

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(6201 Charles Street)	*	OFFICE OF
9 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
Woodbrook Corner, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Shamim Malik		
<i>Lessee</i>	*	Case No. 2018-0359-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 Woodbrook Corner, LLC, legal owner, and Shamim Malik, lessee (“Petitioners”).

The Petition for Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to amend the site plan approved in Case No. 66-220-X to reflect the changes to the building and site that have occurred over the past 52 years. A Petition for Variance was filed: (1) for a rollover car wash, to permit one drying space in lieu of the required two drying spaces and to permit zero parking spaces in lieu of the required two; and (2) for a rollover car wash, to allow the tunnel entrance to face a residentially zoned property and to allow an 8 ft. landscape buffer in lieu of the required 15 ft. Finally, a Petition for Special Exception was filed to allow the conversion of one garage service bay into a rollover car wash.

Appearing at the public hearing in support of the requests was Shamim Malik, Dean Hoover and Steve Merrill. Timothy M. Kotroco, Esq., represented the Petitioners. Several neighbors attended the hearing to obtain additional information and express opposition to certain aspects of the project. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of

Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the requests.

The subject property is approximately 0.70 acres in size and is split-zoned BL-AS, BL & DR 3.5. An Exxon fuel service station is operated at the site. The station has gasoline pumps under a canopy and a building with four (4) garage service bays where automotive repairs are performed. Petitioners propose to use one of the service bays (on the northernmost portion of the site, adjacent to Eddie’s grocery store) for a rollover car wash. Such a use is permitted in the BL zone by special exception.

Special Hearing

The petition for special hearing is essentially a “housekeeping” matter rather than a substantive zoning request. Petitioners submitted a site plan dated June 21, 1966 for an Esso Service Center at the subject property. Through the intervening years the layout and configuration of the site have changed significantly, yet those changes have not been depicted on an updated plan filed with Baltimore County. The special hearing request proposes to update and amend the 1966 plan through submission and approval of the site plan in this case, which will accurately reflect the current and proposed improvements at the site. This will benefit both the neighborhood and County review agencies, and the petition 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.

Mr. Hoover opined Petitioners satisfied all requirements set forth in BCZR §502.1 and the case law interpreting that provision. This testimony is sufficient to establish Petitioners' *prima facie* case, and I do not believe the concerns raised by the community can overcome the presumption in favor of granting the special exception. Neighbors feared increased traffic and noise that could be generated by the car wash operation. These concerns are reasonable and valid. Even so, I believe the testimony provided by Messrs. Hoover and Merrill successfully addressed these issues, and conditions will be included in the final order to help ensure the car wash does not have a negative impact upon the community. In addition, Mr. Hoover graciously offered to assist neighbors in bringing their concerns regarding traffic safety to the attention of pertinent county and state officials.

Under Maryland law, the Baltimore County Council is presumed to have been aware that car wash operations generate a certain amount of noise and traffic, and no evidence was presented to show the impact at this site would be above and beyond that which would be experienced at other BL-zoned properties in the County. As noted by Maryland's highest court, 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). As such the petition will be granted.

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).

According to Mr. Merrill (who has owned and/or operated the service station for over 25 years) a gas station has operated at this site for more than sixty years, and the Petitioners must contend with long-existing site improvements. As such the property is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to operate the rollover car wash. 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.

Noise—especially that associated with the dryer units at the car wash—was one of the primary concerns raised by neighbors. The testimony established that the dryers are the only part of the car wash that generates noise which could arguably be heard off-site, although Mr. Merrill stated the noise at the property boundary would not be too much louder than a conversational tone. Even so, a condition will be included below to require the doors of the car wash facility to be closed any time the dryer unit(s) is operating.

THEREFORE, IT IS ORDERED this 8th 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 amend the site plan approved in Case No. 66-220-X, as shown on the site plan admitted herein as Petitioners’ Ex. No.1, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to allow the conversion of one garage service bay into a rollover car wash, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) for a rollover car wash to permit one drying space in lieu of the required two drying spaces and to permit zero parking spaces

in lieu of the required two; and (2) for a rollover car wash to allow the tunnel entrance to face a residentially zoned property and to allow an 8 ft. landscape buffer in lieu of the required 15 ft., 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. All doors in the rollover car wash must be closed at all times when the blowers/dryers are in operation.
3. Petitioners must remove within 45 days of the date hereof all signs at the property for which a permit has not been issued by Baltimore County.
4. No temporary signs shall be placed along property frontages.
5. Protective bollards or similar barriers shall be installed around the relocated propane tank.
6. Petitioners shall provide landscaping and screening at the site as determined in the sole discretion of the Baltimore County landscape architect.
7. Car wash hours of operation shall be 9:00 AM to 9:00 PM on school days, and 7:30 AM to 9:00 PM on non-school days.

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