

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(7701-7703 German Hill Road)	*	OFFICE OF
12 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
Cloverland Farms Dairy, Inc.		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Two Farms, Inc.,		
<i>Contract Purchaser</i>	*	Case No. 2018-0296-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 Cloverland Farms Dairy, Inc., legal owner, and Two Farms, Inc., contract purchaser (“Petitioners”).

The Petition for Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to allow stacking spaces servicing multi-product dispensers to be located within on-site driveways. In addition, a Petition for Variance seeks: (1) to allow a landscape transition area a minimum of 6 ft. in width from the rear property line in lieu of the required 15 ft.; (2) to allow a total of 30 off-street parking spaces in lieu of the required 37 parking spaces; (3) to allow a total of 6 stacking spaces in lieu of the required 12 stacking spaces for a fuel service station where bypass lanes serve all multiproduct dispensers; and (4) to allow a driveway for two-way movements a minimum of 14.5 feet in width in lieu of the required 20 feet. Finally, a Petition for Special Exception seeks to amend the site plan for a fuel service station and to enlarge the special exception area approved in Case No. 94-183-XA for the construction of a larger convenience store/carry out restaurant building, the reconfiguration and addition of fuel station pumps and other related improvements as shown on the site plan.

Appearing at the public hearing in support of the requests was Jennifer Leonard, Ken Schmid and Jeff Bainbridge. David H. Karceski, Esq. and Jennifer Frankovich, Esq. with Venable, LLP represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Bureau of Development Plans Review (DPR). That agency opposed only the special hearing request to permit stacking spaces within an on-site driveway.

The subject property is approximately 1.09 acres in size and is zoned BL-AS. A gasoline station has existed on this property since 1949, and Royal Farms has operated a fuel service station and convenience store here since 1994. Petitioners acquired two adjoining commercial parcels and propose to expand the size of the convenience store and install additional fuel pumps.

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 site has an irregular shape (like a diamond) and is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements. 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.

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. Ms. Leonard, a landscape architect accepted as an expert, opined Petitioners satisfied all requirements set forth in BCZR Section 502.1 and the Maryland case law interpreting that provision. In the absence of any evidence to the contrary I will grant the petition for special exception.

Special Hearing

As noted earlier the Bureau of DPR opposed the special hearing request pertaining to the stacking spaces at the fuel dispensers. While I share that agency's concerns with the potential for impeding traffic flow at the site, Petitioners presented testimony from Ken Schmid, a traffic engineer accepted as an expert, which I found persuasive.

First, Mr. Schmid confirmed that under no circumstances would vehicle stacking at the fuel pumps interfere with the ingress/egress points from the site or the surrounding roadways. He also testified his firm studied the parking and vehicular movements throughout the site. Based on his observations, he opined the 30 parking spaces on site would be more than sufficient and that even during peak time periods he would expect no more than 6 vehicles stacking at this site waiting to use one of the 12 fuel dispensers. As such he did not believe granting the special hearing request would cause congestion throughout the site. Jeff Bainbridge from Royal Farms

also stated Petitioners would not invest in excess of \$3 million to renovate this site if they believed patrons could not safely and conveniently navigate through the site. In light of this testimony I will grant the special hearing request.

THEREFORE, IT IS ORDERED this 1st day of **November, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the BCZR to allow stacking spaces servicing multi-product dispensers to be located within on-site driveways, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to amend the site plan for a fuel service station and to enlarge the special exception area approved in Case No. 94-183-XA for the construction of a larger convenience store/carry out restaurant building, the reconfiguration and addition of fuel station pumps and other related improvements as shown on the site plan, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow a landscape transition area a minimum of 6 ft. in width from the rear property line in lieu of the required 15 ft.; (2) to allow a total of 30 off-street parking spaces in lieu of the required 37 parking spaces; (3) to allow a total of 6 stacking spaces in lieu of the required 12 stacking spaces for a fuel service station where bypass lanes serve all multiproduct dispensers; and (4) to allow a driveway for two-way movements a minimum of 14.5 feet in width in lieu of the required 20 feet, 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. 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