

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(11100 York Road)		
8 th Election District	*	OFFICE OF
3 rd Council District		
Wight Avenue Lot 3, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2019-0191-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 Wight Avenue Lot 3, LLC, legal owner (“Petitioner”). The special exception petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) for a fuel service station in the ML-IM zone.

Andrew Stine, Daniel Haney, Sean Langford, Ed Steere, Katerina Goldfarb and Chris Hoffmann appeared in support of the petition. Adam M. Rosenblatt, Esq. and Patricia Malone, Esq. represented the Petitioner. Several residents attended the hearing to express concerns regarding certain aspects of the project. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Bureau of Development Plans Review (“DPR”), the Department of Planning (“DOP”) and the State Highway Administration (“SHA”). None of the reviewing agencies opposed the request.

The site is approximately 1.54 acres in size and is zoned ML-IM. A Silver Spring Mining Co. restaurant is currently located at the site. Petitioner proposes to raze the existing structures and construct a Wawa gasoline station with convenience store. Such a use is permitted in the ML-IM zone by special exception, with the caveat that Petitioner must show the station will “primarily serve the industrial uses and related activities in the surrounding industrial area.” BCZR § 253.2.

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.

Professional engineer Andrew Stine, who was accepted as an expert, described the site plan and the improvements planned for the project. Mr. Stine testified Baltimore County has approved a conceptual storm water management plan for the project, and that a landscape plan is currently being reviewed by the County's landscape architect. He reviewed the requirements found in §§ 405 & 502.1 of the BCZR and opined Petitioner satisfied all requirements for special exception relief.

Professional engineer Mickey Cornelius provided testimony concerning traffic conditions in the vicinity of this project. Mr. Cornelius explained his firm obtained traffic counts during morning, evening and Saturday peak hour periods, and he prepared an analysis (Pet. Ex. 9) based on the traffic count figures and other data obtained from the Institute for Transportation Engineers Trip Generation Manual (10th Ed. 2017). The analysis showed that both points of access to the proposed Wawa (off of York Road and Wight Ave.) and the signalized intersection at Wight Ave. and York Road would continue to function at an acceptable level of service if the project is completed.

Edward Steere, a professional planner and market analyst, provided testimony addressing the issue of whether the proposed fuel service station would primarily serve the surrounding industrial area, which is a requirement found in § 253.2 of the BCZR. Mr. Steere submitted an executive summary of his findings (Pet. Ex. 11) which describe the “trade area” he examined, which focused upon the “Hunt Valley Business Park and industrial lands south of Hunt Valley.” Ex. 11, p. 2. His analysis calculated the present demand for fuel within this area, and determined there is presently an unmet need for additional gasoline to serve this industrial area. In conclusion, the witness opined that 59.5% of the fuel sold by the proposed Wawa would be purchased by employees, vendors, and other motorists from “within the defined ML-IM industrial zone.” Ex. 11, p. 4.

One citizen noted there is no pedestrian crosswalk at the intersection of York Road and Wight Ave., which is a busy commercial corridor with a large volume of traffic. I would imagine the SHA will examine this issue in connection with its review of the traffic impact study to be submitted by the Petitioner. Just to make sure that agency is aware of this concern a copy of this order will be sent to the SHA’s District Office in Hunt Valley.

The owner of the nearby Exxon fuel service station noted there are an abundance of gas stations/convenience stores in this vicinity. He also stated his business has already been negatively impacted by several of these large gas stations which have recently opened in the Cockeysville/Hunt Valley area. As discussed at the hearing, the undersigned does not have authority to deny this request based on the number of existing gas stations in the vicinity. While the BCZR requires a showing of “need for the proposed use [i.e., service station]” in an area where there are one or more abandoned stations, no such evidence was presented in this case and that provision is therefore not applicable. See BCZR § 405.3.

THEREFORE, IT IS ORDERED this 21st day of **March, 2019**, by this Administrative Law Judge, that the Petition for Special Exception for a fuel service station in the ML-IM zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must submit for approval by Baltimore County a landscape and lighting plan for the site.
3. No flags, banners or temporary signs of any type shall be permitted on the property.
4. All landscaped areas at the site shall be subject to the maintenance requirements set forth at § 405.4.C.3 of the BCZR.

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