

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(7900 – 7990 Honeygo Boulevard) *	OFFICE OF
14 <sup>th</sup> Election District	
6 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
White Marsh Plaza Trust	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY

**Petitioner**

**Case No. 2020-0262-SPHA**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of White Marsh Plaza Business Trust, Legal Owner (“Petitioner”) for property located at 7900-7990 Honeygo Blvd., White Marsh. The Special Hearing requests an amendment to the Order and Site Plan approved in Case No. 2013-0206-A. In addition, Petitioner requests a Variance from the Baltimore County Zoning Regulations (“BCZR”) §409.6 to allow a total of 381 off-street surface parking spaces in lieu of the required 516 parking spaces.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Andy Bottero, Senior Director of Development and Kathleen Zachmeier-McLaren, Regional Property Manager, both appeared on behalf of Federal Realty Investment Trust (a/k/a FR White Marsh, Inc.), the sole trustee of White Marsh Plaza Business Trust in support of the requested relief. Christopher W. Armstrong, PE (Dev. Ex. 2) who prepared and sealed a site plan in support of the Petitions (the “Site Plan”) (Dev. Ex. 1) and J. Mark Keeley, PTP with Traffic Concepts, Inc. (Dev. Ex. 5) also appeared. David H. Karceski, Esquire and C. Andrew Robinson, Esquire and Venable, LLP represented the Petitioner. There were no protestants or interested persons in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) dated December 9, 2020 and from Department of Environment and Sustainability and Protection (“DEPS”) dated October 29, 2020. Those agencies did not oppose the requested relief.

### **FACTS AND EVIDENCE**

The case proceeded by way of modified proffer from Mr. Karceski and Mr. Keeley. The Property is 7.2 +/- acres and is zoned business-major, commercial town center (BM-CT). The Property is improved with a strip shopping center included a Giant food store, constructed in the 1980s, which anchors the center. The Property is contiguous to, but not part of, the White Marsh Mall. It is bound on west by Perry Hall Blvd. and on the south by Honeygo Blvd. The northern and eastern sides are bound by access roads which flow into the White Marsh Mall.

Aerial photographs provide an accurate depiction of the Property which is elbow shaped and is different from other properties in the surrounding area. (Pet. Ex. 3). In addition, street view photographs of various aspects of the Property, including the parking lot, offer a detailed perspective of a well-maintained site. (Pet. Ex. 4).

In 2013, a parking variance was granted for 387 spaces in lieu of 475 required spaces for commercial tenants including restaurants (Case No.: 2013-0206-A). The 2013 site plan shows the existing tenants in the shopping center at that time. (Dev. Ex. 7). In 2011, a sign variance was granted for the Giant. (Case No.: 2011-0041-A).

Mr. Keeley testified in regard to his parking analysis which referenced the Institute of Transportation Engineers Parking Generation Manual 5<sup>th</sup> Edition (“ITE Manual”) to obtain the peak hour parking demand for standalone uses and for a shopping center. Mr. Keeley also factored in the parking counts he conducted in April of 2013 and again in January, 2021. (Dev. Ex. 6).

Based on this information, he opined that the Property has an adequate parking supply with 381 spaces to support the center. (Dev. Ex. 6).

### **DECISION**

Petitioner in this case seeks a parking variance of 381 off-street surface parking spaces in lieu of the required 516 parking spaces under BCZR, §409.6, which is necessitated by a change in tenants (new retail tenants (including restaurants) for the center. These new tenants require a different parking calculation than that in the 2013 Site Plan. (Dev. Ex. 7).

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995). In both Case No.: 2013-0206-A and Case No.: 2011-0041-A, the Property was found to be unique. Given that the Property has not changed in terms of its irregular physical characteristics and is still ‘elbow-shaped’, I find that the prior findings of uniqueness apply here.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given it would be unable to attract commercial tenants for its center. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of community opposition. In addition, a parking study was completed by Traffic Concepts, Inc. (Pet. Ex. 6) demonstrating that more than sufficient parking exists on Property. Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

**THEREFORE, IT IS ORDERED** this 8<sup>th</sup> day of **February 2021**, by this Administrative Law Judge that the Petition for Special Hearing for an amendment to the Order and Site Plan approved in zoning Case No. 2013-0206-A is **GRANTED**; and it is

**FURTHER ORDERED** that the Variance pursuant to from BCZR, §409.6 to allow a total of 381 off-street surface parking spaces in lieu of the required 516 parking spaces is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

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

Signed \_\_\_\_\_  
MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm