

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(8301 W. Perry Hall Blvd.)</b>		
11 <sup>th</sup> Election District	*	OFFICE OF
5 <sup>th</sup> Council District		
Perry Hall Boulevard Commercial, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Two Farms, Inc.	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	<b>Case No. 2019-0123-SPH</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Perry Hall Boulevard Commercial, LLC legal owner and Two Farms Inc., contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a waiver to permit the redevelopment of the portion of the site in a riverine floodplain and to allow grading, paving, installation of a retaining wall with safety fence, guardrail, concrete curb and gutter, and other site work improvements within the floodplain. A site plan was marked and admitted as Petitioners’ Exhibit 1.

Professional engineer Joshua Sharon appeared in support of the petition. Christopher Mudd, Esq. represented the contract purchaser. One citizen attended the hearing and opposed the request. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”), the Department of Environmental Protection and Sustainability (“DEPS”), the Bureau of Developments Plans Review (“DPR”), State Highway Administration (“SHA”) and the Department of Public Works (“DPW”). None of the reviewing agencies opposed the request; indeed, the DPW recommended approval of the floodplain waiver. Petitioners’ Exhibit 6.

The subject property is approximately 2.23 acres and is split-zoned BM-CCC and DR-1. In a 2018 zoning case special exception approval was granted to operate a Royal Farms fuel service station at the site. *See* Case No. 2018-0059-SPHXA. In the course of preparing construction drawings for that project Mr. Sharon determined a small portion of the proposed access road through the DR-1 zoned portion of the site (approximately 400 sq. ft.) would be located within a riverine floodplain. As such the County recommended Petitioners seek approval for a waiver pursuant to Section 32-4-107 of the Baltimore County Code (BCC).

Mr. Sharon, who was accepted as an expert, opined that the request was in compliance with State and County floodplain regulations, and he testified there would be a negligible impact upon the floodplain. He stated the proposed roadway as shown on the plan is the only available means of access to the site, since the SHA will not approve access from White Marsh Boulevard. In conclusion the witness opined that granting the request would not increase flood heights or have a negative impact upon public safety, as required by BCC Section 32-8-303.

Michael Jungblut, who lives nearby, opposed the request and testified that area roadways are already overcrowded. He also expressed concern with the potential for environmental damage caused by leaking underground storage tanks. Finally, Mr. Jungblut stated there are more than enough fuel service stations in the vicinity, and felt it would be inappropriate to remove a wooded area serving as a natural buffer to build another gas station.

While these are legitimate concerns, I do not believe they are germane to the limited issue involved in this case; *i.e.*, whether a waiver of the floodplain regulations is justified based on Mr. Sharon's testimony and the approval of the DPW. The fuel service station was permitted by special exception in the above-referenced case, and no appeal was taken from that order. As such that determination has now become final and cannot be revisited in the context of this proceeding.

THEREFORE, IT IS ORDERED this 28<sup>th</sup> day of **December, 2018** by this Administrative Law Judge, that the Petition for Special Hearing to approve a waiver to permit the redevelopment of the portion of the site in a riverine floodplain and to allow grading, paving, installation of a retaining wall with safety fence, guardrail, concrete curb and gutter, and other site work improvements within the floodplain, 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 DEPS ZAC comment, a copy of which is attached hereto and made a part hereof.

Any appeal of this decision must be filed 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