

<b>IN RE: PETITION FOR SPECIAL</b>	*	BEFORE THE
<b>EXCEPTION</b>		
W side of MD Route 43, 133.77 feet W of	*	DEPUTY ZONING
c/1 of Crossroads Circle		
15 <sup>th</sup> Election District	*	COMMISSIONER
6 <sup>th</sup> Councilmanic District		
(11905 Market Way)	*	FOR BALTIMORE COUNTY
<b>Edward St. John, LLC, et al.</b>	*	
<i>Legal Owner</i>		
	*	
<b>Wawa, Inc.</b>		
<i>Lessee</i>	*	<b>Case No. 2009-92-X</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Edward A. St. John, General Manager, on behalf of the legal owner of the subject property, Edward St. John, LLC, et al. Special Exception relief is requested pursuant to Sections 259.11.B.2.a, 405.2.B.1, 405.4.E.1 and 405.4.E.10 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a fuel service station in combination with a convenience store with a sales area larger than 1,500 square feet and carry-out restaurant. 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 requisite public hearing in support of the requested special exception was Bruce Rice on behalf of Petitioner Wawa, Inc., the company that is leasing the subject property, and Arnold Jablon, Esquire and David Karceski, Esquire with Venable, LLP, attorneys for Petitioner. Also appearing in support of the requested relief was Nick Brader, P.E. with Matis Warfield, the civil engineer who prepared the site plan, and Rick Cobert with the

Baltimore County Department of Economic Development, who testified in favor of the requested relief. There were no Protestants or other interested persons in attendance at the hearing.

This case represents the second request for special exception on the subject property. In Case Number 06-355-X, the same Petitioner requested, and this office granted, a special exception to permit nearly the identical relief that is again requested in the case at hand. Throughout both cases, Wawa, Inc. has been proposing to construct a fuel service station in combination with a convenience store and carry-out restaurant at the subject location. While the requested relief was granted in the prior case, due to slowing economic conditions, development was not completed within two years as required by Section 502.3 of the B.C.Z.R, which states that a special exception which has not been utilized within a period of two years from the date of the final order granting such relief is void. Thus, Petitioner filed the instant petition for special exception requesting that this office once again permit the property to be developed as depicted on the current site plan, and as previously granted in Case Number 06-355-X. At the public hearing, Mr. Jablon also made an oral request that if the special exception is granted, that this office use the authority contained within Section 502.3 of the B.C.Z.R. to grant Petitioner a period of five years from the date of this final order to utilize the special exception.

The majority of the Petitioner's case came in the form of a proffer from Mr. Jablon. The testimony and evidence revealed that the subject property is square-shaped and contains approximately 14.215 acres of land, more or less, zoned ML-IM, MD 43 (Route 43 Overlay District). The property is located on MD Route 43 extended at its intersection with a new street known as Market Way in the White Marsh/Middle River area of Baltimore County. Petitioner requests approval of a special exception on 2.1 acres of the tract for a fuel service station in combination with a convenience store and carry-out restaurant to be operated by Wawa, Inc. A

blowup of the area pertaining to the special exception was marked and accepted into evidence as Petitioner's Exhibit 2. The evidence revealed that the property is to be improved with a one-story building approximately 5,589 square feet in size, with approximately 4,060 square feet utilized for the convenience store, 750 square feet for the carry-out, and 779 feet for service station uses. Petitioner also submitted a wealth of documents describing the subject property including elevations and signage, an aerial photograph, a landscape plan that conforms to the Office of Planning Comments, and several photographs. These documents were respectively marked and accepted into evidence as Petitioner's Exhibits 2, 3, 4, 6, and 7.

Additional testimony was received from Mr. Cobert who represented the Baltimore County Department of Economic Development and indicated that Petitioner's request will help fulfill the purposes of the Overlay District by creating jobs and fueling the local economy. Mr. Cobert noted that this specific tract has been set aside for retail uses in the overall plan for MD Route 43 extended, and as such will not take away industrial sites from the complex. Rather, Mr. Cobert opined that this station and convenience store would serve the employees of the industrial complex so that unlike other industrial developments in the County, employees will not have to leave the complex for lunch or fuel. Mr. Cobert also indicated that he has worked with Wawa, Inc. on other occasions in the past, and lauded the company for maintaining low fuel prices and clean, efficient operations.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management dated November 6, 2008, which indicate that the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains, must comply with the Forest Conservation Regulations, and must comply with the

Chesapeake Bay Critical Area Regulations. Comments were received from the Office of Planning dated September 4, 2008, which indicate that Petitioner met with the Office regarding the previously submitted Case 06-355-X, which was approved on February 26, 2006, but has since expired. As noted in the previous request, Petitioner agreed to provide a landscape buffer, sidewalk, and add additional landscaping and a sidewalk at the edge of the proposed parking area bordering Market Way. Therefore, based on the information above, the Planning Office finds the development is consistent with The Middle River Employment Center Area Plan, adopted by the Baltimore County Council on August 5, 2002 and September 3, 2002. Architecture and signage should comply with the Baltimore County Crossroads @ 95 Pattern Book.

Based on the testimony and evidence presented, I am persuaded to grant the petition for special exception. This office previously reviewed the criteria of Section 502.1 of the B.C.Z.R. and found that Petitioner's request met all of the requirements for a special exception. While these requirements were once again reviewed, I cannot find any evidence to revisit or overturn the prior findings of this office. Mr. Jablon indicated that the only substantive change to the site plan in the instant case is that the proposed building is slightly smaller than the structure that was proposed in Case Number 06-355-X. Thus, I am persuaded that, as then-Deputy Zoning Commissioner John V. Murphy previously determined, the proposed use will not be detrimental to the health, safety or general welfare of the locale, and that the use will not have any negative effects on the special exception criteria set forth in Section 502.1 of the B.C.Z.R. As for Mr. Jablon's request to extend the time for utilizing the special exception for up to five years, I find nothing in the B.C.Z.R. that would prevent the granting of this request, nor any evidence in the record that would weigh against granting the request. Hence, this request shall also be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's special exception request and the request for extension of time to utilize the special exception should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 8<sup>th</sup> day of December, 2008 that Petitioner's request for a Special Exception pursuant to Sections 259.11.B.2.a, 405.2.B.1, 405.4.E.1 and 405.4.E.10 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a fuel service station in combination with a convenience store with a sales area larger than 1,500 square feet and carry-out restaurant be and is hereby GRANTED; and

IT IS FURTHER ORDERED pursuant to Section 502.3 of the B.C.Z.R. that Petitioner's request to have up to five years from the date of this final order to utilize the special exception be and is hereby GRANTED.

All relief granted is subject to the following conditions:

1. Petitioner may apply for his necessary building or use permits, as applicable, and be granted same upon receipt this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
3. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
4. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).

5. Architecture and signage shall comply with the Baltimore County Crossroads @ 95 Pattern Book.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

\_\_\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz