

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(9500-9526 Pulaski Highway)
15th Election District
6th Council District
SG Maryland, LLC
Two Farms, Inc.
Legal Owners
Petitioners**

*
*
*
*
*

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2018-0168-XA

* * * * *

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 9500-9526 Pulaski Highway. The Petitions were filed on behalf of SG Maryland, LLC, and Two Farms, Inc., legal owners of the subject property. The Special Exception petition seeks to use the described property for a fuel service station on an individual site. The Petition for Variance seeks 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. A site plan was marked as Petitioners’ Exhibit 1.

Appearing at the hearing in support of the petitions were Joshua Sharon, Thomas Sheckells, Jeff Bainbridge and Mark Keeley. David H. Karceski, Esq. and A. Neill Thupari, Esq. represented Two Farms, Inc. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and State Highway Administration (SHA).

The subject property is approximately 4 acres in size and is split-zoned ML-AS and ML-IM. The site is improved with an older commercial building to the rear of the property near the

railroad tracks and a vacant gasoline station at the front of the site adjoining Pulaski Highway. Petitioners propose to raze all existing improvements and construct a Royal Farms fuel service station and convenience store on the property.

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.

Josh Sharon, a professional engineer accepted as an expert, testified via proffer Petitioners satisfied all requirements for special exception relief under BCZR §502.1 and the Maryland case law interpreting that provision. Mr. Sharon also presented a map (Exhibit 7) showing there are no abandoned fuel service stations within one mile of the site, and thus I believe BCZR §405.3 is satisfied.

This is an unusual case in that the subject property itself contains an abandoned gas station, as shown in the photo admitted as Exhibit 8. Even so, as counsel argues, the aforementioned regulation focuses on the “vicinity” surrounding the site rather than the site itself. This is in accordance with the principle that special exceptions (unlike variances) are outward looking. *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md. App. 616, 645-46 (1998) (law considers only “off-site effects of the proposed special exception use”). In addition, Royal Farms leases property directly across the street on which it operates a fuel service station. This station will close

when the new store is constructed. Mr. Bainbridge testified Royal Farms will remove the pumps, canopy and similar appurtenances from the old site and attempt to find a commercial lessee to assume its lease obligations. Thus, even when Royal Farms vacates that site it will not be an “abandoned fuel service station” under the Regulations since the station will not be “left to deteriorate” or have a “blighting influence on surrounding properties.” BCZR §405.7.A. The net result is that there will be a reduction in the number of abandoned fuel service stations and no increase in the number of operational stations in this vicinity.

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).

The property has an irregular shape and is therefore unique. If the BCZR were strictly interpreted Petitioners would suffer a practical difficulty since they would be unable to provide adequate signage for the new store. Finally, I find that the variances can be granted in harmony with the spirit and intent of the BCZR, 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 County and/or community opposition.

In its ZAC comment the DOP suggested architectural features be added to the 220 ft. long canopy over the fuel pumps. Mr. Sharon indicated he was unsure what sort of features the DOP envisioned, and Mr. Bainbridge expressed concern that any changes would cause Royal Farms to deviate from the uniform canopy design used at all of their area locations. This site is in a heavy

industrial zone and there are no design requirements which are applicable in this instance. As such, I will not include this proposed condition in the final order.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 13th day of **March, 2018**, that the Petition for Special Exception to use the described property for a fuel service station on an individual site, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance 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, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 landscape and lighting plans for the site.
3. Petitioners shall have four (4) years from the date hereof to utilize the special exception.
4. No temporary signs, banners or promotional displays shall be permitted on the subject property.
5. Petitioners must obtain from the SHA an entrance permit to access US 40 (i.e., Pulaski Highway).

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