

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(8130 Norris Lane)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Bobs Transport Storage Co., Inc.	*	HEARINGS FOR
<i>Legal Owner</i>		
Airgas USA, LLC	*	BALTIMORE COUNTY
<i>Lessee</i>		
	*	<b>CASE NO. 2019-0061-A</b>
<b>Petitioners</b>		

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Bob’s Transport Storage Co., Inc., legal owner of the subject property and Airgas USA, LLC, lessee (“Petitioners”). Petitioners are requesting variance relief from Section 256.3 of the Baltimore County Zoning Regulations (“BCZR”) to allow the following activities within 48 feet of a residential zone boundary in lieu of the required 150 foot setback: (1) storage of cylinders filled/to be filled with various gasses; (2) parking of trucks and loading/unloading of cylinders on trucks owned and operated by lessee; (3) two 1,000 gallon tanks for propane storage, one 7,000 gallon tank for propylene storage, and supporting equipment with related fill area for use by lessee; and (4) other related activities. A site plan was marked as Petitioners’ Exhibit 1.

Professional engineer Michael Coughlin appeared in support of the petition. David H. Karceski, Esq. and Jennifer Frankovich, Esq. represented the Lessee. Two neighboring business owners attended the hearing to express concerns with the zoning requests. One company, Brawner Builders, was represented by Jeff Pritzker, Esq. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (“ZAC”) comments were received from any of the County’s reviewing agencies.

The site is approximately 11.10 acres in size and is split-zoned ML-IM & MH-IM. Airgas began operation at this site in June, 2018. Joel Young, a 30 year employee who manages operations at this facility, testified Airgas is an international company that supplies gas to various industries including medical, governmental and manufacturing. Mr. Young described the layout of the site and how trucks enter and exit the compound, and he and Chuck Dale, an Airgas safety supervisor, explained how the gases are stored on site. Mr. Young testified only three flammable gases are kept on the property (i.e., propane, acetylene and hydrogen) and in response to a question on cross-examination he testified the company was aware of the required 150 setback prior to leasing the site.

Andrew Suehle is the vice president of Image Engineering, which is located on the adjacent property at 8124 Norris Lane. Mr. Suehle explained his company is in the special effects and event production business, and he indicated he is authorized to store fireworks on his site. He testified he did not oppose the zoning request, but wanted to make sure the Petitioners understood the nature of his business. He also testified he is concerned with the proposed location of the propane storage, which he said was immediately adjacent to an area of his site where explosives are sometimes stored.

John Murphy, a principal of Brawner Builders, was the final witness. Mr. Murphy operates his company from a 6 ½ acre site across the street from the subject property, and he testified that the storage of flammable gas raises significant safety concerns. He explained he has over \$20M in vehicles and equipment stored at his site, and he indicated Petitioners should be required to have insurance coverage in at least that amount, in the event of a catastrophic incident.

At the conclusion of the hearing Lessee's counsel requested the record be left open to allow time for discussions with the neighboring business owners. The Lessee submitted to the OAH on

November 14, 2018 an amended zoning petition and redlined site plan. That plan reflects one additional storage tank on site as well as the relocation of the gas filling and storage areas from the southwest corner to the northwest corner of the site.

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).

*Cromwell* and similar cases emphasize that it is the physical attributes of the property itself which must be examined to determine if a variance is justified. Mr. Coughlin, a professional engineer accepted as an expert, testified the property is unique due to its irregular shape and the fact that nearly 65% of the 11 acre site is encumbered by environmental features (*i.e.*, Chesapeake Bay critical area and flood plains).

He noted these attributes, which are not shared by immediately adjoining properties, make the site unique, and I concur. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to operate the business as proposed at this location. 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.

THEREFORE, IT IS ORDERED, this 16<sup>th</sup> day of **November, 2018**, by the Administrative Law Judge for Baltimore County, that the Amended Petition for Variance pursuant to BCZR Section 256.3 to allow the following activities within 48 feet of a residential zone boundary in lieu of the required 150 foot setback: (1) storage of cylinders filled/to be filled with various gasses;

(2) parking of trucks and loading/unloading of cylinders on trucks owned and operated by lessee;  
(3) two 1,000 gallon tanks for propane storage, one 7,000 gallon tank for propylene storage, and supporting equipment with related fill area for use by lessee; and (4) other related activities, 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.

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