

IN RE: PETITIONS FOR SPECIAL EXCEPTION *	BEFORE THE
AND VARIANCE	
S/S Baltimore National Pike, 343' W c/line *	ZONING COMMISSIONER
St. Agnes Lane	
(5509 Baltimore National Pike) *	FOR
1 st Election District	
1 st Council District *	BALTIMORE COUNTY
Quartner Commercial Properties, LLC *	
Petitioner *	Case No. 2010-0182-XA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the owner of the property, Quartner Commercial Properties, LLC, through its managing member, Jon Quartner, and their attorney, Arnold E. Jablon, Esquire of Venable, LLP. The Petitioner requests a special exception to permit a combination roll-over and self-service car wash, pursuant to Sections 233.3 and 419.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, variance relief is requested pursuant to Sections 307.1 and 419.4.B.3 of the B.C.Z.R. to permit a landscape transition area (LTA) a minimum of 4 feet in the rear yard and a minimum of zero (0) feet in a side yard that abuts non-residentially zoned land in lieu of the required 6 feet. The subject property and requested relief are more particularly described on the two page red-lined site plan submitted, which was accepted into evidence and marked as Petitioner’s Exhibit 1A and 1B.

Appearing at the requisite public hearing in support of the request were Jon Quartner, on behalf of the property owner, Brian Childress and David Hamil, P.E., both registered professional civil engineers¹ with D.S. Thaler & Associates, Inc., the consultants who prepared the site plan(s)

¹ Messrs. Hamil and Childress are recognized and accepted as expert witnesses on land use and zoning - specifically as

for this property, and Marc A. Tyndale, with Car Wash Systems, Inc., an expert in the development and design of car wash operations. The Petitioner was represented by David Karceski, Esquire and Arnold Jablon, Esquire. Appearing as a concerned adjacent property owner was David Farrell, who operates the Catonsville Car Wash just west of the subject property. A letter was received from Ryan J. Potter, Esquire, counsel to both the Roman Catholic Archbishop of Baltimore and St. Agnes Catholic Church, which is located near the subject property. The letter indicated that the Church was not aware of the proposal here and requested that the Church be noted as an interested party and be provided a copy of the decision rendered herein. However, received from the Petitioner was a letter from Mary Kay Barrick, Business Manager of Saint Agnes Parish, dated January 29, 2010, in which she acknowledges the proposal and complements the Petitioner for its improvements to the area and its sensitivity to the needs of the community. *See* Petitioner's Exhibit 6.

There were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies, although the Office of Planning did submit a recommendation. *See* Dennis Wertz's comment, dated February 2, 2010, in which the Director of Planning opposed the intended size of a large, pole-mounted sign, 50 square feet per face and 25 feet in height, to be located on Saint Agnes Lane, and recommended in its place a "monument" style sign with a maximum size of 25 square feet per face and a maximum height of 6 feet. The Office of Planning also requested that building elevations be submitted for review and approval prior to the issuance of any building permits. Provided these comments are addressed, the Office of Planning did not oppose

to B.C.Z.R. Sections 233, 419, 307.1 and 502.1.

the special exception or the variances requested.

Testimony and evidence offered revealed that the requested relief involves Lot 2, known as 5507-5509 Baltimore National Pike (according to Mr. Quartner, the property is known by both numbers), as more particularly shown on Petitioner's Exhibits 1A (the site plan), 2 (the site plan with the internal automobile circulation illustrated in red) and 3 (the site plan with the parking spaces and stacking spaces color coded). Inasmuch as the three exhibits contain identical information, for ease of reference, the site plan referred to hereafter shall be Exhibit 2, except as otherwise cited. Lot 2 is 1.43 acres in area, is an irregular shaped corner parcel located on the southwest corner of Baltimore National Pike (US Route 40 – Pulaski Highway), a four lane highway, divided by a median strip, running east and west, and Saint Agnes Lane, which runs north and south between Old Frederick Road and Baltimore National Pike. The lot of record immediately to the west of Lot 2, and identified as Lot 1 on Petitioner's Exhibit 2, and known as 5511 Baltimore National Pike, is improved with a laundromat also owned by the Petitioner. The laundromat has access from Baltimore National Pike and from Old Frederick Road by way of a 24 foot paved drive. The access from Baltimore National Pike is by a 35 foot wide paved ingress and egress shared by Lot 1 and Lot 2. The access provided to Lot 1 from Old Frederick Road is by way of a 24 foot existing paved driveway, and extends to Lot 2 by a 24 foot paved drive aisle that runs behind the laundromat to Lot 2. Thus, Lot 2 has access as illustrated on Exhibit 2 from three locations - Baltimore National Pike, Saint Agnes Lane and Old Frederick Road. Ingress to Lots 1 and 2 from Baltimore National Pike is right-turn only and egress is also right turn only.

An appreciation of the properties past history and use is relevant and briefly outlined. In 2003, the Petitioner submitted a development plan for a retail center, which included Lots 1 and 2.

On Lot 1 was proposed as an AutoZone and for Lot 2 for a fuel service station and convenience store. The proposed development plan was approved. Subsequently, in Case No 04-033-SPHXA, a special exception was granted to permit the fuel service station as a use-in-combination with a convenience store with a sales area of larger than 1,500 square feet and a variance to permit a landscape transition area abutting a non-residentially zoned property of 0 feet in lieu of the required 6 feet and 0 feet in lieu of the required 10 feet along a public right-of-way; as well as variances to canopy signage. *See* Petitioner's Exhibit 7. The development plan was later amended by substituting the proposed AutoZone store on Lot 1 with the laundromat. *See* Petitioner's Exhibit 8. The existing retail buildings on Lot 2 were razed and Lot 2 is currently vacant. *See* Petitioner's Exhibit 9, photos of the site.

Should the present relief be granted, the Petitioner would abandon the special exception and variances approved in Case No. 04-033-SPHXA.

The subject property is surrounded by commercial uses, as shown on the numerous photographs submitted, of the commercialization of the immediate neighborhood. There are no residential zones or uses adjacent to the subject property. The nearest residentially zoned property is to the southwest of Old Frederick Road, Western Star Cemetery, which is far removed from the subject property. On the corner of Saint Agnes Lane and Baltimore National Pike, opposite the subject site and to its east, is Saint Agnes Church. To the west of the site is Mr. Farrell's business, also a car wash operation. *See* Petitioner's Exhibit 2.

The entire neighboring area, on both sides of Baltimore National Pike, including St Agnes, is zoned B.M.-C.C.C. *See* Petitioner's Exhibit 4, an aerial of the area. The subject property is included within a revitalization district, *See* Petitioner's Exhibit 5.

Testimony indicated that the subject site was improved with various commercial uses, including a restaurant, when the Petitioner purchased the property, which included Lots 1 and 2. After the development plan and special exception were approved, the Petitioner cleared both Lots 1 and 2 and constructed the laundromat on Lot 1 (*See* photograph Exhibit 9).

Mr. Jablon proffered, and Mr. Quartner confirmed, that the Petitioner has invested approximately \$6,000,000 in the entire property (which includes the land costs and the construction costs of the laundromat on Lot 1), and projects that the Petitioner will invest about \$1,500,000 in the construction of the car wash on Lot 2. He further confirmed that there will be approximately 12 employees between the car wash and laundry operations. There will always be at least one employee for the car wash at any given time. The car wash is projected to operate seven days per week, 24 hours per day.

Mr. Jablon proffered, and Mr. Hamil agreed, that the proposed car wash operation would include two types of car washes – six self-service and three roll-over. No full-service will be provided. Mr. Hamil confirmed the property is zoned B.M.-C.C.C., surrounded by B.M.-C.C.C. to the east and west and to the north and south. He confirmed that adjoining 5509 Baltimore National Pike (Lot 2) to the west is 5511 (Lot 1), also owned by the Petitioner, and is currently being used as the laundromat. To the east, as stated above, on the corner opposite on Saint Agnes Lane, is the Church. There are two variances requested, one is for a 0 foot side yard LTA instead of 6 foot required if abutting non-residentially zoned land by B.C.Z.R. Section 419.4.B.3. The side yard referred to, as shown on Petitioner's Exhibit 2, is to the west of the proposed car wash and to the property line separating Lots 1 and 2. Out of an abundance of caution, Mr. Jablon explained that the request for this variance was because Lot 1 and Lot 2 are separately recorded lots of record but he

believes a variance to the side yard is not required since both Lots 1 and 2 are owned by the same party. The second variance requested is for an LTA of 4 feet in the rear yard in lieu of the required 6 feet.

Mr. Hamil confirmed the subject property does not abut any residentially zoned property. He further confirmed that the special exception was required by B.C.Z.R. Section 233 (B.M. zone) and 419.1.

Mr. Jablon proffered, and referred to Petitioner's Exhibit 1B, stating that the proposed car wash would require 33 parking spaces and 34 would be provided. In addition, 41 stacking spaces would be required and 41 provided. No parking or stacking space variance is needed.

In support of the variances requested, Mr. Jablon further proffered, and Mr. Hamil confirmed, there is compliance with all of the requirements necessitated by Sections 419, et. seq., *the car wash regulations contained in the B.C.Z.R.*, but for the LTA setbacks as described above. No other variances are needed. Mr. Hamil opined the property has several unusual characteristics that drive the need for these variances. Most notably, as shown on the site plan, is the size, shape and location of the subject property. Lot 2 is a corner lot with access from three streets. It is important also that both Lots 1 and 2 were historically commercial uses and, as indicated by St. Agnes's Ms. Barrick, the Petitioner's improvements have "definitely" enhanced the area and there is no new impervious areas to be created.

In terms of practical difficulty, Mr. Jablon pointed out that both LTA variances are requested so as not to impact the access lanes already in place. To provide a 6 foot LTA to the side of the proposed car wash would reduce the drive aisle significantly and would cause the need for a drive aisle variance. To provide a 6 foot LTA to the rear would require alteration of the alignment of the

existing access lanes to Saint Agnes Lane already existing from Lot 1. *See* Petitioner's Exhibit 2, which illustrates the traffic flow on site, and Petitioner's Exhibit 3, which illustrates the parking and stacking layout. As shown on these plans, 10 foot wide medians with plantings, as required by the Baltimore County Landscape Manual, are provided with the drive aisles between the medians and the property lines. If the variances were denied, the aisles would be reduced for no reason and variances would still be needed.

It is important also to note that in Case No. 04-033- SPHXA, a 0 foot LTA abutting the non-residentially zoned property was granted. *Uniqueness and practical difficulty* were found to exist then and the site has not changed.

Further, testimony was provided by Marc Tyndale.² He testified that he is knowledgeable about roll-over and self-service car washes, and their noise levels. He testified that the noise levels created by either would not be significant at any distance. It was his opinion that any noise emanating from the car wash operation would not be discernable at any property line. The doors on the car wash tunnels coupled with the normal decibel level of traffic on Baltimore National Pike and the distances from the tunnels to Baltimore National Pike, St. Agnes Lane or to Old Frederick Road mitigate against any identifiable noise.

It was the opinions of Messrs. Hamil and Tyndale that there would be no adverse impact on the community by the car wash operations. Mr. Hamil testified that the granting of the variances will have no detrimental impact on the surrounding locale and would not be detrimental to the health, safety or general welfare of the locale and would have no negative impact on the community. Mr. Hamil stated that it was his opinion that the strictures of B.C.Z.R. Section 307.1 were satisfied

² Mr. Tyndale is an expert in car washes. His resume was submitted as Petitioner's Exhibit 11.

and that a practical difficulty would exist if the variances were to be denied. It was his opinion that the properties were unique in a zoning sense, restating the uniqueness of the property. Mr. Jablon also pointed out that the proposed car wash operation would certainly be no more intrusive than the fuel service use approved in the prior zoning case, which was not appealed. In both instances, the uses are not traffic generators but utilize existing traffic volume.

As to the request for a special exception, Mr. Hamil testified that the proposed use for a car wash would conform to and meet all of the criteria set forth in Section 502.1 indicating that there would be no adverse impact if granted and, if granted, would be consistent with the properties' zoning classification and within the spirit and intent of the B.C.Z.R. It was his opinion that the proposed use would not cause any greater adverse impact or effects at this location than elsewhere in the same zone. The existence of a car wash nearby and the commercial nature of the area coupled with road network confirm that, in his opinion, the use is appropriate at this location.

The ZAC comments were received and are made part of the record of this case. Comments were received from the Office of Planning, and, as stated above, indicated no opposition but did make certain recommendations. Mr. Jablon stated, and Mr. Quartner agreed, that there were no objections to them. Mr. Hamil red-lined Petitioner's Exhibit 1B to amend the pole mounted sign as shown to be on St. Agnes Lane from 50 square feet per face and 25 feet in height to a "monument style sign with a maximum size of 25 square feet per face and a maximum height of 6 feet". Due to the subject property being located on Baltimore National Pike (US Route 40 - a State road), the State Highway Administration (SHA) provided its comment and specifically does not oppose the requested relief.

Finally, inasmuch as the Petitioner owns Lot 1 as well as Lot 2, I believe the zoning merger

doctrine applies. B.C.Z.R. Section 419.4.B.3 provides that there be a 6 foot LTA in a side yard abutting a non-residential property. I find that this specific variance request is not required. Zoning merger occurs as a result of a property owner's use of contiguous lots under the same ownership. *Friends of the Ridge v. Baltimore Gas & Electric Co*, 352 Md. 645 (1999). Both lots are owned by the same party, and effectively are merged by their use. For zoning purposes, 5511 and 5509 Baltimore National Pike shall be considered as one lot, and, therefore, no side yard variance is necessary to Section 419.4.B.3. Alternatively, even if the doctrine of zoning merger does not apply, I find that the proposed side yard LTA of 0 feet satisfies the criteria required by B.C.Z.R. Section 307.1, and would be in strict harmony with the spirit and intent of zoning regulations, specifically Section 419.4.B.3.

Considering all the testimony and the evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure that is the subject of the variances requested. Clearly, the subject property has constraints that are inherent to the property. Its irregular rectangular shape, its frontage on two roads with access from a third, the location of the existing laundromat on Lot 1, the granting of the previous zoning relief in Case No. 04-033-SPHXA, and the approval of the Development Plans, is persuasive to a finding that the properties are unique in a zoning sense. I further find that the strict application of the limitations imposed by Section 419.4.B.3 for a 6 foot rear yard LTA in lieu of the requested 4 feet would cause practical difficulty.

I find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Thus, I find that these variance(s) can be granted in such a manner as to meet the requirements of Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals in

Cromwell v. Ward, 102 Md. App 691 (1995).

Further, I find the proposed car wash will not be detrimental to the community. I find that the proposed use meets the special exception criteria set forth in B.C.Z.R. Section 502.1. The use at the subject location will not have any adverse impacts above and beyond those inherently associated with such a use irrespective of its location within the zone.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 16th day of February 2010, that the Petition for Special Exception to permit a combination roll-over and self-service car wash, pursuant to Sections 233.3 and 419.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1A and 1B, be and is hereby GRANTED; and further, upon vesting of the special exception use granted herein and pursuant to B.C.Z.R. Section 502.3, the Petitioner will abandon the special exception use granted in Case No. 04-033-SPHXA; and

IT IS FURTHER ORDERED that the Petition for Variance, pursuant to Section 419.4.B.3 of the B.C.Z.R., to permit a landscape transition area (LTA) a minimum of 4 feet in the rear yard in lieu of the required 6 feet abutting non-residentially zoned land, in accordance with Petitioner's Exhibit 2, be and is hereby GRANTED subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for a building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2. Petitioner shall submit building elevations including freestanding enterprise and monument style sign elevations to the Office of Planning prior to issuance of any building permits. Petitioner's amended site plan, Exhibit 1B, reflecting red-lined sign changes is approved and made part of this Order.
3. Petitioner shall submit to the Baltimore County Landscape Architect a landscape and lighting plan for review and approval.
4. The special exception use granted herein shall be valid for a period not to exceed five years from the date this Order becomes final, pursuant to B.C.Z.R. Section 502.3.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 419.4.B.3 to permit the side yard landscape transition area (LTA) abutting non-residentially zoned property (west side) of 0 feet in lieu of the required 6 feet, as shown as Petitioner's Exhibit 2, is permitted as of right and, therefore, shall be DISMISSED AS MOOT.

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

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County