

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	*	OFFICE OF
<b>(10901 McCormick Road &amp;</b>	*	ADMINISTRATIVE HEARINGS
<b>10825 Beaver Dam Road)</b>	*	FOR BALTIMORE COUNTY
8 <sup>th</sup> Election District	*	<b>Case No. 2018-0346-SPHXA</b>
3 <sup>rd</sup> Council District	*	
Dan Mar Enterprises, LLC	*	
10825 Beaver Dam Road, LLC	*	
<i>Legal Owners</i>	*	
10825 Beaver Dam Road, LLC	*	
<i>Contract Purchaser</i>	*	
<b>Petitioners</b>		

\* \* \* \* \*

**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 Dan Mar Enterprises, LLC & 10825 Beaver Dam Road, LLC, legal owners, and 10825 Beaver Dam Road, LLC, contract purchaser (“Petitioners”).

The Petition for Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve additional fuel dispensers in an existing fuel service station and an amendment to the previously approved zoning site plan in Case No. 2014-0263-SPHX. In addition, a Petition for Variance seeks approval: (1) for a side yard setback of 10 ft. in lieu of the 30 ft. required; and (2) for two freestanding enterprise signs in lieu of one permitted. Finally, a Petition for Special Exception was filed to use the herein described property for a fuel service station, a full service car wash and a fast food restaurant as uses in combination with a fuel service station.

Appearing at the public hearing in support of the requests was professional engineer Wayne Newton. Dino C. La Fiandra, Esq., represented the Petitioners. 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 submitted by the Bureau of Development Plans Review (“DPR”), the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of the reviewing agencies opposed the requests.

The subject property is approximately three (3) acres in size and is zoned ML-IM. A gasoline station has operated at the site since 1972, and at present a fuel service station and High’s convenience store is operated on the subject property. Petitioners propose to expand the fuel service operation and add a fast-food restaurant (inside of a convenience store) and full service car wash, both of which are permitted in the ML-IM zone by special exception.

The Bureau of DPR noted a flood plain exists on a portion of the site, and Petitioners revised the plan to show the limits of the flood plain. Wayne Newton, a professional engineer accepted as an expert, testified no structures or improvements (including the trash corral, which was relocated outside of the flood hazard area) would be situated within the flood plain. Mr. Newton also confirmed several mature evergreen trees located along the southeast tract boundary will be retained, as requested by the DOP. Petitioners also presented preliminary elevations of the car wash (which were also shown to the DOP), and it appears the structure will be attractive and complement existing site improvements.

### **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. Newton opined Petitioners satisfied all requirements set forth in BCZR §502.1 and the Maryland case law interpreting that provision. As noted earlier a fuel service station has operated at this location for more than 45 years, and no evidence was presented to rebut the presumption in favor of the special exception use. Moreover, one of the ingress/egress points will be relocated so that it aligns with the existing traffic signal at Beaver Dam and McCormick Roads, which will greatly improve traffic flow. As such the petition will be granted.

### **Special Hearing**

The petition for special hearing is essentially a “housekeeping” matter rather than a substantive zoning request. In 2014 a site plan was approved in Case No. 2014—0263-SPHX. That plan showed certain improvements which were proposed at the time, although they never were constructed. The present request simply seeks to amend that earlier plan, in accordance with the site plan approved in this case, which would supersede the 2014 plan. This is a reasonable (and frequent) request, and it will benefit both the community and County review agencies. The petition will therefore be granted.

### **Variance**

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 irregular dimensions 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 variance 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 community and/or Baltimore County opposition.

THEREFORE, IT IS ORDERED this 15<sup>th</sup> day of **August, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve additional fuel dispensers in an existing fuel service station and an amendment to the previously approved zoning site plan in Case No. 2014-0263-SPHX, 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, with a full service car wash and fast food restaurant as uses in combination with a fuel service station, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) for a side yard setback of 10 ft. in lieu of the 30 ft. required; and (2) for two freestanding enterprise signs in lieu of one permitted, 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 submitted by DEPS, a copy of which is attached.

3. Petitioners must provide a pedestrian crosswalk connecting the existing sidewalk adjacent to Beaver Dam Road with the convenience store.
4. Petitioners must submit for approval by Baltimore County landscape and lighting plans for the subject property.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln