

JD 10-25-17

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(7560 Belair Road)		
14 th Election District	*	OFFICE OF
6 th Council District		
7560 Belair Road, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Two Farms, Inc.	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2017-0356-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of 7560 Belair Road, LLC, legal owner and Two Farms, Inc., lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") Sections 405.2.B.1 and 502.1 to use the herein described property for a fuel service station on an individual site.

Professional engineers Paul Taylor and Mickey Cornelius, landscape architect Bernt Peterson, planner Bill Monk and Jeff Bainbridge on behalf of Two Farms, Inc. appeared in support of the petition. David H. Karceski, Esq. and A. Neill Thupari, Esq. represented the Petitioners. Several citizens attended the hearing to express concerns with certain aspects of the project.

A letter of support was received from the Overlea-Fullerton Business and Professional Association (OFBPA), and is included in the case file. Other letters of support and opposition were also received and are contained in the case file. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the State Highway Administration (SHA). None of the reviewing agencies opposed the request.

The subject property is approximately 2.03 acres and is zoned BL-AS. The property is improved with a one-story commercial building now used as a bingo hall. Petitioners propose to

raze that structure and construct in its place a Royal Farms store with gasoline pumps, restaurant, convenience store and outdoor seating area. Similar amenities are found at other Royal Farms store locations in Baltimore County. The property was rezoned by the county council in 2016 to a designation (BL-AS) which permits by special exception the fuel service station use.

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.

Petitioners presented testimony from several experts; Messrs. Petersen, Taylor, Cornelius and Monk. Among other things, these witnesses opined Petitioners satisfied the standards in B.C.Z.R. §405.2 (regarding fuel service stations) and §502.1 (regarding special exceptions), and I concur. Based on the testimony presented I believe the project has been thoughtfully designed and will be an improvement to the neighborhood. The site now contains over 86% impervious surface, and as Messrs. Petersen and Taylor noted additional green spaces will be added to screen the use, which will also reduce the amount of impervious surface to approximately 74%. A modern storm water management facility with bio-retention areas will be added to the site as well. The site plan (Exhibits 1A-1C) demonstrates Petitioners will satisfy all setback, landscape and parking requirements (including stacking space requirements) set forth at B.C.Z.R. §405, and no variances are requested or required.

Citizens indicated traffic is congested in the area, but as Mr. Cornelius testified that is the case on all state highway arterial roads in Baltimore County. As he noted, similar traffic volumes can be found along Frederick Road, Reisterstown Road, York Road, Harford Road and similar thoroughfares. Mr. Cornelius opined the project would not have a greater impact on traffic at this location than it would at other BL-AS zoned properties in the County. He also testified the site is not situated within a failing traffic shed.

Traffic safety and congestion are important issues, but they are also the types of inherent adverse effects that the legislature was presumed to have anticipated when it allowed a fuel service station by special exception. In other words, most uses for which a special exception is required are regarded as “potentially troublesome because of noise, traffic, congestion....” *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). Traffic congestion is an adverse impact which is “inherent” in this use, and the special exception cannot be denied on this basis.

Any gas station/convenience store operation will generate a significant volume of traffic, although as Mr. Cornelius noted most of the trips generated are “pass by” trips; i.e., people will stop in on their way to work or other destination, rather than making a separate trip from their home to simply put gas in their car. As such, I do not believe the Royal Farms store will have a detrimental impact upon the community, and the petition will therefore be granted.

THEREFORE, IT IS ORDERED this 31st day of **October, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to use the herein described property for a fuel service station on an individual site, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is

reversed, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must submit for approval by Baltimore County a landscape and lighting plan for the site
3. Petitioners must obtain from SHA an entrance or access permit for the Belair Road ingress/egress from the site.
4. A car wash facility is not permitted on the subject property.
5. Fuel delivery trucks shall not use Glade Avenue as a means of ingress/egress from the site.
6. Petitioners shall engage the services of a third-party contractor to inspect and maintain at necessary intervals the storm water management facilities at the site.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln