

.IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
(3107 Hammonds Ferry Road)	*	OFFICE OF
13 th Election District		
1 st Council District	*	ADMINISTRATIVE HEARINGS
HJR Benson Venture, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
GH Traders, Inc.		
<i>Lessee</i>	*	Case No. 2014-0167-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 Rick Richardson, on behalf of the legal owner, HJR Benson Venture, LLC and GH Traders, Inc., Lessee (“Petitioners”). The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve a change from a “Full Service” fuel service station to a “GAS AND GO” fuel service station. In addition, a Petition for Special Exception was filed to use the property for a convenience store with carry out restaurant in combination with a fuel service station.

Appearing at the public hearing in support of the requests were Adil Gulzar, Hussan Gulzar and Rick Richardson from Richardson Engineering, LLC, the firm that prepared the site plan. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No Protestants or interested citizens attended the hearing, and the file does not contain any letters of opposition.

The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP) dated March 10, 2014. That agency recommended that

several conditions be included in any order. As discussed below, most (but not all) of those conditions will be imposed in the Order which follows.

Evidence offered at the hearing revealed that the subject property is 1.09 ± acres and is zoned BL-AS. The site is currently improved with a gasoline station and freestanding structure with service bays for auto repairs. GH Traders (the Lessee) began operating the station about six months ago, and has decided it would like to discontinue auto repairs, and convert that structure (approximately 2,779 SF) into a convenience store with carry out restaurant.

Special Hearing

The Petition for Special Hearing seeks approval for the conversion of this station as noted above (i.e., to convert the repair facility into a convenience store). The B.C.Z.R. (§405.4.E) expressly envisions that fuel service stations may include in their operation other “uses in combination,” including convenience stores. The Petitioners noted that an auto repair business is located immediately next door to their station, and they believe the area lacks a convenience store. There is no reason to believe the convenience store operation (conducted entirely within the same building footprint as the repair facility) would be detrimental to the community, and it is indeed quite common to find such stores operated in connection with fuel service stations. As such, the Petition for Special Hearing will be granted.

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. A fuel service and repair facility has operated at this location for many years. In fact, in 1998 the same owner obtained a Special Exception to convert the service bays into a carry-out restaurant. Exhibit 3. Even though that Special

Exception lapsed and the contemplated improvements were never constructed, it is the identical relief sought in this case. Mr. Richardson, a licensed Professional Engineer, opined that Petitioners satisfy B.C.Z.R. §502.1, and I concur. As such, the Petition for Special Exception will be granted.

As noted earlier, the DOP submitted a ZAC comment with several proposed conditions. For the most part, those conditions have been included in the Order below. With respect to the landscaping, Petitioners acknowledged a previous plan for the site was submitted and approved by the County. Petitioners also concede they have not satisfied the requirements of that plan. Accordingly, and to prevent the Petitioners from incurring additional costs, I will require Petitioners to satisfy the planting and screening shown on that earlier (2002) plan. Exhibit 7.

I have not included Condition #5 proposed by DOP, because Mr. Richardson advised the “storage shed” referenced therein has already been removed. I will also not include Condition #4, pertaining to a sidewalk extension. Based on my review of the plan and aerial photos submitted (Exhibits 1, 5A&B and 6), it does not appear as if Hammonds Ferry Road (as opposed to Hollins Ferry Road) is improved with sidewalks. As such, I do not believe the small section of sidewalk proposed by DOP would improve functionality or safety in any respect.

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

THEREFORE, IT IS ORDERED this 8th day of April, 2014, by this Administrative Law Judge, that the Petition for Special Hearing to approve a change from a “Full Service” fuel service station to a “GAS AND GO” fuel service station, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception to use the herein

described property for a convenience store with carry out restaurant in combination with a fuel service station, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners must submit for approval by DOP, prior to issuance of permits, architectural elevations of the proposed convenience store building.
3. Petitioners must comply with the landscape plan for the site approved by Baltimore County (landscape architect Avery Harden) in July 2002, which was marked and admitted as Petitioners' Exhibit 7.
4. Petitioners must screen and enclose the dumpster(s) on site.

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