

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	*	OFFICE OF
(8201 Liberty Road)	*	ADMINISTRATIVE HEARINGS
2 nd Election District	*	FOR BALTIMORE COUNTY
4 th Councilmanic District	*	Case No. 2014-0238-SPHXA
Adeela Ahmad, <i>Legal Owner</i>	*	
Petitioner	*	

* * * * *

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 Donald C. Wright, Esquire, on behalf of Adeela Ahmad, the legal owner.

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), seeking to establish that a fuel service station has continuously operated at this site, and that it is therefore a lawful nonconforming use. A Petition for Special Exception was filed pursuant to B.C.Z.R. §405.2.B.1 to permit a fuel service station on an individual site. Finally, a Petition for Variance was filed pursuant to B.C.Z.R. as follows: (1) to permit a landscape strip of 4.85 ft. along Langrehr Road and 5 ft. along Liberty Road in lieu of the required 10 ft., and 11 ft. in lieu of 15 ft. on the rear property line where the adjacent residentially zoned property is less than 50 ft. from the site pursuant to §405.4.A.2.b; (2) to permit 8 fuel stacking spaces in lieu of the required 12 spaces for MPD dispensers where a convenience store is in conjunction with the fuel service station pursuant to §405.4.A.3.c.2; and (3) for a rear building setback of 6 ft. in lieu of the required 30 ft. pursuant to §238.2.

Appearing at the public hearing in support of the requests was Aman Khan and Rick Richardson, P.E., from Richardson Engineering, LLC, the firm that prepared the site plan.

Donald C. Wright, Esq., appeared as counsel and represented the Petitioner. Shirley & Jeff Supick attended the hearing to express concern about the proposal.

The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were submitted by the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Both agencies oppose the relief.

According to the plan, marked and admitted as Petitioner's Ex. No.1, the subject property has a site area of approximately 1.05 acres (gross) or 0.76 acres (net). State tax records however indicate the lot size is 24,045 SF, or 0.552 acres. The property is zoned BR-AS. For many years a Getty fuel service station has operated at the site (SDAT records show the present structure was built in 1967), although there does not appear to be any prior zoning history or approvals for the property. Petitioner purchased the property from Getty in January 2014, and proposes to raze the existing improvements and construct a new fuel service station, repair facility and convenience store. To do so requires zoning relief.

SPECIAL HEARING

Given the disposition of the petition for special exception below, the petition for special hearing will be dismissed as moot. See, e.g., Purich v. Draper, 395 Md. 694, 717 (2006) (“property cannot operate where the use is both a nonconforming use and a special exception use”). As such, no determination will be made regarding whether Petitioner enjoys lawful nonconforming use status.

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.

Id. at 22-23.

In this case, I do not believe the use would have any greater adverse impact upon the community at this location than at any other BR-AS zoned property in the County. The site is located along a busy commercial corridor, and has been used as a fuel service facility for many years. As such, the petition for special exception will be granted.

VARIANCES

Based upon the testimony and evidence presented, I will however deny 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 Petitioner has not met this test. Specifically, there was no testimony and/or argument that the property is “unique,” as that term is used in the Maryland cases. The court in Cromwell v. Ward, 102 Md. App. 691, 711 (1995), noted that since 1927, only five reported Maryland cases have upheld the grant of variance relief (or reversed the denial of a variance petition). The court in Cromwell also held that “variances are rarely appropriate.” Id. In light of this precedent, I do not believe variance relief is appropriate in this case.

THEREFORE, IT IS ORDERED this 15th day of July, 2014, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) be and is hereby DISMISSED without prejudice as MOOT;

IT IS FURTHER ORDERED that the Petition for Special Exception pursuant to B.C.Z.R. §405.2.B.1, to permit a fuel service station on an individual site, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to permit a landscape strip of 4.85 ft. along Langrehr Road and 5 ft. along Liberty Road in lieu of the required 10 ft. and 11 ft. in lieu of 15 ft. on the rear property line where the adjacent residentially zoned property is less than 50 ft. from the site pursuant to §405.4.A.2.b; (2) to permit 8 fuel stacking spaces in lieu of the required 12 spaces for MPD dispensers where a convenience store is in conjunction with the fuel service station pursuant to §405.4.A.3.c.2; and (3) for a rear building setback of 6 ft. in lieu of the required 30 ft. pursuant to §238.2, be and is hereby DENIED.

The relief granted herein shall be subject to 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 her 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.

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