

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(8817 Wise Avenue)
15th Election District
7th Council District
Two Farms, Inc.
Legal Owner
Petitioner**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2017-0309-XA**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 8817 Wise Avenue. The Petitions were filed on behalf of Two Farms, Inc., legal owner of the subject property. The Special Exception petition seeks to permit a fuel service station and a rollover car wash, as a use in combination. The Petition for Variance seeks to allow a freestanding enterprise sign with a height of 27 ft. in lieu of the permitted height of 25 ft. A six-sheet redlined site plan was marked as Petitioner’s Exhibit 1A-1F.

Appearing at the hearing in support of the petitions was Mark Keeley, Jennifer Leonard and Jeff Bainbridge. David H. Karceski, Esq. and Neill Thupari, Esq., represented the Petitioner. No protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Neither agency objected to the requests.

The subject property is approximately 2.41 acres in size and zoned BR-AS. The site is improved with three commercial buildings which previously housed a bank and automobile repair and service facilities. Petitioner proposes to raze these structures and completely redevelop the

site with a Royal Farms fuel service station, convenience store and car wash. To do so zoning relief is required.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Jennifer Leonard, a landscape architect accepted as an expert, testified via proffer the proposed use would not have a detrimental impact upon the community. She explained the surrounding area is predominantly commercial/industrial, and that the proposed use would enhance the appearance and functionality of the site. She also opined Petitioner satisfied each of the special exception factors set forth in B.C.Z.R. §502.1.

Mark Keeley, a traffic engineer accepted as an expert, testified the signalized intersection at Wise Avenue and Northpoint is rated at an “A” level of service and would continue to be so rated even assuming this project was completed. He also opined the proposed development would not cause “congestion in roads, streets or alleys,” as referenced in B.C.Z.R. §502.1.B. As such I believe the petition for special exception should be granted.

VARIANCE

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

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

Cromwell v. Ward, 102 Md. App. 691 (1995).

Ms. Leonard testified the property has an irregular shape, like an “elongated boomerang.” As such the property is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty since it would be unable to install on the site a sign of sufficient height (i.e., 27 ft. in height in lieu of 25 ft.) to inform motorists of the prices for various grades of gasoline. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21st day of **August, 2017**, that the Petition for Special Exception to permit a fuel service station and a rollover car wash, as a use in combination, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a freestanding enterprise sign with a height of 27 ft. in lieu of the permitted height of 25 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site, which shall indicate the dumpster enclosure will be constructed of

suitable materials and designed to complement the appearance of proposed site improvements.

3. The special exception to operate a used car sales facility on the subject property, granted in Case No. 2012-0057-SPHX, shall be deemed abandoned.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln