

IN RE: PETITIONS FOR SPECIAL EXCEPTION	*	BEFORE THE
AND VARIANCE		
N side of Liberty Road, 193' E of the c/line of	*	OFFICE OF
Brenbrook Drive		
2 nd Election District	*	ADMINISTRATIVE HEARINGS
4 th Councilmanic District		
(8710 Liberty Road)	*	FOR
New Plan Maryland Holdings, LLC,	*	BALTIMORE COUNTY
<i>Legal Owner</i>		
Carroll Branded Fuels, <i>Contract Purchaser/</i>	*	Case No. 2012-0258-XA
<i>Lessee</i>		
Petitioners	*	

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 8710 Liberty Road. The Petition was filed by New Plan Maryland Holdings, LLC, the legal owner of the subject property, and Carroll Branded Fuels, contract purchaser/lessee (the “Petitioners”). The Special Exception Petition seeks relief from Section 405.4.E.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to permit a convenience store with a sales area larger than 1,500 square feet inclusive of accessory storage. Petitioners are also requesting Variance relief from Section 405.4.A.3.C(2) to allow zero stacking spaces in lieu of the required six (6) [one for each multi-product dispenser (MPD)]. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 2.

Appearing at the hearing were Marvin A. Comer II with Carroll Branded Fuels, the contract purchaser/lessee, Lee Giroux, Briana Darnell with Highs Dairy Stores, and Thomas J. Hoff, the land use consultant/architect. Michael B. Mitchell, Jr., Esquire attended and

represented Petitioners. There were no Protestants or interested persons in attendance, and the file does not contain any letters of protest or opposition.

Testimony and evidence offered at the hearing revealed that the site is 25.88 acres, zoned Business Major (BM) and is in the Commercial Community Core (CCC) District. Carroll Fuel is in the process of constructing a fuel service station and High's convenience store, as shown on the photos admitted as Exhibit 1. The operation will be conducted on a portion of land occupied by the new Walmart Supercenter, pursuant to a long-term lease.

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 Planning dated May 15, 2012, stating the following:

The Department of Planning has reviewed the petitioners' request and accompanying site plan. The site is located in a Master Plan designated Commercial Revitalization Area. The site is surrounded by commercial uses including an existing fuel service station, a service garage and a Super Walmart (currently under construction). The Department of Planning recognizes the current volume of traffic generated by existing uses on this portion of Liberty Road. Allowing zero stacking spaces on this site could have negative impacts by impeding traffic on Liberty Road.

As such, the Department of Planning does not support the requested special exception and variances to operate a fuel service station and convenience store on the subject property, as the proposed use is likely to cause interference with traffic traveling on Liberty Road.

The Department of Planning submitted a revised ZAC comment, dated June 7, 2012, wherein they indicated they no longer oppose the zoning relief.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

The Petitioners have met this test.

The subject property is unique in that it is an existing site where a vacant gas station was razed and Petitioners' are constrained by existing site conditions and dimensions. The Petitioners would suffer a practical difficulty if the B.C.Z.R. were strictly enforced, given they would have to reconfigure the entire layout of the gas pumps and may – in trying to provide the stacking spaces – sacrifice the wide and generous drive aisles provided on the plan which will aid navigation throughout the site. Perhaps more importantly, Mr. Hoff testified that, in fact, there is room for a stacking space behind the positions at the gas pumps, and would even be room for a second car to “stack” without protruding onto Liberty Road. Again, in the unlikely event such stacking was necessary, the drive aisles – but not the public's safety – would be the only thing compromised.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

As for the special exception relief, Mr. Hoff opined that the proposal satisfied B.C.Z.R. § 502.1, and I concur. The site has been vacant for over six months, and the new High's store will be a positive addition to the community, and there was no testimony or evidence presented to suggest that the store would negatively impact the neighborhood. Given that special exception uses are presumptively proper, and no evidence here rebutted that presumption, I believe the special exception relief should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 12th day of June, 2012 that Petitioners' request for Special Exception relief under Section 405.4.E.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to permit a convenience store with a sales area larger than 1,500 square feet inclusive of accessory storage, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance relief from Section 405.4.A.3.C(2) to allow zero stacking spaces in lieu of the required six (6), be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are 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.

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

JEB/dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County