

Case No. SP-00049/01

Applicant: BJ's Wholesale Club, Inc.

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER AFFIRMING PLANNING BOARD DECISION

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 04-291, to approve with conditions a revision to a Detailed Site Plan, SP-00049/01, showing a proposed gas station, a propane tank sales area, an addition to a tire sales center, and a variance of 46 feet from the 150-foot street frontage requirement for the gas station, on property described as approximately 11.43 acres of land in the C-M Zone, in the northeast quadrant of the intersection of Ball Park Road and Governor's Bridge Road, Bowie, is hereby:

AFFIRMED, for the reasons stated by the Planning Board, whose decision is hereby adopted as the findings of fact and conclusions of law of the District Council in this case, with the following additions.

A. The District Council agrees with the Planning Board, for the reasons stated by the Board, that the applicant has satisfied all site design guidelines and other Zoning Ordinance requirements, with the exception of the frontage requirement in Section 27-358 (a) (1), adopted by reference in the Commercial Table of Uses in Section 27-461 (b).

B. Section 27-358 (a) (1) of the Zoning Ordinance, which applies to all new gas stations, requires 150 feet of frontage on a public right-of-way. The purpose of this provision is to insure adequate room for access, onto and off of a gas station site, and adequate spacing between gas stations and other uses on adjoining properties.

C. The subject parcel has 104 feet of frontage on Ball Park Road, a 70-foot public right-of-way. The applicant has requested a variance from the frontage restriction in Section 27-358 (a) (1), to waive 46 of the 150 feet of frontage required for the gas station. The applicant, citing Section 27-230 (a), states that the subject property has "exceptional . . . or . . . extraordinary situations or conditions"; that strict application of the frontage requirement will result in "peculiar and unusual practical difficulties to, or exceptional or undue hardship upon" the property owner; and that waiving the 150-foot requirement by 46 feet "will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan."

D. The District Council agrees with applicant and Planning Board that Zoning Ordinance variance requirements in Section 27-230 (a) have been met, and the applicant has proved that it is entitled to the requested variance. Specific findings are given below.

E. Opposition argues that the applicant has not proved practical difficulties or undue hardship to the property "owner," as Section 27-230 (a) (2) requires. But the applicant, BJ's Wholesale Club, Inc., is a long-term tenant on the subject property, with sizable structures and substantial investments in the property. These investments benefit both the applicant, tenant BJ's Wholesale Club, and the record owner. Moreover, the owner signed and joined in the tenant's application, for both the Detailed Site Plan and the variance. To the degree that the applicant tenant, BJ's Wholesale, suffers from denial of its site plan application, the record owner suffers equally; to the degree that strict application of the 150-foot frontage requirement causes difficulties or hardship to the applicant, it causes the same difficulties or hardship to the record owner. For purposes of this application – both site plan approval and variance – the tenant and the record owner stand on the same footing. Denial of the gas station use to tenant BJ's denies it also to the record owner. One cannot tenably argue – as the opposition attempts to do – that there is a distinction in

this case, for purposes of Section 27-230 (a), between tenant-applicant and record owner. Both will be adversely affected, if the variance application or the site plan application is denied.

F. Opposition also argues that this proposed gas station includes vehicle repair services, since part of the BJ's Wholesale Club's shopping center has a tire store and auto parts facility. But the applicant is simply continuing and expanding tire store and automobile parts store operations. These uses are accessory to (or otherwise associated with) the retail store on the premises; they are not part of the gas station use, and they can be placed in operation regardless of whether the gas station is ever constructed. There are no repair services with the gas station use, and Section 27-358 (a) (9), concerning repair services, does not apply.

G. The applicant's site plan and variance application show that the subject property, Parcel C, 11.43 acres in the C-M Zone, has just 104 feet of frontage on Ball Park Road. The short length of frontage on this commercial road comes about primarily because the property has an odd shape, lying behind a large stormwater management pond on Parcel E, which has hundreds of feet of frontage on Ball Park Road. When the large tract which included Parcels C and E was subdivided, the stormwater management pond was placed on the large Parcel E, with the extensive frontage, because of the topography of the tract. Parcel E has the stormwater management pond and separates the subject property from Ball Park Road to capture and hold most efficiently the runoff from the rest of the tract, including Parcel C. The size and shape of the pond and its parcel, Parcel E, have left the subject property, Parcel C, in the shape of a flag, with only 104 feet of frontage.

H. Section 27-230 (a) of the Zoning Ordinance requires the following proofs of a variance applicant:

(a) A variance may only be granted when . . . :

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
- (2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and
- (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

Section 27-239.03 authorizes both Planning Board and District Council to approve variances in site plan cases, applying the standards in § 27-230.

I. Parcel C has an odd shape and for that reason only a short length of frontage. Parcel C therefore meets the subsection (a) (1) requirement that the subject property (a "specific parcel of land") have "exceptional . . . shape, exceptional topographic conditions, or other extraordinary situations or conditions." Because of topography, Parcel E has the large stormwater management pond adjacent to Ball Park Road, depriving Parcel C, the subject property, of adequate frontage on the road. Parcel C has an odd shape, a narrow base, and insufficient frontage, and the conditions affecting Parcel C do not generally affect properties in the vicinity of the subject property.

J. As indicated above, the applicant, BJ's Wholesale Club, and the owner are equally adversely affected by the inadequate frontage for Parcel C. The 150-foot frontage requirement in Section 27-358 (a) (1), if applied strictly to the subject property, would result in "unusual practical difficulties" and "undue hardship" upon both owner and tenant, co-applicants in this case, because the frontage requirement alone prevents them from proving compliance with applicable gas station requirements in §§ 27-358 and 27-461 (b). The frontage restriction has the effect, on this property alone, of preventing approval of a gas station in the C-M Zone, where gas stations are permitted by right. The frontage problem on the subject property creates both undue hardship and practical difficulties to applicant and owner, and the variance will relieve the hardship and difficulties.

K. The applicant easily meets the subsection (a) (3) requirement, non-impairment of "the intent, purpose, or integrity of the General Plan or Master Plan." The subject property and others in the vicinity are intended for commercial uses, including heavy commercial uses like gas stations. They are zoned for such uses, as the Master Plan recommends. The subject property meets all standards in the C-M Zone for gas stations except the 150-foot frontage restriction. There is no basis for a claim that approval of this variance application will substantially impair the Master Plan or General Plan.

The District Council agrees with applicant and Planning Board that the proposed gas station does not substantially impair the purpose, intent, or integrity of either the Bowie-Collington Master Plan or the Southeast Quadrant Study. The study suggests a traffic generation limitation, a "trip cap," on some properties, including the subject property, in the vicinity of the intersections of US 50, US 301, MD 3, and MD 197, but the applicant meets the trip cap restriction.

The Planning Board since about 1991 has imposed the trip cap on subdivisions in and adjacent to the southeast quadrant of the US 50 – MD 3 interchange. The 1994 subdivision, 4-94704, which included the subject property was one of the subdivisions to which the Southeast Quadrant Study trip cap limitations were applied. The opposition seems to suggest that in the present site plan application, the proposed gas station use will exceed the Southeast Quadrant Study's trip cap. The opposition argues that the applicant, BJ's Wholesale Club, should be held to the trip generation estimate it made in 1999, when it opened its retail store, rather than the more recent trip count made by the applicant's traffic consultant.

L. The purpose of the Southeast Quadrant Study, as relevant here, was to minimize the number of new daily traffic trips generated by new land uses along Ball Park Road. As new uses were instituted, their owners were required to submit per-trip fees (approximately \$210.00 per trip)

for new trips generated (or estimated to be generated), beyond certain limits. In 2000, during the review of the BJ's Wholesale Club Detailed Site Plan application, SP-00049, applicant BJ's estimated (actual counts were of course not available) that 4,537 new trips would be generated, and it paid a per-trip fee for that number of trips.

The present application is supported not by an estimate, but by actual traffic counts. They show that the 4,537-trip estimate of 2000 was almost 1,200 too high. The applicant therefore states, and the Council must agree, that the subject property has sufficient new-generation trips assigned to it – 4,537 – that it can accommodate within that total the existing retail store, the proposed propane store and tire store addition, and the new gas station. That is, the original BJ's Wholesale Club store complied with Southeast Quadrant Study trip limitations by estimating the number of new trips and paying a fee for the new trips, and the present new uses (gas station and others) comply because a recent traffic count shows that the original estimate was too high, and the additions fit within the original estimate.

M. Summary. As stated above, the applicant has met all variance requirements, and opposition arguments are fully addressed in the record.

First, because the topography required that Parcel E and the stormwater management pond occupy substantial road frontage on Ball Park Road, the subject property, Parcel C, has a narrow base and inadequate road frontage. This condition is present on the subject parcel but not generally on properties in the vicinity, in and around Ball Park Road.

Second, because of topography and its unusual shape, the subject property has narrow road frontage, 104 feet, and cannot meet the 150-foot frontage restriction in Section 27-358 (a) (1), which applies to new gas stations. As a result of narrow road frontage, the applicant – and the owner, a co-applicant – cannot meet the frontage requirement in the Zoning Ordinance, and strict

application of Ordinance requirements will result in denial of the detailed site plan application for the gas station. Thus, for both the applicant tenant and the owner, strict application of the frontage restriction will cause practical difficulties and undue hardship.

Third, granting the variance from frontage requirements will not substantially impair the intent, purpose, or integrity of the Master Plan or General Plan. The subject property is zoned C-M, in accordance with the Master Plan; gas stations are permitted by right in the C-M Zone; and the applicant meets traffic trip generation restrictions in the 1990 Southeast Quadrant Study.

Fourth, any automobile tire or parts installation on the subject property is independent of the proposed gas station. Section 27-358 (a) (4) does not apply, as the opposition argues.

Conditions.

Affirmance of the Planning Board's decision is subject to the following conditions:

1. Prior to certification of the detailed site plan, the following revisions shall be made:
 - a. Dimensions for all parking and loading spaces shall be shown on the plans.
 - b. The plans shall be revised to indicate concrete curbing in the islands defining the area for the gas station. Attractive landscaping shall be provided in the islands.
 - c. Dimensions shall be provided indicating that the sidewalk in front of the gas station kiosk building is at least five feet wide.
 - d. The applicant shall update the landscape plan to include the required landscape schedules or provide a copy of the original landscape plan as part of the subject detailed site plan set.
2. The area discrepancy between the site plan and building elevation plan regarding the square footage of the proposed tire center addition shall be rectified.
3. The one parking space proposed in the propane sales area shall be a van-accessible handicap parking space.
4. In addition to the standard pavement-painted symbol and signage at the head of the stalls, all handicap parking spaces shall be painted blue in their entirety. A note to this effect shall be placed on the detailed site plan.

5. Landscaping:
 - a. At least 50 percent of the plant species shall be native material, with the remainder of the proposed vegetation being nonnative/noninvasive plant material. The landscape plan shall be revised to reflect this condition.
 - b. The caliper of the "October Glory" Red Maple trees noted on the landscape plan shall be increased to a minimum of 2.5 inches.
6. One light pole and fixture shall be installed and located along the row of new 16 parking spaces. This new lighting equipment shall match the existing freestanding light poles and fixtures used elsewhere on the site in terms of height, color and style and shall have a full cut-off lens. Details of the light pole and fixture shall be provided on the detailed site plan.
7. The building-mounted sign proposed on the southern elevation of the tire center addition shall be deleted from the application, or the applicant shall file an application for a departure to permit the sign to be installed.
8. All flags or banners shall be mounted, suspended or otherwise displayed from any building or be permitted on the site, except a standard size American flag. A note shall be provided on the detailed site plan reflecting this condition.
9. The color, type, pattern and arrangement of block used on the kiosk building shall match that which exists on the main retail building.
10. The gasoline canopy shall be equipped with sprinklers.
11. The propane tank area shall be enclosed by a fence and locked by a security gate.

Ordered this 20th day of June, 2005, by the following vote:

In Favor: Council Members Dean, Bland, Campos, Dernoga, Exum, Knotts and Peters

Opposed:

Abstained:

Absent: Council Members Harrington and Hendershot

Vote: 7-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

By: _____
Samuel H. Dean, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council