

<b>IN RE: PETITIONS FOR SPECIAL HEARING *</b>		BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		OFFICE OF
(7501 Pulaski Highway)	*	ADMINISTRATIVE HEARINGS
15 <sup>th</sup> Election District		FOR BALTIMORE COUNTY
7 <sup>th</sup> Council District	*	<b>Case No. 2019-0417-SPHX</b>
Rodick Realty, LLC		
<i>Legal Owner</i>	*	
DMS Development, LLC		
<i>Contract Purchaser</i>	*	
Petitioners	*	

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Rodick Realty, LLC, legal owner and DMS Development, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve two (2) freestanding electric chargeable signs for gas prices only. A Petition for Special Exception was filed to use the herein described property for a fuel service station in combination with a convenience store and carry-out restaurant with outdoor seating.

Michael Coughlin, David Schlachman, Andy Rodick, Steve Teazell and Kimberly Rodick attended the public hearing in support of the requests. Thomas G. Coale, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (“DPW”).

The subject property is 2.10 acres in size and split- zoned ML-IM and ML-AS.

**SPECIAL HEARING**

At the outset counsel stated that agreement had been made with the County as to the Special

Hearing requests. Accordingly, Petitioner withdrew the Special Hearing Petition.

SPECIAL EXCEPTION

Counsel presented a proffer on behalf of Michael Coughlin, a professional engineer who was accepted as an expert in land use and development in Baltimore County. Mr. Coughlin prepared the site plan (Petitioners Exhibit 4A-4B) to accompany the Petition for Special Exception. Counsel proffered that the witness would testify that the proposed use was in full compliance with Baltimore County Zoning Regulations (“BCZR”) 405 and is permitted by Special Exception on this split zoned site. The area surrounding this neglect site is retail and industrial with excellent and safe ingress and egress roads. The site, which once developed will be leased to WaWa, is sufficient in size and designs to accommodate WaWa’s trucks coming in and out with appropriate turning space. (Petitioner Exhibit 3A).

The witness would state that the prepared site satisfied all requirements under BCZR 502.1; further, that pursuant to BCZR 405.3, there was no abandoned fuel service station within ½ mile of the site in Baltimore County.

The witness would also present the landscape plan (Petitioner Exhibit 2). Finally, he would testify that there is sufficient parking and square footage to accommodate all of the proposed uses. (Petitioners Exhibit 4A).

David Schlachman, the contract purchaser and the developer of the site also testified through proffer of counsel. Counsel proffered that he would state that at present the neighboring pad site use is unknown but that once it was developed there would be required and appropriate architectural themes addressed with that user. (Petitioner Exhibit 4A, note 21).

At the conclusion of the proffer, both Mr. Coughlin and Mr. Schlachman, having been

sworn, adopted as their own testimony the proffered testimony offered on their behalf, without any additions, changes, or corrections.

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.

THEREFORE, IT IS ORDERED this 29<sup>th</sup> day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to approve two (2) freestanding electric chargeable signs for gas prices only, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to use the herein described property for a fuel service station in combination with a convenience store and carry-out restaurant with outdoor seating, 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. Prior to issuance of Permits, Petitioner must provide architectural elevations for the convenience store and fuel canopy to the Department of Planning (“DOP”).
3. Prior to issuance of Permits, Petitioner must submit a landscape and lighting plan to the Bureau of Development Plans Review (“DPR”), pursuant to requirements of the Baltimore County Landscape Manual.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

\_\_\_\_\_  
Signed  
LAWRENCE M. STAHL  
Administrative Law Judge  
for Baltimore County

LMS/sln