

<b>IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION &amp; VARIANCE</b>	*	BEFORE THE
SW side of White Marsh Blvd.; 133.77 feet	*	DEPUTY ZONING
W of Crossroad Circle	*	COMMISSIONER
13 <sup>th</sup> Election District	*	FOR BALTIMORE COUNTY
6 <sup>th</sup> Councilmanic District	*	
(11905 Market Way)	*	
 <b>BC Area 3 Lot 1 LLC</b>	*	
<i>Legal Owner</i>	*	
 <b>Two Farms, Inc.</b>	*	<b>Case No. 2010-0333-SPHXA</b>
<i>Developer</i>	*	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Exception, Special Hearing, and Variance, filed by the legal owner of the subject property, BC Area 3 Lot 1 LLC, and the Developer of the property, Two Farms, Inc., as well as the proposed lessee, Royal Farm Stores.

Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for an amendment to the Order and site plan approved in Case No. 2009-0092-X.

The Special Exception is requested pursuant to Section 405.4.E.2 of the B.C.Z.R. to use the property for a roll-over car wash in combination with a fuel service station.

Petitioners additionally seek Variance relief as follows:

- From Sections 255.1 and 238.2 of the B.C.Z.R. to allow a minimum side yard of 6 feet for the proposed roll-over car wash building in lieu of the required 30 feet; and

- From Section 450.4.5(f) of the B.C.Z.R. to allow free standing order board enterprise signs (Sign H on the site plan) with a sign height of 8 feet each in lieu of the permitted 6 feet; and
- From Section 450.4.5(a) of the B.C.Z.R. to allow a total of 7 wall mounted enterprise signs (Signs B and D on the site plan) in lieu of the 3 permitted wall mounted signs, and to allow a maximum of 3 wall mounted enterprise signs on a single façade in lieu of the 2 permitted wall mounted signs; and
- From Section 450.4.3 of the B.C.Z.R. to allow free standing directional signs (Sign C on the site plan) with a sign face area of 9 square feet each in lieu of the permitted 8 square feet.

The subject property, schematic landscape plan, interior floor plan, elevation drawings, and the requested relief are depicted on the site plan drawings that were collectively marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested Special Hearing, Special Exception, and Variance petitions was Jeff Bainbridge with Royal Farm Stores on behalf of the proposed lessee, and David Karceski, Esquire with Venable, LLP, attorney for Petitioner. Also appearing in support of the requested relief was John Scheffey, President and CEO of Core States Group, the engineering, land use and development firm that drafted the site plan drawings for the subject property. In addition, Melissa Sadowski with the Baltimore County Department of Economic Development appeared in support of Petitioner's requested zoning relief. There were no Protestants or other interested citizens in attendance at the hearing.

The testimony and evidence was presented by way of a proffer from Petitioner's attorney, Mr. Karceski, and revealed that the subject property is square-shaped and contains a total area of

approximately 14.215 acres of land, more or less, zoned M.L.-I.M. (Manufacturing, Light with an Industrial, Major Overlay District) and MD 43 (Route 43 Overlay District). The area of the special exception consists of just over 2 acres with said property located on the southwest side of White Marsh Boulevard/MD Route 43 extended at its intersection with a private road known as Market Way, with ingress/egress from same, in the White Marsh/Middle River area of Baltimore County. The property is currently unimproved, however, two prior zoning cases make the property ripe for development. In Case No. 06-335-X, the then-Petitioner, Wawa, Inc., was granted a special exception for a fuel-service station in combination with a convenience store and carry-out restaurant ancillary to the fuel-service station. Thereafter, in Case No. 2009-0092-X, because the prior special exception relief had expired, Petitioner Wawa Inc. renewed the same request for special exception relief as granted in the prior case and desired a period of five years within which to exercise such rights. This relief was granted. The order for Case No. 2009-0092-X is contained within the case file. Since the relief granted in December 2008, the economic climate has once again caused a change in circumstances for the subject property. Wawa, Inc. is no longer the prospective tenant for the property; instead, Royal Farms is the planned tenant for the property.

The current legal owner, BC Area 3 Lot 1, LLC, and the Developer, Two Farms, Inc., as well as Petitioner Royal Farms Stores, request approval of the special exception to use the property for a roll-over car wash in combination with a fuel service station, to exist in conjunction with the relief previously granted in Case No. 2009-0092-X. Moreover, Petitioner requests Special Hearing relief to allow an amendment to the site plan approved in the aforementioned prior case, thereby updating the current site plan for the subject property.

Furthermore, Petitioner requests several variances related to signage for the property and pertaining to a side yard setback for the proposed roll-over car wash.

In support of the requested relief, Mr. Karceski proffered testimony pertaining to the proposed improvements for the subject property. The evidence revealed that the property is to be improved with a one-story Royal Farms Store approximately 5,786 square feet in size with approximately 4,638 square feet utilized for the convenience store, 465 square feet for the carry-out, and 683 square feet for service station uses, and a separate building consisting of 1,407 square feet for the car wash, as indicated on the site plan drawings. According to the regulations, such uses and dimensions require 64 parking spaces to be provided. The site plan indicates that 66 parking spaces are provided on site. Mr. Karceski indicated that while the concept of the current site plan does not differ from that approved in Case No. 2009-0092-X, there are differences in the plans that necessitate Special Hearing approval for an amendment to the previously approved site plan. As noted by Mr. Karceski, the previously approved site plan had only one fuel canopy with 8 pumps located on the eastern side of the property. The previously approved site plan was marked and accepted into evidence as Petitioner's Exhibit 5. The current site plan has two separate fuel canopies, each with four pumps, one to the north of the planned principal store building and the other to the east of the property -- resulting in the same number of fuel pumps, albeit in a different configuration. Moreover, the requested roll-over car wash will be located on the southwest portion of the site.<sup>1</sup> Ingress/egress for the site remains at two locations off Market Way. A multi-colored landscape plan and architectural rendering/elevation

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<sup>1</sup> According to Section 101 of the B.C.Z.R., a "Roll-Over Car Wash" is "[a] car wash where exterior-only cleaning, washing or waxing services are provided on a roll-over basis with the vehicle in a stationary position during the servicing." [Bill No. 172-1993].

drawings for the primary Royal Farms building on the subject property were marked and accepted into evidence as Petitioner's Exhibits 3 and 4, respectively.

In support of the special exception relief, Mr. Karceski proffered additional testimony from John Scheffey, a licensed professional engineer and the CEO and President of Core States Group. Mr. Scheffey was found to be an expert in fuel-service station layouts and configurations, and in interpretation of the B.C.Z.R. His resume was marked and accepted into evidence as Petitioner's Exhibit 6. Mr. Karceski explained that if called to testify, Mr. Scheffey would state that in his expert opinion, the property's proposed use for a roll-over car wash in combination with a fuel service station satisfies all of the special exception criteria set forth in Section 502.1 of the B.C.Z.R. In particular, Mr. Scheffey would testify that the proposed use would not be detrimental to the health, safety or general welfare of the locality, would not create congestion in the roads or streets, and would not create a potential hazard from fire, panic or other danger.

Moreover, the proposed use would be consistent with the property's manufacturing zoning classification and MD 43 District Overlay. In particular, the proposed use would be consistent with the continued development of the MD 43 commercial corridor. This District Overlay was established in 2000 after extensive studies, reports, and debates, determining the best use for each area of the commercial corridor. As similarly depicted on the "Second Refinement for the Baltimore Crossroads @ 95" Area 4 Limited Exemption Development Plan that was marked and accepted into evidence as Petitioner's Exhibit 7, the subject property, which is in Area 3, was zoned precisely for this type of use. Thus, such use is consistent with the spirit and intent of the B.C.Z.R., and would not be detrimental to any other applicable special exception criteria. Melissa Sadowski, with the Baltimore County Department of Economic

Development, stated that her department supports Petitioner's request for relief and added that the development of this site is a desired step in the MD 43 commercial corridor's overall plan for economic development.

As to the requested variances, Mr. Karceski explained that Petitioner desires variance relief from Sections 255.1 and 238.2 of B.C.Z.R. to allow a minimum side yard of 6 feet for the proposed roll-over car wash building in lieu of the required 30 feet; and from Section 450.4.5(f) of the B.C.Z.R. to allow free standing order board enterprise signs (Sign H on the site plan) with a sign height of 8 feet each in lieu of the permitted 6 feet; and from Section 450.4.5(a) of the B.C.Z.R. to allow a total of 7 wall mounted enterprise signs (Signs B and D on the site plan) in lieu of the 3 permitted wall mounted signs and to allow a maximum of 3 wall mounted enterprise signs on a single façade in lieu of the 2 permitted wall mounted signs; and from Section 450.4.3 of the B.C.Z.R. to allow free standing directional signs (Sign C on the site plan) with a sign face area of 9 square feet each in lieu of the permitted 8 square feet. Mr. Karceski noted that per the request of the Office of Planning, the oval signs designated as 'Signs D,' were no longer requested, thereby eliminating the necessity for relief for these signs. This change was reflected in a redlined amendment to the site plan and the request for this relief was withdrawn.

Mr. Karceski stated that if called to testify as an expert, Mr. Scheffey would testify as to the uniqueness of the site and the practical difficulty that strict adherence to the Zoning Regulations would create. Mr. Scheffey would testify that the property's location in the MD 43 commercial corridor District Overlay -- the only zoning classification of its kind, the large forest buffer, and the lack of ingress/egress off White Marsh Boulevard (MD Route 43) combine to render the property unique. The size, shape, and configuration of the signs as planned are necessary due to the lack of ingress/egress on the main thoroughfare and subsequent lack of

visibility from the roadway. Moreover, the proposed layout and signage provides the optimal plan for vehicular circulation throughout the site. Further, Mr. Scheffey would state that in his expert opinion, granting of the requested relief would not create any adverse consequences or detrimental impact on the surrounding property and that in actuality, the requested relief is consistent with the larger overall plan for the MD 43 District Overlay. Additionally, Mr. Karceski added that the location for the car wash and the proposed signs for the property were planned to promote safety and visibility.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Office of Planning dated July 1, 2010, state that all architecture and site design shall comply with the original pattern book and approved architecture submitted for the Crossroads at 95 development and that the requested variance for wall mounted oval product display signs (Signs D) is not supported by the Office of Planning because such signs detract from the overall appearance and aesthetic of the building. Although the Office of Planning requests that this portion of the Petitioners' request be denied, the other requested relief is recommended for approval. No other adverse comments were received from Baltimore County agencies. As noted above, Petitioner withdrew the request for a variance for 'Signs D' and redlined the site plan to reflect this change. Further, Petitioner stated that compliance with the pattern book applicable at the time of construction would not be an issue nor would constructing a sidewalk along the property's frontage on White Marsh Boulevard through the corner of Market Way.

Turning first to Petitioner's special exception request to use the property for a roll-over car wash in combination with a fuel-service station, I am persuaded to grant this relief. Section 405.4.E.2 of the B.C.Z.R. permits by special exception a "Roll-over car wash. No Specific

additional site area required, provided that the stacking, parking, and buffer requirements of Section 419 are met.” As noted on the Petitioner’s Exhibit 1, the stacking, parking, and buffer requirements for this site are met. Moreover, the expert testimony of Mr. Scheffey indicates that the proposed use would not have any detrimental impacts on the required 502.1 criteria. Further consideration of the evidence shows that this use would not have a negative impact on the surrounding area and actually is consistent with the M.L.-I.M. Zone and MD 43 District Overlay, and the overall planned commercial development in the area as indicated in Petitioner’s Exhibit 7. It is of added significance that the Office of Planning and Department of Economic Development recommend approval of the special exception. Hence, I am convinced that the use proposed at the subject location would not have any adverse effects above and beyond those inherently associated with such a special exception use, irrespective of its location within the zone. *See, Schultz v. Pritts*, 291 Md. 1 (1981); *see also People’s Counsel v. Loyola College*, 406 Md. 54 (2008).

As to the request for variance relief, based on the testimony and evidence, I am persuaded to grant this relief as well. The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). The two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result.

In this case, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, the location of the subject property in the MD 43 District Overlay and commercial corridor specifically zoned for this type of use, the lack of ingress/egress along MD 43, and the environmental constraints caused by the

forest buffer, combine to render the property unique in a zoning sense. Further, I find that strict compliance with the Zoning Regulations would create a practical difficulty and unreasonable hardship that would result in a denial of a reasonable and beneficial use of the property. *See, Belvoir Farms v. North* 355 Md. 259 (1999). I also find the variance requests can be granted in strict harmony with the spirit and intent of the Regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. The car wash is located as far to the rear of the site as possible in order to maximize the vehicular circulation and mitigate the visual impact it may have on the MD 43 thoroughfare, thereby necessitating slight variances in the sign and setback regulations. These variances alleviate the effect that the lack of ingress/egress on MD 43 has on the property. Moreover, the granting of relief is consistent with the overall commercial development plan for the extensive MD 43 extension.

As to the special hearing request, the testimony and evidence presented support approval of the requested relief. In order to update the development of the subject property with the most recent site plan, an amendment to the site plan approved in prior Case No. 2009-92-X is appropriate. Further, it should be noted that the undersigned also makes a finding that the restaurant proposed within the principal Royal Farms Store on the subject property conforms to the definition promulgated under Section 101 of the B.C.Z.R. for a “carry-out restaurant.” Under that section, a “Restaurant, Carry-Out,” is defined as:

an establishment whose principal business is the sale of ready-to-consume food and beverages to customers who order their food and beverages over the counter, by telephone or by fax machine and whose principal characteristic is that food and beverages are consumed off the premises.

While Petitioner acknowledges that there will be a small seating area with several tables and chairs within the principal structure for customer convenience, Royal Farms stores in general are principally carry-out restaurants where restaurant dining is rare. The testimony presented

persuades me to find that this proposed Royal Farms location will offer ready-to-consume food and beverage service much like other Royal Farms stores.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered, I find that Petitioner's requests for special hearing, special exception and variance should be granted.

THEREFORE, IT IS ORDERED this 31<sup>st</sup> day of August, 2010 by the Deputy Zoning Commissioner that Petitioner's request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for an amendment to the Order and site plan approved in Case No. 2009-0092-X, be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's request for Special Exception pursuant to Section 405.4.E.2 of the B.C.Z.R. to use the property for a roll-over car wash in combination with a fuel service station, be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's requests for Variance relief as follows:

- From Sections 255.1 and 238.2 of the B.C.Z.R. to allow a minimum side yard of 6 feet for the proposed roll-over car wash building in lieu of the required thirty 30 feet; and
- From Section 450.4.5(f) of the B.C.Z.R. to allow free standing order board enterprise signs (Sign H on the site plan) with a sign height of 8 feet each in lieu of the permitted 6 feet; and
- From Section 450.4.3 of the B.C.Z.R. to allow free standing directional signs (Sign C on the site plan) with a sign face area of 9 square feet each in lieu of the permitted 8 square feet,

be and are hereby **GRANTED**.

This Order is subject to the following restrictions which are conditions precedent to the relief granted herein:

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 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. Architecture, site design, and construction for the above-referenced project 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.

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz