

<b>IN RE: PETITIONS FOR SPECIAL HEARING *</b>		BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		OFFICE OF
(6124, 6126, 6132 Edmondson Ave)	*	
1 <sup>st</sup> Election District		ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Council District	*	
Stilling Properties, LLC		FOR BALTIMORE COUNTY
<i>Legal Owner</i>	*	
Two Farms, Inc.		<b>Case No. 2018-0101-SPHX</b>
<i>Lessee</i>	*	
Petitioners	*	

\* \* \* \* \*

**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 Stilling Properties, LLC, legal owner and Two Farms, Inc., lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to approve a waiver; (2) to permit the redevelopment of a portion of the site in a riverine floodplain; and (3) to allow grading, paving, installation of a sidewalk and sign, concrete curb and gutter, stormwater management facility, storm drain, landscaping and other site work improvements within the floodplain. A Petition for Special Exception was filed to use the property for a fuel service station on an individual site.

Jeff Bambridge, professional engineer Joshua Sharon, landscape architect Matthew Bishop, traffic engineer Mark Keeley and Jason Stilling attended the public hearing in support of the requests. David H. Karceski, Esq. and A. Neill Thupari, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and Department of Planning (DOP). Neither agency opposed the requests.

The subject property is approximately 1.153 acres in size and is zoned BL-AS, with an extremely small portion zoned DR 5.5. All proposed improvements would be in the BL-AS zoned portion of the site. The property was previously zoned BL, but during the 2016 Comprehensive Zoning Map Process the property was rezoned to BL-AS. Petitioners' Ex. 3.

At present there is a liquor store and automotive service garage at the property. Petitioners would raze those structures and construct a Royal Farms Store with gasoline pumps, convenience store and carry-out restaurant. Such a use(s) is permitted by special exception in the BL-AS zone.

### SPECIAL HEARING

The special hearing pertains to a waiver of certain requirements pertaining to a riverine floodplain on the property. As shown on the plan, only a small portion of the 100-year floodplain is located on the subject property, and no structures or buildings are proposed in that location. Instead, Petitioners propose to install within the floodplain landscaping and curb, gutter, sidewalk and utility improvements along Harlem Lane. The County Code (BCC §32-4-414) permits such infrastructure items to be located within the floodplain, as noted in a November 29, 2017 memorandum from the Director of Department of Public Works (DPW). Petitioners' Ex. 8. That agency did not object to the waiver request and the petition for special hearing will therefore be granted.

### 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.

Messrs. Sharon, Bishop and Keeley (each of whom was accepted as an expert) testified via proffer the Petitioners satisfied each of the requirements set forth in the B.C.Z.R. §502.1. They each also opined the adverse impacts of this special exception use would be no greater at this location than it would be at other BL-AS zoned sites. As such the petition for special exception will be granted.

THEREFORE, IT IS ORDERED this 5<sup>th</sup> day of **December 2017**, by this Administrative Law Judge, that the Petition for Special Hearing as follows: (1) to approve a waiver; (2) to permit the redevelopment of a portion of the site in a riverine floodplain; and (3) to allow grading, paving, installation of a sidewalk and sign, concrete curb and gutter, storm water management facility, storm drain, landscaping and other site work improvements within the floodplain, as shown in detail on the site plan admitted as Petitioners' Exhibit 1A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to use the subject 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 shall have five (5) years from the date hereof in which to utilize the special exception.
3. Prior to issuance of permits Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site.

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