

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	*	OFFICE OF
(5931 Baltimore National Pike)	*	ADMINISTRATIVE HEARINGS
1 st Election District	*	FOR BALTIMORE COUNTY
1 st Council District	*	Case No. 2017-0047-SPHXA
Sahi Petroleum Marketing, LLC,	*	
<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 on behalf of Sahi Petroleum Marketing, LLC, legal owner (“Petitioner”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve a modification to the previously approved plan in Case No. 1982-225-SPH. In addition, a Petition for Variance seeks: (1) to permit a rear yard setback of 8 ft. in lieu of the required 20 ft.; (2) to have parking spaces with a 3 ft. setback from the public right-of-way in lieu of the required 10 ft.; (3) to provide as little as 0 ft. landscape strip for the existing curbs in lieu of the required 10 ft. and a landscape strip of 13 ft. in lieu of the required 15 ft. on the rear property line where the adjacent residentially zoned property is less than 50 ft. from the site; and (4) to permit a drive aisle of 7 ft. between a stacking space and curb in lieu of the required 12 ft. Finally, a Petition for Special Exception seeks approval for the addition to the existing fuel service station of a convenience store greater than 1500 sq. ft.

Appearing at the public hearing in support of the requests was professional engineer Rick Richardson, Maryann Hussain and Chris Alleva. Two neighbors attended and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning

Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). These comments are addressed below.

The subject property is approximately 0.83 acres in size and is zoned BL. A BP gas station is operated on the premises, and Mr. Richardson stated that the gas station use has existed here for over 50 years. Under the Regulations, Petitioner would be entitled without zoning relief to construct on the site a convenience store with a sales area of less than 1,500 sq. ft. This would be considered an “ancillary use” that is “permitted by right in conjunction with any fuel service station.” B.C.Z.R. §405.4.D.2. Petitioner proposes to construct a convenience store greater than 1,500 sq. ft., which is permitted by special exception.

VariANCES

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioner has met this test. The property has a triangular shape and is therefore unique. In addition, findings that this property is unique have been made in prior zoning cases (1965-0383-A; 1975-0086-A; and 2008-0217-SPHA), and those orders are likely entitled to preclusive effect. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to construct the proposed store. Finally, I find that the variance (with the modifications noted below) 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.

The subject property is adjacent to 6 Lincoln Avenue, which is improved with a single-family dwelling owned by Linda Hood. Ms. Hood expressed particular concern regarding the rear yard setback, and did not believe an 8 ft. setback would suffice. I concur, and will grant the variance to permit a 12 ft. setback in lieu of the required 20 ft., along with enhanced fencing and/or landscaping requirements. In my opinion, that will screen the view of the subject property, especially considering that the existing fence is in serious disrepair and provides little if any buffer. Ms. Hood also noted patrons of the station frequently make a left turn to exit the site and travel the wrong way on Lincoln Avenue, which provides access to Route 40. To minimize the impact of this use upon the neighborhood a condition will be included below to require closing this driveway.

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. Mr. Richardson testified Petitioner has satisfied the standards set forth in B.C.Z.R. §502.1, and thus I believe Petitioner has established a prima facie case. While the neighbors testified the site is poorly maintained and unsightly, that of course could be said of many fuel service stations. In other words, I think those negative impacts are inherent in the use, and are not sufficient to rebut Petitioner's evidence in the manner required by Maryland case law.

Special Hearing

The special hearing request is essentially a “housekeeping” matter which seeks to amend (in light of the relief requested herein) the prior zoning plan approved for the subject property. The Petitioner indicated at the hearing, and on the petition itself, this request was made in the alternative to the special exception request discussed above. As such the petition for special hearing will be dismissed without prejudice.

The final issue concerns a Basic Services Map deficiency at the property. In its ZAC comment the Bureau of DPR noted the site is in a “deficient traffic shed.” That agency also noted the site is likely exempt from the Basic Services legislation since it is located in a commercial revitalization district. DPR suggested Petitioner consult a traffic engineer to determine whether the number of peak hour trips would increase with the addition of the convenience store. Petitioner presented a letter (Petitioner’s Exhibit 7) from traffic engineer Mike Nalepa, from Street Traffic Studies, Ltd., which states in pertinent part “the trip rates for gas stations/convenience stores are less per fueling position than a gas station without a convenience store.” In light of this evidence, which was unrefuted, I believe Petitioner has addressed and satisfied that aspect of the DPR ZAC comment.

THEREFORE, IT IS ORDERED this **24th** day of **October, 2016**, 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”) to approve a modification to the previously approved plan in Case No. 1982-225-SPH, be and is hereby DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the Petition for Special Exception for approval of a Convenience Store greater than 1500 sq. ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a rear yard setback of 12 ft. in lieu of the required 20 ft.; (2) to have parking spaces with a 3 ft. setback from the public right-of-way in lieu of the required 10 ft.; (3) to provide as little as 0 ft. landscape strip for the existing curbs in lieu of the required 10 ft.; and (4) to permit a drive aisle of 7 ft. between a stacking space and curb in lieu of the required 12 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioner must obtain from the State Highway Administration (SHA) an entrance permit.
3. Petitioner must comply with the ZAC comment of the DOP, a copy of which is attached hereto and made a part hereof.
4. Prior to issuance of permits Petitioner must provide landscaping, fencing and lighting at the site as determined in the sole discretion of the County's landscape architect. Such landscaping shall provide to the extent practicable a buffer between the subject property and the single family dwelling at 6 Lincoln Avenue.
5. Petitioner must close and remove the existing driveway located along the eastern boundary of site which now serves as a point of ingress/egress from Lincoln Avenue.
6. The convenience store shall be no larger than 1,792 square feet.

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:dlw