

Case No. 14-131-SPHXA and CBA-14-033/Riverwatch, L.L.C. aka Royal Farms

and Two Farms, Inc., the contract purchaser/lessee a/k/a “Royal Farms” (hereinafter “Royal Farms” and/or the “Petitioner”) were represented by David H. Karceski, Esquire, Christopher D. Mudd, Esquire and Venable, L.L.P. The Protestants, Sparks-Glencoe Community Planning Council, Tom Graul, Ken Bullen, Jr. and Ruth Mascari were represented by Michael McCann, Esquire. A public deliberation was held on April 29, 2015.

FACTUAL BACKGROUND

The property consists of 5.88 acres+/- of land in the Hereford area of Baltimore County. It is situated on the north side of Mt. Carmel Road between York Road to the east and I-83 to the west (the “Property”). The Property is an unimproved cornfield. The zoning is BL-CR (Business, Local with a Commercial Rural overlay district). Other commercial uses occupying the section of Mt. Carmel Road where the Property lies, include an Exxon gas station, a Graul’s supermarket, a pharmacy, a bank, an insurance office and a strip shopping center. Bordering I-83 on the west end of Mt. Carmel Road is a State Highway Administration maintenance facility.

In this case, Royal Farms requests to construct a fuel service station in combination with a convenience store and carryout restaurant. The building would measure 5,125 sq. ft. as set forth on the proposed Site Plan (Pet. Ex. 1). Royal Farms is also in need of approval to illuminate all four (4) of its proposed signs.

On the first hearing date, Royal Farms withdrew the Variance requests to permit the wall mounted enterprise sign and to permit a front yard setback. Accordingly, those issues were dismissed.

Finally, Royal Farms seeks a limited exemption under BCC, §32-4-106(b)(8) from the development regulations in connection with the subdivision of the Property into two (2) lots. The Royal Farms store will be located on Lot 2 (2.51 acres). There are two (2) proposed access points to the Royal Farms store namely: a shared driveway between Lots 1 and 2 and an entrance/exit onto the Property from Mt. Carmel Road.

LAW AND REGULATIONS

The law and regulations that are dispositive to the Petitioner’s request for a special exception are contained in the following sections of the BCZR and BCC:

1. Article 4 (Special Regulations) of the BCZR, Section 405 (Fuel Service Stations),
2. Article 2 (Districts) of the BCZR, Section 259.3 (CR Districts),
3. Article 4 (Special Regulations) of the BCZR, Section 450 (Signs),
4. Article 5 (Special Exception Factors) of the BCZR, Section 502.1.,
5. Title 4 (Compatibility Factors) of the BCC, Section 32-4-402, and
6. Title 4 (Limited Exemption) of the BCC, Section 32-4-106(b)(8).

A complete recitation for the aforementioned regulations and code sections are listed in Appendix A of this Opinion.

FACTS AND EVIDENCE

Over the 8 days of hearings before this Board, Royal Farms presented 14 witnesses in its case in chief and an additional 4 witnesses in rebuttal. Royal Farms also entered into evidence 54 exhibits. Likewise, the Protestants called 26 witnesses and offered into evidence 78 exhibits, 71 of which were accepted by the Board.

When a fuel service station in combination with a convenience store and carryout restaurant is requested, the burden of proof is on the petitioner to prove all of the applicable elements in the BCZR §259 – ‘Districts’ and BCZR §405 – ‘Fuel Service Stations’. From the Board’s reading of these regulations, §259 and §405 overlap, duplicate and reference not only each other but other additional requirements such as Special Exception factors in §502.1 and the Compatibility factors in BCC, Title 32, Subtitle 4. As a result, evidence that is required to prove one section, or subsection, can be used to prove another section. In this case, the Board found many instances of repetition among the required factors for CR Districts generally and for fuel service stations

specifically. As a result, to avoid confusion, the Board believes it may be useful to summarize the evidence on each factor followed by a decision on each factor.

BCZR §259.3.C.1 – Bulk Regulations.

In support of the Petitioner’s case, David Woessner, PE, testified as an expert professional engineer with detailed knowledge of zoning regulations. Mr. Woessner prepared and certified the Site Plan (Pet. Ex. 1A, B and D). He explained that the Bulk Regulations of BCZR §259.3.C.1, which are contained within the ‘Use Restrictions’ of 259.3.C, are required for a convenience store and carryout. Specifically, the gross floor area of the Royal Farms store and carryout measures 5,125 sq. ft., which was below the maximum 8,800 sq. ft. under §259.3.C.1.a. The floor area ratio (‘FAR’) under §259.3.C.1.b was only ¼ of the maximum 0.20. Finally, the building height would not exceed 30 ft., measuring 27 ft. 10 in., and therefore would meet the requirements of §259.3.C.1.c.

Protestants did not offer expert testimony on the issue of bulk regulations.

BCZR §259.3.C.2 – Setbacks.

Mr. Woessner also testified that the setbacks under §259.3.C.2. were met and therefore the proposed use did not require any variances. Under §259.3.C.2.a, the maximum front yard setback based on the average of the adjoining properties is 65.8 ft. Measuring from the proposed island under the canopy to the nearest property line, the front yard setback is 57 ft. from Mt. Carmel Road. He said that the island and canopy are identified as a “structure” from which to measure the setback, in accordance with the §303.2.d of the Zoning Commissioner’s Policy Manual. Under §259.3.C.2.b, the side yard setback is 56.68 ft. and the rear yard setback is 212.42 ft. Mr. Woessner opined that both of these meet the minimum 15 ft. setback.

Protestants did not offer expert testimony on the issue of setbacks.

BCZR §259.3.C.3 – Landscaping.

Mr. Woessner explained that a landscape buffer as required under §259.3.C.3.a. will envelope the entire perimeter of the Property. There will be 1 tree for every 8 parking spaces. The islands will be landscaped to meet the 7% impervious surface test under §259.3.C.3.b. A landscape plan outlining the details was accepted into evidence (Pet. Ex. 6).

Protestants did not offer expert testimony on the issue of landscaping.

BCZR §259.3.C.4 – Parking.

The required and proposed number of parking spaces is 32. The parking layout is consistent with neighboring Exxon station and other businesses along Mt. Carmel Rd. such that parking will be located between the convenience store and the street, as well as along the sides of the building. Other than entrance to the Property from the access road between the 2 lots, there is only 1 entrance and exit onto Mt. Carmel Road. Thus, according to Mr. Woessner §259.3.C.4 will be met.

Eric McWilliams, a landscape architect with Boehler Engineering, testified that the Grading Plan is still in the preliminary stages and that a final plan will be submitted to the County.

Protestants did not offer expert testimony on the issue of parking.

BCZR §259.3.C.5 – Environmental Holding Capacity.

As for the environmental holding capacity requirement in §259.3.C.5, in regard to potential interference with water, Paul Scott was accepted as an expert for Royal Farms in the field of hydrogeology. He undertook to study the impact of hydraulic pumping wells and the adequacy of the proposed stormwater management ('SWM') facilities with regard to the proposed use. He prepared a report entitled 'Hydrogeologic Evaluation' dated June 21, 2013 (Pet. Ex. 29).

Mr. Scott performed a ground water recharge analysis which evaluates the amount of water that moves through the Property based on precipitation. He concluded that there will be ample surplus recharge to the Property allowing for replenishment of withdrawn groundwater. Specifically, he explained that the peak amount of water recharge of 1,600 gallons per day exceeds

the well withdraw amount of 1,200 gallons per day. As a result, he testified that there would be an 80% return to the system by artificial recharge. In essence, he opined that there would be no net withdraw amount.

Mr. Scott also explained the peak water withdraw of 1,200 gallons per day for the proposed use is less than 1 foot of drawn down in adjacent wells. Accordingly, he said that the 3 wells on the Grauls' property would not be adversely affected by the proposed use. Indeed, he added that, because the Grauls' wells were closely spaced to each other (80 ft. +/-), those wells were more likely to affect each other than the Royal Farms' wells influencing them.

Mr. Scott also concluded that the Royal Farms' wells would require a yield of 0.83 gallons per minute at most. He said that this well yield meets the State of Maryland well yield of one gallon per minute. With regard to the proposed septic system, Royal Farms will be incorporating the Best Available Technology ("BAT") into the system and therefore, he concluded, there will not be any adverse impacts on either the Royal Farms' wells or the wells on neighboring properties.

In response to the issue of impact on water, Harvey Cohen, a hydrogeologist with S.S. Papadopulos, a consulting firm specializing in water resource and environmental management, testified as an expert on behalf of the Protestants. Notably, Mr. Cohen served as an expert witness in the Jacksonville Exxon spill case. Mr. Cohen was asked to study the potential impacts to groundwater in terms of water supply and contamination. Mr. Cohen prepared a report in which he concluded that wells in the Hereford Shopping Center where the Grauls is located are susceptible to contamination (Prot. Ex. 37).

Mr. Cohen based his opinion on a study that he had performed for the federal government in the late 1990s or early 2000, entitled '*Source Water Assessment Program* ('SWAP')'. He explained that he and his company were hired to study non-community public water systems in Baltimore County. A non-community system is a system that supplies water to fewer than 25 users a year. He added that Grauls was one of the systems he studied. The Source Water Assessment

Area is the area that the State of Maryland considers to be a potential contaminant source of the non-community public water system.

He testified that nitrate levels were very high in the Hereford Shopping Center well; that sanitary surveys showed the presence of MTBE and other gasoline contaminants in the Grauls' wells in 2003 came from the Exxon; and that MDE data indicates that the area is considered to be a "high risk groundwater use area." This last point means that any gas station being built must do additional monitoring for the tanks and the piping to prevent the contamination of gas from entering the subsurface.

Mr. Cohen testified that the groundwater flow direction is west-northwest which he based on his reading of a topographical map, a 1988 MDE report showing groundwater level contours and a 2005 site assessment report. He further opined that there were 2 other properties zoned BL-CR that would not pose the same threat for subsurface contamination.

Mr. Cohen stated that Royal Farms overinflated both the amount of water that is available for pumping and the amount of water that can be transmitted horizontally. Mr. Cohen said that the transmissivity¹ is 15 feet per day rather than 800 feet per day and that a lower transmissivity means more draw down in a well. He reasoned that more draw down in a well may be an indication that more contaminants will be drawn towards the well (Prot. Ex. 37).

Also testifying for the Protestants was Markus Hilpert, a researcher and professor at the Johns Hopkins Bloomberg School of Public Health with a Ph.D. in civil engineering. Although he had not previously testified as an expert, the Board accepted Mr. Hilpert as an expert in the areas of engineering, physics and in the transportation and infiltration of contamination, including gasoline.

¹ 'transmissivity' – a technical term used by hydro-geologists to indicate the ease water will pass through a geologic formation

Mr. Hilpert testified about a study he conducted entitled: “Infiltration and Evaporation of Small Hydrocarbon Spills at Gas Stations’ published in the 2014 *Journal of Contaminant Hydrology* (Prot. Ex. 39). His study discusses what happens when small amounts of gasoline spill into the environment. At the hearing, the Board viewed Mr. Hilpert’s Power Point presentation describing “Chronic Hydrocarbon Release” (Prot. Ex. 40).

To demonstrate how gasoline enters the environment daily at gas dispensers, he produced a video he took showing sequence of events that occur when a milliliter of gasoline drops onto a concrete pad. His study concluded that .01% of gasoline spilled by dispensers on the ground can translate into 120 gallons of gasoline spilled at a station whose sales equal 1.2 million gallons of gas. Mr. Hilpert highlighted that when gasoline spills onto concrete, it will remain there even after 6 hours. If the concrete is cracked or damaged, the saturation of gasoline into the concrete will be accelerated. It was Mr. Hilpert’s expert opinion that the proposed Royal Farms gas station has the potential to spill 240 gallons of gas per year into neighboring wells.

Addressing Mr. Cohen’s opinions on rebuttal, Paul Scott testified that the other two properties proposed by Mr. Cohen as better suited for the proposed Royal Farms were in fact also SWAP areas and would be worse than the Property particularly because Hereford High School wells are downslope from the alternate site.

Mr. Scott also countered that groundwater flow does not follow the topographical map. Rather, he said ground water on the Property would flow to the north because there is a topographic divide, which is the location on the Property where the Department of Environmental Protection and Sustainability (“DEPS”) instructed the Petitioner to locate the septic system. Consequently, Mr. Scott concluded that Mr. Cohen’s opinion was nothing more than a general assumption. Mr. Scott emphasized that the Royal Farms’ wells are not immediately adjacent to the Hereford Shopping Center but rather to the north. In addition, Mr. Cohen failed to take into account the proposed SWM facilities which will control water runoff.

BCZR §259.3.C.6. - Outside Storage.

Mr. Woessner testified that Royal Farms was not proposing to store equipment or material outside on the Property. Therefore, BCZR §259.3.C.6 did not apply to the proposed use.

There was no evidence presented by the Protestants in regard to outside storage.

BCZR §259.3.C.7 – Exterior Signs, Site Lighting and Accessory Structures.

With regard to the proposed exterior signs for the store and fuel pumps islands, Mr. Woessner acknowledged that Royal Farms is seeking approval to illuminate all of the proposed signs pursuant to BCZR §259.3.C.7.c, namely: a freestanding, a wall-mounted, as well as directional and fuel canopy signs (Pet. Ex. 1D and 1E). Mr. Woessner explained that the proposed Royal Farms signs are smaller in size than the maximum permitted under the BCZR.

Mr. Woessner explained that the Royal Farms' wall mounted sign measures 6.64 sq. ft. where the maximum is 8 sq. ft. (BCZR, §259.3.C.7.a) (Pet. Ex. 1D, 1E). The freestanding enterprise sign measures 24.5 sq. ft. and 20 ft. high where the maximum is 25 sq. ft. in size and 25 ft. high (BCZR, §259.3.C.3.7.b). *Id.* Two proposed directional signs will measure 0.93 sq. ft. where the maximum area is 8 sq. ft. and the Royal Farms logo will not be more than 30% of the total sign. *Id.* Three proposed canopy signs will measure 24.9 sq. ft. each where the maximum area is 25 sq. ft. Finally, Mr. Woessner testify that the proposed signs comply with BCZR §450 as required by BCZR, §259.3.C.3.7 (Pet. Ex. 1D, 1E).

There was no expert testimony presented by the Protestants that the proposed signs did not meet the sign requirements. While Royal Farms initially filed a Petition for variance under BCZR, §259.3.C.7 to permit a wall-mounted enterprise sign of 33.08 sq. ft. in lieu of the permitted 8 sq. ft., that request was withdrawn prior to the hearing. As a result, Royal Farms reduced the size of its proposed signage and does not require any variances in this case.

In regard to illumination of signs under BCZR §259.3.C.7.c, Mr. Woessner testified that illuminated signs already exist at the Grauls', Exxon, M&T Bank and the Hereford Pharmacy.

Additionally, the Protestants, including Kenneth Bullen (the manager at Grauls), Kirsten Burger and Nedda Pray, confirmed that the Grauls' signs are illuminated. As confirmed by Protestants, Kirsten Burger, Theaux LeGardeur, and Petitioner's witness Carol Daisey, the Exxon lights are on all day, every day. Further, Protestant, Lynne Jones testified that the sign at the First Baptist Church located at 9 Mt. Carmel Rd. is also illuminated.

BCZR §259.3.C.8 – Relationship to Surrounding Neighborhoods.

In BCZR §259.3.C.8, the proposed use must be compatible with the surrounding neighborhood. All new buildings or additions must meet the Compatibility Standards set forth in BCC §32-4-402. Under §32-4-402(c), the Director of Planning must make a recommendation for any development that is proposed in a CR District. Andrea Van Arsdale, the Director of Department of Planning, recommended approval of the development plan subject to certain conditions to enhance compatibility (Pet. Ex. 14).

Mr. Woessner testified with regard to each of the 8 criteria listed in Subsection (d) of §32-4-402. First, he defined the "neighborhood" as being bounded by I-83 and Mt. Carmel Road. This definition, he concluded was consistent with the definition of "neighborhood" in §32-4-402(a) as "a definable boundary such as a primary collector street or arterial street."

Mr. Woessner explained that under §32-4-402(d)(1), the proposed Royal Farms store will be arranged and oriented like the other buildings in the neighborhood, including the Exxon, to face Mt. Carmel Road and within the prescribed setbacks. The fuel canopies for both the Royal Farms and Exxon are similarly oriented.

William Mortorff, the project manager for the Royal Farms, presented the elevation drawings for the proposed store. He explained that Royal Farms typically uses a standard prototype. However, in this case, in order to maintain a rural design and to match the surrounding architecture, the silver roof was changed to red. The base of the store would be brick. Gables

were added to the windows. The size of and lettering on the signs was reduced as well as many of the architectural elements discussed with and agreed to by the Department of Planning.

Mr. Woessner also indicated that the proposed Royal Farms store and on-site parking will not have any adverse impact on the defined ‘neighborhood’ under §32-4-402(d)(2), as the store meets the setback requirements and the parking will not only be buffered by the landscaping but will be located along the side and front of the store, consistent with the parking of other commercial businesses on Mt. Carmel Road.

Mr. Woessner stated that Subsection (3) is not applicable here as there are no streets being proposed. There is only a private driveway connecting Lots 1 and 2.

According to Mr. Woessner, under Subsection (4), Royal Farms is proposing more open space than the neighboring businesses – as much as 40% of the Property will be open space. (Pet. Ex. 7). He confirmed that the open space patterns will be consistent with the existing open space patterns in the neighborhood.

Similar to Subsection (3), Mr. Woessner testified that Subsection (5) is not applicable here because there are no locally significant features on the Property such as distinctive buildings or vistas to be preserved along Mt. Carmel Road. The Hereford Community Plan reinforces that any locally significant historic buildings are located along York Road, not Mt. Carmel Road (Pet. Ex. 8). (Prot. Ex. 14).

With regard to the landscape design under Subsection (6), according to Mr. Woessner, although there is no landscape pattern along Mt. Carmel Road, Royal Farms is proposing vegetation indigenous to the area and the landscape buffer will exceed what is required.

Subsection (7) requires that exterior signs, site lighting and accessory structures support a uniform architectural theme and present a harmonious relationship with the neighborhood. As testified to by Mr. Mortorff, the proposed signs are smaller than required with small lettering and are consistent with other illuminated signs along Mt. Carmel Road. (Pet. Ex. 1D, 1E). Mr.

Woessner pointed out that Grauls has three separate free standing signs. The ‘Grauls Market’ roof sign has large script letters.

With regard to site lighting under Subsection (7), Randy Boice, PE of Johnson, Mirmiran & Thompson testified as an expert on behalf of Royal Farms. He prepared a Site Lighting Plan (Pet. Ex. 22). Mr. Boice provided the Board with ‘cut-sheets’ for the proposed light fixtures (Pet. Exs. 24A, 24B, 24C, 24D and 24E). He explained that the Property would have street lights on free standing poles, wall lights, flood lights, canopy lights and lights over the entrance to the store.

Mr. Boice explained that the lighting site plan divided the property into several zones and that the lighting or ‘*foot candles*’ are designed to give off specific amount of light depending on the zone. Mr. Boice highlighted that the goal of the lighting design was to limit the lighting across the Property “to be less than 1 foot candle.” In this way, he added that there would be no adverse impact on neighboring properties.

Mr. Boice explained that Royal Farms is proposing to use state-of-the-art LED lighting which projects the light down toward the ground rather than up or out and off the site. As requested by the Department of Planning (Pet Ex. 14), the lighting plan was submitted and approved by Baltimore County. (Pet. Ex. 44).

Other than cross examining Mr. Boice, the Protestants did not offer expert testimony in regard to site lighting.

Finally, in regard to Subsection (8), Mr. Woessner testified that the proposed Royal Farms store is in proportion with the buildings in the existing neighborhood in terms of scale, proportion, massing and detailing under BCC §32-4-402(d)(8) (Pet. Ex. 19A-D). The exterior incorporates a rural design. *Id.* The elevation drawings resemble an old-time country store with neutral colors, a copula on top of a red roof, as well as a brick and stone façade. *Id.* Moreover, according to Mr. Woessner, the floor area ratio (“FAR”) for the store is ¼ of the size of other commercial uses

including, Grauls (20.7% FAR), Village Plaza (20% FAR), Mt. Carmel Center (22% FAR) and pharmacy (21%) (Pet. Ex. 10).

Testifying against the Royal Farms on the issue of compatibility with the neighborhood were the Sparks-Glencoe Community Planning Council (“SGCPC”); Andrew Alcarese; Adam Collins; Nedda Pray (Correspondence Secretary for Board of SGCPC); and Ruth Mascari. The collective concerns of the Protestants and/or their witnesses is that a Royal Farms store and gas station is contrary to the rural character of Hereford. One or more of these witnesses testified that the proposed use is not compatible with the character of the “rural village” as mentioned in the Hereford Plan (Prot. Ex. 14).

Ruth Mascari was a member of the committee which drafted the Hereford Plan. She described the Hereford Plan as a “blueprint for restraint.” She said the goals of that Plan do not encourage development but were written to “preserve the rural atmosphere.” On cross examination, she did agree that the Hereford Plan did not prohibit all development and it did not forbid all new uses.

Kirsten Burger, President of SGCPC, testified that the SGCPC, which is an organization comprised of 400 members, has voted against the Royal Farms because it wants to maintain Hereford as a “rural village.” The geographic boundaries of the SGCPC include the width of Baltimore County between Hereford County and Carroll County, from Hunt Valley northward to MD/PA border, with Hereford at its center. The SGCPC acknowledged at the hearing that Mt. Carmel Road is the “center of commercial activity” which includes Hereford High School, the Hereford library and Grauls. Ms. Burger added that Royal Farms was not unique as there is one located every few miles. SGCPC believes that the Royal Farms does not enhance the rural character of Hereford.

On cross examination, Ms. Burger admitted that Appendix E of the Hereford Plan designated ‘convenience stores’ and ‘carryout restaurants’ as “acceptable uses” within Hereford.

(Pet. Ex. 8) (Prot. Ex. 14). She also conceded that gas stations were also listed in the “action” items as a type of “location service.” Ms. Burger further acknowledged that the “Bulk Regulations” were designed as a mechanism to limit growth and to set a dividing line between projects that met the Bulk Regulations (Floor Area Ratio “FAR”) and those that did not. By way of example, the Hereford Plan designated that businesses along Mt. Carmel Road exceeded the Bulk Regulations (Village Plaza (11,804 sq. ft.) and Mt. Carmel Center (11,088 sq. ft.)). *Id.*

She further conceded that the United Methodist Church on the corner of York Road and Monkton Road exceeded the Bulk Regulations when the church was enlarged. She further acknowledged that the veterinary office located in Hereford exceeded the Bulk Regulations when it sought to expand.

BCZR §259.3.C.3.9 – Auto Service Stations subject to BCZR§405.

BCZR §405.2 provides the locations in which fuel service stations are permitted. Mr. Woessner explained that in this case, §405.2.B is applicable and that a fuel service station is only permitted by special exception. As such Royal Farms is seeking approval of the fuel service station by special exception under Subsection §405.2.B. The following evidence was provided in regard to the special exception factors set forth in BCZR, §502.1:

§502.1.A – Adverse Impact on Health, Safety or General Welfare of Locality.

In analyzing the special exception standards set forth in BCZR §502.1, Mr. Woessner testified that the combined use of a fuel service station, convenience store and carryout would not be detrimental to the health, safety or general welfare of the locality under §502.1A. He referenced the commercial zones listed along Mt. Carmel Road on the Zoning Map (Pet. Ex. 4) and opined that the proposed fuel service station would satisfy Subsection 1A as it is similar to those other commercial uses. He added that Royal Farms did ‘extensive testing on water usage’ and that the proposed septic system passed all health department regulations.

Royal Farms also called Jay Wiedel, the District Manager for Containment Solutions, a business which manufactures underground storage tanks (“USTs”), to discuss the specific type of UST which is proposed to be installed for the Royal Farms fuel service station. Mr. Wiedel explained that Royal Farms is proposing two 30,000 gallon capacity “state of art” USTs. He described the tanks as “double wall fiberglass tanks” because they are 100% compatible with the use of fuels and, unlike the old steel tanks, they do not have rust or corrosion problems.

The Royal Farms’ USTs also have a safety monitoring feature through the use of a brine solution located in an area between the primary storage tank and an outer secondary wall of the tank. He said that if there is a leak, the brine solution will rise and lower instantaneously which triggers an alarm system inside the store. Striker plates are located at every opening of the tank which protects against penetration of the tank when the tank is being filled or serviced.

Mr. Wiedel testified that Royal Farms is going “above and beyond what most end users do in terms of enclosing their piping and things that are coming from the tank...” (T, 11/5/14 Vol. I, p. 51-52). On cross examination, Mr. Wiedel said that while “triple wall tanks” exist, that type of tank would be “overkill” for this Property because those are only installed in environmentally sensitive areas.

Thomas Ruszin, Royal Farms’ Fuel and Environmental Leader, was accepted as an expert in the federal and state requirements for USTs and environmental compliance for fuel service stations. Mr. Ruszin completed a Third-Party Compliance Inspection Program at MDE which taught the federal and state regulations as they pertain to the operation of gas stations and implementation of protections to guard against gasoline leaks. Adding to Mr. Wiedel’s testimony, Mr. Ruszin described the monitoring systems that would be in place at the Royal Farms.

Mr. Ruszin said that the brine solution which is contained in between the tank walls as described by Mr. Wiedel, is connected to an electronic monitoring system which is then linked to the cashier’s area and the manager’s office for 24- hour monitoring. In the event of a tank leak, a

signal inside the store will sound and flash. Additionally, there is 24-hour liquid sensor monitoring of all of the containment sumps. The sumps are connected to an alarm which sounds if there is liquid in one of the containment sumps (Pet. Ex. 27).

To protect against overflow, a double-walled spill bucket is designed to catch the overflow of fuel from a delivery truck hose. When a tank is at 90% capacity, a flapper valve will sound. A delivery hose will be cut off if the tank reaches 95%. Corporate oversight is in place to review daily alarm reports from the store. All Royal Farms' employees must undergo training through classes and exams, followed by a certification in regard to the monitoring systems. Certifications are divided into 'A', 'B' and 'C' operators and Royal Farms requires that a Level 'C' operator be present on site at all times. External monitoring will occur by third party consultants at installation, after the first 6 months and then at 3 years.

Mr. Ruszin was knowledgeable about the Jacksonville Exxon spill and indicated that it occurred when a contractor, who was repairing a fiberglass line, drilled into it. To prevent this type of spill, Royal Farms uses chemical line leak detectors and provides as-built drawings to all contractors making repairs to tanks. Mr. Ruszin stated that Royal Farms is implementing safety monitoring measures above and beyond what is required by the State of Maryland. He opined that these safety measures will have no adverse impacts on the surrounding environment.

On cross examination, Mr. Ruszin agreed that possible sources of contamination could occur if: (1) an UST is installed improperly; (2) piping leading to and from the tank and/or dispenser is installed improperly; (3) the monitoring systems fail; (4) error in monitoring by Royal Farms operators; or (5) spills by customers at gas dispensers.

Protestants called Richard Klein, President of Community and Environmental Defense Services of Freeland MD, a business which assists community groups with environmental issues affecting their community. Mr. Klein was not offered as an expert in this case and therefore did not offer an opinion. Mr. Klein researched the existence of USTs in the Hereford and Parkton

areas via a Public Information Act request to MDE (Prot. Ex. 30). From the MDE database information he received, Mr. Klein marked with a highlighter all of the USTs which were both in use and out of use (Prot. Ex. 31 and 32). Mr. Klein confirmed that the chart did not show what gas stations were active or closed.

Mr. Klein also presented as evidence a chart that he prepared showing water usage in 17 other Royal Farms' stores which stores were located in Baltimore City and were served by public water (Prot. Ex. 33). Mr. Klein obtained the information for this chart from the water bills for those stores which he said are posted on the Baltimore City website.

On cross examination, Mr. Klein stated that he only visually observed some of the USTs in the field. Because only water bills for the public water system are available, Mr. Klein acknowledged that information on the water use for Royal Farms' stores in rural areas is not available to the public. Mr. Klein also conceded that the gallons per day that he calculated from the Baltimore City water bills could be inflated if the store used water for landscaping or if there was a leaky pipe or if there was a broken water line or if there was a problem with the water meter at those particular stores.

In responding to a question posed by the Board, Mr. Klein admitted that the Baltimore City water bill amount also included the rain tax as well as the septic and sewer charges. In addition, because Mr. Klein did not have the actual Baltimore City water bills for those Royal Farms' stores, but only the information from the Baltimore City website, he could not testify with any certainty that other fees and charges were not included in the amount he used to calculate the gallons of water used per day.

§502.1.B – Congestion in Roads.

Kenneth Schmid, PE, a traffic engineer with Traffic Concepts, Inc., testified on behalf of the Petitioner and submitted a Traffic Impact Study for the proposed use (the "Traffic Study") (Pet. Ex. 17). The Traffic Study was submitted to State Highway Administration ("SHA") for a site

access permit for the entrance from the Property onto Mt. Carmel Road. Mt. Carmel Road is also known as MD 137 and is a State road. SHA needed the Traffic Study to determine if any improvements to Mt. Carmel Road would be required if the Royal Farms' store is built. Mr. Schmid clarified that SHA did not require any improvements to Mt. Carmel Road as a result of the proposed use.

Mr. Schmid described the road network consisting of Mt. Carmel Road as a minor arterial road and York Road as a major collector road. He said that the Property is not located within a failing traffic shed. He studied the 4 intersections associated with the I-83 interchange as well as the intersection of Mt. Carmel and York Roads. His study found that the existing conditions were operating at an 'A' level of service even during the peak hours of 7:00-9:00 a.m. and 4:00-6:00 p.m.

Mr. Schmid found that, according the SHA records, traffic declined between 2007 and 2010. In analyzing the potential impact of the Royal Farms at that location, Mr. Schmid used a 1% growth rate. For the sake of his study, he also assumed that any potential use on Lot 1 would be a '*high trip generator*' such as a fast food restaurant, and he concluded that future traffic would still remain at an 'A level of service.' At the same time he found that the exception was that the intersection of Mt. Carmel and York Roads would fall to a 'B level of service' and the intersection of I-83 and Mt. Carmel Road (northbound off ramp) would change to a 'B level of service.' In conclusion, Mr. Schmid testified that the impact on traffic as a result of the proposed use would be no greater here than elsewhere.

The Protestants subpoenaed Terry Maxwell from SHA who is the Scenic Byways Coordinator. Mr. Maxwell explained that the MD Scenic Byways division of the Office of Environmental Design of SHA partners with local jurisdictions to promote scenic roads. He explained to the Board that Maryland has 19 scenic byways which all have different themes. Mr. Maxwell produced a map and brochure of MD Scenic Byways (Prot. Ex. 64 and 65).

Mr. Maxwell confirmed that Mt. Carmel is not on the National Scenic Byways list (Prot. Ex. 64). It is designated as a Maryland Scenic Byway called the “Horses and Hounds” in deference to the horse racing areas surrounding Hereford. The “Horses and Hounds” byway measures 70 miles and includes the area from Hunt Valley to Towson. Mr. Maxwell confirmed that each Byway has amenities such as gas and dining. The goal is to get people to drive on the Scenic Byways and promote the economy.

In reviewing the Royal Farms plans, Mr. Maxwell said that SHA is not requiring an acceleration or deceleration lane at the access point to the Royal Farms store from Mt. Carmel (Pet. Ex. 43).

Witnesses for the Protestants who indicated that traffic would increase and cause congestion on Mt. Carmel and neighboring roads if the Royal Farms store were built included: Andrew Alcarese; Ronnie Seward; Sharon Bailey; Kirsten Burger on behalf of SGCPC; Kenneth Bullen, and Adam Collins. Ronnie Seward complained that he sees traffic increase when schools let out. He said that another gas station would bring the traffic from I-83 consumers. Mr. Alcarese stated that having lights on 24 hours a day at the Royal Farms store will increase traffic, particularly if a sign for the Royal Farms is advertised on I-83. He does not believe that Mt. Carmel Rd. was designed to handle additional traffic. He also believes that there is a safety issue when Royal Farms customers pull out onto Mt. Carmel Rd. because they will be headed uphill.

§502.1.C – Potential Hazard from Fire, Panic or Other Danger.

Mr. Woessner testified that Royal Farms checked the site distances and potential safety issues with regard proper access and turning radius for emergency vehicles into and out of the Property. He concluded that there were no such problems. He added that the Hereford Fire Department was ‘down the street.’ All buildings will meet fire safety codes.

§502.1.D – Overcrowding of Land and Undue Concentration of Population.

Mr. Woessner reemphasized the FAR for the Royal Farms was only 25% of the allowable FAR and therefore would not cause overcrowding of the land. Since the proposed use is not residential, there would be no increase in population.

§502.1.E – Interference with schools, parks, water, sewerage, transportation or other public requirements, conveniences and improvements.

First, in regard to potential interference with water available for the Royal Farms' wells , we incorporate here the evidence presented by Paul Scott, an expert for Royal Farms in the field of hydrogeology that we previously described with regard to BCZR §259.3.C.5. As set forth above, Mr. Scott opined that there would be no adverse impact on available water if the Royal Farms' store is permitted.

Mr. Woessner testified that there was no impact on schools or parks as the proposed use was not residential. Moreover, there was no impact on public water or sewer as the Property is outside the URDL and will use well and septic. Mr. Schmid's testimony and report as above expressed that there was no adverse impact on transportation.

For the Protestants, Mr. Cohen described in great detail, the type of aquifer that exists in Baltimore County, (i.e.: a *'fractured bedrock aquifer'*). He said: "[A]s you go deeper and deeper into the bedrock in Baltimore County...you get fewer and fewer of these fractures that transmit large amounts of water. So most of the available water in Baltimore County is limited to the upper couple hundred feet and you can't just drill deeper to get more water if, in fact, for example, your aquifer is contaminated" (T. p. 176-177).

Mr. Cohen stated that the Baltimore County aquifer was different from the Patapsco or Patuxent aquifers. The two later aquifers, he described, were large regional coastal plain aquifers. More specifically, he said:

They're made of sheets of sand that go on for many miles and there are sheets of clay between them called aquitards that prevent water flowing from one to the other. So theoretically if you had shelf

contamination, you could drill deeper and go through the aquitard into the deeper aquifer and potentially find a fresh source of water there, in the same physical location. That's not the case in Baltimore County. So you have what's essentially a sole source aquifer, meaning there's only one source of water in this area and that's, so that's how a geologist views Baltimore County (T. 176-178).

§502.1.F – Interference with Light and Air.

Mr. Woessner stated that the proposed 1½ story building will not block any light or air or therefore will not inhibit the enjoyment of the surrounding properties.

§502.1.G – Inconsistent with the Purposes of Zoning Classification or Spirit and Intent of BCZR.

With regard to the zoning classification, Mr. Woessner emphasized that a convenience store and restaurant are uses permitted by right in the BL zone, without any need for zoning relief (BCZR, §259.3.A). He added that if the fuel service station were not being requested, the proposed convenience store and carryout restaurant could still be built, subject to meeting the bulk regulations in §259.3.C.1.

On the issue of zoning, Protestants called Ann Bailey, an attorney and former member of SGPC Board from 2006-2009, who has also been President of the Pretty Boy Watershed Alliance since 2011. Ms. Bailey worked on the 2012 CZMP by providing advice to the County Council on environmental issues. She indicated on direct that Councilman Huff downzoned the Property when he applied the CR overlay district. The owner of the Property at the time had requested to increase the BL zoning on the Property. On cross examination, Ms. Bailey conceded that when the County Council applied the CR district overlay to the Property, a gas station became a use permitted by special exception.

§502.1.H – Inconsistent with Impermeable Surface and Vegetative Retention provisions of BCZR.

On this issue, Mr. Woessner testified that there are no streams, forests, wetlands or steep slopes on the Property. He added that there is no existing SWM on the Property and Royal Farms'

proposal to install SWM facility will be advantageous to neighboring properties because it will improve conditions. Currently, the parking lots from neighboring properties drain into the side swales and ditches along Mt. Carmel Road, which ultimately runs into the streams without any treatment or control as to quantity or quality. He also said that Royal Farms is exceeding the requirement that 7% of its parking lot be pervious.

§502.1.I – Detrimental to the Environmental and Natural Resources of the Site and vicinity including forest, streams, aquifers or floodplains.

As previously mentioned by Mr. Woessner in addressing §502.1.H – Inconsistent with Impermeable Surface and Vegetative Retention provisions of BCZR, there are no streams, forests, wetlands or steep slopes on the Property. Eric McWilliams, an expert landscape architect for Royal Farms, who designed some aspects of the proposed SWM facility as well as the preliminary grading plan, noted that the closest stream to the Property was on the other side of I-83 and the closest forest is adjacent to the Property, 300-400 ft. away. He also mentioned that there is a swale which is 400-500 ft. from the Property which conveys surface runoff into the nearest stream.

Eric McWilliams added that the high infiltration rate of the soil on the Property and the design of the proposed stormwater management will treat any runoff from the Property, such that there will be no adverse effect on the aquifers. He explained that rain water would fall into the drywells as clean water. In addition, he explained the bioretention SWM facility would treat any nitrogen phosphorous.

The evidence produced showed that DEPS did not find that the proposed combined use would negatively impact the environmental and natural resources of the Property (Pet. Ex. 14). Eric McWilliams clarified that the design of the SWM plan is in preliminary stage of review with the County. This means that the current location of the well could move. Also relevant on this factor was the testimony of Paul Scott, a hydrogeologist who testified that the Royal Farms' wells

will not affect the draw-down of the wells on neighboring properties as previously discussed and incorporated herein.

Testifying for the Protestants was Theaux LeGardeur who was admitted as an expert in area water resources, including the impact and protection of such resources. He was also on the Board of Directors of SGPC and was the SGPC water resources expert. Mr. LeGardeur is also the Working Director of Gunpowder Riverkeep, a non-profit organization which began in 1970 and monitors the Gunpowder watershed. The Gunpowder watershed is 53 miles long, has 217 tributaries and is less than 4 miles from the Property. Riverkeep has 225 members in 11 states who are advocates for water quality.

Mr. LeGardeur was concerned that water moving off the Royal Farms site will negatively impact water quality of nearby streams which eventually flows into Gunpowder River. He has personally tested the flow of water in the Gunpowder River. Class III trout streams are affected by sediment which can increase water temperature in streams. On cross examination, Mr. LeGardeur admitted that he was not an expert on designing SWM ponds and that he did not know how a SWM pond operates.

Also testifying for the Protestants was John Koontz, a licensed engineer and registered sanitarian. Mr. Koontz was admitted as an expert in water supply, waste water disposal, superfund sites and well and septic issues. Mr. Koontz' testimony centered on the proposed well location on the front of the Property along Mt. Carmel Road (Pet. Ex. 1A). Mr. Koontz said that the proposed location violates the well setbacks set forth in COMAR 26.04.04.05B(2)(a)(iv). He stated that the well location is less than 100 feet from "identifiable sources of contamination" which, he opined, includes not only underground storage tanks but also the piping and dispensers associated with the tanks. He measured the distance as 30 feet from the canopy area, 42 feet from the closest dispenser, and roughly 50-60 feet from one or more of the lines that connect the dispensers to the tanks.

Mr. Koontz cited the Exxon gas station leaks in Jacksonville and Fallston which he reminded were caused by failures in the piping and not the tanks. On cross examination, Mr. Koontz conceded that he was applying the definition of “storage system” and “Connected Piping” found in COMAR Subtitle 10 which is entitled ‘*Oil Pollution and Tank Management*’. He applied those definitions to a different COMAR Subtitle (Subtitle 4) which is entitled ‘*Regulation of Water Supply, Sewage Disposal, and Solid Waste*’ (Prot. Ex. 17-22). The definitions listed in Subtitle 10, ‘*Oil Pollution and Tank Management*’ states that those definitions have those meanings within Subtitle 10.

Eric McWilliams stated that he supervised the preparation of the SWM plan for the Property. He explained that the SWM Plan is in the preliminary stage and that Royal Farms will submit Phase II for approval. He added that the Perk Site Plan was revised on September 3, 2013 (Prot.Ex.2). In response to John Koontz’ opinion that the well location violated COMAR 26.04.04.05 regarding the 100 ft. setback, Mr. McWilliams responded that it was DEPS who required that the well location be moved to that area. Further, he said that the well could move again with a later phase of SWM design. The ultimate location could be anywhere within the shaded area (approx. 40’ in length) on the latest SWM Plan.

Protestants called as an adverse witness, Jeffrey Stein of Advanced Environmental Consultants. Mr. Stein is a professional geologist who was charged with the creation of a corrective action plan and preparation of audit reports for gas leaks at other Royal Farms stores located in Rosedale and Northeast, MD. In support of this testimony, Protestants produced documents subpoenaed from MDE regarding the gas leaks at those other Royal Farms stores (Prot. Ex. 67).

Protestant Kenneth Bullen testified that he was concerned with water runoff from the Property and pointed out that it is situated at the highest point on Mt. Carmel Road. Mr. Bullen lives behind the Subway Restaurant in a community called Mount Carmel Meadows. He has also

been working as the manager at Grauls for the last 20 years. To illustrate water runoff, Mr. Bullen produced photos of storm drains and parking lots of properties along Mt. Carmel Rd. He testified about water flow problems at his home and the floods that previously occurred in his backyard after a heavy rain as a result of a ravine opening. Mr. Bullen then explained that the ravine was fixed by the owner of the Subway Restaurant.

Mr. Bullen said that he was equally concerned about contamination into his well. He explained that the Exxon had leaked and it contaminated the Grauls' wells. He is concerned that the Grauls' wells will be contaminated by the Royal Farms gas station.

Thomas Graul has owned the Grauls' store on Mt. Carmel Rd. for the last 35 years. Mr. Graul testified and produced documents about e-coli contamination of the Grauls' wells in the 1980s from fertilizer which drained down into his property (Prot. Ex. 76). When this occurred, he had three new wells drilled. He also testified about MTBEs from the Exxon which contaminated these wells. Because Royal Farms sits at a higher elevation from his property, he is concerned that a leak from Royal Farms gas station will contaminate his wells. If that happens, he said it would negatively impact all the Grauls' workers and their families.

Nedda Pray is the Correspondence Secretary for the Board of SGCP. At the hearing, she did not testify on behalf of SGCP but from personal experience. While conceding that the Loch Raven Reservoir was already impaired, she said she was concerned that the water runoff from the impervious surfaces of the proposed Royal Farms will reach the Reservoir watershed in 12 hours.

§405.3 – Conditions for Disapproving of Special Exception.

BCZR §405.3 provides a disqualification of a requested special exception for a fuel service station when there is a specific finding of 1 abandoned station within a ½ mile radius, or 2 abandoned stations within 1 mile radius. Eric McWilliams testified for Royal Farms that, in addition to reviewing aerial photographs, he drove his car within a one mile radius of the Property and did not observe any abandoned gas stations.

Lynne Jones, a witness for the Protestants who resides north of Hereford on a farm in Parkton, testified at length about not only the history of Hereford, but also documented by way of a maps and photographs, what she believed were abandoned gas stations in Hereford (Prot. Exs. 48 and 50). Each photograph, as described by Ms. Jones, was of a former gas station closed as far back as 1940s up to and including 2007.

Ms. Jones explained that she calculated the mileage from the Property to each former gas station. According to her calculations, only 8 of the former gas stations were within a 1 mile +/- radius of the Property (Prot. Exs. 49, 50 and 51). She testified consistently with the photographs that each of the former 8 gas stations had been converted to other uses including, without limitation, conversion to automotive repair shops, an office, an automotive towing shop, a restaurant², a bank, and a packaged-goods store. *Id.* The photographs of those businesses did not show any gas pumps or other gas station type equipment.

Ms. Jones also expanded her search for abandoned gas stations outside of the 1 mile radius of the Property to include former gas stations in the Hereford 'school' zone. The Hereford school zone included Hereford, Parkton, east to Harford County and West to Carroll County. Those photographs showed properties located in Whitehall, Freeland, Parkton, Middletown, Monkton, Sparks, Upperco and Maryland Line which is just south of York County Pennsylvania. For this expanded search, she compiled additional photographs of other properties which previously had gas pumps but have since been converted to other uses (Prot. Ex. 48).

§405.4 – Standards

As to the evidence produced pertaining to 'Site Dimensions' under BCZR §405.4.A.1, Mr. Woessner said that the area of the fuel service station is controlled by the chart under §405.4.E. Here, he pointed out, §405.4.E.1 indicates that a convenience store with a sales area larger than

² Ms. Jones acknowledged that the restaurant known as Casa Mia located at 17417 York Road was 1.23 miles from the Property.

1,500 sq. ft. requires that an additional site area of four (4) times the square footage of the convenience store's sales area.

Additional Requirements for Granting Special Exception in CR District. §259.E.

BCZR 259.E. In CR districts, in addition to the §502.1 Special Exceptions Factors, there are five (5) additional requirements for granting a special exception. The following evidence was submitted in regard to the additional five (5) factors:

BCZR 259.3.E.1. – ‘Need’ for the Development at the proposed location.

Market analyst, Joseph Cronyn, testified on behalf of Royal Farms in regard to the ‘need for the development at the proposed location.’ Mr. Cronyn is employed by Lippman, Frizzell & Mitchell, a real estate consulting and appraisal firm. In determining ‘need,’ Mr. Cronyn explained that he used a four mile radius as the ‘trade area’ in order to calculate supply and demand for the proposed use. The 4 mile radius was determined based on ‘land use patterns and highway network in the area’ (Pet. Ex. 31). He described the radius as a ‘neighborhood kind of center’ including Grauls, Exxon as well as various other businesses along Mt. Carmel Rd. and its intersection with York Rd. He found that the buyers would be coming through Mt. Carmel Rd. to reach this ‘village or neighborhood commercial center’. The Property is located at the center of the radius and would become a central business location.

Next, Mr. Cronyn defined the demand within the trade area. He described the trade area as “stable and growing slowly” (Pet. Ex. 31). According to him, it is a heavy commuting area where residents do a lot of driving. Using information from Environmental Systems Research Institute, Inc. (“ESRI”) and US Census statistics, he estimated that the number of households in the trade area was 3,103 in 2014 with an average household income of \$142,736.00. He found that 90% of the residents of the trade area own their own home and have an average of 2.4 vehicles per household (Pet. Ex. 31).

Mr. Cronyn used the 2012 Bureau of Labor Statistics Consumer Expenditure Survey which reported that consumer households spend 4.3% of annual gross income on gasoline and that 1,668 gallons of gas were sold in 2012. He added that the volumes of gas sold is stable. Using 1,668 gallons annually for each household, he opined that each household would buy 32.1 gallons per week which equates to 2 fill-ups for each vehicle. Based on his research, Mr. Cronyn opined that the demand would be 5,175,804 gallons of gas. In addition to the residents of the trade area, the proposed use is expected to serve workers in Hereford and travelers along I-83.

Mr. Cronyn also evaluated the supply of gasoline and testified that the only service station in direct competition within the 4 mile radius around the proposed use is the Exxon station located at 300 Mt. Carmel Rd. (Pet. Ex. 31). He said that there is a gas station located 4.3 miles away from the Property, but distinguished that station as not affecting his “supply” calculation because it is located on Middletown Road which is a different neighborhood altogether.

Mr. Cronyn also mentioned that County Council Bill 103-88³ eliminated the requirement that a petitioner must prove that the proposed use is not duplicated elsewhere and eliminated the requirement that the population within the trade area has adequate buying power to support the proposed facility. (Pet. Ex. 32). As such, the only requirement for a petitioner is to “...document the need for the development at the proposed location” (Pet. Ex. 32).

In summary, Mr. Cronyn found that, in his opinion, the demand of 51.8 million gallons of gas when compared to the limited supply of gas from the Exxon, confirms a ‘need.’

Employing the same 4 mile trade area, the same 3,103 households, and the same average household income of \$142,736.00. Mr. Cronyn also studied the need for a convenience store and carryout restaurant. He prepared a ‘Needs Analysis’ and considered the 2013 Consumer Expenditure Survey conducted by the US Bureau of Labor Statistics regarding spending by

³ the bill which established the CR District and created the ‘need’ factor in BCZR §259.3.E as it reads today

American households (Pet. Ex. 34). Those statistics informed him that the total share of household income spent on food at home, carryout food and miscellaneous personal items was 10.14%. Applying that percentage to the trade area's aggregate household income, he determined that the total resident household expenditures on those goods would be \$44,911,055 in 2014.

On the supply side, Grauls, Exxon convenience store, Subway Restaurant, 7-Eleven and Michael's Pizza will offer some of the same products sold by Royal Farms. The Royal Farms, he concluded, would only capture a small part of the total spending. However, he said that the combination of gas station and convenience store/carryout restaurant offers unique *one-stop* shopping in Hereford (Pet. Ex. 34).

Lay witness, Ed Fishel testified in support of the Royal Farms gas station. He highlighted for the Board that Hereford has 5 attorneys and 3 pharmacies but only 1 gas station. He testified that the gas prices at the Exxon are 0.15 to 0.20 higher than at other gas stations that he frequents. As a retired citizen, he indicated that there was a need for competing gas stations. He also stated that he supported having more choices of fast food items such as fried chicken and coffee.

Mark Gardner testified on behalf of the Hereford Community Association ("HCA") in support of the Royal Farms. Mr. Gardner indicated that HCA has 150 members. HCA voted in favor of the proposed use because the organization supports having choices and emphasized that the price of gas at the Exxon is a problem for residents. He stated that the higher gas prices at the Exxon cause consumers to buy gas elsewhere. HCA also sees Royal Farms as an employment opportunity for high school youth in Hereford.

Mark Hochstein, a resident of Parkton, testified that, although it is not convenient, he drives to Hunt Valley to buy gas because the Exxon prices are high.

Testifying as an expert for the Protestants on the 'need' issue was Richard Garretson, a market analyst with Global Creative Concepts in Virginia. Mr. Garretson's research focused on information provided by Oil Price Information Services as well as information that he obtained

using a Freedom of Information Act ('FOIA') request. From that information, Mr. Garretson explained that he maintains a national database.

Mr. Garretson made clear that in determining 'need' for a trade area, there is no government model available, and therefore it is necessary to create a statistical model. Mr. Garretson did not agree with Mr. Cronyn's analysis. He said that Mr. Cronyn assumed that if the average household makes more money, they will spend more on gas. Mr. Garretson found no correlation between household earnings and the consumption of gas. He said that the consumption of gas is 'flat' (Prot. Ex. 71). He believes that it is more accurate to obtain data on the total amount of gas spent in Maryland as he did through a FOIA request because information is available to the public, rather than estimating the percentage of income spent on gas from the US Bureau of Labor Statistics as Mr. Cronyn did. The Bureau of Labor Statistics, he added, only represents about 125,000 households in the United States which equates to only a sample size of less than one-tenth of one percent.

Using Mr. Cronyn's methodology, Mr. Garretson recalculated the demand using 2014 data from the Hereford area and found that the percentage of household income spent on gasoline was 2.66% based on the 2014 actual income in Hereford of \$145,187.00. This differed from Mr. Cronyn's nationwide value of 4.30%. The percentage calculated by Mr. Cronyn, he said, was based on the average income of consumers nationwide of \$65,596.00 and also incorrectly includes the purchase of motor oil. He went on to say that Mr. Cronyn incorrectly applied the 4.3% to 2013 income data from Hereford of \$142,736.00. Using the information Mr. Garretson collected, he calculated the demand in the 4.0 mile trade area as \$3,430,014.00 rather than \$5,175,305.00. He opined that Mr. Cronyn's estimate of demand was 51% higher than Mr. Garretson's and was therefore, overinflated.

On the supply side, Mr. Garretson acknowledged that there is only 1 service station within the 4 mile radius. Mr. Garretson used 2014 sales data provided by Exxon owner, Pat Meadowcroft

of 2,300,000 gallons annually as opposed to Mr. Cronyn's US average adjusted gallons of gas per year of 1,400,000 (Prot. Ex. 72). Based on that information, Mr. Garretson concluded there will be a substantial oversupply of gasoline of 1,569,986 gallons. This oversupply, he said, would cause the Exxon to close. He added that if the BP station on Middletown Road were included in the trade area, it would increase the supply.

In addition to critiquing Mr. Cronyn's analysis, Mr. Garretson provided his own calculation of demand using a different methodology (Prot. Ex. 73). Mr. Garretson did not use information from the US Bureau of Labor Statistics but rather data from the State of Maryland and Baltimore County for the amount of gasoline actually purchased in 2014. That information provided a number of 1,126 gallons of gas as having been purchased in 2014 per household. He also noted the number of households in 2014 for 1, 1.5, 2, 3, 4 and 4.5 mile radii of the Property. The gasoline demand for each radius was less than Mr. Cronyn's demand calculation of 5,175,804 gallons of gas.

Factoring in the supply number of 2,300,000 based on Exxon's sales, left him with the conclusion there is a substantial oversupply of gas and therefore no need for another service station in Hereford. Referring to the Exxon, he testified that "people's gas needs are being met." However, Mr. Garretson also admitted that Exxon "might need to add a few extra pumps." He further stated that he does not know if the Exxon has the acreage to provide the extra pumps or whether the Exxon would be able to obtain permits for extra pumps.

In regard to the convenience store and carryout restaurant, Mr. Garretson used data from the National Association of Convenience Stores for average sales at convenience store and data regarding the number of convenience stores in Baltimore County (Prot. Ex. 74). To verify this data, Mr. Garretson had asked Protestant Kirsten Burger of SGPC to conduct a survey of every gas station, convenience store and grocery store within a 10 minute drive of the Property. To

compile the survey, Ms. Burger counted the types of products sold in all of the stations, convenience stores and grocery stores.

Taking the actual number of households in Baltimore County per AGS as his source of 338,145 (factoring in employees who work in but do not live in the area), Mr. Garretson determined that the average amount spent by each household on convenience store items was \$1,604.00. Applying that amount to the number of households in 1, 1.5, 2, 3, 4, and 4.5 mile radius, he determined the total amount spent on convenience store items by households in each radii. Then, subtracting the supply numbers that he previously calculated for each radius which included his calculation of the supply produced by Royal Farms, Mr. Garretson opined that there was a substantial oversupply of convenience store products (Prot. Ex. 74).

A number of witnesses for the Protestants testified about whether a gas station and convenience store were “needed” at the proposed location. Kirsten Burger on behalf of SGPCPC; Carolyn Gittings; Kenneth Bullen; Michael Newmeyer (Owner of Michael’s Pizza); Ronnie Seward and Patrick Meadowcroft (Owner of Exxon on Mt. Carmel Rd.). In addition, two witnesses for the Protestants presented photos of gas consumers at the Exxon station. Ann Lawrence Deering presented 31 photos taken over a period of 4 days (Prot. Ex. 60-61). Sue Parish also presented similar photos of the Exxon taken over a period of 21 days (Prot. Ex. 57).

Carolyn Gittings, who lives less than ¼ mile from the Property said that the Royal Farms store is not needed because Grauls sells the same type of grocery items and the Exxon sells gas. She believes that a Royal Farms store would commercialize Hereford. Likewise, Kirsten Burger, on behalf of the SGPCPC, testified that SGPCPC does not want duplication of products for sale. She highlighted that the Exxon, 7-Eleven, Subway, Michaels’s Pizza, Monkton Grill and Grauls all sell the same type of items proposed here. She added that the Hereford Plan contemplates ‘unique’ businesses, not businesses where services are already available.

Michael Newmeyer, owner of Michael's Pizza, testified that he is concerned that the Royal Farms will hurt his business. As seen on this menu, he sells many of the same fast food items that Royal Farms sells (Prot. Ex. 53). He testified that he is already in competition with the 7-Eleven, Casa Mia's and the Monkton Grill. Speaking about the 7-Eleven, Mr. Newmeyer candidly said: "7-Eleven crushed me when it moved in." Although he does not sell chicken at his store, he conceded that he personally buys chicken at Royal Farms stores.

Patrick Meadowcroft, owner of the Exxon, testified and produced documents revealing the monthly and annual gas sales for his station between the years 2005 and 2014 (Prot. Ex. 72). Those documents indicated that in 2013, the Exxon sold 2,406,509 gallons of gas and in 2014 it sold 2,485,728 gallons of gas per year.

Collectively, the Protestants testified that the Royal Farms is not 'needed' because everything that Royal Farm sells, from gas to convenience store items, is already available for sale in existing businesses in Hereford. In other words, if a new business offers duplicative services, they do not feel that it belongs in Hereford.

BCZR 259.3.E.2. – Existing Site Conditions.

Mr. Woessner described the Property as a cornfield. He said there are no proposed roads or 25% slopes, or wetlands, or forests or floodplains or buffers or streams on the Property; it is a clean site. Mr. Woessner testified that the proposed use will not result in undue site disturbance or excessive erosion or sediment loss. The testimony of Eric McWilliams confirmed that the soil type has a high infiltration rate. Therefore, infiltration will be maximized by the proposed state-of-the-art SWM facility. Royal Farms proposes to catch the rainfall and let it infiltrate the soil in a controlled manner. The evidence was undisputed that there currently is no SWM facility. The Protestants did not have an expert on SWM.

BCZR 259.3.E.3. – Architecturally/Historically Significant Buildings.

Mr. Woessner explained that the Property does not have any architecturally or historically significant buildings. As a result, this factor is not applicable here.

BCZR 259.3.E.4. – Scenic View and Natural Features.

Mr. Woessner added that there are no scenic views on Mt. Carmel Road or natural features of the Property that exist and therefore there are none that need to be protected. As previously mentioned, Royal Farms is proposing that 40% of its plan will be open space.

BCZR 259.3.E.5. – Detrimental to Neighboring Uses as a Nuisance.

Mr. Woessner opined that the Royal Farms use would produce noise, dust, fumes, vapors, gases and odors similar to other uses on Mt. Carmel Road including the Exxon, 7 Eleven and Grauls. By way of example, fuel trucks already deliver to the Exxon. Likewise, trucks delivering products to Grauls would produce similar sounds and smells.

Application for Limited Exemption under BCC §32-4-106(b)(8)

Testifying for Royal Farms on the application for Limited Exemption was Eric McWilliams. In his employment with Bohler Engineering as a landscape architect, he prepared the development plans for presentation to the Development Review Committee (Pet. Ex. 35A and B). He also prepared the Application requesting the Limited Exemption (Pet. Ex. 36). He testified that he was familiar with the development review process in Baltimore County and the development policy manual. He was accepted as an expert in the Development regulations and in the preparation of limited exemption development plans.

As to the basis for requesting the limited exemption under BCC §32-4-106(b)(8) from community input meetings and from having a hearing officer's hearing for 'a minor development with less than three lots.' Mr. McWilliams testified that it is proposed that the Property be divided into two lots (one of which will have the Royal Farms.) If granted, he testified that a development plan is still required to be reviewed and approved by all the relevant County agencies.

Mr. McWilliams opined that it qualified under BCC §32-4-101(1) as a ‘minor development’ because it is a development without a ‘public works agreement.’ He presented the Development Review Committee approval letter for the limited exemption dated March 19, 2014 (Pet. Ex. 38).

Through cross examination of Mr. McWilliams, the Protestants questioned that the community input meeting and hearing officer’s hearing on the development were the only opportunities for the interested public to become informed about the Plan and to ask questions. Mr. McWilliams disagreed and stated that, as per the Development Management Policy Manual (Pet. Ex. 40) the public hearing in the zoning case was adequate due process for the Protestants. He also mentioned that Royal Farms representatives did hold a meeting at the Hereford Fire Hall for interested parties.

The Protestants did not offer any expert testimony in regard to the request for limited exemption.

DECISION

By way of background, commercial-rural (CR) districts are superimposed by the County Council to areas where such facilities are not available within a reasonable distance; where sewerage treatment and potable water supply can be provided without adverse effect on the environment and neighboring uses; and where public roads are capable of handling the anticipated increase in traffic without adverse impacts on surrounding areas (BCZR §259.2.A.1). The County Council may assign a CR district to an area of commercial development beyond the Urban Rural Demarcation Line (‘URDL’) for which the CR district is recommended in the Master Plan (BCZR §259.2.A.2). The underlying zone upon which the CR district is superimposed by the Council may be B.L., B.M., B.R., or R-O. *Id.*

The CR district was created in 1975 to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and

agricultural population and tourists (BCZR §259.2.A.1). One of the specific functions of the CR District is to control service stations and other commercial uses in rural areas (BCZR, §405.1.A).

The CR districts have special ‘Use and Bulk Regulations’ which makes them unique (BCZR §405.1.B). The County Council intended to regulate the location and appearance of fuel service stations as well as other uses developed on the same site in combination with the fuel service stations (BCZR §405.1.D). Accordingly, the fuel service station regulations found in §405 of the BCZR, and the CR District regulations as set forth in BCZR §259, must be viewed together and the applicable sections therein proven by the evidence presented.

In regard to the Property at issue here, the County Council applied the CR district onto the underlying BL (business-local) zoning. With that application, the County Council was aware that a fuel service station was a possible use which would be permitted by special exception, provided it met the specific performance standards, use regulations and other additional requirements.

The request in this case for a fuel service station in combination with a convenience store and carryout restaurant is sought under BCZR §405.2.B.2. As above, §405.2.B.2 is for a fuel service station on an individual site, which does not meet the requirements of BCZR §405.2.A, and is located on property outside the URDL, with a CR district designation, in a BL zone. Consequently, the request here must satisfy the special exception standards in BCZR §502.1 in addition to the bulk regulations and additional requirements.

In reviewing the evidence presented, the Board makes the following findings of facts and decisions with regard to each of the requirements §259 and §405 of the BCZR for a fuel service station in combination with a convenience store and carryout restaurant:

BCZR §259.3.C.1 – Bulk Regulations.

Under the category of ‘Use Restrictions’ in BCZR §259.3.C, there are specific ‘Bulk regulations’ to control the appearance of a building in a CR district. Under BCZR §259.3.C.1.a, the maximum gross floor area for all buildings on any lot cannot be more than 8,800 sq. ft. Under

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BCZR §259.3.C.1.b, the floor area ratio (FAR) shall not exceed 0.20. Finally, under BCZR §259.3.C.1.c, the height of a proposed building cannot be more than 30 ft. The undisputed evidence presented by David Woessner, PE, on behalf of Royal Farms, was that the Royal Farms store would meet each of these requirements. Specifically, the store would be 5,125 sq. ft.; the FAR measured .05; and the height of the proposed store would be 27' 10". Accordingly, we find that the Bulk Regulations have been satisfied by the evidence presented. We note that there was no evidence to the contrary presented by the Protestants as to §259.3.C.1.

BCZR §259.3.C.2 – Setbacks.

Building setbacks are another 'Use restriction' for CR district. The front yard setback for any building must not be less than 15 feet from the street right-of-way-line and not more than the average of the setbacks of adjacent buildings (BCZR §259.3.C.2). The rear and side yard setbacks shall be not less than 15 feet. *Id.* We note that the original variance request for a front yard setback of 65.74 feet was dismissed by Royal Farms because the store meets the setbacks.

Indeed, the undisputed evidence presented by Mr. Woessner was that the maximum permissible front yard setback (based on the average of the adjoining properties) is 65.8 feet. In addition, the service station gas pumps will be 57 feet from Mt. Carmel Rd. which is within the required range of 15 to 65.8 feet. Based on this evidence, we find that the setback use restrictions have been met. There was no evidence presented by the Protestants in regard to BCZR §259.3.C.2. Therefore we find that §259.3.C.2 has been met.

BCZR §259.3.C.3 – Landscaping.

In addition to the requirements set forth in the Landscape Manual for commercial zones, CR districts have landscape standards which must be met (BCZR §259.3.C.3). Landscaping must envelope the entire front, side and rear setbacks. Additionally, a minimum of 7% of the parking lot must be pervious, with at least one tree per every eight parking spaces.

Mr. Woessner described that the proposed landscape buffer will be a 15 foot area enveloping the entire perimeter of the Property. This area will contain evergreen and other deciduous trees. He said that there will be 1 tree for every 8 parking spaces. To meet the 7% pervious surface requirement, the islands with the gas pumps will be landscaped. Mr. Woessner testimony was supported by the preliminary landscape plan (Pet. Ex. 6). As is customary with various aspects of development plans, both DEPS and SHA will review the landscaping plan before it is final.

The cross examination of Mr. Woessner on the landscaping factor focused on Lot 2 which is not where the Royal Farms will be located. As such, the Board did not find that such information was sufficient to counter the Petitioner's evidence on this issue. The Protestants did not have an expert testify about the proposed landscaping. Thus, we find that BCZR §259.3.C.3 has been satisfied.

BCZR §259.3.C.4 - Parking.

In reviewing the Revised Site Plan and as clarified by Mr. Woessner, we were informed that the required number of parking spaces for this combined use is 32 (Pet. Ex. 1). The number of proposed parking spaces for the Royal Farms is 32. There is also a requirement in 259.3.C.4 that the proposed parking be consistent with neighboring properties and there will be no more than 2 access locations. As is evident from the aerial photo of the neighborhood, parking spaces on neighboring properties are located in the front and on the sides of the buildings. The Site Plan shows that the proposed Royal Farms' parking will be located in the front and on the sides of the store.

Based on the evidence, we find that the proposed parking layout is consistent with the Exxon station and with other businesses along Mt. Carmel Road. In addition, other than the access onto the shared driveway between Lots 1 and 2, which the public will not use, the Site Plan shows only 1 access point onto Mt. Carmel Road.

We add that no evidence was produced by the Protestants that the number of proposed parking spaces or the proposed layout was anything other than as described by the Petitioner or as set forth on the Landscaping and Site Plans. As a result, we find that the requirements of BCZR §259.3.C.4 have been met.

BCZR §259.3.C.5 – Environmental Holding Capacity.

On the environmental holding capacity issue, Royal Farms had to prove that the proposed combined use will not overburden the private sewage disposal system or potable water supply, endanger reservoirs or create health or environmental nuisances for neighboring properties (BCZR §259.3.C.5). There was a good amount of testimony from both parties by way of lay witnesses and experts, on the effect that the proposed combined use would have on the potable water supply/wells in the neighborhood.

In support of the Royal Farms combined use, the Board heard the testimony from Paul Scott, a hydrogeologist, as outlined above. His opinion was that there would not be a net withdraw amount on neighboring wells, including the Grauls' wells. Mr. Scott's conclusion was that the Royal Farms would withdraw 1,200 gallons per day which would be recharged by rain water entering the ground. His other calculation was that the Royal Farms would use 0.83 gallons per minute (at best) which is below the State of Maryland yield of 1 gallon per minute.

The Protestants' hydrogeologist expert, Mr. Harvey Cohen, disagreed with Mr. Scott's testimony and concluded that the horizontal transmissivity is 15 feet per day rather than 800 feet per day which ultimately means more draw down on a well. He informed the Board that more draw down in a well may be an indication that more contaminants will be drawn towards the well.

There was no evidence that the proposed use would adversely affect the private sewer system. On the issue of the effect on potable water supply, the Ground Water Management section of DEPS requested by letter dated March 20, 2013, that Royal Farms evaluate the impact on groundwater supply on the adjacent Grauls' wells due to the operation of the SWM facilities and

the wells proposed on the Property. In addition, DEPS' Ground Water Management Section requested an estimation from Royal Farms of the necessary water yield from the new wells to meet anticipated demand for water on site.

In response to Ground Water Management/ DEPS's request, and to satisfy the requirement in §259.3.C.5, Mr. Scott prepared a Report of Hydrogeologic Evaluation dated June 21, 2013 (Pet. Ex. 29). According to Mr. Scott, his Report was reviewed and approved by DEPS. There was no evidence to contradict that fact. As a result, we find that as per §259.3.C.5, DEPS is satisfied that the land can support the proposed development without overburdening the required potable water supply, endangering reservoirs or creating a health or environmental nuisance for neighboring properties.

While §259.3.C.5 does not require anything more than proof of DEPS' approval, having heard the testimony and reviewed the evidence on this issue, we find that Mr. Scott's analysis to be more convincing than Mr. Cohen's. The well yield calculated by Mr. Scott of 0.83 gallons per minute is less than the State of Maryland well yield of 1 gallon per minute. Mr. Scott's explanation that the peak well withdraw for Royal Farms of 1,200 gallons per day is only less than 1 foot draw down on adjacent wells. We find credible his recharge analysis of 1,600 gallons per day which supports his conclusion that there would be no net withdraw amount. Given the proximity of the Grauls' wells to each other, we agree that the Grauls' wells are more likely to influence one another, than the ones proposed by Royal Farms.

Mr. Scott described the proposed septic system as one where the Best Available Technologies ("BAT") will be used. We find this to be significant in terms of protecting both health and the environment under §259.3.C.5. Royal Farms' selection of the most recent state-of-art BAT systems strengthens their position that there will be no adverse impacts onsite wells or offsite wells. There was no expert testimony by the Protestants to counter the BAT systems proposed.

We understand the Protestants' concerns about gas stations leaks, particularly in light of the Jacksonville Exxon leak. The evidence here was that the Grauls' wells were already contaminated with E.coli from fertilizers used in agriculture as well as MTBE from the Exxon station on Mt. Carmel Road. Patrick Meadowcroft testified that, after the leak from his Exxon tanks was discovered in 2009, he had to close down his business during June, July and August of that year until the leak was repaired (Prot. Ex. 72).

As a result of these past contaminations from both fertilizer and gas, Mr. Graul has a legitimate concern that same could happen in the future. Mr. Graul presented the Board with documents from 1981 and 1982 which evidenced several locations on his property where potential wells were drilled to find water. Some of those locations were dry (Prot. Ex. 76). He testified that his property sits below the Royal Farms and he believes that groundwater will drain from Royal Farms into his wells.

We find that the proposed double-walled Brine tank system and BAT sewage disposal system, along with the safety mechanisms in place as proposed here, outweigh the general concerns about future possibilities. As we see it, the Exxon station had a breach, corrected it and has been operating continuously since it was repaired in 2009. Despite the Exxon breach, Grauls also continued to operate. Royal Farms will employ the latest up-to-date technology to prevent future problems. Gas stations such as the Exxon with older technology would be at higher risk for another breach than a state-of-art service station.

In addition, we do not find convincing Mr. Cohen's argument that there is a potential for onsite fuel leaks because groundwater flows from the Property toward Grauls. He based his opinion on his review of topography maps but failed to consider that the topographical divide located on the Property which would direct the groundwater primarily to the north, not to the west. This is buttressed by DEPS' request for Royal Farms to relocate the septic fields onto the north side of the Property.

Further, Mr. Cohen's selection of two (2) sites in Hereford which he opined were better suited for the Royal Farms, was not persuasive. If the potential for contamination is the concern, each of these 2 alternate locations might also potentially contaminate the wells serving Hereford High School as well as nearby residential wells. Moreover, each of the alternative sites were located within a "SWAP" area, the very area which Mr. Cohen argued needed protection. We note that Mr. Cohen's 2004 Hereford study shows that there are many SWAP areas and non-community public water systems. The SWAP area which includes Grauls is not the only one.

We also find that the study conducted by Protestants' expert Markus Hilpert regarding small spills of gasoline at the pumps penetrating concrete and eventually entering groundwater, would be equally applicable to not only the Mt. Carmel Rd. Exxon, but to every gas station, particularly those which do not have the most up-to-date safety measures in place. While his academic study is theoretically interesting, it does not change the Board's view. We find that Royal Farms proposal for subsurface spill buckets and containment sumps would capture most, if not all, droplets of fuel which are spilled. We also do not think it is reasonable to deny a fuel service station on the basis of what consumers might, or might not do, when pumping gas.

BCZR §259.3.C.6 – Outside Storage.

Mr. Woessner testified that there would be no 'outside storage' at the Royal Farms. The Protestants did not present any evidence to the contrary. As a result, this factor is not applicable to this case.

BCZR §259.3.C.7 – Exterior Signs, Site Lighting and Accessory Structures.

A previously addressed *supra*, Royal Farms withdrew its variance request for a 33.08 sq. ft. wall-mounted enterprise sign in lieu of the permitted 8 sq. ft. sign. The current proposal is for a 6.64 sq. ft. enterprise sign which is permissible under the regulation (Pet. Ex. 1D and 1E). In addition, there is one (1) proposed freestanding enterprise sign which will be 24.5 sq. ft. in size and 20 feet in height. This free standing enterprise sign fits squarely within the permitted 25 ft.

high and 25 sq. ft. in size. *Id.* The evidence also showed that Royal Farms is proposing directional and service station canopy signs which comply with BCZR §450. There was no evidence presented by the Protestants that the number of signs or size of the signs would be anything other than as proposed by Royal Farms. As such, we find that the evidence satisfies the requirement of 259.3.C.7.a and b.

In Section 259.3.C.7.c, approval is specifically needed for any sign that is to be illuminated. Royal Farms made a separate request for the illumination of all proposed signs (freestanding, wall-mounted, directional and fuel canopy signs). The Board heard from several lay witnesses that the Grauls' signs, the Exxon signs and the First Baptist church have signs which are illuminated. In particular, Kirsten Burger testified that the Exxon station signs are illuminated 24 hours a day.

Given the location of the Royal Farms along a commercial corridor adjacent to other commercial uses which have illuminated signs advertising their businesses, we find that it is reasonable and consistent with the other neighborhood businesses that Royal Farms should be permitted to have its signs illuminated. Royal Farms has already reduced the size of its signs as well as the lettering, which, in turn, reduces the amount of light protruding from the same. The Protestants did not offer evidence that the illumination of signs was anything other than as described by Royal Farms. Thus, we find that §259.3.C.7.c has been satisfied.

BCZR §259.3.C.8 – Relationship to Surrounding Neighborhoods.

With regard to the relationship of the proposed Royal Farms to the surrounding neighborhood, this factor requires evidence that the proposed Royal Farms store will comply with the *Compatibility Standards* contained in BCZR §32-4-402. The Compatibility Standards have eight (8) separate requirements which must be met as set forth above.

BCC §32-4-402(a)(1) defines 'neighborhood' as limited to the existing buildings and land uses adjacent to and extending from the proposed development to 'a definable boundary such as a primary collector street or arterial street.' Based on the collective testimony and documents from

both parties, and in particular the Revised Site Plan (Pet. Ex. 1 A), aerial zoning map (Pet. Ex. 4) and neighborhood aerial photograph (Pet. Ex. 7), we find that the ‘neighborhood’ for the purpose of applying the compatibility standards includes I-83 to the west, the commercial zoning to the north and south and the rear property lines of properties bounding on York Rd. to the east.

In regard to the 8 Compatibility Standards, we make the following decisions based on the evidence presented:

32-4-402(d)(1) – The arrangement and orientation of the proposed buildings and site improvements are patterned in a similar manner to those in the neighborhood.

In reviewing the Revised Site Plan, as clarified by both Mr. Woessner, we find that the proposed Royal Farms store will be arranged and oriented like the other buildings in the neighborhood, including the Exxon such that it will face Mt. Carmel Road and will be located within the prescribed setbacks. We also find that the fuel canopies for both the Royal Farms and Exxon are similarly oriented.

In reviewing the elevation drawings for the proposed store and as clarified by William Mortorff, the project manager for the Royal Farms, we find that Royal Farms changed many of its prototype designs to create an appearance that was in keeping with a rural look. We note that the Planning Office approved of the drawings. Finally, there was no evidence presented by the Protestants that the arrangement and orientation of the buildings was not as described by the Petitioner. Accordingly, we find §32-4-402(d)(1) has been met.

32-4-402(d)(2) The building and parking lot layouts reinforce existing building and streetscape patterns and assure that the placement of buildings and parking lots have no adverse impact on the neighborhood.

We find that the evidence presented by Royal Farms in regard to the building and parking lot layouts was satisfied through Mr. Woessner’s testimony, the Revised Site Plan (Pet. Ex. 1A) and Elevation Drawings (Pet. Ex. 19A-D). We also find that the proposed Royal Farms store and

on-site parking will not have any adverse impact on the defined ‘neighborhood’ under §32-4-402(d)(2). The evidence showed that the store meets the setback requirements and the parking will not only be buffered by the landscaping but will be located along the side and front of the store, consistent with the parking of other commercial businesses on Mt. Carmel Road.

In regard to Subsection (2), the Protestants did not offer any evidence to the contrary. Thus, we find §32-4-402(d)(2) has been met.

32-4-402(d)(3) The proposed streets are connected with the existing neighborhood road network wherever possible and the proposed sidewalks are located to support the functional patterns of the neighborhood.

Subsection (3) is not applicable here as there are no streets being proposed. There is only a private driveway connecting Lot 1 and 2.

32-4-402(d)(4) The open spaces of the proposed development reinforce the open space patterns of the neighborhood in form and siting and complement existing open space systems.

In reviewing the Revised Site Plan (Pet. Ex. 1A) and Landscaping Plan (Pet. Ex. 6), we find that the proposed open space patterns will be consistent and will complement the existing open space patterns in the neighborhood. Here, the evidence shows that Royal Farms is proposing more open space than the neighboring businesses. *Id.* The photographs of some of the existing businesses along Mt. Carmel Rd. reveal that open space is sparse at best (Pet. Ex. 7). §32-4-402(d)(4) has been met.

32-4-402(d)(5) - Locally significant features of the site such as distinctive buildings or vistas are integrated into the site design.

The evidence confirmed that there are no locally significant features on the Property such as distinctive buildings or vistas along Mt. Carmel Road. The Hereford Community Plan reinforces that any locally significant buildings are located along York Road, not Mt. Carmel Road (Pet. Ex. 8) (Prot. Ex. 14). Thus, Subsection (5) is not applicable.

32-4-402(d)(6) The proposed landscape design complements the neighborhood's landscape patterns and reinforces its functional qualities.

The testimony of Mr. Woessner indicated that there is no landscape pattern along Mt. Carmel Road. That fact notwithstanding, Royal Farms chose vegetation indigenous to the area and the landscape buffer will exceed what is required. In making this decision, we find it significant that Royal Farms is proposing to plant evergreen and deciduous trees. The proposed landscape envelopes the entire proposed use. The Protestants did not provide any evidence on this issue. We find that the elements of Subsection (6) have been met.

32-4-402(d)(7) - The exterior signs, site lighting and accessory structures support a uniform architectural theme and present a harmonious visual relationship with the surrounding neighborhood.

We heard the testimony of Randy Boice, PE in regard to the site lighting as he described not only the cut sheets for the proposed light fixtures (Pet. Exs. 24A, 24B, 24C, 24D and 24E), but the Lighting Plan (Pet. Ex. 22). We learned that the use will have street lights on free standing poles, wall lights, flood lights, canopy lights and lights over the entrance to the store. We find that there would be no adverse impact on neighboring properties particularly given that the lighting across the Property will be less than '1 foot candle.'

The proposed state-of-art LED lighting which projects the light downward (rather than up or out and off the site) will be consistent with neighboring properties. We note that the lighting plan was submitted and approved by Baltimore County. (Pet. Exs. 14 and 44).

As previously discussed in regard to BCZR 259.C.7.c, the Royal Farms signs are smaller than required under the BCZR and are consistent with other illuminated signs along Mt. Carmel Road (Pet. Ex. 1 D, 1E). Other than cross examining Mr. Boise, the Protestants did not offer expert testimony in regard to site lighting. Accordingly, Subsection (d)(7) is met.

32-4-402(d)(8) - The scale, proportions, massing, and detailing of the proposed buildings are in proportion to those existing in the neighborhood.

On the final Compatibility factor, we find that the proposed Royal Farms store is in proportion to the buildings in the existing neighborhood in terms of scale, proportion, massing and detailing under BCC §32-4-402(d)(8) (Pet. Ex. 19 A-D). The exterior resembles an old-fashioned country store detailed with neutral colors, a red copula on the roof, and brick and stone façade. *Id.* In regard to scale and proportion, the testimony we heard from Mr. Woessner was that the floor area ratio for the store is ¼ the size of the Grauls, Exxon and Village Plaza (Pet. Ex. 10). The Protestants did not offer evidence to contradict that fact. Consequently, we find Royal Farms satisfied Subsection (d)(8).

BCZR §259.3.C.9 – Auto Service Stations subject to BCZR §405.

BCZR §259.3.C.9 requires that all auto service stations are subject to BCZR §405. Section §405.2.B is applicable here and requires Royal Farms to prove each of the special exception factors set forth in BCZR, §502.1.

The Court of Appeals in *People’s Counsel for Baltimore County v. Loyola*, 406 Md. 54, 62 (2008) affirmed the holding in *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981), in analyzing each of the 502.1 factors in a special exception case and stated:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

The Court in *Loyola* explained that the adverse effects are inherent in all conditional or special exception uses.

Applying the holdings in *Loyola* and *Schultz* here, this Board must determine whether there are any facts and circumstances that show that the fuel service station, in combination with a convenience store and carryout restaurant, at this Property, would have any adverse effects above

and beyond those inherently associated with a fuel service station in combination with a convenience store and carryout restaurant, irrespective of its location within the zone.

As we discussed *supra*, the County Council's application of the CR district to this Property is a strong indication that the Council considered certain inherent adverse effects that a fuel service station in combination with a convenience store and carryout restaurant, would have in that neighborhood (*Loyola* at 106). Despite knowing those adverse effects, the Council elected to apply the CR district to this Property located outside the URDL and served by well and septic.

Loyola and *Schultz* inform us that unless we find that there are specific facts or circumstances in this case which demonstrate that the adverse effects inherent in a fuel service station in combination with a convenience store and carryout restaurant are more adverse at this Property than the effects that are already inherent in a fuel service station in combination with a convenience store and carryout restaurant, we must grant the request for special exception.

A special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislature has determined can, prima facie, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change its presumptive finding; and that the duties given the board are to judge whether the neighboring properties would be adversely affected, and whether the use in the particular case is in harmony with the general purpose and intent of the zoning plan (*Rockville Fuel v. Board of Appeals*, 257 Md. 183, 262 A.2d 499 (1970); *Oursler v. Board of Zoning Appeals*, 204 Md. 397, 104 A.2d 568 (1954); *Montgomery County v. Merlands Club*, 202 Md. 279, 96 A.2d 261 (1953)).

BCZR §502.1 A – Adverse Impact on Health, Safety or General Welfare of Locality.

Based on the evidence summarized above with regard to health, safety or general welfare of this locality, and without repeating all the evidence presented on this factor previously outlined,

we find that the proposed use of a fuel service station in combination with a convenience store and carryout restaurant does not pose any more adverse effects at this location than are normally inherent with this use.

In addressing whether a funeral home as a special exception use would adversely impact health, safety and/or welfare, the Court of Special Appeals in *Anderson v. Sawyer*, 23 Md. App. 612 (1974), the Court of Special Appeals, explained:

By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts will honor.

Id. at 624.

The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses.....

Id. at 624-625.

Specifically, Royal Farms satisfied this factor through the testimony of David Woessner, James Wiedel, Thomas Ruszin, Randy Boice, Kenneth Schmid and Paul Scott who each contributed important evidence through testimony and documents as discussed above.

On the other hand, the Protestants' collective complaints in regard to how the Royal Farms would adversely affect their health, safety and welfare, were not unique to this Property but were universal to any fuel service station, convenience store and carryout restaurant. The common theme centered on the general concern for possible future leaks from the Royal Farms USTs into adjacent wells. The Protestants said this while showing support for the Exxon gas station which already had a tank breach contaminating the Grauls' wells. The theme of the Protestants case was that the Property was located in a rural area and that it should remain as a cornfield. Yet, the

evidence showed that farm fertilizer actually contaminated the Grauls' wells causing Grauls to incur the cost of digging new wells.

In *Anderson v. Sawyer, supra*, the Court of Special Appeals described these types of conclusions as “amount[ing] to nothing more than a generalized fear unsupported by facts or reasons. It does not constitute probative evidence on the question of adverse effect” (*Id.* at 622).

In *Deen v. Baltimore Gas and Electric Company*, 240 Md. 317, 330 (1965), the Court of Appeals in discussing the health, safety and welfare factor stated the following:

Appellants assert that it was error for the Board to fail to consider the future effects which the high tension wires would have on the health, safety and general welfare of the locality 'which could be reasonably anticipated in a normal course of its development'. This factor was without relevance in this case, because there was no evidence produced at the hearing which would show that the effect of high tension wires on the future health, safety and welfare of this area would be in any respect different than its effect on any other rural area. Section 502.1 implies that the effect on health, safety or general welfare must be in some sense unique or else a special exception could never be granted in such an area for the above ground location of high tension wires. The only evidence as to future conditions was testimony revealing the possibility of future development of this land. Such a possibility alone does not come close to showing any future deleterious effect upon the public health, safety or general welfare.

Similarly, in *Mayor & City Council of Baltimore v. Foster & Kleisner*, 46 Md. App. 163 (1980), the testimony by witnesses against a conditional use permit for a sign amounted to vague and unsupported fear that it might hinder efforts improve other areas in the same neighborhood. The *Foster* Court said in discussing the permitting of billboards by the City Council and the role of the Board in reviewing the case:

The City Council, by permitted billboards as a conditional use, has legislatively determined that, as a general rule, they do not menace or endanger the public health, safety, general welfare or morals within the area of that permitted use. The Board has a limited amount of discretion to deny the use if there is substantial evidence to show that, notwithstanding the underlying legislative conclusion, a particular structure would have such an effect. But it may not thwart the legislative will based upon unspecific and unsupported

protestations and concerns. In short, these conclusions have absolutely no evidentiary support and are therefore by law, arbitrary and capricious.

Id. at 171-172.

Harvey Cohen's opinion actually supported the Petitioner's case on health, safety and welfare in that the subsurface conditions for this Property were no worse than any other parts of Baltimore County. Mr. Cohen described all of Baltimore County as having "fractured bedrock aquifer." He said that most of the available water in Baltimore County is limited to the upper couple hundred feet where the fractures are located. He contrasted the Baltimore County aquifer with the "coastal plain aquifers" of Anne Arundel which are made of sheets of sand with sheets of clay in between, preventing water from flowing between them. Under *Loyola* and *Schultz*, this testimony only shows how this Property is similar to other properties in Baltimore County, not how this use, at this Property, makes the location more susceptible to adverse impacts. We also incorporate here our reasoning in regard to Mr. Cohen's theory that two (2) alternate sites under §259.3.C.5 – Environmental Holding Capacity are not better suited for this use.

BCZR §502.1 B – Congestion in Roads.

Royal Farms had Kenneth Schmid testify as to a decrease in traffic between 2007 and 2013 in the area of the Property according to SHA records. The Protestants did not have an expert testify about any traffic congestion on Mt. Carmel or surrounding roads. The Board did hear from lay witnesses as to their general concerns that a Royal Farms store may bring more traffic. Under *Anderson, supra*, the Court of Special Appeals noted that the opponents of a development project could not rely upon lay witness testimony to rebut the expert testimony of a traffic engineer provided by the developer (*Id.* at 618-619). Rather, the Protestants in *Anderson* needed to present their own traffic expert (*Id.*).

We also heard that although Mt. Carmel is a designated scenic-byway (the "Horses and Hounds" Scenic-Byway) this designation does not prohibit commercial development. To the

contrary, Terry Maxwell from SHA testified that Mt. Carmel Road was one of the most, if not the most, commercialized “scenic byways” in the State. Mr. Maxwell confirmed that fuel service stations are not prohibited from being located along scenic byways. SHA has no authority to prevent a commercial uses outside of Mt. Carmel Road which is a state road.

More importantly, Mr. Maxwell cleared up for the Board that Mr. Carmel Road does not have any of the other designations that a majority of the scenic byways possess such as: “Official Main Street,” “Heritage Area,” “Historic District,” or “Arts & Entertainment District.” Indeed, we learned that the purpose of the “scenic byways” designation is to direct the traffic onto Mt. Carmel Road and beyond to where commercial businesses are located, not to deter consumers from coming.

Based on the weight of evidence, we find that the proposed fuel service stations in combination with a convenience store and carryout restaurant will not create congestion on Mt. Carmel Road or on surrounding roads. We also find that the traffic generated by the Royal Farms is no more than any other convenience store/carryout restaurant.

BCZR §502.1 C – Potential Hazard from Fire, Panic or Other Danger.

We find that there was no evidence presented that this fuel service station in combination with a convenience store and carryout restaurant would generate additional or different type of hazard from fire, panic or other danger than would any other fuel service station in combination with a convenience store and carryout restaurant. Protestants’ generalized concern for possible danger of a gas tank leak does not rise to level of probative evidence that would warrant denial of a special exception (*Anderson supra; Deen, supra*).

The Protestants did not offer evidence to contradict David Woessner’s expert testimony that the site distances were adequate to allow access, or that the turning radius for emergency vehicles was anything other than adequate. Accordingly, we find that the Petitioner satisfied § 502.1.C.

BCZR §502.1 D – Overcrowding of Land and Undue Concentration of Population.

There was no evidence by the Protestants that the combined fuel service station, convenience store and carryout restaurant would overcrowd the land or cause an undue concentration of population. We find that the nature of a gas station and convenience store is for one-stop, quick shopping. Customers would not be at the Royal Farms for extended periods. This case does not involve residentially zoned property nor is it the type of use that would lend itself to a concentration in population like a shopping mall, concert venue or movie theater.

We find that on this factor, the proposed use, at this location as it is situated among existing businesses, would not cause overcrowding of the land or undue concentration of population and would certainly be no more adverse than any other location where a fuel service station in combination with a convenience store and carryout restaurant would be located. Thus, §502.1.D is satisfied.

BCZR §502.1 E – Interference with Schools, Parks, Water, Sewerage, transportation or other public requirements, conveniences and improvements.

Weighing the evidence as outlined above as presented by Paul Scott (water), David Woessner (schools/parks) and Kenneth Schmid (transportation) against the evidence presented by Protestants experts, Harvey Cohen and Marcus Hilpert, as well as the testimony for lay witnesses for the Protestants, we find that a fuel service station in combination with a convenience store and carryout restaurant at the Property will not interfere with schools, parks, or other public requirements, conveniences and improvements. We further find that any adverse effects on water, sewerage or transportation will be no worse than the inherent adverse effects of those systems by any other fuel service station, convenience store and carryout restaurant in any other area.

This special exception factor is repetitive of the requirements for *Environmental Holding Capacity* in BCZR §259.3C.5 in regard to whether the potential development will overburden the private sewage disposal system and potable water supply, endanger reservoirs or create a health or

environmental nuisance. As a result, to avoid repetition, we incorporate here our analysis of §259.3C.5 above in favor of the Royal Farms in §502.1.E.

BCZR §502.1 F – Interference with Light and Air.

This Property is currently a cornfield. The proposed Royal Farms store will be a 1½ story building measuring 27’10” in height which meets the maximum height restrictions of 30’ as set forth in BCZR §259.3.C.1. The building will not cause shadows or block air to any other neighboring building. There was no evidence presented by the Protestants that there would be any interference with light or air. Accordingly, we find that Royal Farms has satisfied §502.1 F.

BCZR §502.1 G – Inconsistent with the Purposes of Zoning Classification or Spirit and Intent of BCZR.

As we previously indicated in discussing the application by the County Council of the CR District to this Property, the requested special exception use of a fuel service station in combination with a convenience store and carryout restaurant is directly in line with the purposes of the CR District. As we indicated above, BCZR §405.1.A. informs that the County Council crafted the CR district in 1975 to “govern service stations and other commercial uses in rural areas.”

We agree with the Petitioner that even if the fuel service station were denied, the convenience store and carryout restaurant are permitted by right in a BL zone. The underlying zoning here is BL and the nature of the proposed use is commercial. As we have said, the Property is located among other commercial uses. Thus, the proposed use is consistent with the BL zone.

Relevant to our review of this factor is that there are no variances being requested. As such, the requests comply with the various requirements in the BCZR including setbacks and sign specifications. This would be consistent with the spirit and intent of the BCZR.

BCZR §502.1 H – Inconsistent with Impermeable Surface and Vegetative Retention provisions of BCZR.

With regard to impermeable surface and vegetative retention provisions, the Protestants did not offer any expert testimony to contradict David Woessner’s testimony that Royal Farms

will exceed the requirement that 7% of its parking lot be pervious. Since there are no wetlands on the Property and it is a cornfield, vegetative retention is not applicable here. Thus, on this issue, the weight of the evidence favors Royal Farms and we find that §502.1.H has been satisfied.

BCZR §502.1 I – Detrimental to the Environmental and Natural Resources of the Site and vicinity including forest, streams, aquifers or floodplains.

The evidence produced by Royal Farms through David Woessner was that there are no streams, forests, wetlands or steep slopes on the Property. Similarly, the Board heard from Eric McWilliams who said that the closest stream is 300-400 ft. from the Property, on the western side of I-83. We find that the introduction of SWM to the Property where there is none, will greatly benefit water runoff by treating it before it enters the stream. Protestants' witness, Theaux LeGardeur, had no expertise in SWM facilities. Paul Scott's testimony on the lack of draw down on the wells will not impact the aquifers in the area was credible and convincing.

Our analysis of the Protestants experts, Harvey Cohen on aquifers and Markus Hilpert on possible well contamination is also applicable to §502.1.I and is incorporated here. We find that it is important that DEPS did not indicate that there would be any adverse effect on environmental or natural resources of the site.

Accordingly, we find that there will be no adverse impact on the environmental or natural resources of the Property or the vicinity. Therefore, Subsection §502.1.I is satisfied.

BCZR §405.3 – Conditions for Disapproving of Special Exceptions for Fuel Service Station.

The Protestants argued that if we found that the Special Exception factors were satisfied as above, the Special Exception request should still be denied because they believe that there are 'abandoned gas stations' within ½ mile and 1 mile radius of the Property. As set forth in detail above, this evidence was presented by Lynne Jones, a historian on Hereford who resides in Parkton. She estimated that those 8 properties were within a 1 mile radius of the Property. She

confirmed that each of those 8 gas stations had been converted to other uses, including automotive service station, restaurant and a bank.

We reviewed the condition for disapproving a special exception in BCZR §405.3 as well as the reference in §405.3 to §405.7, which contains the definition of “abandoned fuel service station” (one which is not in actual continuous operation “as a gas station”), in conjunction with §405.7 and §405.8. Having reviewed these sections together, we disagree that the 8 converted gas stations should be considered ‘abandoned.’ We find that the Protestants are misconstruing the intent of §405.3 by taking certain terms out of context without considering all of §405.

First, the definition of “abandoned fuel service station” in §405.7. B, which is entitled ‘Notice of Presumption of Abandonment’ instructs that when an owner ceases or terminates the use of a property as a fuel service station, the owner must notify PAI within 30 days of termination. The reason for the notice is linked to the County Council’s finding in §405.7.A that when a fuel service station ceases doing business because it is not in actual and continuous operation, it could be left to deteriorate. On that point, the County Council used the phrase “continued vacancy” in §405.7.E.3 which we interpret, reflects the Council’s concern for the presence of gas pumps as well as the lack of maintenance of the property by the owner who ceases the gas station operation.

The “continued vacancy” concern is incorporated into §405.7.A which states that such deterioration can threaten the health, safety and welfare of the community, can have a ‘blighting influence’ on surrounding properties, and can cause a deterioration of the ‘use, value and enjoyment of property in the immediate neighborhood.’ In fact, these 3 concerns listed by the County Council in §405.7.A are the same factors which must be considered by the Zoning Commissioner (now referred to as the Administrative Law Judge) under §405.7.E when deciding whether an owner of a station must remove ‘all above ground structures, including paving, and removal or abandonment in place of underground tanks.’

In §405.7.E which is entitled “Proceedings to require removal”, it is clear from the express language employed by the County Council that there is a limited time period (90 days) for an owner of a station that is not in continuous operation, and where the gas station pumps and other equipment are still on the premises but dormant, to correct all deficiencies noted by PAI. In 405.7.E, the County Council intended for there to be a hearing in place where an Administrative Law Judge could order the removal of the fuel station equipment if need be, thereby preventing the blight and depreciation of the property.

However, what is missing from the Protestants’ argument is that the conversion of each of the 8 former fuel service stations to other businesses, is precisely what the County Council intended to accomplish when a gas station operation ceases. So even if 8 properties meet the definition of ‘*abandoned*’ (which we do not find here), Section 405.8 states that the purposes of §405.8 is to “promote the conversion of ‘*vacated*’ fuel service stations to other uses...” (Emphasis added). A converted gas station occupied by another business is not an ‘abandoned’ or ‘vacated gas station.’ When a station is ‘converted’, the special exception use as a fuel service station terminates at the time of conversion (§405.7.C). Additionally, if converted, the gas station equipment and structures, if necessary or appropriate to the new use, do not need to be removed. Indeed, the photographs confirm that the 8 converted businesses do not have any above ground equipment such as the gas pumps (Prot. Exs. 48 and 40).

We also emphasize that under 405.7.A, in order to be an ‘abandoned’ fuel service station, there must be proof that an owner “intentionally” ceased or terminated the use as a station. There was no proof by the Protestants here of ‘intent’ by any owner of the 8 gas stations to close or terminate. The only evidence presented were photographs and Ms. Jones description of former stations. It is only after ‘intent’ is found in 405.7.A, that the consecutive 12 month time period of ‘actual and continuous operation *as a station*’ comes into play. But even then, there was no evidence here by the Protestants that operation ceased for ‘12 consecutive months.’ These stations

could have ceased operating as a gas station for 1 month and then converted to another business. There was no evidence that any of these 8 stations failed to operate at least 8 hours a day, 5 days a week as required by §405.7.B. The transition from gas station to another business could have been less than 8 hours a day or less than 5 days a week. This Board is without evidence to make that factual determination. Ms. Jones' general recollection as to years of possible closure do not provide this Board with probative evidence on this issue.

We find, upon our review of the evidence and these Subsections, that the 8 stations were not 'abandoned.' In the case of, *In re: Seven Kids, LLC*, Case Nos.: 99-199-X, CBA-99-127 and CBA 99-128, this Board in discussing the definition of 'abandoned' previously said:

“Unfortunately, Section 405.3 does not set forth a valid definition of abandoned gas stations, and the Board does not feel that the three long-abandoned stations at this intersection of Harford and Fork Road, including the one abandoned at the proposed site, would qualify as abandoned stations within the meaning of Section 405.3.”

In addition, we find that purpose of determining whether a station is 'abandoned' is to establish there is no 'need' for a proposed station. Reading these Subsections together, it is clear that the County Council did not want another new station to be placed in an area where 1 or more former stations were sitting dormant with gas pump equipment in place and deteriorating buildings and landscape. It does not follow, however, that a station converted to another business, would be a reason that a proposed station is not 'needed.' To argue that position, is to ignore the express language in §405.7 and §405.8.

Even if 1 or more of these 8 stations is found to be 'abandoned' under §405.3, there is an exception in that Subsection to the 'need' requirement, where evidence is produced rebutting the abandoned station with market data indicating there is a 'need.' Accordingly, in the alternative, this Board finds that there is a 'need' based on market data under §405.3 as presented by the Petitioner under BCZR 259.3.E.1 for the reasons as set forth below, which is incorporated into this section in its entirety.

BCZR §405.4 – Standards.

As set forth above, BCZR §405.4 lists specific standards for site layout, site dimensions, setbacks for fuel pumps, appearance, general design, landscaping, parking spaces, internal driveways and paved areas for a fuel service station. Some of these sections are repetitive of Use Restrictions applicable to the CR district generally as in BCZR §259.3, and repetitive of some sections of the Compatibility Standards in 32-4-402 referenced in §259.3.C.3.8. The uncontroverted testimony here by David Woessner, along with our review of the Revised Site Plan (Pet. Ex. 1A-1F), supports the Petitioner’s position that all the regulations in §405.4 have been satisfied. On this issue, the Protestants did not present any expert testimony to contradict Mr. Woessner. Accordingly, we find §405.4 Standards have been satisfied.

BCZR §259.3.E - Additional Requirements for granting a Special Exception in CR District.

In addition to the §405 Regulations for Fuel Service Stations and special exception factors of BCZR 502.1 as well as the Use and Bulk regulations applicable to development in a CR District in §259, the County Council has imposed 5 additional requirements which must be met before a special exception use is permitted in a CR District.

BCZR §259.3.E.1 – ‘Need’ for the Development at the proposed location.

As set forth above, the Board heard a great deal of testimony from experts and lay persons for both parties in regard to whether a Royal Farms fuel service station in combination with a convenience store and carryout restaurant is ‘needed’ under BCZR 259.3.E.1. As per the discussion above of the condition in BCZR §405.3 that even if there is determined to be a fuel service station which has been identified as ‘abandoned’ as defined therein, that finding can be rebutted by market data evidencing ‘need.’ We find that such evidence of need was presented here.

The definition of ‘need’ was spelled out by the Court of Appeals in *Neuman v. Mayor and City County of Baltimore*, 251 Md. 92, 98-99 (1968). The Court of Appeals in *Neuman* said:

Need for the services of a physician likewise **must be considered as elastic and relative**. *Clearly, it does not mean absolute necessity*. Need has been judicially held to mean ‘**expedient, reasonably convenient and useful to the public** * * * *. *Baltis v. Village of Westchester*, 3 Ill.2d 388, 121 N.E.2d 495, 503; *accord, Baltimore, City of v. C&P Telephone Co.*, 92 Md. 692, 700-701, 48 A. 465; *Illinois Bell Telephone Co. v. Fox*, 402 Ill. 617, 85 N.E.2d 43, 51. * * *

(Emphasis Added). Protestants’ collective position was that the products and services sold by Royal Farms are already available in Hereford and therefore they are not needed. In other words, if the product or service already exists, Protestants believe that it is not ‘needed.’

First, the *Neuman* definition of ‘need’ does not require absolute necessity. It is more liberal and requires only that the use be “expedient, reasonably convenient and useful.” Second, both experts Joseph Cronyn and Richard Garretson agree that more fuel pumps are needed in Hereford based on market data that there was unmet demand for fuel in Hereford (T. 3/11/48, pp. 114-115).

Third, the duplication of services is not a criteria for determining whether a use is ‘needed.’ Not only does the *Neuman* definition defy that position but County Council Bill 103-88, which created the CR district, specifically deleted language that would have required the duplication of services to be considered as a factor (Pet. Ex. 32). Bill 103-88 reads in pertinent part:

THE PETITIONER SHALL DOCUMENT THE NEED FOR THE DEVELOPMENT AT THE PROPOSED LOCATION,; ~~THAT THE COMMERCIAL SERVICES PROPOSED ARE NOT DUPLICATED ELSEWHERE AND THAT THEREIS A POPULATION WITHIN THE TRADE AREAWTTH ADEQUATE BUYING POWER TO SUPPORT THE PROPOSED FACILITY.~~

(Pet. Ex. 32). Thus, this Board does not consider ‘duplication of services’ or whether there is ‘adequate buying power.’ Having left in only the requirement of “document[ing] the need”

informs us that the County Council intended that this be the only requirement. As a result, this Board must apply the *Neuman* definition in determining ‘need’.

Prior to the decision in *Neuman*, the Court of Appeals in *Board of County Commissioners for Prince George’s County v. Luria*, 249 Md. 1 (1968), denied a special exception request for a fuel service station in Bladensburg because the evidence was that there were eleven (11) active stations within $\frac{3}{4}$ mile of the subject property and therefore there was no need for an additional one. On the same day that *Neuman* was decided, the Court of Appeals, in *Board of County Commissioners for Prince George’s County v. Lightman*, 251 Md. 86 (1968) denied a request for special exception for a 24 hour-a-day Crown fuel service station in Prince George’s County. The basis for the denial was that there were seven (7) active stations within 2,500 feet of the proposed location.

Similarly, in *American Oil Company v. Board of Appeals of Montgomery County*, 270 Md. 301 (1973), denied the request for a gas station on the basis that there were eight (8) existing gas stations within 3.4 miles of the subject property, two (2) of which were owned by American Oil Company (Amoco). The Amoco Court citing its decision in *Mayor & City Council of Baltimore v. Biermann*, 187 Md. 514, 523 (1947) said: “...we indicated that the number of filling stations in the vicinity was one of the factors to be considered in sustaining a denial of a special exception for a filling station...”

The Court in *Hoffman v. Mayor & City Council*, 51 A.2d 269, 271 and 273 (1947) the Court of Appeals denied an application for a gas station on Edmondson Avenue and Swann Avenue in Baltimore City because there were five (5) active gas stations within close proximity to the site and that “the number of filling stations in the area of the site of the proposed filing station has reached a saturation point.”

In their Post-Hearing Memorandum, Protestants cite our opinion in *In The Matter of The Application of Donald E. Warrener, Jr.*, Case No.: 99-73-SPHXA and argue that we found “no

need for a gas station based on one abandoned gas station within one-half mile, and a number of existing gas stations that were adequate to serve the needs of the rural community” (Prot. Post Hearing Memo. p. 48). In *Warrener*, a majority of two (2) members of this Board agreed to deny the request for special exception and special hearing for a fuel service station but granted the request to continue the service garage and existing used car sale operation.

However, we do not agree with the Protestants interpretation of our decision in *Warrener* for denying the requests. The evidence there was that there were nine (9) active gas stations within 3 to 7 miles of the site and 11 abandoned gas stations. In *Warrener*, there was no dispute as to the presence of one abandoned gas station which then generated additional testimony on ‘need’ to rebut that presumption. However, of the abandoned gas stations, we made clear in *Warrener* that that reason alone was not enough to justify the disapproval of a fuel service station:

Based on the totality of testimony taken, the Board finds that such a reason would not, in and of itself, be sufficient enough to let that factor discourage a profitable commodity being offered in the form of gas sales, particularly when Mr. Svec and Mr. Grevey testified that other suppliers were interested in such sales at the site and saw great opportunities. Additionally, based on a number of other cases which have involved the Board concerning the “need” issue for gasoline sales, the Board has observed that such stations thrive and prosper if the gasoline “need” factor is coupled with customer demand for early morning and late afternoon commuter sales, where additional, limited food/necessity items can be purchased while waiting for gas to be pumped.

To the contrary, our reason for denying the fuel service station request in *Warrener* was the number of *active* fuel service stations in and around the site, not the presence of one (1) abandoned fuel service station. In *Warrener*, we also said:

Of key analysis, however, was Mr. Sherwood’s report. While the Sherwood Report reflects a need for gasoline sales on Md. Route 439 to serve residents of this section of Northeast Baltimore County, and those who live east of I-83 and north of the White Hall area, as well as other MD 439 motorists between Harford County and I-83, the Board finds, as fact, that the number of current stations available are more than adequate to serve the needs of this rural community.

Id. p. 19.

After *Warrener* was decided in April of 2000, this Board heard *In re: Seven Kids, LLC*, Case No.: 99-199-X, which was a request for special exception approval for a Royal Farms store and fuel service station at Harford and Sunshine Avenue in Fork, Maryland in August of 2000. We denied those requests having found: (1) that there were 11 abandoned gas stations; and (2) because of environmental concerns of tank leaks due to the nature of the site sitting atop a topographical ridge and drainage divide which was at the center of a large fault running through the property from northwest to southeast. The expert testimony produced showed that as a result of the flow of groundwater through the drainage divide on the property and the evidence of active contamination of the wells of witnesses who testified, there was probably contamination of neighboring wells.

In *In re: Seven Kids, LLC*, Joseph Cronyn and Kenneth Schmid also testified on behalf of Royal Farms. Unlike this case, the Board there found that the traffic study by Mr. Schmid showed a decrease in the amount of traffic within a 1 year period. As for Mr. Cronyn's data in that case, it showed that the population increase over a 13 year period prior to and after the store opening would increase by only 81 people.

We find that the facts here are distinguishable from those in *In re: Seven Kids, LLC* as well as in the cases cited above. Here, there is one (1) active fuel service station – the Mt. Carmel Rd. Exxon – within a 4 mile radius of the Property. The Protestants urge us to consider the station on Middletown Road which is 4.3 miles from the Property. Even though it is only 3/10 of a mile outside of the 4 mile radius used by Mr. Cronyn, we find that the location of the Middletown Rd. station is in an entirely different neighborhood, to the north off I-83, and would not be ‘convenient’ (as that term is identified in *Neuman*) for the same patrons of the Mt. Carmel Exxon or Royal Farms.

As previously discussed, we do not find that the fuel service stations presented by Lynne Jones on behalf of the Protestants which were converted to other uses meet the definition of ‘abandoned’ under BCZR §405.3. In the event that any one or more of those station(s) presented by her are found to have satisfied that definition, we find that the market data supplied by Joseph Cronyn met the burden of proof necessary to overcome the presumption of ‘abandonment’ as set forth in BCZR §405.3. We find Mr. Cronyn’s analysis that there is an abundant demand for fuel within the 4 mile trade area using the Bureau of Labor Statistics figures to be more compelling and believable than Richard Garretson’s testimony. Mr. Garretson’s analysis focused only on the supply side, rather than on demand.

Mr. Cronyn testified that the proposed fuel service station in combination with the convenience store and carryout restaurant met the *Neuman* definition of “expedient, reasonably convenient and useful” in that the use, in totality, permitted a new and unique kind of one-stop type of shopping in Hereford. On the issue of ‘convenience,’ the Board found credible the testimony of Mark Hochstein, a resident of Parkton, who testified that, although it is not convenient, he drives to Hunt Valley to buy gas because the Exxon prices are high. Similar testimony was evinced by Hereford Community Association while the Exxon is geographically convenient, the high prices cause patrons to purchase gas elsewhere. Even some of the witnesses for the Protestants testified that they do not buy fuel at the Mt. Carmel Rd. Exxon even though it is convenient because the prices are too high.

Based on our review of the evidence regarding the ‘need’ for a fuel service station, in combination with a convenience store and carryout restaurant, we find that the Petitioner has satisfied BCZR §259.3.E.1.

BCZR §259.3.E.2 – Existing Site Conditions.

This factor is repetitive of the Special Exception criteria in §502.1A, H and I. As a result, rather than repeating the same, we incorporate our analysis here. The Board heard uncontroverted

testimony by David Woessner that this cornfield has no proposed roads or slopes, or wetlands, or forests or floodplains or buffers or streams on the Property; it is a clean site. Accordingly, the proposed use will not result in undue site disturbance or excessive erosion or sediment loss. The evidence showed that the soil type has a high infiltration rate which will be maximized by the proposed state-of-the-art SWM facility. The evidence was undisputed that there currently is no storm water management facility. Based on the weight of the evidence, we find that 259.3.E.2 has been satisfied.

BCZR §259.3.E.3 – Architecturally/Historically Significant Buildings.

The evidence was undisputed that there are no architecturally/historically significant buildings on the Property. Therefore, there are no buildings to preserve or to integrate into the site plan. Consequently, we find that BCZR §259.3.E.3 has been satisfied.

BCZR §259.3.E.4 – Scenic View and Natural Features.

The evidence revealed that the site design leaves 40% of the Property as open space. David Woessner testified that there are no scenic views to preserve. We incorporated herein our analysis of BCZR §259.3.C.3 (Landscaping) above as relevant to preservation of views and features. We also incorporate our discussion herein of the Compatibility factors in BCC §32-4-402 and highlight the proposed rural design/country store appearance as it will be situated among evergreens and indigenous trees. As a result, we find that BCZR §259.3.E.4 has been satisfied.

BCZR §259.3.E.5 – Detrimental to Neighboring Uses as a Nuisance.

By its very nature, the Royal Farms, operating as a fuel station/convenience store/carryout restaurant, will produce some degree of noise, air pollution and light that is not presently existing in the cornfield. However, we find that those types of effects are no different than the ones generated by the Grauls and Exxon or other neighboring commercial businesses along Mt. Carmel Rd. We have already found, based upon our review of the evidence, that Mt. Carmel Rd. is a commercial corridor. It houses the SHA facility with incoming and outgoing trucks. Any

testimony by the Protestants that the Royal Farms would create more of a nuisance by keeping its lights on 24/7 in our view, ignores the constant lights shining from Grauls and Exxon. We incorporate herein our analysis of the Special Exception factors and we find that BCZR §259.3.E.5 has been satisfied.

BCC §32-4-106(b)(8) – Application for Limited Exemption.

The request for limited exemption from the development regulations was consolidated with the Petition for Special Hearing and Petition for Special Exception. As noted above, the Petitioner seeks a limited exemption under BCC §32-4-106(b)(8) from community input meetings and from having a hearing officer's hearing. The basis for this request as testified to by Petitioner's expert, Eric McWilliams, was that this was 'a minor development with less than 3 lots.' Mr. McWilliams testified that it is proposed that the Property be divided into 2-lots (1 of which will have the Royal Farms). If granted, he testified that a development plan is still required to be reviewed and approved by all the relevant County agencies.

We heard Mr. McWilliams' opinion that it qualified under BCC §32-4-101(1) as a 'minor development' because it is a development without a 'public works agreement.' We reviewed the Development Review Committee approval letter for the limited exemption dated March 19, 2014 (Pet. Ex. 38). We reviewed the Development Management Policy Manual (Pet. Ex. 40). There was no expert testimony produced by the Protestants to counter Mr. McWilliams testimony.

Based on the weight of evidence as well as our review of the BCC §32-4-101(1), we find it appropriate that the Petitioner is granted a limited exemption under BCC §32-4-106(b)(8).

ORDER

THEREFORE, IT IS THIS _____ day of _____, 2015, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Hearing under BCZR§259.3.C.7 for approval of illuminated signage be and the same is hereby **APPROVED**; and it is further,

ORDERED that the Petition for Special Exception per BCZR §405.2.B.2, §405.4.E.1 and §405.4.E.10 to allow a fuel service station on an individual site and a convenience store having a sales area larger than 1,500 sq. ft. and a carry-out restaurant as uses in combination be, and the same is hereby **GRANTED**; and it is further,

ORDERED that the Petition for Variance per BCZR §259.3.C.7 to permit a wall mounted enterprise sign of 33.08 sq. ft. in lieu of the permitted 8 sq. ft. which was previously withdrawn by the Petitioner, is hereby **DISMISSED**; and it is further,

ORDERED that the Petition for Variance to permit a front yard setback of 65.74 ft. in lieu of the maximum allowed 58 ft., if necessitated by the SHA widening of Mt. Carmel Road, which was previously withdrawn by the Petitioner, is hereby **DISMISSED**.

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*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**

/s/
Maureen E. Murphy, Panel Chair

/s/
Benfred B. Alston

Richard A. Wisner was a Board member at the hearings and public deliberation. He was not reappointed to the Board and his term expired effective May 1, 2015.

APPENDIX A

ARTICLE 4. Special Regulations

SECTION 405. Fuel Service Stations

§ 405.1. Statement of legislative findings and policy.

A. Bill No. 40-1967 enacted six commercial districts (C.N.S., C.C.C., C.T., C.S.A., C.S.-1 and C.S.-2) and one industrial district (I.M.). One of the main purposes of the new commercial districts was to control the location of service stations and the uses associated with them. In 1975, the C.R. District was added to govern service stations and other commercial uses in rural areas.

B. While the C.T., C.C.C., C.R. and I.M. Districts have special use and bulk regulations which make each one unique, the remaining districts (C.N.S., C.S.A., C.S.-1 and C.S.-2) do not include provisions which make them distinct. As a consequence, the C.S.A., C.N.S., C.S.-1 and C.S.-2 Districts are consolidated into the automotive services (A.S.) District.

C. The design and operation of service stations has changed significantly and the provisions set forth in Bill No. 40-1967 no longer reflect contemporary business practices. Due to the rise of self-service stations, the number of businesses that "service" motor-vehicles by providing repair facilities has been steadily declining, while the number of stations with convenience stores or car wash operations has been increasing. To better reflect the evolving role of this use, the name of "automotive service station" is being changed to "fuel service station," and regulations which govern the permitted ancillary uses are being amended to reflect contemporary business practices and to facilitate the upgrading of existing stations.

D. 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.

§ 405.2. Locations in which fuel service stations are permitted.

* * * *

B. Fuel service stations on individual sites which do not comply with the requirements of Section 405.2.A are permitted by special exception, as provided below and subject to Sections 405.3 and 405.4.

* * * *

2. Outside the URDL with C.R. District designation only in B.L., B.M. or B.R. Zones, subject to Section 259.3.B.2.

§ 405.3. Condition for disapproving special exception.

In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A

finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed fuel service station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data.

§ 405.4. Standards.

A. Site development.

1. Site dimensions. The area of any fuel service station site shall be no less than 15,000 square feet or 1,500 times the number of fuel service spaces (as defined in Section 101), whichever is greater. If any use permitted under Section 405.4.D or 405.4.E is added to the fuel service station, the area of the site shall be increased in accordance with the provisions of those sections.

2. Setbacks.

a. No main structure of a service station shall be set back less than 35 feet from any street right-of-way; no fuel pump shall be set back less than 25 feet from any street right-of-way; no canopy shall be set back less than 15 feet from any street right-of-way.

b. Except at the required access driveways, a landscape transition area shall be provided along the entire perimeter of fuel service stations. Such area shall have a minimum width of 10 feet if the fuel service station abuts a public right-of-way, and six feet in all side and rear yards abutting nonresidentially zoned land, except that service stations located within 50 feet of any residentially zoned property (other than a residential zone line in a public right-of-way) shall provide a buffer measuring no less than 15 feet from that property line.

c. The landscape transition area shall be vegetated and screened in accordance with the Landscape Manual requirements for automotive uses.

d. Other setbacks shall be as required by these regulations.

3. Access, internal circulation and vehicle reservoir capacity.

a. The number and location of access driveways shall be determined by the hearing officer or Zoning Commissioner based upon the recommendations of the Director of Public Works and the Department of Planning.

b. All internal paved areas of a fuel service station site used for parking, driveway, aisles and stacking purposes shall comply

with Section 409 and shall be laid out to preclude vehicles waiting on the street or blocking the right-of-way before gaining entrance.

c. In addition to the fuel service space, at least one stacking space shall be provided:

(1) For each pump island side, at pump islands that contain multiproduct dispensers (MPD) and where a bypass lane serves each MPD;

(2) For each MPD in cases where there is no bypass lane or where a convenience store is located on the same lot; or

(3) For each pump, if the pump dispenses a single fuel type.

d. Parking spaces on the site of any fuel service station shall be provided as follows:

(1) One space per employee on the largest shift.

(2) Three spaces per 1,000 square feet of gross floor area for a convenience store up to 1,500 square feet. (Convenience stores larger than 1,500 square feet shall be subject to the parking requirements for retail uses in accordance with Section 409, including the first 1,500 square feet).

(3) Three spaces per service bay, not counting service spaces in the bays.

(4) One space per self-service air or vacuum cleaner unit.

(5) One space per automatic teller machine.

B. All fuel service stations shall provide a rest room facility, water and compressed air for customers.

C. Appearance.

1. General design.

a. Any structure on the site that is converted to an ancillary use or to a use in combination with a fuel service station must be upgraded to create a unifying architectural theme with other structures on the site.

b. The rear and sides of buildings on lots abutting residentially zoned properties shall be finished with materials that in

texture and color resemble the front of the building. The type of facade treatment shall be indicated on the site plan or an accompanying elevation drawing and is subject to review by the Director of Planning.

c. Except for the temporary outdoor sale of items permitted under Section 230.1.A.9, the outside display of merchandise is permitted only under the canopy, or if there is no canopy, on or between the pump island or in an area immediately adjacent to the cashier's kiosk. Such goods may not block access drives, stacking spaces or interfere with the site's circulation pattern.

d. If the fuel service station is located within 50 feet of a residentially zoned property, lighting standards on site may not exceed a height of 18 feet and shall be directed away from any residentially zoned properties.

e. To increase compatibility with surrounding buildings or to enhance the attractiveness of the site of fuel service stations for which a special exception is required, the Zoning Commissioner may specify additional requirements, including:

- (1) Changes in building or site plan design;
- (2) Restrictions on hours of operations; or
- (3) Other requirements deemed necessary for compliance with this section.

2. Signs. Signs are permitted, subject to Section 450.

3. Maintenance. At all times, the premises shall be maintained in a clean and orderly condition. All landscaped areas shall be irrigated as needed and dead plants replaced. The responsibility for compliance with these provisions lies with all parties that individually or collectively have a lease or ownership interest in the fuel service station.

D. Ancillary uses. The uses listed below, only, are permitted by right in conjunction with any fuel service station. The minimum area of the site as determined under Section 405.4.A.1 shall be increased each ancillary use by at least the number of square feet indicated below, which includes land for required parking and stacking spaces:

* * * *

2. Convenience store with a sales area of up to 1,500 square feet inclusive of accessory storage. An additional site area of four times the square footage of the convenience store's sales area shall be provided.

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3. Automatic teller machine, but no drive-through facilities. Additional site area of 1,000 square feet for each device shall be provided.
4. Self-service vacuum stations. All such stations shall be located at least 30 feet from a residentially zoned property. No additional site area is required.
5. Temporary outdoor sale of Christmas trees, firewood, cut flowers or live plants as limited by Section 230.1.A.9.
6. The sale of cigarettes, candy, drinks, snacks and similar items from vending machines or the cashier's kiosk. No additional site area is required if vending machines do not exceed a total of five machines, otherwise the area shall be considered a convenience store.
7. The retail sale of automotive service items such as motor oil, antifreeze or allied products. No additional site area is required.

E. Uses in combination with fuel service stations. The minimum area of the site as determined by Section 405.4.A.1 shall be increased for each use in combination with a fuel service station by at least the number of square feet indicated below:

Type of Use	Integral Planned Development	Individual Site
<i>(SE = Special Exception and P = Permitted by Right)</i>		
1. Convenience store with a sales area larger than 1,500 square feet inclusive of accessory storage. Additional site area of four times the square footage of the convenience store's sales area must be provided.	SE	SE
* * * *		
10. Restaurant, including fast food, fast food drive-through only, and carry-out restaurants. Additional site area of six times the gross square footage of the restaurant must be provided.	SE	SE

§ 405.7. Abandoned fuel service stations.

A. Finding. The County Council recognizes that at times the public need for fuel service stations at particular locations ceases, and those stations become abandoned. An abandoned fuel service station is one which, intentionally, is not in actual and continuous operation as defined in Section 405.7.B. The County Council further recognizes that an abandoned fuel service station which is left to deteriorate can become a threat to the health, safety and welfare of the community, can have

a blighting influence on surrounding properties and can cause a deterioration of the use, value and enjoyment of property in the immediate neighborhood.

B. Notice of presumption of abandonment. Whenever the owner or agent of any fuel service station has ceased or terminated the use of the premises as a fuel service station, the owner or agent shall notify the Director of Permits, Approvals and Inspections within 30 days after the termination. Notwithstanding the failure of the owner to notify the Director, any fuel service station which has not been in actual and continuous operation as a station for a period of 12 consecutive months shall be presumed to be abandoned and right to resume the use is thereby terminated. For purposes of this section, "continuous operation" shall mean operation as a fuel service station at least eight hours per day, five days per week.

C. Termination of special exception. Any special exception for the operation of a fuel service station shall become void upon notice of abandonment by the owner or upon proof of abandonment after notice and hearing pursuant to Section 500.7 of the zoning regulations. Any special exception for a fuel service station shall terminate at the time of the conversion to another use.

D. The premises (including landscaping) of any fuel service station which is not in continuous operation or which is abandoned shall be continuously maintained in the same manner as is required under these regulations for operating fuel service stations.

E. Proceedings to require removal.

1. Whenever it shall be determined by the Director of Permits, Approvals and Inspections that a fuel service station has not been in continuous operation and that the premises have not been continuously maintained, the Director shall issue a notice to the owner or agent to repair, correct or take other appropriate action to remedy the specific deficiencies enumerated in the notice.

2. If the deficiencies have not been corrected within a period of 90 days following the date of the notice, the Director of Permits, Approvals and Inspections shall refer the matter to the Zoning Commissioner for a hearing, pursuant to Section 500.7, to require removal.

3. If, after notice and hearing pursuant to Section 500.7 of the zoning regulations, it is determined that a fuel service station has not been in continuous operation and not continuously maintained and corrected according to prior notice, and if it is further found that by reason of the continued vacancy, the structure and grounds lack reasonable or adequate maintenance, thereby causing deterioration and blighting influence on nearby properties and thereby depreciating the enjoyment, use or value of the property in the immediate vicinity to such an extent that it is harmful to the public health, welfare, safety, comfort or convenience of the neighborhood in which the station is situated, the Zoning Commissioner shall order the station's removal. For purposes of the subsection, "removal" shall mean the removal by the owner of all aboveground structures,

including paving, and removal or abandonment in place of underground tanks in compliance with the provisions of COMAR 26.10.10.02 and § 33-7-103 of the Baltimore County Code.

§ 405.8. Conversions of abandoned stations.

One of the purposes of this subsection is to promote the conversion of vacated fuel service stations to other uses; therefore, if a fuel service station has been abandoned as such, but is converted to another use, no fuel service station structure, equipment or appurtenances necessary or appropriate to the new use need be removed.

SECTION 259. Districts.

BCZR §259 governs CR Districts. Specifically, §259.3 provides special regulations for CR Districts.

* * * *

B. Uses permitted by special exception.

1. Any use permitted by special exception in the underlying zone on which the C.R. District designation is applied and which meets the bulk regulations of Section 259.3.C.1 is permitted by special exception.
2. Any use permitted (by right or by special exception) within the C.R. District but which is not permitted in the underlying zone and which meets the bulk regulations of Section 259.3.C.1 is permitted by special exception, except that service stations and car wash operations are only permitted in a C.R. District with B.L., B.M. or B.R. as a base zone.
3. Buildings which exceed the requirements of Section 259.3.C.1 may be permitted by special exception only when the proposed development is in compliance with site design guidelines and performance standards which are part of a duly adopted Master Plan for the district.
4. In addition to the requirements generally imposed by Section 502.1, any use permitted by special exception in C.R. Districts shall meet the requirements of Subsection E below.

C. Use restrictions.

1. Bulk regulations.

- a. The gross floor area for all buildings on a lot shall not exceed 8,800 square feet, of which no more than 6,600 square feet shall be on the ground floor.
- b. The floor area ratio shall not exceed 0.20.
- c. Building height shall not exceed 30 feet.

2. Setbacks.

- a. The front yard setback shall be not less than 15 feet from the street right-of-way line and not more than the average of the setbacks of adjacent buildings.
- b. The rear and side yard setbacks shall be not less than 15 feet.

3. Landscaping. In addition to the requirements of the Landscape Manual for commercial zones, the following landscape standards shall apply to uses in C.R. Districts:

- a. The entire required front, side and rear setbacks shall be landscaped; and
- b. A minimum of 7% of the parking lot shall be pervious surface with a minimum of one tree per eight parking spaces provided.

4. Parking. Parking shall be located in a manner appropriate and consistent with adjoining development and must be located within the C.R. District. Access onto roadways shall be limited to no more than two locations. Except where physical constraints, site configuration or safety precludes compliance, parking must be accessible to the parking lots of adjacent nonresidential uses and zones.

5. Environmental holding capacity. The applicant shall prove to the satisfaction of the Director of the Department of Environmental Protection and Sustainability that the land can support the proposed development without overburdening the required private sewage disposal system and the potable water supply, endangering the metropolitan district reservoirs or creating a health or environmental nuisance for neighboring properties.

6. Outside storage. Outside storage of equipment and material shall be permitted only on the lot, subject to the following requirements:

- a. The storage area must be located to the side or rear of the building, outside of the required setbacks;
- b. The storage area shall not cover more than 15% of the lot, except as determined by the Zoning Commissioner in a special exception hearing; and
- c. The storage area shall be screened by a fence in association with plantings.

7. Signs and displays. Signs are permitted, subject to Section 450 and the following additional restrictions:

- a. Only one wall-mounted enterprise sign which does not project more than six inches from the building and does not have a surface area exceeding eight square feet is permitted.
- b. Only one freestanding enterprise sign with a surface area of no more than 25 square feet per side is permitted. The sign shall be integrated with the landscaping, and the location shall be approved by the Director of the Department of Planning.
- c. No sign shall be illuminated unless approved by the Zoning Commissioner after a hearing.
- d. Display of goods, vehicles and equipment is permitted in the front yard, but not more than five feet in front of the required front building line.

8. Relationship to surrounding neighborhoods. New buildings or additions shall be appropriate pursuant to § 32-4-402 of the Baltimore County Code.

9. Auto service stations are subject to the provisions of Section 405.

D. Procedure for obtaining plan approval in a C.R. District.

1. If a County Review Group (CRG) plan is required, the plan shall be approved prior to the granting of a special exception in a C.R. District.

2. When a special exception is required, the CRG shall also find that the proposed development satisfies the requirements of Subsection E below.

E. Additional requirements for the granting of a special exception in a C.R. District. In addition to the requirements generally imposed in the issuance of special exceptions by Section 502.1, the following requirements shall apply to the granting of special exceptions in C.R. Districts:

1. The petitioner shall document the need for the development at the proposed location.

2. The proposed development shall take into account existing and proposed roads, topography, existing vegetation, soil types and the configuration of the site. The proposed development will not disturb slopes with grades exceeding 25%; will minimize disturbance to vegetated areas, wetlands and streams; and will not result in undue site disturbance or

excessive erosion and sediment loss. Infiltration will be maximized and stormwater management discharge will be decentralized.

3. Architecturally or historically significant buildings and their settings shall be preserved and integrated into the site plan.

4. The buildings shall be sited to protect scenic views from public roads and so that the natural rural features, including but not limited to pastures, croplands, meadows and trees, are preserved to the extent possible. Additional open space may be required to preserve and enhance the enjoyment of the natural amenities and visual quality of the site.

5. The proposed development will not be detrimental to neighboring uses and the tranquility of the rural area through excessive noise and will not result in a nuisance or air pollution from dust, fumes, vapors, gases and odors.

Article 4. Special Regulations

Section 450. Signs.

Contained within BCZR, Article 4 Special Regulations and specifically Section 450, entitled “Signs” reads as follows:

§ 450.2. Organization and applicability.

A. Organization. The specific requirements for erecting and maintaining signs are set forth in Section 450.4. In the various zones or uses, a sign is permitted on the basis of its purpose, i.e., class, and form, i.e., structural type. All signs within the scope of Section 450 are subject to the general requirements in Section 450.6. Particular classes of signs are also subject to the special requirements in Section 450.7. Provisions relating to the administration of and compliance with these sign regulations are in Section 450.8.

B. Scope.

1. Unless otherwise provided, authority for erecting or maintaining a permanent or temporary on-premises sign or a permanent off-premises sign derives exclusively from Section 450.

2. The specific signage regulations for a district created pursuant to Section 259 are applicable to the extent that they impose more stringent requirements than Section 450.

3. Signs for a planned unit development are subject to the provisions of Section 450, unless specific signage provisions are modified pursuant to Section 430.

4. In the event of a conflict between Section 450 and Article 23 of the Baltimore County Code, the provisions of Article 23 shall control.

5. In the event of a conflict between Section 450 and the Annotated Code of Maryland, Transportation Article, Title 8, Subtitle 7, Regulation of Outdoor Advertising, the provisions of the Code shall govern signs visible from federal-aid primary highways.

6. All signs must comply with applicable provisions of the Baltimore County Building Code, except that Section 450 shall control to the extent that it imposes more stringent requirements.

C. Exemptions. The requirements of Section 450 do not apply to the following:

1. A "sign" not "visible" from any "highway" as each of these terms is defined in Section 450.3.

2. Merchandise displayed for customers and temporary signs incidental to the display of seasonal merchandise, provided that each sign has a maximum area of two square feet, six square feet for a garden center, a maximum height of 15 feet in OR-1, OR-2, O.T., S-E, B.L., B.M., B.R., M.R., M.L.R., M.L., M.H., C.B. and B.L.R. Zones and eight feet in any other zone, and is intended to provide information to customers on the premises provided it adheres to Section 450.6.A.

3. A sign consisting solely of words, symbols or characters not more than one inch in height.

4. A sign integral to accessory self-service machinery, including, but not limited to, gasoline pumps, automatic banking tellers, vending machines and newspaper boxes, if the sign does not display flashing, blinking, strobing or scrolling.

5. A sign identifying the owner or manufacturer of another sign to which it is attached or indicating licensure of another sign to which it is affixed.

* * * *

8. Except in the case of an enterprise or joint identification sign, a sign displaying a "street address," as that term is defined in Section 450.3, provided that the sign's copy is no more than four inches high in a residential zone and no more than eight inches high in a nonresidential zone, if the sign does not display flashing, blinking, strobing or scrolling.

9. An enterprise or joint identification sign consisting solely of a "street address," provided that the sign does not exceed the maximum area permitted for the sign's class in that zone, if the sign does not display flashing, blinking, strobing or scrolling.

10. The part of an enterprise or joint identification sign comprising the "street address," provided that it does not exceed 30% of the sign's area, if the sign does not display flashing, blinking, strobing or scrolling.

* * * *

12. A temporary window sign, if the sign does not display flashing, blinking, strobing or scrolling.

13. A seasonal display or decoration, for events such as national holidays, not advertising a product, service or activity.

* * * *

§ 450.4. Table of Sign Regulations.

The following table specifies the allowable combinations of sign classes and sign types, along with the use, permit, area, height and other pertinent limitations. Each column in the table has a Roman numeral heading, along with a corresponding summary title. The following descriptions of each summary title are incorporated into the table:

A. Class (I): The entries in this column identify and define the various categories of signs. Each sign must be categorized in a single class. For any sign that meets the definition of more than one class, the more restrictive class will control.

B. Structural Type (II): The entries in this column identify the various structural types of signs, as defined in Section 450.5, which may be used to display signs in a given class, subject to the limitations in the succeeding columns.

C. Zone or Use (III): The entries in this column establish the zone(s), e.g., B.M., B.R., etc., in which signs of the various class and structural type combinations may be displayed. In certain cases, a sign's permissibility is associated with a particular land use, e.g., farm market, in whichever zone(s) such use is otherwise permitted by the Zoning Regulations.

D. Permit Required (IV): The entries in this column indicate whether a specific permit is required for erection or maintenance of a sign. "None" indicates that a permit is not required, provided that the sign complies with all other applicable provisions of this section. "SE" indicates that each sign is permitted only as a special exception use authorized pursuant to Section 502 of the Zoning Regulations. "Use" indicates that a use permit for each sign must be obtained pursuant to Section 500.4 of the Zoning Regulations.

E. Maximum Area/Face (V): The entries in this column establish the maximum area, in square feet, or the formula for calculating the maximum area, permitted within the face of each sign in a given class, regardless of

structural type. Unless otherwise expressly stated, the maximum area is considered the limit for each sign face if more than one sign is permitted in Column VI. If double-faced signs are erected, only one face area is counted toward the maximum area allowed. For freestanding signs, the maximum area may be increased pursuant to Section 450.5.B.4.d.

F. Maximum No./Premises (VI): The entries in this column establish the maximum number of separate signs in a given class, or the formula for determining the maximum number, which may be displayed on a single premises. Unless otherwise provided, the maximum number of signs applies to any combination of signs included in each separate lettered paragraph under Column II. A double-faced sign is considered one sign. Where a sign is permitted on the basis of a building, frontage or vehicular entrance, the sign must be erected only upon the building or frontage, or at or near the vehicular entrance, for which it is permitted.

G. Maximum Height (VII): The entries in this column specify the maximum allowable height for freestanding signs only, subject to the additional limitation in Section 450.5.B.4.c.

H. Illumination (VIII): The entries in this column indicate whether a sign may be illuminated, subject to the requirements of Section 450.6.B.

I. Additional Limitations (IX): The entries in this column indicate additional limitations or identify cross-references to applicable sign provisions elsewhere in Section 450.

§ 450.5. Structural types of signs.

A. In general. The restrictions imposed by this section are intended to directly relate to the structural form in which a sign is erected or displayed. Type is determined by the general structural character of the sign. In addition to the general limitations imposed by the table in Section 450.4, the structural types defined below are subject to the specific limitations of this section.

B. Structural type definitions and restrictions.

* * * *

4. Freestanding sign: A sign that is maintained on a structural framework or supporting element, including a post or a pole, fixed in the ground, but is not attached to a building. Freestanding signs, except outdoor advertising and those that are temporary, are subject to the following:

a. Within a single premises, no freestanding sign may be erected within 100 feet of another freestanding sign having an area larger than eight square feet.

b. On the same side of a highway, no freestanding joint identification sign may be erected within 100 feet and no enterprise sign may be erected within 25 feet of a residential zone.

c. The maximum height of a freestanding sign may not exceed the height specified in Section 450.4.

d. The maximum area for any freestanding sign permitted in Section 450.4 may be increased relative to the setback from a right-of-way of the nearest highway on which a premises has frontage:

- (1) Five percent if the setback is at least 10 feet.
- (2) Ten percent if the setback is at least 20 feet.
- (3) Fifteen percent if the setback is 50 feet or more from the right-of-way.

5. Integral sign: A sign comprising part of the face of a building by being carved or cast, as in stone, bronze or aluminum, or otherwise made or affixed as a permanent component of the building to display such information as building name, date of erection, commemorative citations or the like. An integral sign is not subject to the provisions of Section 450.8 pertaining to abandoned or nonconforming signs or abatement.

6. Projecting sign: A sign having its structural framework or supporting elements attached to a wall of a building with a face which is more than one foot from the wall at any point on the face or is not in a plane parallel to the wall. "Projecting sign" does not include wall-mounted, roof, canopy or awning signs. Projecting signs are subject to the following:

a. A projecting sign may not be higher than the lesser of:

- (1) The height of the eaves, cornice or parapet at the top of the wall to which it is attached; or
- (2) A height of 25 feet from the base of the wall below the sign, unless in the C.T. District of Towson, where the sign may extend to a height of 75 feet from the base of the wall below the sign.

b. Except for a sign permitted in the C.T. District of Towson under Section 450.4.5(p), a projecting sign may not extend horizontally more than four feet from the wall to which it is attached, except that a projecting sign may extend five feet and may have a maximum area up to 10% larger than would be permitted under Section 450.4 if the sign is:

- (1) Attached to a building on a corner lot at an angle that approximately bisects the angle of the corner; and
- (2) The only projecting sign on the building.

c. If a projecting sign extends over a sidewalk or walkway, no part of the sign may be closer than:

- (1) One foot horizontally from the vertical plane of the nearest curb face; and

(2) Ten feet vertically from the nearest point on a sidewalk beneath the sign.

d. Except for a sign permitted in the C.T. District of Towson under Section 450.4.5(p), no part of a projecting sign may be closer than 10 feet to a side or rear lot line.

e. Except for a sign permitted in the C.T. District of Towson under Section 450.4.5(p), a projecting sign's structural framework or supporting elements may not be visible.

* * * *

8. Service station canopy: An open-sided structure, whether or not it is attached to a building or erected over fuel pumps or service islands at a fuel service station pursuant to Section 405 of these regulations. A "service station canopy" is not considered a canopy or a freestanding sign for purposes of this section. Service station canopy signs are subject to the following:

a. A sign may be erected upon a face of a service station canopy, provided that it does not project above, below or beyond either end of the face. Signs may be erected on or between, and attached to, structural columns which support the service station canopy.

b. Signs permitted on or under a service station canopy may not be erected elsewhere or combined with other signs permitted on the premises.

9. Wall-mounted sign: A sign painted on a wall of a building or structurally attached to a building wall in a plane parallel to the wall, including a sign erected upon a mansard, as defined in Section 450.3. Wall-mounted signs are subject to the following:

a. No part of a wall-mounted sign other than lighting fixtures may project more than 18 inches from the wall to which it is attached.

b. No part of a wall-mounted sign may extend above the eaves or parapet, whichever is higher, at the top of the wall to which it is attached, or be placed on the walls or screening enclosing elevator, air conditioning or similar utility mechanisms which project above the eaves or parapet.

c. No part of a sign erected on a mansard may extend more than four feet from its surface, project beyond the vertical plane of the fascia or eaves at the base of the mansard, or extend above the face or beyond either end of the face of the mansard.

10. Enterprise window sign: An enterprise sign mounted on the interior of an enclosed structure that is visible from the exterior of the structure. A sign applied or attached to the exterior of a window is considered to be a wall-mounted sign as covered by Section 450.5.B.9.

* * * *

§ 450.6. General sign requirements.

* * * *

B. Illumination. Illuminated signs are subject to the following:

1. The light emanating or reflecting from, or projecting onto, a sign shall be shaded, shielded or directed so that its intensity does not cause a glare or a similar adverse effect on neighboring, highways or parking areas.
2. Projected illumination must be reasonably confined to the face of the sign.
3. Except for that portion of a changeable copy sign displaying time or temperature, all elements illuminating a sign shall operate at a constant intensity so that no sign has the appearance of movement or of being illuminated by flashing, blinking, strobing, oscillating or alternating lights. The message display for changeable copy signs displaying time or temperature is restricted to date, time and temperature only.
4. A sign may be displayed with reflectorized surfacing if illumination is prohibited.

* * * *

Special Exception Factors – BCZR 502.1.

BCZR §502.1 outlines the conditions for determining whether a special exception should be granted:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

Compatibility Factors – BCC 32-4-402.

BCZR §259.3C(8) requires a finding with compatibility standards in BCC § 32-4-402

which reads as follows:

(a) *“Neighborhood” defined.* In this section, “neighborhood” means the existing buildings and land uses adjacent to and extending from the proposed development to:

- (1) A definable boundary such as a primary collector street or arterial street;
- (2) An area with a significant change in character or land use; or
- (3) A major natural feature.

(b) *Exception.* This section does not apply to a research park.

(c) *Recommendations by Director of Planning.* The Director of Planning shall make compatibility recommendations to the Hearing Officer for:

- (1) A cluster subdivision;
- (2) A development in the RCC, R-O, OR-1, OR-2, O-3, SE, OT zones, the CR districts, or, except as provided for a development described in § 32-4-402, a Planned Unit Development; or
- (3) Alternative site design dwellings as provided in the comprehensive manual of development policies.

(d) *Compatibility objectives.* Subject to subsection (c) of this section, development of property shall be designed to achieve the following compatibility objectives in accordance with the guidelines in the comprehensive manual of development policies:

- (1) The arrangement and orientation of the proposed buildings and site improvements are patterned in a similar manner to those in the neighborhood;
- (2) The building and parking lot layouts reinforce existing building and streetscape patterns and assure that the placement of buildings and parking lots have no adverse impact on the neighborhood;
- (3) The proposed streets are connected with the existing neighborhood road network wherever possible and the proposed sidewalks are located to support the functional patterns of the neighborhood;

- (4) The open spaces of the proposed development reinforce the open space patterns of the neighborhood in form and siting and complement existing open space systems;
- (5) Locally significant features of the site such as distinctive buildings or vistas are integrated into the site design;
- (6) The proposed landscape design complements the neighborhood's landscape patterns and reinforces its functional qualities;
- (7) The exterior signs, site lighting and accessory structures support a uniform architectural theme and present a harmonious visual relationship with the surrounding neighborhood; and
- (8) The scale, proportions, massing, and detailing of the proposed buildings are in proportion to those existing in the neighborhood.

* * * *

Limited Exemption – BCC 32-4-106(b)(8).

A request for limited exemption from the development approval process § 32-4-106(b)(8).

LIMITED EXEMPTIONS.

* * * *

(b) *Exemption from community input meetings and Hearing Officer's hearing.* The following development is exempt from the community input meeting and the Hearing Officer's hearing under Subtitle 2 of this title:

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(8) A minor development that does not exceed a total of three lots;