

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N/S Pulaski Highway (U.S. Rte. 40),		
1,299.36' SW of Middle River Road	*	ZONING COMMISSIONER
(9300 Pulaski Highway)	*	OF
15 th Election District	*	BALTIMORE COUNTY
6 th Council District		
	*	
BP Lubricants USA, Inc.		Case No. 2010-0287-SPH
<i>Petitioner</i>	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the Vice President of BP Lubricants USA, Inc., David J. Duggan, through their attorney, Sebastian A. Cross, Esquire, with Gildea & Schmidt, LLC. The Petitioner requests a special hearing to approve a modified parking plan pursuant Baltimore County Zoning Regulations (B.C.Z.R.) Section 409.12.b, or, in the alternative, to confirm that the proposed parking field satisfies the durable and dustless requirement of B.C.Z.R. Section 409.8.A.2. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Paul Johnson, P.E., site/project engineer, on behalf of the property owner, and attorney for the Petitioner, Sebastian A. Cross, Esquire, of Gildea & Schmidt, LLC. There were no Protestants or other interested parties present.

On behalf of the Petitioner, Messrs. Johnson and Cross offered testimony and evidence regarding the use of the property. As shown on the site plan prepared by the architect and engineering firm of E.I. Associates, the subject property is rectangular in shape and consists of

approximately 11.047 acres zoned M.L.-I.M. and M.L.-A.S. (Manufacturing Light 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 the County. The property is improved with an office and lab building and an approximately 40,000 square feet commercial/industrial manufacturing building. An aerial photograph, marked and accepted into evidence as Petitioner's Exhibit 2 characterizes the CSX Railroad tracks that border along the northwest property line and serve the manufacturing building. The southeast boundary has 1,300 feet of frontage on U.S. 40 with enhanced landscaping. The surrounding neighborhood is commercial and industrial in nature and is in keeping with Petitioner's existing blending of nonhazardous oil operation use.

The facility at 9300 Pulaski Highway has been operating since 1977 and recently received approval to confirm the existing facility is a permitted use in the ML zone and that the facility is not an oil refinery and is not considered a trucking facility. See Case No. 2010-0105-SPH decided by Deputy Zoning Commissioner Thomas H. Bostwick on December 22, 2009. To the extent applicable, the findings and conclusions set forth in his prior Order are adopted by reference and incorporated herein. The Petition currently before me is for the section of the surface parking area along the eastern portion of the site as delineated on Exhibit 1. The special hearing request was submitted due to the surface materials of this area consisting of RC 6 crushed concrete stone base material.¹ This area of the parking lot is used for long term trailer storage and, as such, a question was raised by Baltimore County when issuing the grading permit for this area (submitted as Exhibit 3) whether this surface is permitted for parking as these areas should contain a durable and dustless surface as defined in B.C.Z.R. Section 101.1 and the design standards of Section

¹ RC-6 is a term given to "recycled" aggregate base course materials. CR-6 is a similar term that stands for "crushed stone" alternative paving materials.

409.8.A.2. As such, BP Lubricants now asks for confirmation that this surface makeup is “an equivalent paving material” and a proper alternative so as to be within the spirit and intent of the zoning regulations.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Of note is a comment received from the Bureau of Development Plans Review (DPR) wherein Dennis Kennedy requests certification from a geo-technical engineer that this foundation is firm and adequate. The comment also raises concerns over the amount of dust or *finer* that would be created by this surface, as crusher run can contain up to fifteen (15) dust particles. As such, the comment goes on to state this surface should not be considered dustless and recommended committing a surface treatment periodically to retard this dust. In the meantime, Mr. Kennedy recommends the area to be limited to long term trailer parking with only occasional ingress and egress.

In response to this comment, Mr. Cross submitted follow up correspondence between himself and Mr. Kennedy as Petitioner’s Exhibit Nos. 5A and 5B. This response to DPR appended a certification dated June 17, 2010 that the trailer parking lot pavement as constructed provides a durable and sustainable wearing surface for the intended use. This certificate was signed and sealed by Richard M. Hillis, P.E. of Hillis-Carnes, a geo-technical engineering firm from Annapolis. Likewise, the response also explained the characteristics of the existing surface is characterized by actually only four (4) percent dust, which was less than Mr. Kennedy’s problematic levels of 8-15 percent. Rationale for this surface being employed onsite was also presented as limited pavement damage resulting from the trailer storage and providing better storm water runoff quality. Finally, this response explained this area was used for long term parking of 20-30 box trailers that store dry products with only occasional ingress and egress which meets the

preferable alternative listed in Mr. Kennedy's ZAC comment. In response to this correspondence and certification, a follow up email was received from Mr. Kennedy on June 22, 2010 (Exhibit 5B) in which he states his concerns were addressed by the aforementioned documentation and that the email could serve as his revised comment.

As explained through this correspondence and by Mr. Cross' proffer, the surface is being used for long term storage of trailers which have "landing gear" or legs that over time sink into traditional asphalt pavement resulting in greater damage and environmental impacts than the pervious surface currently onsite. Evidence was also presented that this surface was inspected and improved by the County Inspector for the work performed and falls within the limit of fines approved by the Maryland Highway Administration for RC and CR-6 stone base. The benefits for storm water runoff also were stressed as justification to find this surface as proper.

Based upon the cumulative testimony and evidence presented, I am persuaded to grant the special hearing relief. I do not believe that the existing parking surface will be detrimental and actually seems to better serve the type of trailer parking thereon. In my judgment, Petitioner has satisfied the requirements for such relief and I find the approval of RC-6 compact stone paving material as constructed, will, in this case serve for long term storage of trailers and is appropriate.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 3rd day of August, 2010, that the Petition for Special Hearing to approve a modified parking plan pursuant Baltimore County Zoning Regulations (B.C.Z.R.) Section 409.12.b, or, in the alternative, to confirm that the recycled aggregate base parking field satisfies the durable and dustless requirement of B.C.Z.R. Sections 101.1 and 409.8.A.2, in accordance with Petitioner's Exhibit 1

and the Hillis-Carnes Certification Exhibit 5A, be and is hereby GRANTED, subject to the following restrictions:

1. Petitioner may apply for any required building permits 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 such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
2. Approval for this surface is limited to serve only the type of long term trailer parking currently existing at Petitioner's facility. If this area is ever altered to serve another use, it must come in full compliance with Section 409 of the Baltimore County Zoning Regulations and/or be the subject of a hearing to confirm propriety of the change.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:pz

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