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| IN RE: PETITIONS FOR SPECIAL HEARING * | | BEFORE THE |
| AND SPECIAL EXCEPTION | | OFFICE OF |
| (7179 Holabird Avenue) | * | |
| 12 th Election District | | ADMINISTRATIVE HEARINGS |
| 7 th Council District | * | |
| Weis Markets, Inc. | | FOR BALTIMORE COUNTY |
| <i>Legal Owner</i> | * | |
| | | Case No. 2017-0322-SPHX |
| Petitioner | * | |
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| * * * * * | | |

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Weis Markets, Inc., legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve a fuel service station canopy sign with electronic changeable copy elements (pricing). A Petition for Special Exception was filed to use the herein described property for a fuel service station.

Appearing at the public hearing in support of the requests was Jack O’Hara, Alex Ororbia and professional engineer John Luciani. Caroline L. Hecker, Esq. and Justin Williams, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 0.491 acres in size and is split-zoned BL-AS and BL. The property is unimproved, and Petitioner proposes to construct a fuel service station on the lot. Petitioner opened a Weis Market grocery store directly across the street in August, 2016, and as it has at other locations it proposes to operate the gas station in conjunction with the grocery

store.

SPECIAL HEARING

All signage proposed (See Exhibit 8) is permitted by right under B.C.Z.R. §450. Counsel notes that Petitioner would be entitled to have a second freestanding sign on Delvale Avenue, though it has not proposed a sign at that location.

The petition for special hearing is required because the B.C.Z.R. does not address whether or not electronic changeable copy is permitted on a fuel service station canopy sign. The sign would display prices for the various grades of gasoline sold at the station. Such pricing information is required by state law, and consumers find such signage helpful in determining which station in the vicinity offers the lowest prices. I do not believe granting the request would lead to “visual clutter,” and will therefore grant the petition. Petitioner stated the electronic signage proposed here is identical to that approved in recent zoning cases involving Weis Markets. See Exhibit 11, Order in Case No. 2017-0241.

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 reaffirmed 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. *Id.*

John Luciani, professional engineer, testified via proffer Petitioner satisfied the

requirements of B.C.Z.R. §502.1 and the cases interpreting that provision. No evidence was offered to rebut this *prima facie* case and the petition will therefore be granted.

THEREFORE, IT IS ORDERED this 8th day of **August 2017**, by this Administrative Law Judge, that the Petition for Special Hearing to approve a fuel service station canopy sign with electronic changeable copy elements (pricing), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to use the herein described property for a fuel service station, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at 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.
3. Petitioner must submit for approval by Baltimore County a floodplain study for the site.
4. The special exception area, in which is permitted the operation of the fuel service station, shall encompass only the BL-AS zoned portion of the property.

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