the retail center was under common control. He stated, for example, that the parking and landscaping requirements applied to the entire site, and the stormwater management facility manages stormwater runoff for the entire site. He concluded that the parking requirements, landscaping requirements, and the stormwater management facility provide the necessary control over the development on the entire site to enable a determination that the Retail Center is under common control.

Mr. Drummey, Vice President of B.J.'s, also testified that B.J.'s lease requires it to participate in certain elements of the overall center. For example, B.J.'s is restricted as to the signage that it can provide within the retail center. He also testified that the stormwater management facility located on the B.J.'s parcel serves the entire White Marsh Center.

Jack Cannella, Vice President of Design and Construction for Heritage Properties, the owner of the shopping center, testified regarding the common control of the retail center. He explained that there is a stormwater management agreement that applies to the entire center and that the various lot owners, including Bob Evans and Burger King, are subject to the terms of the agreement.

The BCZR require that a planned shopping center be located on at least 3 acres of land. Mr. Haile testified that the net area of the site is 19.45 acres. Therefore, the retail center satisfies the site requirement.

Wholesale Club Drive is a public street that connects the retail center to Belair Road. In the opinion of Mr. Haile, Wholesale Club Drive should be considered a way by which the physically separate buildings of the retail center are connected.

Section 26-168(yy)(1)(i) and (ii) defines the term "street" to mean "any street, avenue, boulevard, road, lane, parkway, freeway, viaduct, bridge or other way [emphasis supplied] which is an existing state or county highway, or a street or way shown on a plat duly recorded in the office of the clerk of the circuit court for the county."

Based upon this definition, the Board finds that Wholesale Club Drive is a way that provides vehicular access to the physically separate buildings in the retail center as well as to B.J.'s Wholesale Club.

The Board also finds that Wholesale Club Drive has only one point of access to Belair Road. Therefore, it does not have more than the permitted number of vehicular access points to a public street, in accordance with § 101 of the BCZR.

Based upon the finding that the White Marsh Retail Center is a planned shopping center, the proposed fuel service station is permitted as a matter of right under BCZR § 405.2A.

The Protestants also argued that B.J.'s performs various automotive functions at its service garage in the warehouse and contended that the proposed fuel station would be a use in combination with the service garage permitted only by special exception under BCZR § 405.E.

Mitchell Kellman, the Petitioner's expert on zoning matters, testified that there would be no

physical connection between the fuel service station and the service garage. In his estimation, a service garage must be attached to the fuel service station in order to be a use in combination with the fuel service station. It is quite clear that customers will pay for their gas at a kiosk located on the fuel service station lot, and the site plan does not call for any combination of the fuel service station and service garage.

There is no testimony to contradict the testimony of Mr. Kellman. Therefore, the Board finds that the service station is a self-contained operation and not a use in combination with a service garage. Therefore, it is permitted as a matter of right under BCZR § 405.2A.

Issue No. 3. Whether or not the requested variance from § 405.2A to allow a fuel service station in a planned shopping center to be located on a lot that is within 0 feet of a residentially zoned property in lieu of the required 100 feet is moot.

While the Protestants contend that the entire 17.791- acre site is a "lot" within the meaning of § 405.2A of the BCZR, the Board finds that that position is incorrect. The definition of "lot" is not found in the BCZR. Therefore, the Board is required to accept the definition as set forth in the most recent edition of *Webster's Dictionary*. That definition is "a measured parcel of land having fixed boundaries and designed on a plot or survey; a parcel of land in fact used for, intended for, or appropriated to a common purpose."

Petitioner's expert witness, Mr. Edmund Haile, testified that the lot set aside by the Petitioners for the operation of the fuel service station was approximately 18,000 square feet, which was 486 feet from the nearest residentially zoned property. The setback requirement in § 405.4 of the BCZR would therefore be satisfied. The Board has reviewed the testimony of Mr. Haile, and other witnesses, and finds that the request for a variance from § 405.4 is unnecessary, and therefore moot.

Item No. 4. Whether or not the variance requested by Petitioners to allow 492 parking spaces in lieu of the required 582 parking spaces should be granted.

The Petitioners have requested a variance to allow 492 parking spaces in lieu of the required 582. According to BCZR § 409.6, the B.J.'s site is required to provide five (5) spaces per 1,000 square feet of gross leasable area totaling 582 parking spaces. The Petitioner requests a variance because of the reduction in parking spaces due to the addition of the fuel service station.

The evidence before the Board indicated that there were special circumstances which existed that were peculiar to the property. According to the testimony of Mr. Drummey, the operation of B.J.'s is unique from other retail uses because of what he referred to as "the shopping frequency factor." Mr. Drummey indicated that customers coming to B.J.'s buy in bulk and therefore do not come as frequently as customers to a normal retail store. Therefore, the customers, on average, purchase goods two or three times a month, and therefore less parking is actually needed for its customers.

Mickey Cornelius, Vice President of The Traffic Group, Inc., confirmed with empirical data Mr. Drummey's conclusion that the parking spaces at the site are underutilized by customers and patrons. In the opinion of Mr. Cornelius, the wholesale club generates much less traffic than the typical retail operation. He relied upon data published by the Institute of Transportation Engineers Trip Generation Report regarded as the accepted source on trip generation data. The ITE states that discount clubs generate about 35 percent less traffic than a typical retail store. Mr. Cornelius testified that he visited the site on several occasions during the Holiday season and parking spaces were abundantly available. There were photographs introduced into evidence with respect to the parking available during weekends, and it was noted that there was abundant parking available on

the B.J.'s parking lot.

It was also noted that strict compliance with the BCZR would result in practical difficulty or undue hardship for B.J.'s in that there would be insufficient space available after the construction of the service station for additional parking to be provided.

Finally, there was no testimony that the relief requested would cause any injury to the public health, safety or general welfare, and the variance request does meet the intent of the BCZR.

The Board finds that the property is unique when compared with other retail stores in the area. We also find that the property meets the other requirements set forth by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 (1995). Therefore, the Board will grant the variance from § 409.6 of the BCZR to allow a total of 492 parking spaces in lieu of the required 582 parking spaces.

Item No. 5. Whether or not the variance from § 405.4B of the BCZR requiring all service stations to provide a restroom facility should be granted.

Petitioners request a variance from BCZR § 405.4B which provides that "all fuel service stations shall provide a restroom facility, water and compressed air for customers."

On behalf of the Petitioner, Mr. Drummey testified that the fuel service operation would be open from 6:00 a.m. until ½ hour after the closing of B.J.'s Warehouse. He stated that the restrooms at the warehouse would be open to the customers of the fuel service station during the hours of operation of the warehouse. This would leave the customers of the fuel service station a 3½ -hour period, from 6:00 a.m. to 9:00 a.m. and one-half hour after the store closes, with no restroom facilities available.

Section 307.1 of the BCZR states, in pertinent part:

"The zoning commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship....

The majority of the Board questions whether or not the Board has the power to grant any variance from the requirement for restroom facilities in a service station as required by § 405.4B of the BCZR. The majority considers that this is not an area regulation and that it has no authority to grant a variance from the requirement to supply restroom facilities at a service station. The Board does not consider that requiring that the service station supply restroom facilities would work any undue hardship on B.J.'s, and would be in support of the health, safety and general welfare of the community. Therefore, the Board will deny this request for variance.

ORDER

THEREFORE, IT IS THIS 5th day of June, 2001 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioners' Motion to Dismiss be and the same is hereby **DENIED**; and it is further

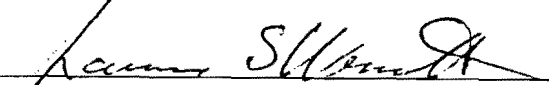
ORDERED that the variance request from § 405.2A to allow a fuel service station to be located on a lot that is within 0 feet of a residentially zoned property in lieu of the required 100 feet be and is hereby **DISMISSED as moot**; and it is further

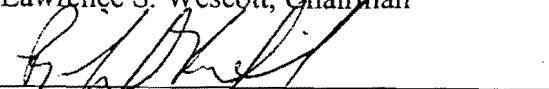
ORDERED that Petitioner's request for a variance from § 409.6 of the *Baltimore County Zoning Regulations* (BCZR) to allow 492 parking spaces to be provided in lieu of the required 582 parking spaces be and is hereby **GRANTED**; and it is further

ORDERED that the variance request from Section 405.4B of the BCZR to waive the requirements of providing restrooms in a service station facility be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Richard K. Irish

6/5/01
IN THE MATTER OF
THE APPLICATION OF
BELAIR ROAD WHITE MARSH JOINT VENTURE
/PETITIONER FOR VARIANCE ON PROPERTY
LOCATED ON THE N/E END WHOLESALE CLUB
ROAD, 740' E OF C/L BELAIR ROAD
(4201 WHOLESALE CLUB ROAD)

14TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 00-309-A

* * * * *

CONCURRING /DISSENTING OPINION

This Board member respectfully concurs with my colleagues in their opinion of the Belair Road White Marsh Joint Venture except with their decision to deny the request for variance from §405.4.B of the *Baltimore County Zoning Regulations* (BCZR), which provides that "all fuel service stations shall provide a restroom facility, water and compressed air for customers." Section 307 of the BCZR permits granting of a variance upon certain terms and conditions, which in pertinent part allows a variance where special circumstances or conditions exist that are peculiar to the land that is the subject of the variance request, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.

Under the Court of Special Appeals decision in *Cromwell v. Ward*, 102 Md.App. 691 (1995), which sets forth the legal standards under which a variance may be granted, the Board of Appeals, hearing the case *de novo*, is given the task of interpreting regulations and statutes where issues are debatable in the light of the law. The first burden on the Petitioner for variance is to prove that the property is unique. This standard must be met before other parts of the variance can be properly considered.

The Appellants offered one witness, Mr. Earl Ingram, a resident in the area who opined that he felt "you have to have a restroom back there." [T 135-20] He also stated that you could not see B.J.'s from Burger King [T 136-18] and that the road was a long, winding road back to B.J.'s.

Under cross-examination, he opined that he would probably go to one of the other stations up on Belair Road if he needed to use the bathroom and get gas.

In support of the variance, the Petitioners produced testimony on the availability of the restrooms in the B.J.'s stores and concurred that the restrooms would not be available between 6:00 a.m. and 9:00 a.m., as well as for the last half-hour that the service station will remain open after B.J.'s closes. Mr. George Drummey, Senior Vice President of Marketing for B.J.'s Wholesale, testified that, based on his involvement in the operation of other B.J.'s stores equipped with fuel service stations, ninety-five (95) percent of the fuel service customers would be B.J.'s members. Therefore, the fuel service station would be utilized for the most part during the B.J.'s store hours of operation when patrons could avail themselves of the facilities inside the store.

Upon consideration of the testimony and evidence offered during this hearing, this Board member finds that the subject property is unique due to its steep slopes, environmental constraints, winding accessibility and uniqueness as to being a membership-based vs. retail operation which makes the operation used primarily by its membership-based clientele. Mr. Drummey, Senior Vice President of Marketing for B.J.'s Wholesale, testified fully as to these factors and his testimony was uncontradicted by the Protestants.

Having established that the subject property is unique, this Board member finds that the application of zoning ordinances imposes a practical difficulty and undue hardship on the Petitioners. The restroom non-availability for 3 ½ hours out a 15½ -day does not warrant the potential environmental impact on the east/northeast side which is constrained by 300+ foot environmental buffer.

The third and final prong of the standards found in *Cromwell* speaks to the spirit and intent of the zoning regulations. The testimony presented showed no detriment to the neighborhood by the lack of restrooms for the 3 ½ -hour time period. Mr. Mitchell Kellman of Daft, McCune & Walker, who was accepted as a zoning expert, opined that the request for the waiver of the restroom requirements was an area variance and would be in strict harmony with the spirit and intent of the regulations. Mr. Drummey's testimony also supported this conclusion and the Protestants were unable to produce any credible evidence to the contrary.

Based on the testimony and evidence given, this Board member would grant the restroom waiver.


C. Lynn Barranger

DATE: June 5, 2001



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
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June 5, 2001

Robert D. Sellers, Esquire
Suite 303, 401 Washington Avenue
Towson, MD 21204

RE: *In the Matter of Belair Road White Marsh Joint Venture*
Case No. 00-309-A

Dear Mr. Sellers:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of the Concurring /Dissenting Opinion of Ms. Barranger.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules of Procedure*, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Bianco
Administrator

Enclosure

c: John D. Leahy, Jr.
Charles E. Warns II
William A. Knell, Sr.
Robert A. Hoffman, Esquire
Patricia A. Malone, Esquire
Phil Woodyatt & Jay Ledul /B.J.'s Wholesale Club
Jack Cannella /Belair Road White Marsh
Joint Venture c/o Heritage Properties
Mickey Cornelius /The Traffic Group
✓ People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



1/29/01

IN THE MATTER OF

Belair Road White Marsh Joint Venture
4201 Wholesale Club Road
14th Election District,
6th Councilmanic District

Petitioners

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 00-309-A

* * * * *

PROTESTANTS' MEMORANDUM IN LIEU OF
CLOSING ARGUMENT

STATEMENT OF THE CASE

Petitioners seek to add a third principal use, a fuel service station, to their property on Wholesale Club Drive which is zoned BR. Currently there are two uses on the property, a BJ's Wholesale club/discount store and a Tuffy's automobile service garage. The Baltimore County Zoning Regulations (BCZR) provide that a fuel service station may be located on the site only if it is part of a "planned shopping center" as defined in the BCZR and no part of the lot is within 100 feet of residentially zoned property.

Petitioners have requested a variance from BCZR §405.2.A for a fuel service station in a planned shopping center within 0 feet of residentially zoned property; a variance from §409.6 to allow fewer parking spaces for the wholesale club; and a variance from §405.4.B to waive the requirement to provide restrooms at a fuel service station.

Protestants maintain that the location is not a planned shopping center, as defined, and that the required distance from residentially zoned property is not a regulation which can be varied. Alternatively, Protestants maintain that the standard to be applied is that of "undue

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hardship” and not “practical difficulty” and that Petitioners have not met their additional burden of showing that the property is “unique.” Furthermore, under any circumstances a special exception is required for the combination of fuel service and auto repair uses at the site.

I. STANDING TO APPEAL

Petitioners argue that Protestants have no standing to appeal the decision of the Zoning Commissioner to the Board. They rely on Eastern Service v. Cloverland, 130 Md. App. 1, 744 A.2d 63 (2000) and Bryniarski v. Montgomery Co., 247 Md. 137, 230 A.2d 289 (1967). The cases cited by Protestants are easily distinguishable on the facts from this case. In Eastern there was direct evidence out of the mouth of the Protestant that he was appearing solely out of concerns about competition. Likewise the Bryniarski case also speaks of a person whose sole reason for objecting is to prevent competition. Furthermore those cases involve standing for judicial review not for administrative proceedings. The Baltimore County Code grants standing to appeal to the Board of Appeals to any person or persons, or any taxpayer aggrieved or feeling aggrieved by a decision of the Zoning Commissioner. Baltimore County Code §26-132. In this case all Protestants are taxpayers feeling aggrieved.

There is a clear distinction between standing before administrative agencies and standing for judicial review. The requirements for administrative standing under Maryland are not very strict. Proceedings before administrative agencies are intentionally designed to encourage citizen participation. Anyone identifying himself as having an interest in the outcome on the agency record thereby has standing at the administrative level. Sugarloaf v. Dept. of the Environment, 334 Md. 271, 686 A.2d 605, (1996). All three Protestants meet that standard easily.

Additionally, Mr. Earl Ingram, a nearby resident, learned of the appeal and came to testify

regarding his concerns about traffic and the availability of restrooms at the site. Both Mr. Ingram and the Protestants have an interest which is protected by the United States Constitution under the principles of due process and equal protection. To rule that they may not be heard would be blatantly unconstitutional under both federal and state law and instantly overturned.

Petitioners seek to prevent the participation of Protestants by arguing that they appeared and appealed solely to prevent competition. Petitioners' counsel proffered that the addresses of Protestants correspond to fuel service stations, but did not put before the Board any evidence on that point whatsoever nor was there any evidence that fuel service stations in those locations would "compete" with the sale of gas at BJ's Wholesale Club on Belair Road or that the Protestants' motivation had anything to do with competition. In fact, Protestant, Charles Warns, testified that he was a resident of Baltimore County, a member of BJ's Wholesale Club and that he went to the Belair Road BJ's "often." See attached Transcript Extract at T. 148. The substance of his testimony had nothing to do with competition. Instead he provided the Board with the only information offered regarding the existing use of the site as a service garage. He described the auto repair services offered by BJ's Tuffy Auto Service Center, corroborated by BJ's own advertising flyer which he provided to the Board. Protestants' Exhibit 1 and T. 153. Certainly a member of a wholesale club can be an aggrieved person regarding matters affecting the club and activities on club property.

BJ's own witness, Mr. Greg Drummey, when questioned about whether automobile repair service was conducted on the site stated, "I don't know whether we do at this location or not." T. 41. Thus, the only meaningful evidence before the Board on the important issue of a "use in combination" of fuel service with a service garage came not from the Petitioners but from the Protestants whose participation Petitioners seek to prevent. In light of Mr. Warns' standing as

a club member and in the absence of any evidence about patterns of competition in gas sales, market areas, or Protestants' motivation, any finding that Protestants sole reason for the appeal was to prevent competition would be entirely speculation and completely unsupported by any evidence. The burden to produce such evidence is on the moving party. Argument by counsel is not evidence.

II. PETITIONERS SEEK A "VARIANCE" WHICH CANNOT BE GRANTED

Petitioners seek a variance from the operation of §405.2.A.1 of the BCZR. That section provides:

"405.2 Locations in which fuel service stations are permitted.

A. A fuel service station is permitted by right subject to Section 405.4, provided that no part of the lot is within 100 feet of a residentially zoned property and is integrated with and located:

1. In a planned shopping center of which at least 20% has been constructed at the time the building permit for the fuel service station is issued, but not to exceed one station for each 60,000 square feet of gross floor area of the planned shopping center;..."

First it should be noted that if relief from the 100 foot condition precedent contained in that section is required, it cannot be granted by way of a variance. BCZR §307 sets out the authority and guidelines under which variances can be granted in Baltimore County. There is "power to grant variances from height and area regulations, and from offstreet parking regulations and from sign regulations." Section 307 goes on to provide in very express terms that there is "no power to grant any other variances." See BCZR §307 attached as Memo Exhibit A. Emphasis added.

The plain meaning of §405.2.A.1, its location within the statutory scheme and the commonly accepted meaning of "area" all make it clear that the 100 foot requirement is a condition precedent to be met before a use is permitted and that it is not an area regulation

controlling the location on a lot of a permitted use. The intent of the County Council in enacting §405.2.A. is indicated by the heading “Locations in which fuel service stations are permitted.” This is a regulation which permits a use in certain described locations. Other regulations exist which control the “area” regulations for fuel service stations such as §405.4.A.2 which is entitled “Setbacks.” All business and industrial zones contain additional specific sections entitled “Area Regulations”. See BCZR §232, §235, §238, §243, §250, §255 among others. In this case the setbacks in §238 for BR zones apply in addition to the fuel station setbacks. Those are clearly area regulations as are the more specific “setbacks” for fuel service stations found in §405.4.A.2. To find that the 100 foot pre-condition contained in §405.2.A. is an “area” regulation would mean that the County Council imposed not one, nor two, but three different sets of area regulations for fuel service stations, codified in 3 different places within the BCZR. Given that both the 100 foot pre-condition of §405.2.A. and the setbacks of §405.4.A.2 were imposed by the same legislation, Bill No. 172-93, it is even more clear that the 100 foot pre-condition is not an “area” regulation. The 100 foot condition was not placed in the “Setback” or “Area Regulation” sections by the Council because it was not intended to be an area regulation. See BCZR §405 attached as Memo Exhibit B.

Furthermore, the plain language of the section is not that of an “area” regulation. It does not control the location on a lot of a use, rather it grants the right to a use “provided” that the lot meets certain criteria. It is clearly the language of a condition precedent. Parallel language is used in the immediately following §405.2.B.1 which allows “Fuel service stations ... by special exception ... 1. Within the urban-rural demarcation line (URDL), in C.C.C., A.S. or I.M. Districts, “provided” no part of the lot is in an M.R. Zone.

Petitioners' witness Mr. Kellman maintained that the first instance (no part of the lot within 100 feet of residentially zoned property) could be varied, while the second (no part of the lot in an MR zone) could not be varied, even though both sections use the same word, "provided"; both are found under the heading "Locations in which fuel service stations are permitted"; and both impose a condition precedent to the right to a "use" and do not regulate the location of a use on a lot. The only distinction between the clauses is that the first contains a linear distance stated in feet and the second does not. Petitioners argue that any distance stated in the BCZR can be varied whether it regulates area or serves some other purpose. That is far beyond both the express wording and intent of §307 and nullifies the Council's intent to keep fuel station lots at least 100 feet from residentially zoned property where permitted by right. The 100 foot pre-condition in §405.2.A is not an area regulation and cannot be changed by variance.

Should the Board find that such a variance can be granted, then it is as use variance, not an area variance, in that it restricts the right to use the land for a purpose not permitted absent the variance. Anderson v. Board of Appeals, 22 Md.App. 28, 37-38, 322 A.2d 220 (1974). In order to grant a use variance the standard to be applied is that of "undue hardship" not "practical difficulty." Undue hardship is the denial of any reasonable and significant use of the property. Belvoir Farms Homeowners Assn. v. John C. North, II, 355 Md.259, 734 A.2d 227 (1999). Because there already exist on the property both a BJ's Wholesale Club and an automotive repair facility it would be impossible to argue or prove that a reasonable use of the property was denied.

As with any variance it is also necessary to establish that the property is somehow inherently unique or that the zoning laws impact it differently than other properties. No such showing was made. It is only the owners' wish to add yet a third principal use to the property which presents any difficulty at all.

III. PETITIONERS CANNOT COMPLY WITH §405.2.A BY “CREATING” AN ILLEGAL LOT

The record lot on which BJ's is located lies within 100 feet of residentially zoned land for hundreds of feet on both the east and south sides. Petitioners' Exhibit 10. Because §405.2.A requires that “no part of the lot [be] within 100 feet of a residentially zoned property”, Petitioners have “created” a “lot” for the fuel station by drawing “use” lines around a rectangular area on the parking lot where the fuel station is proposed. Those lines do not appear on any Plat, recorded or otherwise, except the site plan accompanying the petition, Petitioners' Exhibit 1, which states “Use division lines shown for illustrative purposes only.” Those lines are not described in any deed or lease or other document anywhere, recorded or otherwise. There is no provision or mention of “use” lines anywhere in the BCZR or County Code. The Zoning Commissioners' Policy Manual §102.2 provides that the Zoning Commissioner may require a “line of division” between two uses on a property. But a “line of division” drawn for the setback and similar purposes described in the Manual is a far different thing than the creation of an entirely new “lot within a lot” to circumvent a pre-condition imposed by the regulations and to allow a use where none can exist without the “line of division” as happened here. See ZCPM §102 attached as Memo Exhibit C.

Most important however is that while “lot” is not specifically defined in the BCZR, “subdivision” is defined in the County Code in §26-1 as “the division of a lot, tract, or parcel of land into two (2) or more lots, sites or other divisions of land for the purpose... of sale or building development....” Petitioners' creation of the “use lot” is a subdivision of a lot for the purpose of building and is therefore “development” as defined in §26-168(p). One may not create a “lot,” “subdivide” or “develop” land without complying with the development regulations in Title 26 of the County Code. That has not occurred here and Petitioners' “use lot”

is not a lot at all under County law and cannot satisfy §405.2.A. See excerpts from County Code attached as Memo Exhibit D.

IV. THE USE IS NOT PERMITTED IN THE LOCATION PROPOSED

A. THE PETITIONERS' LAND IS NOT A "PLANNED SHOPPING CENTER"

Fuel service stations require special exceptions in virtually every location within the County; in every zone and even in industrial (IM) districts and automotive service (AS) districts. BCZR §405.2.B. In fact, fuel service stations are permitted as a matter of right only in 3 well defined instances set out in §405.2.A. Those instances are a "planned drive-in cluster", an "approved planned industrial park", and in a "planned shopping center" which Petitioners allege controls the instant matter. Protestants maintain that the proposed site does not need the definition of a "planned shopping center".

The definition which must be applied is found in BCZR §101 as follows:

"SHOPPING CENTER, PLANNED -- An integral retail shopping development for which an overall plan has been approved by the Office of Planning and which: is under common ownership or control; has a site at least three acres in net area; has vehicular access to physically separate buildings on the site by means of interior service drives or ways; and has no more than two points of vehicular access from the site to public streets except as follows:

A planned shopping center may have one additional vehicular access point to a public street for each 250 feet of street frontage thereon in excess of 500 feet; and

A planned shopping center may have a greater number of vehicular access points than as defined above if an overall plan for such center has been approved by the Office of Planning before the adoption of this definition, provided that the number of vehicular access points is not further increased after the adoption of this definition. EN [Bill No. 40-1967]"

Taken in the order they appear in the definition the various requirements are discussed below. All quoted definitions are from Webster's Third New International Dictionary as provided in the BCZR.

“Integral retail shopping development” – Integral means “an entire thing”, a totality, a whole. Retail means “to sell in small quantities” or “the sale of commodities and goods in small quantities to ultimate consumers – opposed to wholesale.” Emphasis added. There is no evidence before the Board that the proposed location consists of totally or predominantly retail shopping or that there is any integral or unifying element to it. Two of the lots have been sold in fee and are used for restaurant purposes. There is a small “strip” of businesses located on Lot 2B, but the record is completely devoid of any description of the “uses” present in that strip and no evidence that it contains “retail” uses. The overwhelming amount of shopping area is BJ’s Wholesale Club. Petitioners’ Exhibit 3 indicates 6,600 sq. feet and 3,278 sq. feet of restaurant use, 117,000 sq. feet of “discount store” use and only 19,200 sq. feet of “retail” use.

BJ’s Wholesale Club is exactly that, a wholesale club and not a traditional retail store. Petitioners’ own witnesses testified repeatedly how and why BJ’s was different from traditional retail stores. Mr. Drummey testified that BJ’s was different from a “traditional retailer” like Walmart. The “shoppers come less frequently, but they tend to spend more so they don’t visit our facilities as frequently....” T. 18,19. He testified that BJ’s was unique in that “club shopping tends to be a planned purchase.” “People tend to come less often but spend more” and “where someone may go to a Walmart 6 or 7 times per month, they may go to BJ’s 2 or 3 times a month.” T. 29.

Mr. Kellman, a zoning compliance specialist and former employee of the Baltimore County Zoning Office, when asked why the use of the property and the BJ’s structure itself was

unique answered, "I think that wholesale clubs such as BJ's, Price Club, whatever, my experience in the Baltimore County Zoning Office, these types of uses always fell into like a gray area whether they were considered retail, wholesale or warehouse type use." He also testified that "Those BJ's type stores weren't your typical retail type use and, therefore, I don't think it requires as much parking as the standard retail type use. A lot of storage in those buildings." T. 98.

Mr. Cornelius, Petitioners' traffic expert, continued to underscore that wholesale clubs are quite different from typical retail stores. He testified that wholesale clubs "generate different types of traffic characteristics and parking characteristics than a typical retail center." Furthermore, he testified that "club stores generate about 35% less traffic than a typical retail store of the same size." T. 115,116. Mr. Cornelius' testimony is corroborated by Petitioners' Exhibit 3 where parking requirements for those "discount store" and "retail" uses were calculated at significantly different rates.

The overwhelming weight of Petitioners' own witnesses' testimony is that BJ's Wholesale Club is not a typical "retail" use. It is a wholesale club/discount store/membership warehouse. A 35% difference in traffic generation indicates that the use is significantly different from traditional retail uses. In fact the differences between the BJ's Wholesale Club use and traditional retail was the sole justification offered by all Petitioners' witnesses to support the proposition that less parking is needed. There is no evidence in this record that this location is predominantly "retail" but rather there is extensive testimony and evidence from the Petitioners themselves that it is not.

"Overall plan approved by the Office of Planning" –Petitioners' Exhibit 7 contains a notation signed by Jeffrey Long from the Office of Planning that "confirms" that the site is a

“planned shopping center” but, when called to testify before the Board, Mr. Long was very clear that when he had been requested to review the plan he had not been given accurate information, particularly about the public ownership of Wholesale Club Drive. His testimony was that with that knowledge the Office of Planning now would seek a special hearing to make a determination whether or not this site was a planned shopping center. The “approval” by the Office of Planning under these circumstances was no approval at all.

“Is under common ownership or control” – Lots 1 and 2A of the original subdivision have been sold in fee and there is therefore no common ownership, nor has there been in quite some time. The issue then becomes whether there is common “control” at this location consistent with the concept of a planned shopping center. Petitioners’ attempt to establish the element of common control by the terms of the BJ’s lease but the lease terms in evidence as Petitioners’ Exhibits 5A and 5B do not indicate common control over the entire tract. The lease only applies to the “demised premises” illustrated on Petitioners’ Exhibit 5C which is limited to the BJ’s site. A careful reading of the lease paragraphs introduced does not indicate any significant overall control at all. The portions dealing with the pylon sign demonstrate a mutual cost sharing arrangement, not control. Paragraph 5 imposes a burden on the Landlord not to place two specific competing or undesirable uses at the site. It grants no “control” over the BJ’s which makes up most of the site. Likewise in Paragraph 6 it is the tenant who has “control” over the Landlord’s actions.

Petitioners maintain that the existence of the joint pylon sign Agreement, an access easement involving only the Burger King lot, and a storm water management maintenance Agreement (Petitioners’ Exhibits 14A,B and C) are sufficient to fulfill the “control” requirement of the definition of a planned shopping center. Petitioners fail to take into account, however, that

with virtually every sub-division, residential or commercial, various written easements and agreements are necessary to provide for shared access, signage and the channels and basins controlling storm waters. If those types of agreements constitute the "control" required by the definition then every sub-division of commercial property could meet the definition. Rather the type of control required by the definition is that commonly associated with shopping centers such as Owings Mills Mall, White Marsh Mall, Westview Shopping Center, etc. In those true planned shopping centers, the control consists of hours of operation, joint advertising campaigns, shared maintenance of parking facilities and other improvements, control of access to common areas, architectural continuity and control, and is intended to further a unified integrated conceptual plan that is more than lot lines drawn on a Plat. There is absolutely nothing in the record of this case which indicates that there is any unifying control typical of a true planned shopping center at this location. It is a commercial subdivision with ordinary access, sign and storm water management agreements.

"Three acres in net area" --this site clearly meets this requirement.

"Vehicular access to physically separate buildings on the site by means of interior service drives or ways" -- It is uncontested that the bed of Wholesale Club Drive was dedicated to and accepted by Baltimore County in 1994. Protestants' Exhibit 2. Petitioners maintain that a public road such as Wholesale Club Drive can also be an "interior service drive or way" because the definition of "street" in the County Code includes the word "way." According to Mr. Long, however, the Office of Planning does not necessarily agree. While a "way" may sometimes be a street, the usage here requires an interpretation which makes sense when considering the definition as a whole. To find as the Petitioners suggest would be to write out of the definition the words "interior" and "service" and ignore completely the County Council's use of the words

“public streets” in the very next line of the definition and repeatedly in the following paragraphs.

Considering the definition in its entirety, they must have intended some difference in meaning between “interior service” drives or ways and “public streets.”

All five elements discussed above are necessary to find that the proposed location is a planned shopping center. All five are connected by the conjunction “and” and all therefore must be established by the Petitioners. Petitioners’ stretch four of those elements to the breaking point using contortions of usual meanings and twisting common sense in attempting to satisfy the definition.

The issue of what is or is not a planned shopping center is paramount it carries with it the fuel service station use as a matter of right when that right exists virtually nowhere else, not even in automotive service (AS) districts. In addition to permitting fuel sales as a right, a site considered a planned shopping center also need not comply with §405.3 which for all other sites requires that any abandoned gas stations in the vicinity be considered before permitting a new one. The concept of a planned shopping center in locating a fuel station is therefore an enormously powerful one circumventing the special exception protections and the “need” analysis provided by the consideration of abandoned stations. It must therefore be strictly construed to carry out the intent of the County Council. It should also be noted that during the just concluded year 2000 Comprehensive Zoning Map Process these same Petitioners requested that an AS (automotive service) district be placed on this same property. Their request was denied by both the Planning Board and the County Council. See Issue #6-032 in Memo Exhibit E.

B. THE PROPOSED USE IS NOT “INTEGRATED” WITH THE SHOPPING CENTER

Section 405.2.A not only contains the pre-condition regarding the 100 feet distance from residentially zoned property but also provides that a fuel service station is permitted “provided that” it “is integrated with and located” in a planned shopping center. The use of the words “integrated with” in addition to “located in” clearly demonstrates that the Council had something more in mind than just a gas station somewhere within the property lines of a planned shopping center. The fuel station is to be “integrated” with all the retail uses in the shopping center and not just plopped onto a parking lot on the site for the benefit of one business.

The evidence in this matter shows that the fuel service station is just that, plopped onto an existing parking lot and integrated, if at all, only with the BJ’s Wholesale Club. It has no association or connection with any other part of the commercial center. A close examination of Petitioners’ photos, Exhibits 12A-H shows this clearly. The fuel service location can not be seen at all from Belair Road or from any of the restaurants or from the strip center, nor can the restaurants or strip center be seen from the fuel area. The fuel site is not accessible from those establishments except by an auto trip out onto a public County road (Wholesale Club Drive) and then down the BJ’s private drive, a distance of almost 1000 feet. Petitioners’ Exhibit 2. The fuel site is also separated from the most of the “shopping center” by a very wide and intrusive easement containing huge power line towers and it is much lower in elevation. There is no architectural, spatial or visual integration with the other commercial uses nor is the site even in the same proximity.

According to Mr. Drummey, 95% of the gas customers will be BJ’s members. T.20. He said “...it’s a service our members want, and to enhance our business at the club.” T. 21.

Emphasis added. The sale of fuel will be “integrated” only with BJ’s. There is no evidence that any significant number of gas customers will come from those patronizing the restaurants and the strip center on the upper part of the site. It is not situated to attract them and not intended to. Under those circumstances and based on the record in this case, there is no evidence on which to find that the fuel station is integrated with the commercial center as a whole as required by the regulations.

**V. IF THIS COMBINATION OF USES IS PERMITTED AT ALL,
A SPECIAL EXCEPTION IS NEEDED TO COMBINE
A FUEL SERVICE STATION WITH A SERVICE GARAGE**

BCZR §405.4.D and E regulate the uses permitted in conjunction with a fuel service station. Given that §405.4.D states that “only” the uses listed there are permitted by right with a fuel station and nothing similar to a wholesale club use is listed, and that wholesale club/discount store does not appear in §405.4.E as a use which may be combined with fuel sales by special exception, the BCZR does not seem to allow the combination of fuel sales with a wholesale club/discount store under any circumstances. See Memo Exhibit B. Under Baltimore County law unless expressly permitted by right or by special exception, a use or combination of uses is not permitted at all. Protestants believe that is the case here.

It is absolutely clear however that BCZR §405.4.E requires a special exception to combine a service garage with a fuel service station whether or not any other uses are present. Protestants produced uncontradicted evidence that extensive and complex automotive service and repair was being provided at the BJ’s Wholesale Club through their Tuffy Auto Service Center. Protestants’ Exhibit 1. In addition to that documentary evidence, Mr. Warns testified from direct observation and inquiry “that the automotive services provided on the site included

brakes, mufflers, air conditioning, fuel injection, cooling systems, tires, batteries, tune-ups.”

T. 153.

Mr. Warns further testified that the same day of the hearing he got an estimate on a front brake job and “head gasket replacement” which he testified was “major work involving dismantling the top part of an engine....” and that BJ’s was “a full service repair facility.” T.153. Those automotive repair services far exceed the automotive services allowed as an ancillary use in conjunction with any fuel service station. Section 405.4D defines ancillary vehicle repair as “minor vehicle repair or diagnostic services including but limited to the installation of mufflers, small auto parts and accessories” and which “must remain accessory to the fuel service station operation.”

On the BJ’s site there are multiple service bays offering extensive automotive repair including major engine work to which BJ’s now wants to add 12 fueling stations. The site is already being used as a service garage. When a service garage use is combined with a fuel service station use BCZR §405.4.E .4 requires a special exception whether on an individual site or in an integral planned development. See Memo Exhibit B. Here both of those principal uses are owned and managed by BJ’s, on a single lot of record which also contains the BJ’s Wholesale Club building. There will be a shared access road, shared parking requirements and shared restrooms.

Petitioners argue that the “lot” created by “use lines” drawn around the fuel service location on the parking lot somehow prevents the uses at BJ’s from being considered uses “in combination.” The BCZR contemplates no such distinction. This argument points out the fallacy and danger of “use lines” to create a “lot” and ignores entirely that the site is one lot of record, with common ownership, management, access, parking, and shared restrooms. It should

also be noted again that Mr. Drummey's testimony was that 95% of the fuel service customers would be BJ's Wholesale Club members. The sale of fuel will be very much combined with the wholesale club customers and its repair service customers. By their own testimony, 95% of gas buyers will be shared customers!

Petitioners' sale of fuel at this site will clearly result in a "use in combination with a service garage" as contemplated by the BCZR. Section 405.1.D sets out the stated intent to regulate "additional uses which may be developed at such [fuel] sites." See Memo Exhibit B. Given the absolutely clear intent of the County Council to control and regulate uses combined with fuel service stations, the precedent of circumventing those intentions by the fiction of a "use line" would effectively undermine the entire statutory scheme. Anyone hoping to add a car wash, service garage, automobile rental, etc., to a fuel station site could draw a "use line" across their lot to "separate" the uses and thereby circumvent the §405.4.E requirement for a special exception for the combination of uses. That result would be absurd.

VI. CONCLUSION

In conclusion, the Protestants indisputably have standing to maintain this administrative appeal and any further judicial appeal. Petitioners' desire to add fuel sales to their location must be denied because it is not allowed by the BCZR. No variance can be granted from §405.2.A because it is not an "area" regulation. If a variance can be granted it is a "use" variance and requires a finding of such undue hardship that the land can be put to no useful purpose which is obviously not the case here.

A fuel service station is not permitted as a right in this location because Petitioners' lot is within 100 feet of residentially zoned property and not in a planned shopping center. Their

attempt to create a fictitious "use" lot would effectively thwart the intention of the regulation and cannot be allowed.

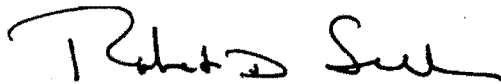
The site is clearly not a "planned shopping center" because of Petitioners' own actions and as demonstrated by their own testimony. They take great pride in not being a traditional retail business and justify providing less parking spaces because they are a significantly different use than retail but then ask that the Board find that the site is a "retail" shopping center. Petitioners obtained the "approval" of the Office of Planning by neglecting to provide them with accurate information. After selling two out of their four lots, in fee, to restaurants and retaining no control over those restaurants whatsoever; and entering into a long term lease with BJ's in which BJ's, and not the owners of the center, seems to have most of the control, the Petitioners now argue that ordinary easements and agreements typical of all development establish the necessary "common control" element. Petitioners dedicated the bed of Wholesale Club Drive to Baltimore County (shifting the costs for its maintenance to the taxpayers) because it was easier for them to provide utility meters and trash removal but now they say that public street is an "interior service drive" in order to meet a requirement. In every instance Petitioners have acted to maximize the benefit to themselves but now contradict and disavow their own actions and want it both ways.

County regulations permitting fuel service stations in planned shopping centers contemplate that the fuel sales will service the entire shopping center by requiring that the fuel station be "integrated with" and not just "located in" the shopping center. In this case the site is integrated with only the BJ's store and not with the entire center. The BJ's store is not even integrated in any way with the rest of the center. In fact their lease states that no adjacent land shall be "integrated" with their leased area and that BJ's can require a fence be built if "persons

having business upon other land adjacent to or near" the leased premises use their outside area.

Petitioners' Exhibit 5B, Paragraph 6. This center is not an "integral retail shopping development" and the proposed location is not integrated with the center.

Not every sub-division of commercially zoned land is a planned shopping center. Accepting Petitioners' arguments in this case would have that effect. Weighing whether a fuel service station may be placed in a location as a matter of right, thereby circumventing all protections to the community offered by the special exception process and the determination whether there is a need for gas stations in the vicinity requires that the regulations be interpreted in a way which gives effect to all the definitions and regulations and carries out the stated intentions of the County Council. For the reasons stated, Petitioners' requests are beyond any relief which can be granted under the BCZR and must be denied.



Robert D. Sellers
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on 29th day of Jan., 2001, a copy of this Protestants' Memorandum in Lieu of Closing Argument was mailed first class, postpaid to Robert A. Hoffman, Venable, Beatjer & Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, attorney for Defendant.



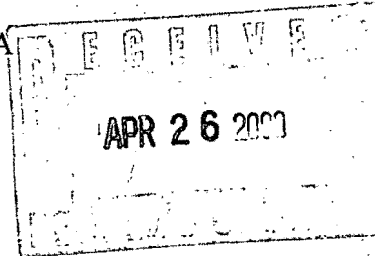
Robert D. Sellers
Attorney for Protestants

4/14/00

IN RE: PETITION FOR VARIANCE
N/E end Wholesale Club Road,
740' E centerline Belair Road
14th Election District
6th Councilmanic District
(4201 Wholesale Club Road)

Belair Road White Marsh Joint Venture
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 00-309-A



* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, the Belair Road White Marsh Joint Venture, by and through David Rhodes, a member of Heritage Properties, Inc. The variance request is for property located at 4201 Wholesale Club Road, which property is zoned BR. The Petitioner is requesting a variance: 1) from Section 405.2.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a fuel service station in a planned shopping center, to be located on a lot that is within 0 ft. of a residentially zoned property in lieu of the required 100 ft.; 2) from Section 409.6 of the B.C.Z.R., to allow 492 parking spaces to be provided in lieu of the required 582 parking spaces; and finally, 3) from Section 405.4.B of the B.C.Z.R., to waive the requirements of providing restrooms.

Appearing at the hearing on behalf of the variance request were Phil Woodyatt and Jay Ledul, appearing on behalf of B.J.'s Wholesale Club, Ed Haile, professional engineer with Daft, McCune & Walker, and Rob Hoffman and Patricia Malone, attorneys at law, representing the Petitioner. Mickey Cornelius, appearing as an expert in traffic engineering from the Traffic Group, also attended the hearing, as well as Jack Cannella, a representative of Heritage Properties, the owner of the site. Appearing in opposition to the Petitioner's request were John

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Date 4/14/2000
By R. J. [Signature]

Leahy, Jr., Charles Warns, II and William A. Knell, Sr. The protestants were represented by Robert Sellers, attorney at law.

Testimony and evidence indicated that the property, which is the subject of this variance request, consists of 17.746 acres, more or less, zoned BR. The subject property is improved with a 116,140 sq. ft. warehouse building known as "The B.J.'s Wholesale Club". The property is located on the east side of Belair Road in the vicinity of White Marsh Boulevard. The B.J.'s Wholesale Club has existed on the property for several years. B.J.'s is now desirous of offering the sale of gasoline to its B.J. members. They have set aside an area on the property containing 18,000 sq. ft. of area wherein gasoline pumps will be installed, along with a small kiosk, where an attendant will oversee the sale of gasoline. The fuel service station is located on the existing B.J.'s parking lot a short distance from the warehouse itself.

Testimony and evidence indicated that B.J.'s is now in the process of adding fuel service stations to their existing stores, not only in Maryland, but their other locations around the country. The fuel service station is open to the general public, however, B.J.'s members will be able to purchase their gasoline at a discounted rate. According to the testimony, other similar type wholesale clubs are adding fuel service stations to their properties as an extra convenience to their members.

As stated previously, several individuals appeared in opposition to the Petitioner's request. Those individuals were represented by Robert Sellers, attorney at law. No testimony was offered in opposition to the variances requested by the Petitioner. However, several legal arguments were offered by Mr. Sellers on behalf of his clients.

First and foremost, Mr. Sellers argued that the addition of a fuel service station at this location requires that a special exception be requested. Mr. Sellers argued that the fuel service

station is not permitted as of right and the Petitioner should have included a special exception request pursuant to Section 405.2.B of the Baltimore County Zoning Regulations. The basis of Mr. Sellers argument was that the proposed fuel service station is proposed on property which is not located within a "planned shopping center" as required Section 405.2.A.1 of the B.C.Z.R. Mr. Sellers argued that the B.J.'s site is an individual property and not part of a planned shopping center.

The definition of "planned shopping center" is contained within Section 101 of the Baltimore County Zoning Regulations. The definition is as follows:

"An integral retail shopping development for which an overall plan has been approved by the office of planning and zoning and which: is under common ownership or control; has a site at least three acres in net area; has vehicular access to physically separate buildings on the site by means of interior service drives or ways; and has no more than two points of vehicular access from the site to public streets except as follows:

A planned shopping center may have one additional vehicular access point to a public street for each 250 feet of street frontage thereon in excess of 500 feet; and

A planned shopping center may have a greater number of vehicular access points than as defined above if any overall plan for such center has been approved by the office of planning and zoning before the adoption of this definition, provided that the number of vehicular access points is not further increased after the adoption of this definition."

After considering the testimony and evidence offered at the hearing, I find that the property which is the subject of this Petition is part of an overall planned shopping center as that term is defined within the B.C.Z.R. The Petitioner submitted into evidence as Petitioner's Exhibits 5A and 5B, and Petitioner's Exhibit 6, approved CRG plans of the White Marsh Retail Center consisting of 4 commercial lots within this planned shopping complex. The road servicing the center is known as Wholesale Club Drive. In addition to B.J.'s wholesale club, there also exists other commercial entities such as the Bob Evans Restaurant, the Burger King Restaurant and a

DATE 4/14/2000
BY J.P. JAMES

strip of retail uses also located along Wholesale Club Drive. Testimony indicated that the Bob Evans and Burger King properties have, in fact, been sold off to those entities. However, there remains a sufficient amount of retail shopping development under common ownership or control to satisfy the definition as set forth in Section 101.

In reaching this determination, I also relied on the definition of "shopping center" which is defined just prior to "planned shopping center" on page 1-28 of the B.C.Z.R. The definition of "shopping center" depicts a more traditional type of shopping center which one commonly encounters in their neighborhood. It is the type of development wherein all of the commercial uses are connected by party walls, canopies, interconnected by walkways and sidewalks, and share common parking areas. This is the type of shopping center with which most citizens are familiar. The "planned shopping center" is somewhat different than the "shopping center" in that commercial uses are not structurally connected to one another, have their own separate parking fields, and are connected by a common roadway. For this and the other reasons previously stated, I find that the Petitioner's property herein is part of a planned shopping center and, therefore, a fuel service station is permitted as of right and no special exception is necessary. My interpretation is consistent with the Office of Planning, as well as Permits and Development Management, in that neither of those county agencies had any adverse comments to the Petitioner's request herein.

The second issue raised at the hearing before me involves the first variance requested by the Petitioner. The Petitioner has requested a variance from Section 405.2.A, to allow a fuel service station in a planned shopping center to be located on a lot that is within 0 ft. of a residentially zoned property in lieu of the required 100 ft. Mr. Sellers argued that this particular provision of the Baltimore County Zoning Regulations cannot be varianced in that the

requirement that the lot be situated greater than 100 ft. from a residentially zoned property is a condition precedent to the relief requested and, therefore, cannot be variances. Mr. Hoffman on the other hand, representing the Petitioner, argued that the requested variance is wholly unnecessary and was only requested at the insistence of the Office of Permits and Development Management. Mr. Hoffman argued that the lot set aside by the Petitioner, whereupon the service station use will be conducted, is located approximately 486 ft. from the nearest residentially zoned property. The arguments of counsel are based on their own interpretation of "lot", as that term is used within Section 405.2 of the Baltimore County Zoning Regulations. Unlike "planned shopping center", the definition of "lot" is not found within the Baltimore County Zoning Regulations. Section 101 of the B.C.Z.R. requires that when a word or term is not defined within the B.C.Z.R., that word or term shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language Unabridged. The definition of the word "lot" as contained within Webster's is as follows:

"A measured parcel of land having fixed boundaries and designated on a plot or survey; a parcel of land in fact used for, intended for, or appropriated to a common purpose."

Mr. Sellers argued that the "lot" which is the subject of this request, constitutes the entire 17.791 acre parcel whereupon the B.J.'s warehouse is located. Mr. Hoffman argued at the hearing that the "lot" in question is the 18,000 sq. ft. lot that has been set aside specifically for the fuel service station use.

Applying the definition as contained within Webster's, I find that the "lot" which must be situated at least 100 ft. from a residentially zoned property is, in fact, the 18,000 sq. ft. lot set aside by the Petitioner for the operation of the fuel service station. As the definition states, a lot need only have fixed boundaries and be designated on a plot or survey which is used for,

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By R. J. [Signature]

intended for, or appropriated to a common purpose. The 18,000 sq. ft. area set aside on the site plan submitted as Petitioner's Exhibit 1A satisfies that definition. Therefore, the "lot" as that term is used in Section 405.2.A of the B.C.Z.R., is the 18,000 sq. ft. area set aside for the fuel service station use.

In addition to relying on the definition contained within Webster's, it was also helpful to read Section 405.4 of the B.C.Z.R. This section assisted me in my determination that the fuel service station "lot" is, in fact, the 18,000 sq. ft. area set aside by the Petitioner. Section 405.4 promulgates the specific design of the fuel service station lot, such as: size, setbacks for any structure, fuel pump, and canopy located upon this lot and the landscape transition area for the lot itself. In addition to the aforementioned, Section 405.4 also provides additional design standards for the fuel service station lot, all of which help to determine that the "lot" about which Section 405.2 applies is the 18,000 sq. ft. area set aside for the fuel service station use and not the entire 17.791 acre site. Therefore, having so ruled, the first variance requested by the Petitioner shall be dismissed as being unnecessary.

Having dismissed the first variance request, it is now necessary to address the variance to allow 492 parking spaces in lieu of 582 and to waive the requirement to provide restrooms at the fuel service station. Testimony offered at the hearing demonstrated that the large parking area set aside for B.J.'s customers has and continues to be underutilized by customers and patrons. The parking spaces nearest to the Wholesale Club store are used on a regular basis. However, the parking fields around the perimeter of the site are rarely, if ever, used. Therefore, there are more than enough parking spaces to accommodate customers at this time, and the variance to allow 492 spaces in lieu of 582 should be granted. Furthermore, the variance to waive the requirements of restrooms being installed at the fuel service station should also be granted.

Testimony on that topic demonstrated that public restrooms are provided within the B.J.'s Wholesale Club and patrons of the fuel service station can utilize those facilities in the event it becomes necessary to do so. Furthermore, it is anticipated that the persons utilizing the fuel service station might very well have already made purchases within the wholesale club itself and, therefore, would have had an opportunity to use the restroom facilities if necessary.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and their property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. Of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variances are not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of these requests and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

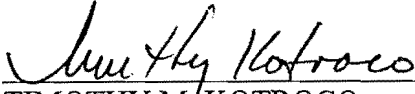
Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 14th day of April, 2000, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from Section 409.6 of the Baltimore County Zoning Regulations, to allow 492 parking spaces to be provided in lieu of the required 582 parking spaces, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the variance request from Section 405.4.B of the B.C.Z.R., to waive the requirements of providing restrooms be and is hereby GRANTED.

IT IS FURTHER ORDERED that the variance request from Section 405.2.A., to allow a fuel service station to be located on a lot that is within 0 ft. of a residentially zoned property in lieu of the required 100 ft., be and is hereby DISMISSED as moot.

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING

Date

4/14/2000

By

R. J. J. J.



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4201 WHOLESALE CLUB ROAD

which is presently zoned BR

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

SEE ATTACHED

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

TO BE DETERMINED AT THE HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Patricia A. Malone

Name - Type or Print

Signature

Venable, Baetjer and Howard, LLP

Company

210 Allegheny Avenue

410-494-6200

Address

Towson

MD

Telephone No.

21204

City

State

Zip Code

Legal Owner(s):

Belair Road White Marsh Joint Venture
c/o Heritage Properties, Inc.

Name - Type or Print

Signature David Rhodes, Member

Name - Type or Print

Signature

515 Fairmount Avenue

410-769-6100

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

Representative to be Contacted:

Patricia A. Malone

Name

210 Allegheny Avenue

410-494-6200

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 HR

UNAVAILABLE FOR HEARING March 11-12

Reviewed By [Signature]

Date 1/27/00

Case No. 00 309 A

REV 9/15/98

PETITION FOR VARIANCES

1. Variance from BCZR Section 405.2.A to allow a fuel service station in a planned shopping center to be located on a lot that is within 0 feet of a residentially zoned property in lieu of the required 100 feet.
2. Variance from BCZR Section 409.6 to allow 492 parking spaces to be provided in lieu of the required 582 parking spaces.
3. Variance from BCZR Section 405.4.B to waive the requirement to provide restrooms.



Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

February 15, 2000

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED FEB 25 2000

ATTENTION: Gwen Stephens

RE: Property Owner:
BELAIR RD. WHITE MARSH JOINT VENTURE - 309
RONALD G. ALESSI - 313

Location: DISTRIBUTION MEETING OF February 7, 2000

Item No.: 309 313

Dear Ms. Stephens:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works.
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1994 edition prior to occupancy.

REVIEWER: LIEUTENANT HERB TAYLOR, Fire Marshal's Office
PHONE 887-4881, MS-1102F



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

ad/PMZ

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: February 16, 2000

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 4201 Wholesale Club Road

INFORMATION:

Item Number: 309

Petitioner: Belair Road White Marsh Joint Venture c/o Heritage Properties,
Inc.

Zoning: BR

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The applicant should demonstrate to the satisfaction of the Zoning Commissioner that convenient and accessible restrooms will be provided to customers using the fuel service station.

Section Chief: *Jeffrey M. Long*
AFK/JL

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley *AC for RBS*

DATE: February 18, 2000

SUBJECT: Zoning Petitions
Zoning Advisory Committee Meeting of February 7, 2000

DEPRM has no comments for the following zoning petitions:

Item #	Address
306	350 Poplar Road
308	1345 Western Run Road
309	4201 Wholesale Club Road
310	328 Delight Meadows Road
311	4502 East Joppa Road
312	322 Weatherbee Road

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
 Department of Permits &
 Development Management

DATE: February 18, 2000

FROM: *Sub* Robert W. Bowling, Supervisor
 Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
 for February 14, 2000
 Item Nos. 305, 306, 307, 308, (309),
 310, 311, and 312

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File



**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor

John D. Porcan
Secretary

Parker F. Williams
Administrator

Date: 2-7-00

Ms. Gwen Stephens
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 309

JLL

RECEIVED FEB 08 2000

Dear Ms Stephens:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202



**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor
John D. Porcari
Secretary
Parker F. Williams
Administrator

Date: 2-7-00

Ms. Gwen Stephens
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 309

JLL

RECEIVED FEB 08 2000

Dear Ms Stephens:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

RE: PETITION FOR VARIANCE
4201 Wholesale Club Road, NE end Wholesale Club Dr,
740' E of c/I Belair Rd, NW/S White Marsh Blvd
14th Election District, 6th Councilmanic

Legal Owner: Belair Rd White Marsh Jt. Venture
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 00-309-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of February, 2000 a copy of the foregoing Entry of Appearance was mailed to Patricia A. Malone, Esq., Venable, Baetjer & Howard, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, attorney for Petitioner(s).



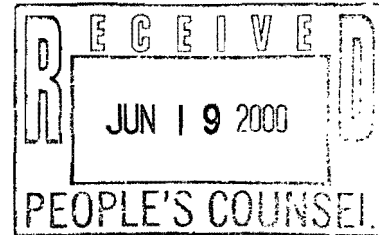
PETER MAX ZIMMERMAN



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

June 15, 2000



Mr. David Rhodes
Belair Road White Marsh Joint Ventures
c/o Heritage Properties, Inc.
515 Fairmount Avenue
Towson, MD 21204

Dear Mr. Rhodes: *BELAIR RD. WHITEMARSH JT. VENTURE*

RE: Petition for Variance, Case No.00-309-A, 4201 Wholesale Club Road, 14th
Election District

Please be advised that an appeal of the above-referenced case was filed in this office on May 12, 2000, by Central Catonsville Neighborhood Associates Inc. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:rsj

c: Patricia A. Malone, Esquire, Venable, Baetjer and Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204
Phil Woodyatt, 1 Merer Road, Natick, MA 01760
Jay Ledul, 1 Merer Road, Natick, MA 01760
John D. Leahy Jr., 8101 Belair Road, Baltimore, MD 21236
Charles E. Warns II, 8485 Honeygo Blvd., Baltimore, MD 21236
William A. Knell Sr., 7533 Belair Road, Baltimore, MD 21236
People's Counsel, M.S. 2010
Arnold Jablon, PDM Director
Zoning Commissioner

*405.2 A -
variance -
should be
for transport?*



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PROTESTANT(S) SIGN-IN SHEET

NAME

Robert Sellers

John D. Leahy Jr

Charles E. Warns II

William A. Knell Sr.

ADDRESS

Johnson 21241

401 Washington Ave Ste 303

8101 Belair Rd. Balt. MD. 21236

8485 Honeygo Blvd BALTO MD 21236

7533 Belair Rd. Balt. Md. 21236



Part of
BJ's is 9

"Planned Shopping CTR"

- Everything from Bel Air Road to BJ's site
- Buyer King, Bob Evans, ^{CTR} ~~shop~~
- Entire area is under common ownership

Definition of "Shopping CTR, Plan" - under common ownership.
etc... etc...

page 1-28

3405.2 - 100' from residential zone

- "lot"

Definitions - "residentially zoned property"

- "lot of record" is defined

- "lot" is not defined in the BZCR

Mickley Cornelius

- Expert in Traffic Engineering
- Reviewed site plan + went to site
- his personal experience parking is more than adequate - 100 of 90 spaces no adverse impact

Jack Cannella

Heritage Properties

- U.P. of Heritage

- familiar w/ Shopping CTR - they developed it

2 Record plans for White Marsh retail center

lot 1 Bob Evans

lot 2 Buyer King + 5 shops CTR

lot 3 BJ's

- At time of development - they owned everything
- Sold Burger King + Bob Evans

uses in Strip CTR - 6 uses in total

- '91 - CTR was approved
- Burger + Bob - Sold in about '93

Wholesale Club road - supposed to be a public road
 Occur~~ing~~ has deeded Wholesale Club Road to B.H. Co.
 person has to use public Road to get between
 the 3 lots

Sellers

- I - 100' requirement - Cannot be variances
 405.2 - Conditions precedent
 use section

- II - Definition - "Planned Shopping CTR" -
 integral retail shopping CTR - - Read definition
 make sure this property meets this definition
 "common ownership or control" - no covenants etc...
 not an interior road - Public road
 must use public road
 if not Planned Shopping CTR...
 then 405.2 B - 50x

CRG approval does not mean control

"Planned Shopping CTR" -

- internal drive road can be a public Road

large long-tailed reptiles (as alligators, crocodiles, etc.) having four limbs adapted to swimming or walking, with skin stiffened with bony plates and horny epidermal scales, teeth implanted in sockets and confined to the margins of the jaws, the quadrate bone immovably fixed to the skull, the heart completely four-chambered

lorica \ˈlɒrɪkə\ [NL, fr. L, neut. pl. of *loricatus*] *syn of AMEURA*

loricate \ˈlɒrɪkət, usu -əd- + V\ vt -ED/-ING/-S [L *loricatus*, part. of *loricare* to arm with a cuirass, fr. *lorica* cuirass, a : to enclose in or cover with a protecting substance

loricate \-kət, -kāt, usu -d- + V\ or **lori-cate** \-səd, -ātəd\ *adj* [L *loricatus*] 1 : having a lorica 2 [NL *loricata*] : of or relating to the Loricate

loricate \-səd, -ātəd\ *n* -s [NL *Loricata*] : a loricate animal

loricati \ˈlɒrɪkəti\ [NL, fr. L, masc. pl. of *loricatus*] *of LORICATA*

lorication \ˈlɒrɪkəʃən\ *n* -s [L *lorication-*, *loricatio*, fr. *loricare* + *-ion-*, *-io* -ion] 1 : the quality or state of having a lorica 2 : a loricate covering

lorikeet \ˈlɒrɪkɛt\ *n* -s [lori + -keet (as in *parrakeet*)] : any of numerous small arboreal usu. brush-tongued parrots that are found mostly in Australasia and that feed largely upon the fruit of flowers

lori \ˈlɒrɪ\ *n* -s [lori + -let] : a small short-tailed loriot of New Guinea and northern Australia that is dark in color with yellow flanks and red and blue markings on the head — called also *fig parrot*

lorimer \ˈlɒrɪmə(r)\ or **lor-i-ner** \-rənə(r)\ *n* -s [ME *lorimer*, *loriner*, fr. OF *lormier*, *lorenier*, fr. *lorain* strap holding horse's saddle (fr. LL *loramentum* harness, straps, fr. L *lor* strap + *-mentum* -ment) + *-ier* -er] : a maker of bits, reins, and metal mountings for bridles and saddles

loriot \ˈlɒrɪət, -ɛɪ\ *n* -s [F, fr. MF, alter. of *loriol*, fr. *Poriol* loriot, the oriole, fr. OF, fr. *l* the (contr. of *le*, def. art., fr. L *ille* that one, that) + *orior* loriot, oriole — more at *ORIOLE*] : the golden oriole of Europe

loris \ˈlɒrɪs\ *n* -s [F, perh. fr. obs. D *loeris* by, simpton] 1 -ES : either of two small nocturnal lemuriform lemurs : a : a slim-bodied lemur (*Loris gracilis*) of northern India and Ceylon — called also *slender loris* b : a heavier heavier-bodied lemur (*Bradicebus tardigradus*) of the East Indies that has a dusky dorsal stripe — called also *slow loris* 2 *cap* [NL, fr. F] : a genus (the type of the family Lorisidae) that comprises the slender loris

lori-sid \ˈlɒrɪsɪd\ *adj* or *n*

lori-sid \ˈlɒrɪsɪd, dɛ\ *n* pl, *cap* [NL, fr. *Loris*, type genus + *-id*] : a family of lemurs comprising the lorises and related forms (as the galagos and potto)

lori-form \-fɔrm\ *adj* [NL *Lorisiformes*] : resembling a loris

lori-formes \-fɔrm, mɛz\ *n* pl, *cap* [NL, fr. *Loris* + *-formes*] : in some classifications : a division of Lemuroidea comprising the lorises and related forms

lorimer \ˈlɒrɪmə(r)\ *n* -ES [ME *lormerie*, fr. MF, fr. OF, fr. *lorimer* + *-ie* -y] *archaic* : metalware made by lorimers

lori \ˈlɒrɪ\ *adj* [ME, fr. *loren*, past part. of *lesen* to lose] 1 *archaic* : LOST, RUINED 2 *a* : left alone : ABANDONED, FORSAKEN (thus to be cast out, thus to die — John Keats) 3 *a* : large brass saucepan lay ~ near the doorstep — Arnold Bennett 4 *b* : DESOLATE, LONELY (never vaunted her ~ condition — Dorothy Parker) *syn* see ALONE

loriness \ˈlɒrɪnəs\ *n* -ES : the quality or state of being lorn

lori \ˈlɒrɪ\ *n* -s [AmerSp, fr. Sp, parrot, prob. fr. Carib *loro*] : PARROT FISH

lorine *cross n*, *usu cap* L : CROSS OF LORRAINE

lori-er \ˈlɒrɪənə(r)\, *lɒrɪ-er* \-rə\ *n* -s *usu cap* [Lorraine, region in eastern Europe + *-er*] : a native or inhabitant of Lorraine

lori-ese \ˈlɒrɪˈneɪz, lɒrɪ-, -ɛs\ *adj*, *usu cap* [Lorraine + *-ese*] 1 : of, relating to, or characteristic of Lorraine 2 : of, relating to, or characteristic of the people of Lorraine

lori \ˈlɒrɪ, lɪr-, -rɪ\ *n* -ES [prob. fr. *lurry*] 1 *a* : a large low wheel-drawn wagon without sides and with a platform that typically overhangs the four small heavy wheels b *Brit* : PORTTRUCK; *esp* : one with low or open sides and sometimes with a cover 2 : any of various trucks running on rails : as *flat* : a light easily movable flatcar for the use of workmen on railroads b : LARRY

lori-hop \ˈlɒrɪhɒp\ *vi*, *Brit* : to hitchhike *esp*, on lorries

lori \ˈlɒrɪm, lɒr-, -rɪ\ *n* pl *lori-ra* \-rə\ [NL, fr. L, strap — at LORE] 1 : LORE 2 *a* : a transverse piece in the structure of a bee in which the base of the submentum rests on a similar structure in other insects c : an elongated sclerite

count of the minutes) 8 *a* : to cause to miss one's way or bearings (you could not ~ him anywhere in London) (soon lost himself in the maze of streets) b : to make (oneself) withdrawn from immediate reality (lost himself in daydreaming) 9 *a* : to wander or go astray from : miss so as not to be able to find (lost his way) (the ships lost each other in the fog) b : to draw away from : shake off : OUTSTRIP (lost his pursuers) 10 : to fail to keep in sight or in mind (lost the thief in the crowded street) (the fielder lost the ball in the sun) (an intention that was soon lost) 11 : to free oneself from : get rid of (dieting to ~ weight) (~ a cold) 12 : to make (itself) hidden or obscured (the river ~s itself in the marshes) ~ *vi* 1 : to undergo deprivation of something of value (investors lost heavily) or deterioration of a valuable quality (the story ~s considerably in translation) 2 : to undergo defeat : fail to win a goal or a contest (able to ~ with good grace) (better to have loved and lost than never to have loved at all — Alfred Tennyson) 3 *a* of a timepiece : to run slow — lose ground : to become at a disadvantage : fall behind : fail to advance or improve — lose one's cud : to cease ruminating : refuse feed — lose one's heart : to fall in love (lost her heart to a charming ne'er-do-well)

lo-sel \ˈlɒzəl\ *n* -s [ME, fr. *losen* (past part. of *lesen* to lose), alter. of *loren* (past part. of *lesen* to lose), fr. OE, past part. of *lōsan* to lose — more at LOSE] : a worthless person

lo-sel-ry \-rē\ *n* -ES *archaic* : the character or action of a losel

lose *out vi* : to fail to win in competition : fail to receive an expected reward or gain (afraid of losing out to more unscrupulous competitors) (lost out in the hurdles)

lo-ser \ˈlɒzə(r)\ *n* -s : one that loses : as a : one that consistently loses or is likely to lose or is behind (as in a game or competition) (a cheerful ~) b *Brit* : LOSING HAZARD c : a card that may be expected to lose a trick or that does lose a trick in bridge (discarded his club ~s on the established spades in dummy) d : one that is convicted of a penal offense

loses *pres 3d sing of LOSE*

lo-sey-ite \ˈlɒzɛɪt\ *n* -s [Samuel R. Losey †1906? Am. mineral collector + *-ite*] : a mineral (Mn,Zn)₂(CO₃)₂(OH)₁₀ composed of a basic carbonate of manganese and zinc

losh \ˈlɒʃ\ *n* -ES *often attrib* [Russ *losh* elk; akin to OHG *elaho* elk — more at ELK] 1 : elk hide 2 : a hide dressed only with oil (~ leather)

losh \ˈlɒʃ\ *interj* [euphemism for *lord*] — used as a mild oath in Scots dialect

losing *adj* [fr. pres. part. of *lose*] : likely to result in failure or defeat (~ strategy) (fighting a ~ battle) : likely to lose : causing defeat (~ cards) (three ~ tricks in his hand)

losing hazard *n* : the pocketing of the cue ball after it strikes an object ball in English billiards

loss \ˈlɒs\ *also* \ˈlɒs\ *n* -ES [ME *los*, prob. back-formation fr. *lost*, past part. of *losen* to lose, get lost, perish, destroy — more at LOST] 1 *a* : the act or fact of losing : failure to keep possession : DEPRIVATION (precautions against ~ or theft of property) (~ of a leg) (~ of sight) (~ of reputation) (~ of caste) (virtual ~ of three divisions of infantry) b : the harm or privation resulting from losing or being separated from something or someone (bore up bravely under the ~ of both parents) (the explosion caused a temporary ~ of hearing) (embittered by the ~ of his wife's affection) c : an instance of losing (his retirement was a serious ~ to the company) (her death was a ~ to all who knew her) d *obs* : LACK, DEFAULT 2 : a person or thing or an amount that is lost : as a losses pl : killed, wounded, or captured soldiers b : power or energy wasted in a machine, apparatus, or system (friction ~) (heat ~ due to faulty insulation) c (1) : the power diminution of a circuit element corresponding to conversion of electric power into heat by resistance (2) : ATTENUATION 3 *a* : the act or fact of failing to gain, win, obtain, or utilize (~ of a battle) (~ of opportunity) (~ of a game) (~ of a night's sleep); *specif* : an amount by which the cost of an article or service exceeds the selling price — opposed to *profit* (forced to sell all the stock at a ~) (railroad claimed to be operating at a ~) b : a yardage disadvantage in football that results when an offensive play ends behind the line of scrimmage 4 : decrease in amount, magnitude, or degree (temperature ~) (~ in altitude) — opposed to *gain* 5 *a* : the state or fact of being destroyed or placed beyond recovery : DESTRUCTION, RUIN, PERDITION (quitted all to save a world from utter ~ — John Milton) (~ of a ship with all hands) (~ of life in war) b *obs* : a cause of ruin or destruction 6 : the amount of an insured's financial detriment due to the occurrence of a stipulated contingent event (as death, injury, destruction, or damage) in such a manner as to charge the insurer with a liability under

most-color process \ˈmɒst-ɔlə\ *n* : a technique of pottery decoration found in Central and So. America and involving the covering of areas with wax before dipping in dye so that on subsequent firing the waxed areas lose the applied color and revert to the original color

lost motion *n* 1 : the lag between the motion of a driver and that of a follower in a mechanism due to yielding or looseness 2 : inefficient or poorly directed expenditure of energy or time

lost-ness *n* -ES : the quality or state of being lost (that ~ which is the extreme product of individualism — T.L.Cook)

lost river *n* : a surface stream that flows into an underground passageway

lost-wax process \ˈlɒst-wɒks\ *n* [lost-wax trans. of F *cire perdue*] : CIRE PERDUE

lot \ˈlɒt, usu -hd- + V\ *n* -s [ME, fr. OE *hlōt*; akin to OHG *luz* share of land, ON *hlutr* lot, share, *hlautr*, Goth *hlauts* lot, Lith *kludyti* to cause to hook on, and perh. to L *claudere* to close — more at CLOSE] 1 : an object (as a piece of wood, pebble, die, straw) used as one of the counters in determining a question by the chance fall or choice of one or more of them — see SORTILEGE 2 *a* : the use of lots or an equivalent process (as counting off) as a means of deciding something (one was chosen by ~ to represent the group) b : the choice resulting from such process (the ~ fell on the youngest member) 3 *a* : something that comes to or happens to one upon whom a choice by lot has fallen : SHARE, PART, ALLOTMENT (the will provided for equal ~s for all the children) (you have neither part nor ~ in this matter — Acts 8: 21 (RSV)) b : one's way of life or one's share of worldly reward or privation determined by chance, fate, or divine providence : FORTUNE, DESTINY (the ~ of man, to suffer and to die — Alexander Pope) (a policeman's ~ is not a happy one — W.S. Gilbert) (one of those women who have always been resigned to the limitations of their ~ — Nadine Gordimer) 4 *obs* : a customs fee : TAX, DUTY 5 *obs a* : a lottery prize b : a prize-winning lottery ticket 6 *a* : an allotment or portion of land set aside for a special purpose (each settler was awarded a ~ (pasture ~) (burial ~) (circus ~) (used-car ~) b : a measured parcel of land having fixed boundaries and designated on a plot or survey (farm cut up into house ~s) (building ~) c : a parcel of land in fact used for, intended for, or appropriated to a common purpose (manufacturing ~) (refuse ~) d *chiefly North* : a small pasture e *chiefly South & Midland* : COW PEN, BARNYARD 1 : PARKING LOT g : a motion-picture studio and its adjoining property 7 *a* : a number of units of an article (stationery ~) or a parcel of articles offered as one item (as in an auction sale) b : all the members of a present group, kind, or quantity — used with *the* (one more suitcase to carry out and that is the ~) (when you've seen one you've seen the ~) 8 *a* : a number of associated persons : CREW, SET, CROWD (got in with a hard-drinking poker-playing ~) (his wife's family were a queer and stubborn ~) (nothing but a ~ of busybodies) (not an honest man in the ~) b : KIND, SORT (stay away from him, he's a bad ~) (recruits were a sorry ~) 9 : a considerable quantity or number : GREAT DEAL (~ of money) (~ of trouble) (there are ~s of books on the subject) — often used adverbially with *a* (feels a ~ better now) *syn* see FATE

lot \ˈlɒt\ *vb* lotted; lotted; lotting; lots [ME *lotten*, fr. *lot*, *n*.] *vi* : to cast or draw lots ~ *vt* 1 : to form or divide into lots (~ land) (~ fruit for market) — often used with *out* (~ out goods in parcels) 2 : ALLOT, APPORTION 3 *obs* : to draw lots for — *lot on or lot upon now chiefly dial* : to count on : look forward to : EXPECT, PLAN

lot abbr lotion

lot-a or **lot-tah** \ˈlɒd-ə, -tə\ *n* -s [Hindi *lotā*] : a small usu. spherical water vessel of brass or copper used in India

lotia \ˈlɒtiə\ *n*, *cap* [NL, fr. F *lotte* burbot] : a genus of fishes (family Gadidae) consisting of the burbot

lote \ˈlɒt\ or **lotebush** \ˈlɒt-ɛ-\ *also* **lot-ti-bush** \ˈlɒd-ɛ-\ or **lotewood** \ˈlɒt-wʊd\ *n*, pl **lotes** or **lotebushes** [origin unknown] 1 : a low spiny shrub (*Condalia obtusifolia*) of Mexico and southern Texas having edible fruit and roots from which a soap substitute is made — called also *Texas buckthorn* 2 : JUJUBE 2

loth *var of* LOATH

loth-rin-gian \ˈlɒθrɪnːjən\ *adj*, *usu cap* [ML *Lotharingia* Lorraine, region in western Europe + *-an*] : of or relating to Lorraine

lothar-lo \ˈlɒθə(r)-lo\, -ther-, -thar-, -thar-, -thar- *n* -s *often cap* [after *Lothario*, seducer in the play *The Fair Penitent* (1703) by Nicholas Rowe †1718 Eng. dramatist] : a gay deceiver or seducer : LIBERTINE, RAKE

lotic \ˈlɒd-ɪk, -ɒtɪk\ *adj* [L *lotus* action of washing or bathing (fr. *latus*, *lotus*, past part. of *lavare* to wash) + *-ic*] : of, re-

[L, fr. *para- + synthetis*] the Romance languages by the process of word formation and prefixing a particle (as in

para- + synthetic: of, relating to
[thə, tən \ n, pl parasynthe-ta
of *parasyntethos* formed from
+ *synthetos* put together, com-
ic]: a word formed by para-

ly [ISV *para- + syphilitic*]
hills — used chiefly of diseases
considered indirectly but now
syphilitic infection
para- + atacamite: a mineral
of copper and is dimorphous

so *para-tac-ti-cal* \-aktə-kəl
pairs as LL *syntaxis* syntax: E
ing to, or exhibiting parataxis
adv
dj [NL *parataxis* + E -ic]
g to a mode of individual ex-
ents, and relationships are per-
a, in which occurrences in the
no sequential or logical relation-
stimuli have only idiosyncratic
re PROTOTAXIC

L, fr. Gk, act of placing side by
vis] 1 a: coordinate ranging
one after another without con-
"he laughed; she cried")
placing of a subordinate clause
a subordinating connective (as
a man wants to see you") 2: the

para- + tergite: the sclerotized
an insect
p [NL, fr. *para- + Tetranychus*]
some classifications includes the

[NL, fr. Gk, juxtaposition, fr.
para-para- + tithenai to place
IESIS

-s [1 *para- + thiophosphate* +
agricultural insecticide (C₂H₅-
me toxicity to mammals as well
para-nitro-phenyl thiophosphate
mon] trademark — used for an
athyroid glands of cattle used
ting tetanic convulsions

SV *para- + thyroid* (n.): PARA-

oid or *parathyroidal* \parə+
(adj.) or *thyroidal* or *thyroidal*
and 2: of, relating to, or prom-
inds

re+ \ adj: having the parathy-

[ISV *parathyroid + -ectomy*]
glands
several usu. four small endocrine
times embedded in the thyroid
irregularly arranged secretory
na rich in capillaries and produc-
s in maintaining normal calcium
re TETANY

hīrō, prīvəl also *para-thy-ro-*
thyroid + -privat (fr. L *privus*
or -*privat* — more at PRIVATE)
functional deficiency of the para-

\ adj [1 *parathyroid + -tropic*]
parathyroid glands (~ hormone)
NL, fr. *para- + tomium*: the
le between culmen and tomium
-es [1 *para- + -tomy*: reproduc-
ul division zone following organi-
a new individual from blastema
AY
rə, tōn'braun, zē, yū'es \ n, usu cap
rganic pigment — see DYE table I

para-vauite \parə+ \ n [1 *para- + vauite*] a mineral
FeAl₂(PO₄)₂(OH)₂·8H₂O consisting of a hydrous basic alu-
minum phosphate having slightly more water than vauite
para-vent \parə, vēnt \ n [F, fr. It *paravento*, fr. *parare* to
shield, guard, ward off (fr. L, to prepare) + *vento* wind, fr. L
ventus — more at PARE, WIND]: a screen from the wind
para-vertebral \parə+ \ adj [ISV *para- + vertebral*]
situated beside or adjacent to the vertebral column —
para-vertebrally \+ \ adv

para-vesical \+ \ adj [1 *para- + vesical*]: adjacent to the
urinary bladder — used chiefly of a peritoneal pouch or recess
para-wollastonite \+ \ n [1 *para- + wollastonite*]: a mineral
CaSiO₃ consisting of calcium silicate dimorphous with
wollastonite

par-axial \(')par+ \ adj [ISV *para- + axial*] 1: located
on each side of the cephalo-caudal axis of the body 2: re-
lating to or being the space in the immediate neighborhood
of the optical axis of a lens or mirror (~ rays) — *par-axially*
\+ \ adv

par-axonia \+ \ [NL, fr. *para- + axonia*] syn of ARTIO-

par-axonic \par+ \ adj [1 *para- + axonic*]: having the axis
of the foot between the third and fourth digits (~ artiodactyl)
para-xylene \parə+ \ n [1 *para- + xylene*]: XYLENE lb
para-zoa \parə, zōa \ n pl, cap [NL, fr. *para- + -zoa*]: a
group of invertebrate animals coextensive with Porifera and
comprising multicellular forms that are essentially comparable
to a gastrula in organization — compare METAZOA, PROTOZOA
para-zo-ni-um \parə, zōnē-um \ n, pl *parazo-nia* \-ē-ə \ [L, fr.
Gk *parazōnion*, fr. *para- + -zōnion* (fr. *zōnē* belt,
girdle) — more at ZONE] 1: a small sword or dagger of the
ancient Greeks short enough to be worn in the girdle 2: a
short dagger of medieval times

par-boil \pär+ \ vt [ME *parboillen* (influenced in meaning
by part), fr. *parboillen* to boil thoroughly, fr. MF *parboillir*,
parboillir, fr. LL *perbullire*, fr. *per-* thoroughly (fr. *per* through)
+ *bullire* to bubble, boil — more at FOR, BOIL] 1: to boil
briefly as a preliminary or incomplete cooking procedure
(~ed it ... then roasted it — Marjorie K. Rawlings) 2: OVER-
HEAT, SWEAT (work out in the gym and then ~ themselves in
steam cabinets) — compare BLANCH, SCALD

parboiled rice n: rice that has been soaked, steamed, and
dried before milling to improve the cooking quality, retain the
water-soluble vitamins, and reduce the breakage in milling
1 *parbreak* vb [by folk etymology fr. older *parbrake*, fr. ME
parbraken, fr. *par-* thoroughly (fr. OF, fr. L *per-*, fr. *per*
through) + *braken* to vomit; akin to D *braken* to vomit, OE
brecan to break — more at FOR, BREAK] obs: VOMIT

2 *parbreak* n, obs: VOMIT
1 *par-buck-le* \pär, bəkəl \ n [alter. (influenced by *buckle*) of
earlier *parbunkel*, of unknown origin] 1: a purchase for
hoisting or lowering a cylindrical object (as a cask) by making
fast the middle of a long rope aloft and looping both ends
around the object which rests in the loops and rolls in them
as the ends are hauled up or paid out 2: a double sling made
of a single rope for slinging a cask, gun, or other object

2 *parbuckle* \+ \ vt: to hoist or lower by means of a parbuckle
1 *par-cel* \pär-səl, 'päs-, dial except in sense 3 'pas- or 'paas- \ n
-s [ME, fr. MF *parcelle*, *parcel*, fr. (assumed) VL *particella*,
alter. of L *particula* small part — more at PARTICLE] 1 a: a
component part of a whole: DIVISION, FRAGMENT, PORTION
(nature in all her ~s and faculties fell apart — G.M. Hopkins)
— often used in the phrase *part and parcel* (part and ~ of
a larger tract) b obs: a particular detail: ITEM (I will die a
hundred thousand deaths ere break the smallest ~ of this vow
— Shak.) 2 a: a continuous tract or plot of land in one
possession no part of which is separated from the rest by
intervening land in other possession b: a tract or plot of land
whose boundaries are readily ascertainable by natural or
artificial monuments or markers 3: a company, collection,
or group of persons, animals, or things: LOT, PACK — often
used as a generalized expression of disapproval (shooing out a
~ of hens — Ida Treat) (a small ~ of cows and a few sheep
— Elizabeth M. Roberts) (came to control a whole ~ of mari-
time companies — E.J. Kahn) (a ~ of giddy young kids
— Mark Twain) 4 a: a wrapped bundle of one or more ob-
jects: PACKAGE (the box was obviously a diamond ~
— Emily Hahn) (old ladies ... rustling their luncheon ~s
— Anthony Carson) (divide science into convenient pedagogic
and administrative ~s — *Scientific American Reader*) b: a
unit of salable merchandise 5: PARCELING 2 SYN see PART

2 *parcel* \+ \ adv [ME, fr. *parcel*, n.] archaic: PARTLY
3 *parcel* \+ \ vt parceled or parcelled; parceled or parcelled;
parcelling or parcelling \-s(a)lɪŋ \ parcells [1 *parcel*] 1: to
divide into parts or portions: DISTRIBUTE — often used with

green that is greener and paler than average vine and yellow,
lighter, and stronger than oyster gray b: a grayish yellow that
is duller than chamois and redder and slightly less strong than
old ivory

parchment coffee n: dried but unhulled coffee beans
parch-ment-ed \-məntəd, -men- \ adj: having a leathery
surface

parch-ment-ize \-mənt, -īzd, -n, -tī- \ vt -ED/-ING/-S: to con-
vert (as paper or other cellulosic material) into a substance
resembling parchment esp. by treating with sulfuric acid

parchment paper n: VEGETABLE PARCHMENT

parchment worm n: a worm of the family Chaetopteridae

parch-menty \-məntē \ adj: of, relating to, or resembling
parchment (~ cheeks — William Fildie)

par-ci-den-tate \pär-sē, -sē- \ adj [L *parci-* (fr. *parcus* sparing,
fr. *parcere* to spare) + E *dentate* — more at PARSIMONY]: hav-
ing few teeth

parcimonious var of PARSIMONIOUS
par-ci-ty \pär-sēd-ē \ n -ES [L *parcitas*, fr. *parcus* sparing,
scanty + -itas -ity]: FRUGALITY, SCANTINESS

par clearance n: nationwide clearance of bank checks at face
value conducted through the Federal Reserve system

par-close \pär, klōz \ also *per-close* \pär- \ n [ME *parclose*,
fr. MF, enclosure, end, fr. fem. of *parclos*, past part. of *par-*
close to enclose, end, fr. *par-* thoroughly (fr. L *per-*, fr. *per*
through) + *close* to close — more at FOR, CLOSE] 1 obs: the
end or conclusion of a sentence or discourse 2: a screen or
railing used esp. to separate a chapel from the main body of a
church

2 *par-close* \(')pär, klōz \ vt [obs. F *parclos-*, stem of *parclose*]
archaic: CONCLUDE, ENCLOSE

par-cook \(')pär+ \ vt [par- (as in parboil) + *cook*]: PARBOIL

pard \pär-d \ n -s [ME *parde*, fr. OF, fr. L *pardus*, fr. Gk
pardalis, *pardos*, of non-IE origin like Skt *prḍaku* leopard,
snake, Per *palang* leopard] archaic: LEOPARD

2 *pard* \+ \ n -s [short for *pardner*] chiefly dial: PARTNER, CHUM
pardah var of PURDAH

pardal or *pardale* n -s [L *pardalis* female leopard, fr. Gk
pardalis leopard — more at PARD] obs: LEOPARD

par-da-lote \pär'də, lōt \ n -s [NL *Pardalotus* genus of birds
including the diamond bird, fr. Gk *pardalōtos* spotted like a
leopard, fr. *pardalis* leopard]: DIAMOND BIRD 1

par-dao \(')pär, dāu, pər'd- \ n -s [Pg, fr. Skt *pratāpa* splendor,
majesty, fr. *pra-* before, forward + *tapati* it heats; fr. the use of
the word *pratāpa* as an epithet of kings on native coins — more
at FOR, TEPID]: a half rupia coin of Portuguese India

pard-ed \pär'dəd \ adj, archaic: having spots like those of the
leopard

par-des-sus de vi-ole \pär'dē'sūdēvī'ol \ n [F, lit., above the
viol]: a small viol higher in pitch than the treble viol

par-dhan \pär, dān \ n, pl *pardhan* or *pardhans* [Hindi *par-*
dhan, *pradhān*, fr. Skt *pradhāna* chief, fr. *pra-* before — more at
FOR]: a bardic minstrel and ritual beggar of the Gond people

par-die or *per-die* or *par-di* or *par-dy* \(')pär'dē, pär'- \ intj
[ME *pardee*, fr. OF *par Dé* by God] archaic — a mild oath

pard-ine \pär, dīn, -dēn \ adj [1 *pard* + -ine]: of, relating to,
resembling, or spotted like a leopard

pardine lynx n [trans. of NL *Lynx pardina*]: SPOTTED LYNX

pard-ner \pärdnər, 'pādnə(r) \ n -s [alter. of *partner*] chiefly
dial: PARTNER, CHUM

par-do \(')pär, dō, pər'dō \ n -s [by alter.]: PARDÃO

par-don \pär'dn, 'pād- \ n -s [ME *pardoun*, fr. OF *pardon*, fr.
pardonner — more at PARDON] 1 a: the excusing of an
offense without exacting a penalty: remission of punishment
b: divine forgiveness 2 Roman Catholicism a: INDULGENCE
b: a festival at which an indulgence is granted 3 a: a release
by a sovereign or an officer having jurisdiction from the legal
penalties or consequences of an offense or of a conviction
b: an act of grace of the pardoning authority granted before
or after conviction to one person by name or a number (as a
class) of persons conditionally or absolutely or in any other
form within the power of the pardoning authority — compare
AMNESTY 2 4: an official warrant of remission of penalty

5 a: excuse or forgiveness for a fault, offense, or discourtesy
(begged my ~ for his clumsiness) — often used in polite
apology or contradiction (I beg your ~, but I think not)
b: excuse for failure to hear or understand (beg ~)

SYN AMNESTY, ABSOLUTION: PARDON in the sense here dealt
with indicates a remission of punishment or penalty, entirely
effective but without indicating exoneration from guilt (a
royal pardon later freed him from a death sentence — Amer.
Guide Series: Md.) (decided that a parole wasn't enough — he
wanted a full pardon — Green Peyton) AMNESTY indicates a
general remission of punishment, penalty, retribution, or dis-
favor to a whole group or class; it may imply a promise to

pa-rei-ra \pə'rei-
vine, fr. *parreira*
brava wild] 1 o
vine (Chondodend
that is used as
several roots of
pareira — usu. u
PAREIRA, YELLO
pa-re-ja \pə're-
paricula, dim. o
: a Spanish trav
the assistance o
parel n -s [ME
APPAREL] 1 o
preparation o
paremiographe
pa-ren \pə'ren-
pa-ren-chy-ma
pə'renkəm \ o
chyma, fr. Gk,
fr. *par-* para-
the tissue of i
vessels of the o
plants consisti
of cell division
synthesis and
stance of leave
parts of stems
and distinctive
growth (as a
framework b
stellate cells a
internal organs
c: the endopl
pa-ren-chy-ma
mous \-mas \
CHYMATOUS
par-en-chym-a
\pə'renkə, mād-
ous or -ic \ o
chyma — par
par-en-chym-i-
enchyma]: PL
parenthesis var
pa-rens pa-tri-
[L]: the father
(as in the U.
the capacity o
without natur
heirs, and of p
tect themselv
patriae — Har
1 *par-ent* \pär-
L *parent-*, par-
beget, produc
brings forth o
parent (2): a
a natural par
2 obs: RELAT
tion to its of
tree — Farmer
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— J.P. Minard
their ~ atom
eloquence, el
Brooks) c:
which another
subsidiary (p
Series: Ark.)
2 *parent* \+ \
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parents: tra
source of
par-ent-age
PARENT] 1 a
atives 2: d
LINEAGE (ca
— Margaret
(the ballads
(it is somet
— Arctic)
position of
na-reu-tal \

Prot Ex #1

Code: 05--RW-91-033
J.O. 5-1-6655
Item 2 (H)

COUNTY HIGHWAY DEED

THIS DEED, Made this 3RD day of JUNE, in the year 1994, by BELAIR ROAD WHITE MARSH JOINT VENTURE, a Maryland General Partnership, Grantor; and RAYMOND E. SCHLISSLER, Trustee.

WITNESSETH, that in consideration of the sum of Five (\$5.00) Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does grant and convey unto BALTIMORE COUNTY, MARYLAND, a body corporate and politic, its successors and assigns, in fee simple, for public highway purposes, all that lot of ground situate, lying and being in the Fourteenth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

IN AND TO the bed of WHOLESALE CLUB DRIVE, as laid out and shown on the Plat entitled "PLAT ONE OF WHITE MARSH RETAIL CENTER", which plat is recorded among the Plat Records of Baltimore County in Plat Book S.M. No. 63, folio 052, and which plat was re-recorded as "FIRST AMENDED PLAT ONE OF WHITE MARSH RETAIL CENTER in Plat Book S.M. No. 65, folio 090.

SUBJECT, HOWEVER, to a revertible slope easement for supporting slopes which was granted and conveyed by Martha V. Langenfelder to the State Highway Administration by Inquisition dated December 17, 1987 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7762, folio 309.

BEING a portion of the property which by Deed dated July 15, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7920, folio 735 was granted and conveyed by Martha V. Langenfelder to Belair Road White Marsh Joint Venture.

FOR TITLE TO TRUSTEES: See the following instruments, viz.: (1) Deed of Trust dated July 15, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7920, folio 745 from Belair Road White Marsh Joint Venture to Alex J. Guggenheim and Raymond E. Schlissler, Trustees; and (2) Agreement of Confirmation, Modification and Restatement of Deed of Trust dated September 24, 1991 and recorded among the aforesaid Land Records in Liber S.M. No. 8923, folio 352 by and between Belair Road White Marsh Joint Venture and Alex J. Guggenheim and/or Raymond E. Schlissler, Trustees.

TOGETHER with the appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above granted property unto Baltimore County, Maryland, a body corporate and politic, its successors and assigns, in fee simple, for public highway purposes.

AND the said Grantor hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that it will warrant specially the property granted; and that it will execute such further assurances of the same as may be requisite.

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

mf 6-7-94

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE *mf* DATE 6-7-94

IN THE MATTER OF: * BEFORE THE TRANSCRIPT EXTRACT

BELAIR ROAD WHITE MARSH * COUNTY BOARD OF APPEALS

JOINT VENTURE * OF

4201 Wholesale Club Drive * BALTIMORE COUNTY

14th Election District * Case No. 00-309-A

6th Councilmanic District * December 27, 2000

* * * * *

The above-entitled matter came on for hearing

before the County Board of Appeals of Baltimore County at

the Old Courthouse, Towson, Maryland 21204, at 10 o'clock

a.m., December 27, 2000.

* * * * *

Reported by:

C.E. Peatt

CASE NO. 93-336-A (SIGN LOCATED AT BELAIR ROAD AND WHOLESALE CLUB DRIVE)

THEREFORE IT IS ORDERED BY THE DEPUTY ZONING COMMISSIONER FOR BALTIMORE COUNTY THIS 4TH DAY OF JUNE, 1993, THAT THE PETITION FOR VARIANCE REQUESTING RELIEF FROM SECTION 413.5D TO PERMIT A SIGN HEIGHT OF 35.8' FEET IN LIEU OF THE MAXIMUM 25 FEET FOR AN EXISTING CENTER IDENTIFICATION SIGN, IN ACCORDANCE WITH PETITIONER'S EXHIBIT 2, SUBJECT TO THE FOLLOWING RESTRICTION:

1) THE 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, THE RELIEF GRANTED HEREIN SHALL BE RESCINDED.

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

ZONING RELIEF REQUESTED:

1. VARIANCE FROM BCCR: SECTION 405.2.A TO ALLOW A FUEL SERVICE STATION IN A PLANNED SHOPPING CENTER TO BE LOCATED ON A LOT THAT IS WITHIN 0 FEET OF A RESIDENTIALLY ZONED PROPERTY IN LIEU OF THE REQUIRED 100 FEET.
2. VARIANCE FROM BCCR: SECTION 409.6 TO ALLOW 492 PARKING SPACES TO BE PROVIDED IN LIEU OF THE REQUIRED 582 PARKING SPACES.
3. VARIANCE FROM BCCR: SECTION 405.4.B TO WAIVE THE REQUIREMENT TO PROVIDE REST ROOMS.

LOT 1
PLAT ONE OF
WHITE MARSH RETAIL CENTE
S.M. 63/53
BEF REIT INC.
12071/241
TAX ACCT. # 2200008647

BELAIR ROAD WHITE MARSH
JOINT VENTURE
PILAT 65/90
TAX ACCT. # 2200016283

DRAINAGE & UTILITY
EASEMENT
S.M. 63/53

LOT 3
PLAT TWO
WHITE MARSH RETAIL CENTER
PLAT REF 68/53

TWO STORY MASONRY BUILDING
BUILDING AREA: 16,140 Sq. Ft.

WHITE MARSH BOULEVARD

RIGHT-OF-WAY WIDTH VARIES

MARYLAND ROUTE 43
(S.H.A. PLATS #50141 & #50142)

NOTES:

PROPERTY OWNERSHIP:
BELAIR ROAD WHITE MARSH JOINT VENTURE
C10 HERITAGE PROPERTIES, INC.
515 FAIRMOUNT AVENUE
TOWSON, MARYLAND 21204
AREA OF PROPERTY
NET AREA 17.746± Ac.
GROSS AREA 17.791± Ac.
PLAT REFERENCE:
PLAT 68/34
LOT 3, PLAT 134, "WHITE MARSH RETAIL CENTER"
TAX MAP NO. 81, PARCEL 1209
COUNTY AND DISTRICT NO. 220000895
ZONING MAP: NE-B-F
ZONING: BR
FLOOR AREA RATIO:
116,140 S.F./17.761255 S.F. = 0.15
< 2.0 ALLOWED
PARKING REQUIRED
580 RETAIL
1 EMPLOYEE
1 COMPRESSED AIR STATION
582 SPACES
PROVIDED: 492 SPACES
(INCLUDING 12 HANDICAPPED SPACES)
PREVIOUS COMMERCIAL PERMITS:
B090565, B091180, B098863, B109246, B136440,
B14974, B154500, B17474, B132378, B328188
B36507/
CRG PLAT APPROVAL: MARCH 2, 1992
AS CONFIRMED BY JEFFREY LONG OF BALTIMORE COUNTY
OFFICE OF PLANNING, ON OCTOBER 14, 1993, THE WHITE MARSH
RETAIL CENTER, WITHIN WHICH THE B.J.'S WHOLESALE CLUB
LIES, IS A "PLANNED SHOPPING CENTER" AS DEFINED BY
SECTION 101 OF THE BALTIMORE COUNTY ZONING REGULATIONS.
THE WHITE MARSH RETAIL CENTER IS OVER 20% COMPLETE, AND
THERE ARE NO OTHER FUEL SERVICE STATIONS IN THE
AREA. ALL NEW SIGNAGE WILL COMPLY WITH SECTION 450 OF THE
BALTIMORE COUNTY ZONING REGULATIONS.
FUEL SERVICE STATION AREA-12 FUEL SERVICE SPACES
X 1500 S.F. = 18,000 S.F. USE DIVISION LINE SHOWN FOR
ILLUSTRATIVE PURPOSES ONLY
WATER WILL BE PROVIDED AT 510K

LOCATION MAP

SCALE: 1" = 2000'

DATA SOURCES

PROPERTY INFORMATION SHOWN HEREON IS BASED UPON THE PLAT ENTITLED "PLAT TWO OF WHITE MARSH RETAIL CENTER" PREPARED BY DAFT-MCCUNE-WALKER, INC. DATED DECEMBER 20, 1990 AND RECORDED IN PLAT BOOK 63, PLAT 583

TOPOGRAPHY FROM AN ALTA SURVEY BY DAFT-McCUNE-
WALKER, INC. LAST REVISED NOVEMBER 10, 1995.

100 YEAR FLOODPLAIN SHOWN HEREON IS BASED UPON THE PLAT ENTITLED "PLAT TWO OF WHITE MARSH RETAIL CENTER" DATED DECEMBER 20, 1990 AND RECORDED IN PLAT BOOK 63, PLAT 53.

PROPOSED FUEL STATION DESIGN FROM A PLAN
PREPARED BY JACQUES WHITFORD COMPANY, INC.

COORDINATES AND BEARINGS SHOWN HEREON ARE
BASED ON THE BALTIMORE COUNTY METROPOLITAN
DISTRICT COORDINATE SYSTEM

DMW

Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

**A Team of Land Planners
Landscape Architects,
Engineers, Surveyors &
Environmental Professionals**

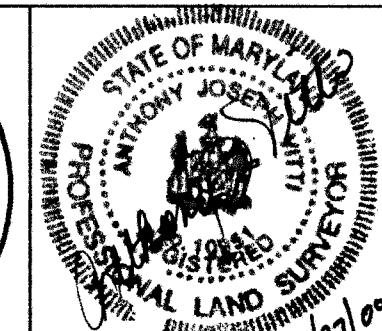
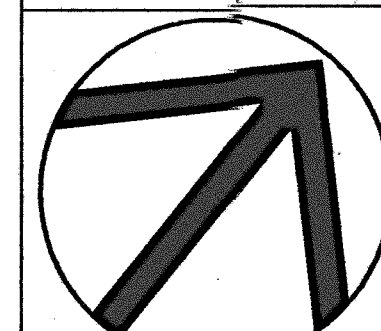
PLAN TO ACCOMPANY PETITION FOR ZONING VARIANCE

BJ'S WHOLESALE CLUB

4201 WHOLESALE CLUB DRIVE

14TH ELECTION DISTRICT

6TH COUNCILMANIC DISTRICT
COUNTY MARYLAND



DATE	BY	REVISIONS
------	----	-----------

DATE	BY	REVISIONS
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00.309-A

THE DATES

01-27-00

BASE: WDF

DRAWN: WDE

DRAWN: WEE

DESIGNED:

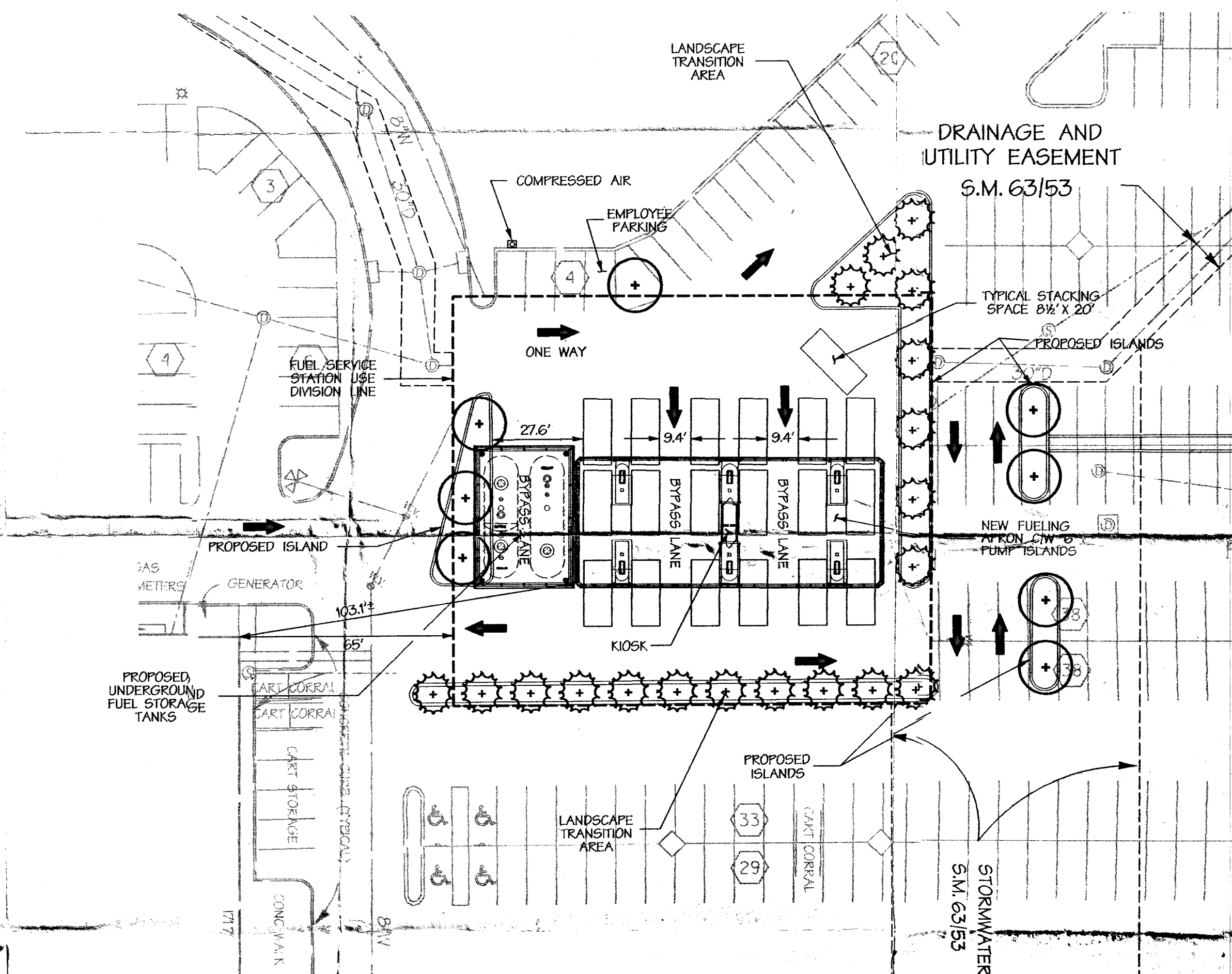
DESIGNED: _____
CHECKED BY: _____

CHECKED BY: _____

DATE CHECKED: _____

PROJECT NO.: 88021.Z

1 of 2



DETAIL PLAN
SCALE: 1"=30'

DATA SOURCES:

PROPERTY INFORMATION SHOWN HEREON IS BASED UPON THE PLAT ENTITLED "PLAT TWO OF WHITE MARSH RETAIL CENTER" PREPARED BY DAFT-MCUNE-WALKER, INC. DATED DECEMBER 20, 1990 AND RECORDED IN PLAT BOOK 63, PLAT 53.

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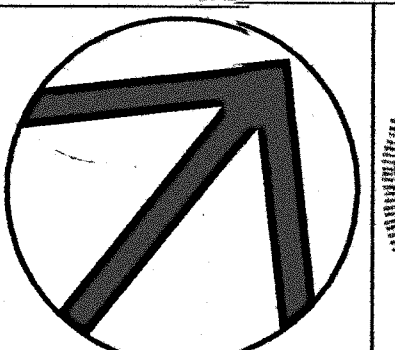
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A Team of Land Planners,
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PLAN TO ACCOMPANY PETITION
FOR ZONING VARIANCE
DETAIL PLAN

BJ'S WHOLESALE CLUB
4201 WHOLESALE CLUB DRIVE

14TH ELECTION DISTRICT BALTIMORE COUNTY MARYLAND 6TH COUNCILMANIC DISTRICT BALTIMORE COUNTY MARYLAND



DATE	BY	REVISIONS

ISSUE DATES	BASE: WDE
REVIEW: 01-27-00	DRAWN: WDE
BID:	DESIGNED:
PERMIT:	CHECKED BY:
CONSTRUCTION:	DATE CHECKED:
SCALE: 1"=30'	DRAWING:
PROJECT NO.: 88021Z	2 of 2