

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(3300 Washington Blvd.)
13th Election District
1st Councilmanic District
EMZA, Inc./*Legal Owner*
Petitioner**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
*
* **Case No. 2014-0245-XA**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 3300 Washington Blvd. The Petitions were filed on behalf of EMZA, Inc., the legal owner of the subject property. The Petition for special exception seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) for a convenience store and gas station, pursuant to B.C.Z.R. § 405.2.B.1. The Petition for Variance seeks relief under B.C.Z.R. as follows: (1) for two car stacking spaces in lieu of the required three car stacking spaces pursuant to § 405.4.A.3.c; (2) for 27 off-street parking spaces in lieu of the required 31 spaces pursuant to § 409.6.2; (3) for a 14 ft. drive aisle (two way) in lieu of the required 20 ft. pursuant to § 409.4.A; and (4) setback of five feet (5 ft.) for existing fuel pump canopy in lieu of the required 15 ft. pursuant to §405.A.2.a. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the hearing in support of the Petitions were Zulfiqar Baig, Ehsan Anjunn, and Amrish G. Patel, P.E. with AST Consultants, Inc., who prepared the site plan for this project. Frank X. Borgerding, Jr., Esq. represented the Petitioner. There were no Protestants or interested citizens in attendance and the file does not contain any letters of protest or opposition. The Petition was properly advertised and 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 only substantive ZAC comments were received from the Department of Planning (DOP) and Bureau of Development Plans Review (DPR). The DPR indicated that a landscape plan must be approved prior to issuance of any permits, and the DOP initially recommended denial of all requests. After reviewing a revised site plan (dated August 7, 2014), the DOP indicated it did not oppose the requests, provided certain conditions were imposed.

The subject property is 0.463 acres (20,111 sq. ft.) and is zoned BL-AS. The site is situated at the intersection of U.S. 1 and Caton Avenue, adjacent to the Baltimore City line. The area is heavily travelled and entirely commercial. Petitioner notes that a gas station has existed on this site since at least 1950, a point echoed in the DOP's ZAC comment concerning a "non-conforming fuel service station with ancillary convenience store." Even so, there has been no formal finding that the operation is a lawful non-conforming use, and in any event, the Petitioner proposes to expand by approximately 150% the size of the existing structure. The B.C.Z.R. restricts to 25% the enlargement of non-conforming uses and structures, B.C.Z.R. § 104, and thus the Petitioner seeks special exception and variance relief.

The only improvements proposed concern the convenience store, which Mr. Patel (Petitioner's engineer) explained is in poor condition. That structure is presently 1,690 sq. ft., and the Petitioner proposes to construct a 2,350 sq. ft. enlargement of the store, which would then be just over 4,000 sq. ft. All other improvements and facilities on the site would remain as currently configured. The B.C.Z.R. permits by special exception a convenience store with a sales area larger than 1,500 sq. ft., provided the additional site area is at least four times the square footage of the convenience store. B.C.Z.R. § 405.4.E.1. Since the site area is 20,111 sq. ft., and the

proposed store would be 4,000 sq. ft., the Petitioner would appear to satisfy this additional restriction.

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 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. No such evidence was presented in this case, and of course a fuel service station has been in operation at this location for over 50 years. 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. The site is of irregular dimensions and has frontage on two public highways. As such, the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would suffer a practical difficulty, in that it would be unable to construct the proposed improvements and modernize the operation. 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.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 29th day of August, 2014, that the Petition for Special Exception for a fuel service station/convenience store, pursuant to B.C.Z.R. § 405.2.B.1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance relief from B.C.Z.R. as follows: (1) for two car stacking spaces in lieu of the required three car stacking spaces pursuant to § 405.4.A.3.c; (2) for 27 off-street parking spaces in lieu of the required 31 spaces pursuant to § 409.6.2; (3) for a 14 ft. drive aisle in lieu of the required 20 ft. pursuant to § 409.4.A; and (4) for a setback of five feet (5 ft.) for an existing fuel pump canopy in lieu of the required 15 ft. pursuant to § 405.A.2.a, 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/or licenses 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. Petitioner must comply with the ZAC comments of DOP dated August 14, 2014, a copy of which is attached hereto and incorporated herein.

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/dlw