

<p><b>IN RE: PETITION FOR SPECIAL HEARING</b></p> <p>N side of Pulaski Highway; 1299 feet S of the c/l of Middle River Road 15<sup>th</sup> Election District 6<sup>th</sup> Councilmanic District (9300 Pulaski Hwy.)</p> <p>Dave Duggan, Vice President of <b>BP Lubricants USA, Inc.</b> <i>Legal Owner</i></p>	<p>* * * * * *</p>	<p>BEFORE THE</p> <p>DEPUTY ZONING</p> <p>COMMISSIONER</p> <p>FOR BALTIMORE COUNTY</p> <p><b>CASE NO. 2010-0105-SPH</b></p>
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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Dave Duggan, Vice President, on behalf of the legal property owner, BP Lubricants USA, Inc. Petitioner requests Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To confirm that BP Lubricants’ operation on site is not an oil refinery as defined in the B.C.Z.R.; and
- To confirm that Lubricant Manufacture is a use permitted within the M.L. Zone; and
- To confirm that BP Lubricants’ operations on site does not constitute a trucking facility; and
- For such other and further relief as deemed necessary.

The subject property and requested relief are more fully described on the site plan drawing which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief were Max Medeiros, Project Leader, and Paul Johnson, Project Engineer, on behalf of Petitioner BP Lubricants USA, Inc. David K. Gildea, Esquire and Sebastian A. Cross, Esquire with Gildea & Schmidt, LLC appeared as attorneys for Petitioner. Also appearing in support of the requested

relief were Jim Hermann with J.V. Hermann and Associates and Robert E. Walsh with EI Associates, the architectural and engineering firm that prepared the site plan. Appearing on behalf of the Baltimore County Department of Economic Development in support of the requested relief was Richard Cobert. There were no Protestants or other interested persons in attendance.

Testimony and evidence was presented by way of a proffer by Mr. Cross and revealed that the subject property is rectangular in shape and consists of approximately 11.047 acres zoned M.L.-I.M and M.L.-A.S. This represents a “Manufacturing, Light” zoning designation, with both an “Industrial, Major” and an “Automotive Services” District overlay. The property is located on the northwest side of U.S. 40 (Pulaski Highway), north of Martin Boulevard and east of Philadelphia Road, in the White Marsh/Middle River area of Baltimore County. As shown on the site plan, the property is improved with approximately 40,000 square feet of commercial/industrial manufacturing buildings. As also shown on the aerial photographs that were marked and accepted into evidence as Petitioner’s Exhibits 2A through 2D, there is a railroad line that runs along the rear of the property, parallel to U.S. 40.

Further evidence revealed that the facility at 9300 Pulaski Highway has been operating since 1977 -- originally as Dryden Oil -- and later changing its name to Castrol. Castrol later merged with BP Lubricants, USA, Inc. (“BP”) in 2005. The current operation has not changed significantly since its inception and manufactures all types of lubricants for industrial and residential users including; BP branded motor oil, gear lubes, hydraulic fluids and related products throughout the United States and Canada. The facility is the second largest lubricant blending plant in the Americas both in rate and volume and produces 30 million gallons of lubricating products annually. The Petition before this Commission is for a 5,000 square foot expansion of the facility in order to modernize equipment.

Initially, BP through its engineer Robert Walsh, submitted a letter dated April 22, 2009 to Department of Permits and Development Management (“PDM”) Director Timothy Kotroco outlining the details of this planned expansion and requesting a verification of zoning. A copy of this letter was marked and accepted into evidence as Petitioner’s Exhibit 3. Mr. Walsh received a response letter dated July 1, 2009 from Aaron Tsui with PDM’s Zoning Review Office, a copy of which was marked and accepted into evidence as Petitioner’s Exhibit 4. Mr. Tsui’s letter raised certain questions about the operation and, as a result, BP petitioned for a Special Hearing to verify not only the propriety of the existing operation in an M.L. Zone, but also to confirm that the operation does not contain the characteristics of a trucking facility or oil refinery.

Mr. Cross then explained the details of BP’s operation at the subject property and indicated that raw materials are delivered by railcar and trucks and this bulk material is stored in holding tanks. This material is then mixed with base oils, additives, dyes and polymers into blending tanks which are heated to 140 degrees and agitated for 20 minutes. The final product is primarily shipped by bulk (rail) and also truck. The planned expansion will replace 40 year old technology which currently accounts for 90% of facility production. This expansion will provide additional capacity for the operation while reducing energy use by 80% and pollution emissions by 20%. Photographs depicting the current interior operation were marked and accepted into evidence as Petitioner’s Exhibits 5A through 5D.

One of the central issues to this case raised by the Zoning Review Office is the possible nomenclature of the operation as an oil refinery. Testimony on this issue revealed this operation should not be classified as an oil refinery. Petitioner’s engineer, Mr. Walsh, provided expert testimony and defined “oil refining” as the processing of crude oil into a number of hydrocarbon products, predominantly used as transport fuels. Oil refineries are typically large sprawling

industrial complexes usually covering several hundreds acres, and employing hundreds of highly skilled technicians and engineers. Furthermore, oil refining is generally associated with separation, conversion, and treatment achieved by high heat (over 1,000 degrees Fahrenheit) and pressure, characteristics that are not present at this facility. Moreover, no hazardous byproducts (such as corrosive hydrofluoric/sulphuric acid, toxic hydrogen sulphide and nitrogen) are present. Likewise, as to the second issue raised by the Zoning Review Office, this operation does not have the characteristics of a “trucking facility” as defined in Section 101 of the B.C.Z.R. This section defines a trucking facility as follows:

A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels; or (b) for truck or truck-trailer parking or storage.

Unlike with a trucking facility, most of the material used to produce the lubricants is shipped to the site by rail and stored before blending. The final product is then shipped offsite by rail and truck. The element of goods or chattels being unloaded and loaded solely from truck to truck to facilitate transportation of such goods or chattels is not present; rather in this instant matter, Petitioner utilizes both trucks and railcars to bring in materials to create the lubricating products and uses trucks and railcars to take the end product to the customers. Unlike a trucking facility, the subject property is not a weigh station used primarily for end products to be stored until shipment, but is an accessory use to the permitted manufacturing operation.

It is also of note this operation has existed continuously at the current location for over thirty years and has never received any violations during this time. In support of this compliance, petitioners submitted Federal, State and Local government permits that have been issued over previous years, which were collectively marked and accepted into evidence as Petitioners Exhibit 7.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated November 12, 2009 which indicates that a representative visited the site and observed the operations. The operation has existed for some time and is consistent with other uses in the area. The Planning Office supports the relief requested under the subject special hearing. In addition, a letter of support dated November 30, 2009 was received from Department of Economic Development Director David S. Iannucci. Also, Richard Cobert with that Department appeared at the hearing and testified in support of the petition. As indicated in the letter and Mr. Cobert's testimony, BP has been a part of the Baltimore business community for over 40 years. Their plan to expand their operations on Pulaski Highway by adding additional tank capacity will involve an investment of approximately \$3.5 million into the site and double their current employment of 61, while also reducing their energy costs by 80% and decreasing production time by 30%. BP would also be increasing their use of the Port of Baltimore by shipping out an additional three containers per day. As such, Mr. Cobert's department is in full support of BP's expansion.

Considering the testimony and evidence presented, I am persuaded to grant the special hearing requests. In my judgment, Petitioner has clearly demonstrated that its operation on the subject property does not constitute an "oil refinery." This term is delineated in Section 256.4 of the B.C.Z.R. to include any facility for the recovery, processing or recycling of oil, or the storage or transfer of oil to be recycled. As Petitioner's engineer, Mr. Walsh explained, oil refining is the processing of crude oil into a number of hydrocarbon products, predominantly used as transport fuels, and is achieved by high heat (over 1,000 degrees Fahrenheit) and pressure. Conversely, Petitioner's facility mixes raw materials with base oils, additives, dyes and polymers into blending tanks, which are heated to 140 degrees and agitated for a short period. In short, Petitioner's

operation is comparatively low in intensity and produces lubricants primarily through mixing and blending of materials, and does not constitute an oil refinery. In addition, I find that Petitioner's operation, which has been ongoing continuously since the 1970's without interruption is a use permitted in the M.L. Zone. In my view, this is the type of industrial use permitted in this commercial corridor of Pulaski Highway that is surrounded by other manufacturing and business uses.

Finally, I find that Petitioner's operation on site does not constitute a "trucking facility" as that term is defined in Section 101 of the B.C.Z.R. As indicated in that definition, a trucking facility traditionally receives goods and chattels from trucks or trailers and moves the goods or chattels to other trucks or trailers for transport. In essence, its primary function is providing transportation services and it does not have an interest or ownership in the goods or chattels, other than perhaps a temporary bailment situation. On the other hand, in the instant matter, Petitioner receives the materials via rail and trucks to produce its lubricating products and has custody and ownership of the end products. It uses trucks merely to transport its end products to customers. It is an accessory use and not the primary operation of the facility. Hence, in my judgment, it is not a trucking facility.

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 request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 22<sup>nd</sup> day of December, 2009, that Petitioner's request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- To confirm that BP Lubricants' operation on site is not an oil refinery as defined in the B.C.Z.R.; and
- To confirm that Lubricant Manufacture is a use permitted within the M.L. Zone; and
- To confirm that BP Lubricants' operations on site does not constitute a trucking facility,

be and are hereby **GRANTED**, subject to the following conditions:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its 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\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz