

IN RE: PETITIONS FOR SPECIAL EXCEPTION	*	BEFORE THE
AND VARIANCE		
(9043 Liberty Road)	*	OFFICE OF
2 nd Election District		
4 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
9400 Liberty Limited Partnership		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Two Farms, Inc.		
<i>Contract Purchaser/Leesee</i>	*	Case No. 2013-0132-XA
Petitioner		

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 9043 Liberty Road. The Petitions were filed by David H. Karceski, Esq., on behalf of 9400 Liberty Limited Partnership, the legal owners of the subject property. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) Sections 405.2.B.1, 405.4.E.1, 405.4.E.2 and 405.4.E.10 to allow a fuel station on an individual site and a convenience store having a sales area larger than 1,500 sq. ft., carry-out restaurant and a roll-over car wash as uses in combination. Petitioner is also requesting Variance relief from §§ 419.4.B.1 and 405.4.A.3.c(2): (1) to allow a car wash tunnel entrance to face an adjacent residentially zoned property; and (2) to allow 10 stacking spaces in lieu of the required 20 stacking spaces. Petitioner submitted at the hearing an amended site plan which reflects that the variance relief with respect to the “stacking spaces” is no longer required. The subject property and requested relief are more fully described on the site plan and amended site plan which were marked and accepted into evidence as Petitioner’s Exhibits 1 & 11, respectively.

Appearing at the hearing in support of the Petitions were Mark Keeley, Jeff Bainbridge, Neil Shade and Bill Monk. David H. Karceski, Esquire, and Justin Williams, Esquire, attended and represented the Petitioners. Several members of the community appeared in opposition to the

Petitions (represented by J. Carroll Holzer, Esquire), and their names are included within the case file. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Bureau of Development Plans Review (DPR) noted a landscape plan would need to be approved prior to permit issuance, and the Department of Planning identified certain concerns with the proposed signage and landscaping.

Testimony and evidence offered at the hearing revealed that the subject property is 1.109 acres (Lot 1) and 1.305 acres (Lot 2) and is zoned BR-AS. The Petitioner proposes to construct and operate at the location a Royal Farm Store with gas dispensers, convenience store and car wash. To do so, the Petitioner requires Special Exception and Variance relief.

SPECIAL EXCEPTION

As noted above, Petitioner seeks Special Exception relief to allow a fuel station on an individual site and a convenience store having a sales area larger than 1,500 sq. ft., carry-out restaurant and a roll-over car wash as uses in combination per Baltimore County Zoning Regulations (B.C.Z.R.) sections 405.2.B.1, 405.4.E.1, 405.4.E.2 and 405.4.E.10. 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 People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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.

In this case, although several neighboring residents through counsel indicated they were opposed to the project, the protestants did not produce testimony or evidence sufficient to overcome the Special Exception presumption. As such, the petition for Special Exception will be granted.

VARIANCE

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. William Monk, who was accepted as an expert in land planning and the B.C.Z.R., testified the property is unique because the site “narrows” at the top and the topography dictates that the Storm Water Management facility be positioned at the front of the site adjoining Liberty Road. Thus, I believe the site is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioner would suffer a practical difficulty and/or hardship, given it would be unable to construct the proposed improvements. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the absence of County opposition.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioner’s Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 30th day of April, 2013, that Petitioner's request for Special Exception relief under sections 405.2.B.1, 405.4.E.1, 405.4.E.2 and 405.4.E.10 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to allow a fuel station on an individual site and a convenience store having a sales area larger than 1,500 sq. ft., carry-out restaurant and a roll-over car wash as uses in combination, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance relief from Section 419.4.B.1 of the B.C.Z.R., to allow a car wash tunnel entrance to face an adjacent residentially zoned property, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Special Exception must be utilized within 2 years of the date of this Order, unless this utilization period is extended by subsequent Order.
3. The car wash facility shall be restricted to the following hours of operation: 9:00 a.m. to 9:00 p.m. daily.
4. The entrance and exit doors for the car wash facility must remain closed during operation.
5. The car wash facility shall be lighted/illuminated only during the hours of operation noted above.

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