

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	*	OFFICE OF
(118 Mount Carmel Road)	*	ADMINISTRATIVE HEARINGS
7 th Election District	*	FOR BALTIMORE COUNTY
3 rd Councilmanic District	*	Case No. 2014-0131-SPHXA
Riverwatch, LLC, <i>Legal Owner</i>	*	
Two Farms, Inc.,	*	
<i>Contract Purchaser/Lessee</i>	*	
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by David H. Karceski, Esquire from Venable, LLP, on behalf of Riverwatch, LLC, the legal owner, and Two Farms, Inc., (“Petitioners”).

The Petition for Special Hearing was filed pursuant to §259.3.C.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), for approval of illuminated signage. A Petition for Special Exception was filed pursuant to B.C.Z.R. §§ 405.2.B.2, 405.4.E.1, and 405.E.10 to allow a fuel service station on an individual site and a convenience store having a sales area larger than 1,500 square feet and a carry-out restaurant as uses in combination. Finally, a Petition for Variance was filed pursuant to B.C.Z.R. § 259.3.C.7 to permit a wall-mounted enterprise sign of 33.08 square feet in lieu of the permitted 8 square feet.

At the hearing, Petitioners’ counsel submitted an amendment to the petition, seeking variance relief concerning a front yard setback, although this request was contingent upon the State Highway Administration’s (SHA) widening of Mt. Carmel Road in front of the site. See Nash v. Board of Adjustment, 474 A.2d 241, 245-46 (N.J. 1984) (permissible to grant a variance premised upon the occurrence of a condition subsequent). Both the community and the

Petitioners are opposed to such highway widening. Kenneth Schmid, a traffic engineer accepted as an expert, testified he will meet with SHA officials and hopes to convince that agency that roadway widening is not necessary and/or appropriate in this case

Appearing at the public hearing in support of the requests was Jeff Bainbridge and Tom Ruszin. David H. Karceski, Esq. and Justin Williams, Esq. with Venable, LLP, appeared as counsel and represented the Petitioners. Several area residents attended the hearing, and for the most part they support the project. In addition, the Hereford Community Association submitted a letter expressing support for the plan. Petitioners' Exhibit 4. Kirsten Burger, on behalf of the Sparks-Glencoe Association, opposed the project and submitted a list of concerns marked as Protestant's Exhibit 1. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were submitted by several county agencies. The State Highway Administration (SHA) indicated the Petitioners must obtain an entrance permit. The Bureau of Development Plans Review (DPR) requested that Petitioners submit a landscape plan to (DPR) for review. Finally, the Department of Planning (DOP) supports the plan, provided certain conditions were imposed in the Order.

The subject property (identified on the plan as Lot 2) is approximately 2.5 acres in size and is zoned BL-CR. The site is unimproved, and the Petitioners propose to construct a Royal Farms Store with fuel service and a convenience store. Petitioners require several aspects of zoning relief to undertake the project, as discussed below.

SPECIAL HEARING

The Petition for Special Hearing seeks approval of illuminated signage. The property is located in a C.R. District (Commercial, Rural) and the relevant provision in the B.C.Z.R.

prohibits illuminated signs “unless approved by the Zoning Commissioner after a hearing.” B.C.Z.R. § 259.3.C.7.c. Other than the quoted language, the BCZR does not provide any guidance concerning what standards or requirements should be applied in determining whether to permit such signs.

Here the testimony established that all of the businesses in the immediate vicinity (including a grocery store, banks, and gasoline station) have illuminated signs. In addition, the Petitioners indicate that “dark sky friendly” lighting will be used, and a plan was submitted showing that there will be little or no spillage of light from the premises. Petitioners’ Ex. 6. As such, the special hearing relief seems appropriate in these circumstances.

SPECIAL EXCEPTION

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 court in Schultz described the applicable test in this fashion:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz, 291 Md. at 22-23.

Maryland’s highest court has recognized that most uses for which a special exception is required are regarded as “potentially troublesome because of noise, traffic, congestion...” Montgomery County v. Butler, 417 Md. 271, 297 (2010).

As noted at the outset, Ms. Burger submitted a list of concerns with the project, including the potential for environmental degradation and leakage of fuel from an underground storage tank. Of course, these are valid concerns, and many witnesses spoke about the Jacksonville

gasoline leak. While no one could in good faith guarantee that a leak would never occur, I found the testimony of Jay Wiedel--whose company will be manufacturing and supplying the tanks-- and Thomas Ruszin--a Royal Farms employee with certification from the Maryland Department of the Environment--to be quite convincing. Each described the safeguards and procedures employed to prevent such an incident from occurring, and the fuel storage and monitoring system to be installed here will be state of the art. Such a concern would exist in connection with any fuel service station, and under Schultz this cannot serve as the basis to deny the special exception.

Ms. Burger also testified that the proposal appears to conflict with the Hereford Community Plan, which in 1991 was incorporated into the County Master Plan. She indicated that the plan is “controlling” (Protestants’ Ex. 1, at p. 2) in this case, which is not entirely correct. Under Maryland law, master plans are, unless stated to the contrary in a statute, advisory in nature. City of Rockville v. Rylyns Enter., Inc., 372 Md. 514, 530 (2002). In development hearings, the Master Plan is in fact binding, pursuant to BCC § 32-4-102. HNS Develop., LLC v. People’s Counsel, 425 Md. 426 (2012). But no such provision exists for zoning cases. Even so, the testimony in this case established that the proposal is in fact consistent with the Hereford plan, which identifies the site as appropriate for commercial uses.

VARIANCES

Based upon the testimony and evidence presented, I will also grant the request for variance relief. 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).

The Petitioners have met this test. Eric McWilliams, a landscape architect, testified the site is irregularly shaped, and noted the store will be set back over 150 feet from Mt Carmel Road to preserve the bucolic nature of the Scenic Byway. Thus, the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, since they would be unable to install a sign of sufficient size to be seen by passing motorists. 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.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the special hearing, special exception and variance relief requested shall be granted.

THEREFORE, IT IS ORDERED this 29th day of January, 2014, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to § 259.3.C.7.c of the Baltimore County Zoning Regulations ("B.C.Z.R."), for approval of illuminated signage, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' request for Special Exception filed pursuant to B.C.Z.R. §§ 405.2.B.2, 405.4.E.1, and 405.E.10 to allow a fuel service station on an individual site and a convenience store having a sales area larger than 1,500 square feet and a carry-out restaurant as uses in combination, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' request for Variance to permit a wall-mounted enterprise sign of 33.08 square feet in lieu of the permitted 8 square feet, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' request for Variance to permit a front yard

setback of 65.74 feet in lieu of the maximum allowed 58 feet, if necessitated by the SHA widening of Mt. Carmel Road, 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 comply with the ZAC comment of DEPS, dated January 10, 2014.
3. Petitioners must submit for approval by Baltimore County's landscape architect lighting and landscape plans.
4. Petitioners must satisfy the conditions set forth in the DOP ZAC comment dated January 24, 2014.
5. The special exception granted herein must be utilized within two years of the date hereof, unless extended by subsequent order.

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