

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND SPECIAL EXCEPTION	
(10825 Beaver Dam Road) *	OFFICE OF
8 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
10825 Beaver Dam Road, LLC,	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
	Case No. 2014-0163-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed by Dino C. LaFiandra, Esquire, with Whiteford, Taylor & Preston, on behalf of 10825 Beaver Dam Road, LLC, legal owner. The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an amendment to the previously approved site plan in Case No. 89-306-SPHX. In addition, a Petition for Special Exception was filed pursuant to B.C.Z.R. §405.2.B.1 to use the herein property for additional fuel service in an existing fuel service station, and pursuant to §405.4.E.1 for a convenience store larger than 1,500 square feet inclusive of accessory storage.

Appearing at the public hearing in support of the requests was Briana Darnell and Wayne Newton, a professional engineer whose firm prepared the site plan. Timothy Kotroco, Esquire, with Whiteford, Taylor & Preston, represented the Petitioner. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Substantive comments were received from the Department of Planning

(DOP) dated March 10, 2014, and the Bureau of Development Plans Review (DPR) dated February 10, 2014. The DPR requested that a landscape plan be submitted for approval by the County and the DOP opined the proposed use was appropriate and would not be injurious to the community.

Testimony and evidence offered at the hearing revealed that the subject property (comprised of two parcels) totals 113,283 square feet and is zoned ML-IM. The site is improved with a fuel service station and High's convenience store, which was approved by special exception in 1989. (Case No. 89-306-SPHX). The Petitioner proposes to expand the fuel service operation and convenience store, and was instructed by the County to file the above Petitions.

Special Hearing

The Petition for Special Hearing seeks to amend the site plan approved in Case No. 89-306-SPHX. This is in the nature of a "housekeeping" matter, and the primary issue in the case concerns the petition for special exception, discussed below.

Special Exception Standards

Special exception uses are presumptively valid and consistent with the comprehensive zoning plan, People's Counsel v. Loyola College, 406 Md. 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption. The reality is that the special exception use has been conducted at this site for over twenty years, and there is nothing to indicate that the welfare of the community has been compromised. The BCZR contains a specific provision relating to fuel service stations lawfully in operation prior to 1993, BCZR § 405.6. That regulation contemplates that both special hearing and special exception relief is necessary in a case like this, where the operation is expanding and will include an ancillary "use in combination," (i.e., the convenience store).

Here, no testimony or evidence was presented showing that an abandoned fuel service station exists within a one-half or one mile radius of this station. In addition, both the DOP and Petitioner's engineer opined the proposal satisfied all B.C.Z.R. requirements. Mr. Newton also testified (via proffer) that the use would serve the industrial area surrounding the station, which is shown on the site plan as "Metropolitan Industrial Park." Ex. 1. As such, I believe the Petitioner has satisfied the requirements for relief, and the Petition for Special Exception will be granted.

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

THEREFORE, IT IS ORDERED this 17th day of April 2014, by this Administrative Law Judge, that the Petition for Special Hearing to approve an amendment (as shown on the two-sheet site plan marked as Exhibit #1) to the previously approved site plan in Case No. 89-306-SPHX, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception pursuant to B.C.Z.R. §405.2.B.1 to use the herein property for additional fuel service in an existing fuel service station, and pursuant to §405.4.E.1 for an ancillary "use in combination" (i.e., convenience store larger than 1,500 square feet inclusive of accessory storage), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Special Exception relief granted herein shall supersede and replace the Petition for Special Exception granted in Case No. 89-306-SPHX.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and/or licenses and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that

