

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE		
(6426, 6430, 6434 Baltimore National Pike)	*	OFFICE OF
1 st Election District		
1 st Council District	*	ADMINISTRATIVE HEARINGS
McComas Associates		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Two Farms, Inc.		
<i>Lessee</i>	*	Case No. 2019-0245-XA
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 6426, 6430 & 6434 Baltimore National Pike. The Petitions were filed on behalf of McComas Associates, legal owner of the subject property, and Two Farms, Inc., lessee (“Petitioners”). The Special Exception petition seeks to allow a fuel service station pursuant to Section 405.2.B.1 of the BCZR. The Petition for Variance seeks to allow a total of four enterprise signs (two wall-mounted and two canopy) in lieu of the three (3) signs permitted with no more than two signs on any single facade. A site plan was marked as Petitioners’ Exhibit 1.

Appearing in support of the petitions were Jeff Bainbridge, Michael McComas, Ken Schmid, Michael Coughlin and Thomas Sheckells. David H. Karceski, Esq. and Jennifer Frankovitch, Esq. represented Petitioners. Mike Pierce attended the hearing to express concern about certain aspects of the project. 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”) and the State Highway Administration (“SHA”). Neither agency opposed the request.

The subject property is approximately 2.82 acres in size and zoned BR-AS. The property is located in Catonsville along US 40, a busy commercial corridor. Petitioners propose to construct a Royal Farms store at the site. Fuel service stations are permitted by special exception in the BR zone. Petitioners also request variance relief for certain signs that have become fairly standard at numerous Royal Farms locations throughout Baltimore County.

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.

Michael Coughlin, a professional engineer accepted as an expert, described the project in general and reviewed each page of the 4-sheet site plan. He also described and presented elevations of the proposed signage. The witness testified there are no abandoned fuel service stations within one (1) mile of this site, and he opined Petitioners satisfied all requirements for special exception relief.

Two legal issues arose at this juncture of the hearing. First, Petitioners indicated this site is within a traffic shed identified as deficient or failing on the basic services map. Normally that would mean Petitioners could obtain development and zoning approvals but could not be issued building permits for the project. This site however is within the Baltimore National Pike

Commercial Revitalization District (Pets. Ex.2), and as such is exempt from basic services mapping standards. BCZR §4A02.4.E.1.i.

Mr. Pierce also questioned whether a fuel service station would be permitted at this site in light of a recent Council Bill (#104-18) which amended BCZR Section 405.2.B.2. Following the hearing I reviewed that legislation and do not believe it impacts the project in this case. As noted above this site is within an AS District; as such, a fuel service station is permitted by special exception at this location. Petitioners need not comply with the requirements imposed in the aforementioned legislation, which would be applicable to fuel stations inside the URDL which are not in a district. Having resolved that issue, and in light of Mr. Coughlin's testimony summarized above, I believe the Petition should 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).

As Mr. Coughlin testified the site has an elongated shape and there is a significant grade change across the property. As such the property is unique. If the BCZR were strictly interpreted Petitioners would suffer a practical difficulty since they would be unable to provide appropriate signage for the service station. Finally, I find that the variances 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. This is demonstrated by the lack of County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 30th day of **April, 2019**, that the Petition for Special Exception to allow a fuel service station pursuant to Section 405.2.B.1 of the BCZR, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance to allow a total of four enterprise signs (two wall-mounted and two canopy) in lieu of the three (3) signs permitted with no more than two signs on any single facade, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. The special exception granted herein must be utilized within three (3) years of the date hereof.
3. No temporary signage of any type shall be permitted on the subject property.
4. Prior to issuance of permits Petitioners shall submit for approval by Baltimore County landscape and lighting plans for the subject property.

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