

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
11250 & 11254 Dolfield Blvd.)		
4 th Election District	*	OFFICE OF
4 th Council District		
Merritt-M15, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
High's of Baltimore, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2019-0189-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 Merritt-M15, LLC, legal owner and High’s of Baltimore, LLC, lessee (“Petitioners”). The special exception petition was filed pursuant to Sections 405 and 502.1 of the Baltimore County Zoning Regulations (“BCZR”): (1) to approve a special exception for a fuel service station; (2) to approve a special exception for a full service car wash as a use in combination with a fuel service station; and (3) to approve a special exception for a fast food restaurant as a use in a combination with a fuel service station.

Wayne Newton, Jesse Newman, and Stuart Foard appeared in support of the petition. Dino C. La Fiandra, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Bureau of Development Plans review (“DPR”) and the Department of Planning (“DOP”). Neither agency opposed the request.

The site is approximately 2.41 acres and is zoned BM-IM. The property is situated at the corner of Dolfield Boulevard and Red Run Boulevard. At present, the site is unimproved and is surrounded by commercial and industrial uses. Petitioners propose to construct a High’s fuel

service station with car wash and convenience store. These uses are permitted by special exception in the BM-IM 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.

Wayne Newton, a professional engineer accepted as an expert, testified (via proffer) Petitioners satisfied all requirements set forth in BCZR Sections 405 and 502.1, and that any detrimental impact to the community caused by the proposed uses would be no worse here than at other BM zoned properties in the area. In the absence of any evidence to the contrary, the petition will be granted.

The DOP's ZAC comment will be included as a condition to the relief granted below. The DPR raised in its ZAC comment an issue regarding improvements being proposed "on top of an existing storm drain outfall." Counsel indicated Petitioners were aware of this issue, and that the storm water management easement area would be relocated during the DRC process.

THEREFORE, IT IS ORDERED this **21st** day of **March, 2019**, by this Administrative Law Judge, that the Petition for Special Exception pursuant to Sections 405 and 502.1 of the BCZR: (1) to approve a special exception for a fuel service station; (2) to approve a special exception for a full service car wash as a use in combination with a fuel service station; and (3) to approve a

special exception for a fast food restaurant as a use in a combination with a fuel service station, 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 prior to issuance of permits comply with the ZAC comment submitted by the DOP, a copy of which is attached.

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/dlw