

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(Perry Hall & White Marsh Boulevard)	*	OFFICE OF
11 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
Perry Hall Boulevard Commercial, LLC,		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Two Farms, Inc.,		
<i>Contract Purchaser/Lessee</i>	*	Case No. 2018-0059-SPHXA
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Perry Hall Boulevard Commercial, LLC, legal owner, and Two Farms, Inc., contract purchaser/lessee (“Petitioners”).

The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve access to a commercial use through a residential zone (D.R.1). In addition, a Petition for Variance seeks: (1) To allow a maximum of 4 enterprise signs (1 wall-mounted and 1 canopy on front and rear facades) for a single tenant building, in lieu of the maximum permitted 3 signs with no more than 2 on a single façade; (2) To allow a freestanding enterprise sign on a lot which has a lot line that is co-terminous with a right-of-way line of a highway, but to which the premises does not have and is not allowed pedestrian or vehicular access; and (3) To allow a landscape transition area a minimum of 0 ft. in width in a side yard abutting non-residentially zoned land in lieu of the required 6 ft. Finally, a Petition for Special Exception seeks approval for a fuel station on an individual site.

Appearing at the public hearing in support of the requests was Joe Moran, Kenneth W. Schmid, Tom Ruszin and Joshua T. Sharon, with Morris & Ritchie Associates, Inc. David H. Karceski, Esq. and A. Neill Thupari, Esq. with Venable, LLP represented the Petitioners. Mike Pierce attending the hearing and expressed concern with the signage for the project. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Bureau of Development Plans Review (DPR), the Department of Planning (DOP), the Department of Environmental Protection and Sustainability (DEPS) and the State Highway Administration (SHA).

The subject property is approximately 2.23 acres in size and is zoned BM-CCC. The unimproved property is located at the intersection of White Marsh Boulevard and Perry Hall Boulevard. Petitioners propose to construct a Royal Farms store at the site.

Variances

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).

Petitioners have met this test. The property has an irregular shape and is bordered by two public roads to which the site does not have access. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements and provide appropriate signage to alert motorists to the location of the store. Finally, I find that the variances 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. The variances primarily concern signage at the site, but I do not believe the signs proposed will be excessive or will create visual clutter.

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.

Both Mr. Schmid and Mr. Sharon opined Petitioners satisfied each of the requirements set forth at B.C.Z.R. § 502.1, and no testimony or evidence was offered to rebut these opinions. As such, and in recognition of the presumption supplied by Maryland law, the petition for special exception will be granted.

Special Hearing

The petition for special hearing seeks approval to access the proposed Royal Farm store through a portion of land with residential (D.R.1) zoning. As shown on the site plan, only a small portion of the access drive would intrude upon the residential zone; all commercial structures, signage and related infrastructure is located in the BM-CCC zone. The access drive would be situated near (but not within) nontidal wetlands and the White Marsh Run. There are no dwellings situated in the immediate vicinity of the proposed access drive, and I do not believe granting the request would have a detrimental impact upon the community. The DEPS ZAC comment will be incorporated into the order below to ensure the environmental resources at the site are protected.

As noted at the outset Mr. Pierce expressed concern with the proliferation of illegal signage at several Royal Farm stores throughout the County. He presented a series of photos (Protestant's No. 1) which identify the stores in question, all of which have unauthorized signs (the majority of which were advertisements for cigarettes and tobacco products). I share Mr. Pierce's concern. This type of signage creates visual clutter and mars the appearance of the community, which is what the sign ordinance seeks to prevent. B.C.Z.R. § 450.1. A condition will be added in the order below to prohibit such unsightly and unauthorized signs.

The final issue concerns "the right of ingress and egress" over the BGE property which bisects this site, a point raised in the DOP ZAC comment. The owner's representative confirmed that while BGE is the fee-simple owner, it has the right (by deed and license) to access its property over and across the BGE property.

THEREFORE, IT IS ORDERED this 16th day of **October, 2017**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve access to a commercial use through a residential zone (D.R.1), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception for a fuel station on an individual site, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) To allow a maximum of 4 enterprise signs (1 wall-mounted and 1 canopy on front and rear facades) for a single tenant building, in lieu of the maximum permitted 3 signs with no more than 2 on a single façade; (2) To allow a freestanding enterprise sign on a lot which has a lot line that is co-terminous with a right-of-way line of a highway, but to which the premises does not have and is not allowed pedestrian or vehicular access; and (3) To allow a landscape transition area a minimum of 0 ft. in

width in a side yard abutting non-residentially zoned land in lieu of the required 6 ft., 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 comply with the ZAC comment of DEPS, a copy of which is attached hereto and made a part hereof.
3. Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site, which plans should specifically demonstrate how the proposed dumpster would satisfy the requirements of Condition “H” in the Landscape Manual.
4. Only “commercial special event” temporary signs (as described in B.C.Z.R. § 450.4, Class 17 on Table of Sign Regulations) shall be permitted at the site. Such signs shall be subject to the limitations set forth at B.C.Z.R. § 450.7.E.2.
5. Only signs for which a permit has been issued by Baltimore County may be placed or situated on the subject premises.

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:dlw