

IN THE MATTER OF	*	BEFORE THE
<u>WILLIAM AND MARY GROFF -</u>	*	BOARD OF APPEALS
LEGAL OWNERS AND PETITIONERS	*	
DMS Tollgate, LLC - Contract purchaser	*	FOR
For the property located at	*	
10609 Reisterstown Road	*	BALTIMORE COUNTY
4 <sup>th</sup> Election District	*	
2 <sup>nd</sup> Councilmanic District	*	Case No. 13-080-X

\* \* \* \* \*

**OPINION**

This matter comes before the Board of Appeals as an appeal from the October 31, 2013 decision of the Office of Administrative Law which granted the Petitioners' request for Special Exception to use the subject property, known as 10609 Reisterstown Road, as a fuel service station with a convenience store containing a sales area larger than 1,500 sq. ft., with conditions.

The Petitioners are the property owners William and Mary Groff, and the contract purchaser, DMS Tollgate, LLC. The Petitioners were represented by G. Scott Barhight, Esquire. The Protestants in this matter consisted of Malik Imran, Afshin and Ashkin Rahmanattar, and were represent by G. Macy Nelson, Esquire.

**BACKGROUND**

The Special Exception sought in this matter is for the purpose of allowing the contract purchaser to construct and operate gasoline service station with an enclosed convenience store greater than 1,500 sq. ft., which is permitted under the Baltimore County Zoning Regulations by way of a Special Exception. The subject property is 8.51 +/- acres and is zoned BL-AS. The Special Exception sought in the matter covers an area of 1.70 acres and is the proposed site for the Wawa service station and convenience store. The Administrative Law judge granted the Special Exception with the following conditions:

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. Unless extended by subsequent order, the special exception granted herein must be utilized within two (2) years from the date of this Order.
3. The “special exception area” shall include the 1.70 acre (74,088 SF) area of the proposed Wawa service station and convenience store, but shall not include the 0.43 acre (18,628 SF) area of proposed relocated Groff Lane.
4. Approval by Baltimore County of a landscape and lighting plan for the site.
5. Approval by county, state and federal authorities of the floodplain study and/or floodplain map amendment or revision as sought by Petitioners.
6. Approval and issuance of all necessary permits by the State Highway Administration.

#### BOARD HEARING

The Board of Appeals conducted a de novo hearing in this matter as required under the Baltimore County Code. As a threshold matter there is no dispute as to whether the Petitioners are entitled to apply for a Special Exception for the proposed use of the subject property in the area where it is situate pursuant to sections 230.3 and 405.4.E of the Baltimore County Zoning Regulations (BCZR). The dispute involves the question of whether the use of the subject property as proposed by the Petitioners violates the established law regarding the grant of Special Exceptions by Baltimore County and Sections 502.1 and 405 of the BCZR.

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 held 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.

In the instant case the Protestants argue that the Administrative Law Judge failed to consider the proper section of the Baltimore County Code as it relates to filling stations; that the proposed location imperils the surrounding neighborhood by reason of its impact on the floodplain; and, that the proposed use would have a negative impact on the general welfare of the neighborhood in which it is situate.

#### PETITIONERS' CASE

The Petitioners offered into evidence the testimony of Ken Schmidt, of Traffic Concepts, Inc., who was admitted as an expert in the fields of Traffic Engineering and Transportation Planning. Mr. Schmid opined that the proposed use will not create congestion of the roads, streets or alleys in the area of the subject property. The proposed relocation of Groff Lane to create a four way signalized intersection, according to Mr. Schmid, will create a safer and more convenient pattern of traffic circulation for the subject property and the surrounding area. According to Mr. Schmid his company has created and delivered two (2) Traffic Impact Studies on behalf of the Petitioners to the Maryland State Highway Administration in support of the planned relocation of Groff Lane.

On cross examination Mr. Schmid acknowledged that the he has yet to receive approval for the planned road relocation.

The Petitioners called Mr. Rick Richardson, of Richardson Engineering, who was offered and accepted by the Board as an expert in the fields of civil engineering, zoning and development. Mr. Richardson testified that based on the proposed use and design of the site, the proposed use will meet or exceed the County requirements pursuant to Section 502.1 for a Special Exception. Mr. Richardson continued to opine that the proposed use will not have significant negative impacts on the surrounding area with respect to health, safety or general

welfare. Mr. Richardson testified that in his opinion the provisions of BCZR Section 405 concerning fuel service stations. Mr. Richardson testified that the proposed fuel service station is not is not located within a mile radius of any abandoned fuel service station(s).

The Petitioners offered into evidence a 100 year Flood Plain Study (Petitioners' Exhibit No. 15) which had been previously submitted to the County Department of Public Works as part of the review process for this site. While the flood plain study was accepted by the County for filing the document must be approved by the Maryland Department of the Environment and the Army Corps of Engineers.

#### PROTESTANTS' CASE

The Protestants called to testify John Seitz, of Transportation Resource Group, Inc. who was accepted by the Board as an expert in the area of Traffic Engineering. Mr. Seitz testified that as a part of his investigation of the proposed use of the subject site he evaluated the potential truck turning radius for fuel delivery trucks entering the proposed site using a computed based traffic modeling program and determined that a fuel delivery truck attempting to turn into the proposed site would cause potential congestion and traffic difficulty of Groff Mill Road because of the wide turning angle required for such trucks.

Mr. Seitz was questioned as to his familiarity with the Baltimore County Zoning Regulations and the requirements for a Special Exception. Mr. Seitz responded that he was not familiar with the particulars of those areas.

The Protestants next called Andrew Miller, PhD who was admitted as an expert in hydrological studies. Dr. Miller testified concerning the Flood Plain Study prepared by the Petitioners. According to Dr. Miller the subject area contains a portion of the existing flood plain which will be filled in to facilitate construction of the site. The issue of concern to Dr.

Miller was the impact of the proposed flood plain filling on the water elevations and velocity of the 50-year and 100-year floods as established by the federal government. Dr. Miller opined that in the event of a 100-year flood the velocity of water travelling along the water way adjoining the subject property could conceivably increase at or near an overpass bridge located along Reisterstown Road thereby causing the potential for damage to the bridge and the surrounding land.

Three Protestants were called to testify as to their concerns about the proposed Special Exception. They were: Malik Imram; Afshin Attar; and, Ashkam Rahmanattar. Each of the Protestants is either employed by or otherwise affiliated with other fuel delivery stations in the area. The Protestants generally voiced their concerns that the proposed site would cause traffic disruptions in the area, increase crime and specifically that there would be a problem with the entry and exit of fuel delivery tankers to the proposed site. Mr. Imram is the owner of the Gulf filling station which is located adjacent to the proposed site. Mr. Attar is the owner of the Exxon filling station which is likewise located adjacent to the proposed site. They both stated their concerns as to the negative impact on their businesses of the proposed Wawa fuel delivery and convenience store by reason of increased competition in the area.

#### DECISION

In this case the Petitioners' have decided to proceed with the request for a Special Exception before receiving County approval for the proposed road relocation and approval for the flood plain relocation from FEMA. Under the BCZR this approach is not prohibited and therefore the grant of a Special Exception has no bearing on the approval on non-approval of the foregoing matters.

The instant case then presents the narrow issue of the Petitioners' compliance with the requirements for a Special Exception. In the Boards' view the evidence presented is sufficient to satisfy the requirements of Section 502.1 of the BCZR which reads:

“Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of the Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

As noted above in this Opinion there is a presumption under Maryland Law that a Special Exception is in the general interest of the jurisdiction and therefore valid and 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.

The Protestants' concerns taken from the available evidence do not rebut the presumption of validity of the Special Exception use in this case. There are, however, factors that cannot be determined as this time and those include the proposed road relocation approval and the re-engineering of the flood plain. The possibility of a negative impact upon the flood plain by Petitioners' plans will be determined separately by way of the investigation by State and Federal

authorities and pursuant to the Baltimore County Code (Section 32-8-101 et. seq.) will only be granted when there is no adverse effect upon the safety and welfare of the citizenry. Likewise we are presented with a proposal for ingress and egress for the subject site without benefit of an approved plan. Any such approval will require a review of county standards by the appropriate county officials based upon the requirements of the B.C.Z.R. Those issues cannot be ascertained at this time and the Board will accordingly grant the Special Exception to the Petitioners' with the same conditions as those imposed by the Administrative Law Judge below.

Another issue raised and argued before the Board is the effect of the following prohibition contained in Section 405.3 of the BCZR titled "Conditions for disapproving special exception." which reads as follows:

"In addition to the findings required under Section 502.1, the Zoning Commissioner, prior to granting any special exception for a fuel service station, shall consider the presence of abandoned fuel service stations in the vicinity of the proposed site. A finding by the Zoning Commissioner of the presence of one abandoned fuel service station, as defined in Section 405.7, within a one-half mile radius, or two such stations within a one-mile radius of the proposed fuel station establishes that there is no need for the proposed use, unless rebutted to the Zoning Commissioner's satisfaction by market data."

The evidence presented at the hearing established that there are no abandoned fuel service stations located within either one-half mile or one-mile of the proposed site. However counsel for the Protestants urged the Board to read the first sentence of Section 405.3 separately from the remaining paragraph so as to interpret the provision of that sentence as requiring the Zoning Commissioner (Board) to examine an area more distant than one-mile for the presence of abandoned fuel service stations on the theory that the "vicinity" referred to in sentence one extends beyond the area of the proposed site as stated in sentence two of Section 405.3. The Board differs in its interpretation of Section 405.3 and holds that the examination of the "vicinity" extends only to those areas mentioned in the following sentence of Section 405.3.

Accordingly the application for a Special Exception is approved subject to the conditions stated below.

**ORDER**

THEREFORE, IT IS THIS 24<sup>th</sup> day of June, 2014, by the Board of Appeals of Baltimore County,

**ORDERED** that the Petition for Special Exception to use the subject property, known as 10609 Reisterstown Road, as a filling station with a convenience store containing a sales area larger than 1,500 sq. ft. be and the same are hereby **GRANTED**; and it is further,

**ORDERED** that the Petitioner's request be subject to the following conditions:

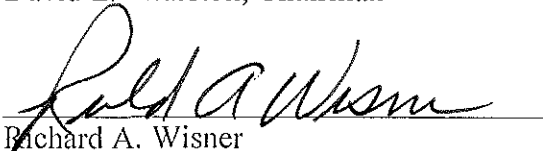
1. Unless extended by subsequent order, the special exception granted herein must be utilized within two (2) years from the date of this Order.
2. The "special exception area" shall include the 1.70 acre (74,088 SF) area of the proposed Wawa service station and convenience store, but shall not include the 0.43 acre (18,628 SF) area of proposed relocated Groff Lane.
3. Approval by Baltimore County of a landscape and lighting plan for the site.
4. Approval by county, state and federal authorities of the floodplain study and/or floodplain map amendment or revision as sought by Petitioners.
5. Approval and issuance of all necessary permits by the State Highway Administration.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**



David L. Thurston, Chairman



Richard A. Wisner

\*Wendell H. Grier was Panel Chairman at the hearings held on March 5, 2014, March 12, 2014, and April 2, 2014. His term expired on April 30, 2014.