

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
N/S Pulaski Highway, 562' SW	*	ZONING COMMISSIONER
Allender Road		
(11424 Pulaski Highway)	*	OF
11 th Election District	*	BALTIMORE COUNTY
5 th Council District		
	*	Case No. 2010-0066-SPHA
Ronald W. Parker		
<i>Petitioner</i>	*	
* * * * *		

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Ronald W. Parker. Within the petition for special hearing, relief is sought to upgrade the truck stop and amend the plans and Orders previously granted in Case Nos. 5378-X (10-18-61), 72-36-X (8-30-71) and 83-124-SPH (8-19-83) allowing for changes in the site's configuration for a new building addition and a freestanding canopy over fuel-dispensing islands. The Petitioner requests a variance from Sections 238.1 & 2, 303.2 and 102.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit fuel pumps and canopy with a 10 foot front setback in lieu of the required front average setback of 62.5 feet and to permit building-to-building setbacks as close as 43 feet in lieu of the required 60 feet. The property under consideration and requested relief are more particularly described on the site plan submitted which was accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Ron Parker, d/b/a White Marsh Truck Stop, the property owner; Bob Infussi with Expedite, LLC, assisting the Petitioner with the permitting process; William N. Bafitis, P.E., with Bafitis and Associates, Inc., the consulting firm who prepared the site plan, and Bob Conley, property manager. The

requested approval was not contested and no member of the community, or any representatives of the various County reviewing agencies appeared or testified at the hearing.

Testimony and evidence offered disclosed that the subject property is a rectangular shaped parcel located on the northwest side of Pulaski Highway (US Route 40), south of Allender Road in White Marsh. The property contains an area of 2.295 acres (100,000 square feet), more or less, split-zoned B.R.-A.S. and M.L. and improved with a two-story retail office and truck repair building with sufficient blacktop maneuvering areas and accessory fuel pumps and canopy, parking spaces for 20 cars and 24 tractor and trailer stacking and parking spaces located at the rear of the building. Drive aisles provide ingress and egress to the site from the westbound lanes of Route 40 and are adequate and consistent with current County and State Highway Administration requirements. The Petitioner has owned and operated the truck stop and tractor repair business on the property since May 1981.

An appreciation of the property's past history and use is relevant and briefly outlined. Petitioner's Exhibit 2 contains the zoning history. In 1961, a special exception for a gasoline service station was granted for this commercial site in Case No. 53-78-X. Thereafter, in August 1971, a special exception for a truck terminal was granted for the property including an additional parcel located on the east side of Pulaski Highway in Case No. 72-36-X. In 1976, County Council Bill No. 18-76 deleted the definition of a truck terminal from the Baltimore County Zoning Regulations and created definitions for a Trucking facility, Trucking facility, Class I (Truck terminal), Trucking facility, Class II, and a Truck stop. Truck stop is defined in Section 101 of the B.C.Z.R. to mean:

“A structure or land uses or intended to be used primarily for the sale of fuel for trucks and, usually, incidental service or repair of trucks; or a group of facilities consisting of such a use and attendant eating, sleeping, or truck parking facilities. As used in this definition, the term ‘trucks’ does not include any vehicle whose

maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration”.

Next, Deputy Zoning Commissioner Jean M.H. Jung granted special hearing approval on August 19, 1983 for improvements to the site consisting of the construction of an addition to the building for offices and repair facilities for tractors and trailers, which essentially permitted the improvements and existing conditions within the 2.29 acre site before me at present.

The Petitioner now comes with a new approach to update his facility. A 55' x 90' trailer repair addition will be attached to the existing facility's northeast side. The present fuel dispensing islands and canopy, positioned where the new addition is proposed, will be removed and a new self-service fueling area for commercial vehicles using diesel, gas and LP (natural propane) gas will be relocated forward to the front of the property similar to other fueling facilities located along this industrial area for easier access and to facilitate prompt dispensing for customers with limited weight times. The dispensing islands will be covered by a proposed 45' x 55' canopy as a convenience amenity and improve the site appearance. It is anticipated that the primary customers, who will use electronic identification cards to activate the fuel pumps, will be able to better recognize this as a full-service truck stop from as far away as Allender Road which is controlled by a traffic signal. Mr. Parker stated that the new services at his White Marsh Truck Stop are in greater demand as the S&E (Smith & Everhart) Truck Repair Facility located across Route 40 has discontinued the sale of fuels and no longer provides mechanical repairs. Mr. Bafitis provided photographs of the subject property and surrounding adjacent commercial uses (collectively Petitioner's Exhibit 3) and opined as to the uniqueness of the property. In brief, the need for variance relief is due to the existing traffic patterns and need for fuel services to be located with easy access from Pulaski Highway. He further testified that the

truck stop will meet or exceed all governmental (State and Federal) safety regulations with respect to the storage and dispensing of fuels and otherwise satisfies the standards set forth in Section 502.1 of the B.C.Z.R. It is further noted that the requirements set forth in Section 238 of the B.C.Z.R. pertain to commercial buildings. A building which is defined in Section 101 of the B.C.Z.R. means:

“A structure enclosed within exterior walls or fire walls for the shelter, support or enclosure of persons, animals or property of any kind.”

As illustrated on the site plan, it is the proposed canopy which will be located 43 feet from the existing building and 21 feet back from the Pulaski Highway right-of-way that drives the need for the variances. The canopy, open on all four (4) sides, arguably does not meet the definition of *building*. It is, however, the policy of the Zoning Review Office of the Department of Permits and Development Management that since a canopy is a *structure* it should therefore be subject to the front yard and side yard setbacks of the B.R.-A.S. zoning provisions.

As to the petition for special hearing, I am persuaded that same should be granted. Thus, I will approve the site plan submitted in this case. I am persuaded that expansion of the building and proposed canopy for the fueling facility in this commercial and industrial area is appropriate and will not be detrimental to the health, safety and general welfare of the locale. The granting of the special hearing will allow the Petitioner to expand the proposed repair building addition within the site in an orderly and rational basis. Thus, the petition for special hearing shall be granted.

I shall also grant that portion of the petition for variance relating to the internal 43-foot setback as well as the front setback to permit the relocation and use of providing fuel dispensing pumps and canopy in this area. It is, again, worth noting that the setback relief is for an open

canopy as opposed to a *building*. Clearly, an open canopy over the fuel pumps within the site is warranted as a convenience amenity and will provide adequate light for safe fueling operations. The character of the surrounding locale is such that the use does not detrimentally impact the health, safety and general welfare of the locale. I am persuaded that the Petitioner has satisfied the burden of practical difficulty required by Section 307 of the B.C.Z.R. Thus, the variance shall be granted.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd day of October 2009 that the Petition for Special Hearing's approval of an amendment to upgrade the previously approved plans and Orders permitting a truck stop as set forth in Zoning Cases 5378-X, 72-36-X and 83-124-SPH, and to allow changes in the site's configuration for a new building addition and a proposed freestanding canopy, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance from Section 238.1 & 2, 303.2 and 102.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow fuel pumps and a canopy with a 10 foot front setback in lieu of the required front average setback of 62.5 feet, and to permit a setback between buildings as close as 43 feet in lieu of the required 60 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioner shall comply with the recommendations made by the Office of Planning, within its Zoning Advisory Committee (ZAC) comment, dated September 30, 2009, a copy of which is attached hereto and made a part hereof.
2. The Petitioner shall comply with the recommendations made by the Department of Environmental Protection and Resource Management (DEPRM) in its ZAC comment, dated September 29, 2009, by complying with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

3. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this Order shall be taken in accordance with Baltimore County Code (B.C.C.) Section 32-3-401.

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County