

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(100-114 W. Padonia Road)		
8 th Election District	*	OFFICE OF
3 rd Council District		
Two Farms, Inc.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0317-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 Two Farms, Inc., legal owner (“Petitioner”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to use the subject property for a fuel service station and a rollover car wash, as a use in combination.

Traffic engineer Mark Keeley, professional engineer Steve Warfield and Jeff Bainbridge appeared in support of the petition. David H. Karceski, Esq. and Jennifer Frankovich, Esq. represented the Petitioner. Eric Rockel, President of Greater Timonium Community Council (“GTCC”) attended the hearing to obtain additional information regarding the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”).

The subject property is approximately 2.29 acres in size and is zoned BM-CCC. The property is now improved with two (2) commercial buildings, which will be razed. Petitioner proposes to construct on the site a Royal Farms fuel service station, convenience store and rollover car wash. Such uses are permitted by special exception in the BM zone.

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. Mr. Warfield opined Petitioner satisfied all requirements set forth in BCZR §502.1 and the case law interpreting that provision. In the absence of any evidence to the contrary and in light of the presumption provided by Maryland law the petition will be granted.

Eric Rockel testified the community's main concern was traffic. Mr. Keeley noted the property is not within a failing traffic shed, although the intersection at Padonia and York Road functions at a "D" level of service in the afternoon peak period. As discussed at the hearing, traffic is the most frequent concern cited in both commercial and residential zoning cases. Although Mr. Keeley explained most traffic visiting the site would be considered pass-by trips where motorists stop for gas or convenience store purchases on their way to another primary destination, it stands to reason traffic will increase in the area. Other than expensive and time-consuming infrastructure improvements, no readily-available cures exist for this problem. In terms of a strict legal analysis, increased traffic is considered to be inherent in many special exception uses, and the petition cannot be denied on that basis. 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).

THEREFORE, IT IS ORDERED this **3rd** day of **August, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to use the herein described property for a fuel service station and a rollover car wash, as a use in combination, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must comply with the ZAC comment of the Bureau of DPR, a copy of which is attached.
3. Petitioner shall have five (5) years from the date hereof in which to utilize the special exception.

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