

**IN RE: PETITIONS FOR SPECIAL EXCEPTION  
AND VARIANCE**

**(3716 Washington Blvd.)**

Merritt-031, LLC  
Petitioner

\* BEFORE THE  
\* OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* FOR BALTIMORE COUNTY  
\* **Case No. 2013-0013-XA**

\* \* \* \* \*

**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 3716 Washington Boulevard. The Petitions were filed by David H. Karceski, Esq., on behalf of Merritt-031, LLC, the legal owner of the subject property. The Special Exception Petition seeks relief to allow a fuel service station use on an individual site and a convenience store having a sales area larger than 1,500 square feet and carry-out restaurant as uses in combination, pursuant to §§ 405.2.B.1, 405.4.E.1, and 405.4.E.10 of the Baltimore County Zoning Regulations (“B.C.Z.R.”). Petitioner is also requesting Variance relief from § 405.4.A.2.b of the B.C.Z.R., to allow a landscape transition area minimum of 5' in lieu of the required 6' for side and rear yards abutting non-residentially zoned land, and from § 405.4.A.3.c(2) of the B.C.Z.R., to allow 6 stacking spaces in lieu of the required 12 stacking spaces. The subject property and requested relief are more fully described on the redlined site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the hearing was Joseph Cronyn, Gena McNichol, Valek Zarski, Mickey Cornelius, Terri Levine, Dan Pallace, and Iwona Rostek-Zarska with Baltimore Land Design Group, Inc., the consulting firm that prepared the site plan. David H. Karceski, Esquire, with Venable, LLP, attended and represented the Petitioner. The file reveals that the Petition was

properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or interested persons in attendance, and the file does not contain any letters of protest or opposition.

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 (DOP) on August 20, 2012, which state:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The petitioner requests a special exception to allow a fuel service station use on an individual site and a convenience store having a sales area larger than 1,500 square feet and carry-out restaurant as uses in combination. Also requested are variances to allow a landscape transition area a minimum of 5 feet in lieu of the required 6 feet for side and rear yards abutting non-residentially zoned land and to allow 6 stacking spaces in lieu of the required 12 stacking spaces. A pre-existing access easement to the adjacent vehicular lot limits access locations as shown.

The Department of Planning does not oppose the petitioner's requests provided:

1. A sidewalk is installed along the access driveway frontage and along the Washington Boulevard frontage of the subject site (as shown on the plan refinement received August 3, 2012).
2. The dumpster enclosure is masonry to match the exterior building materials of the principal building.

As noted by counsel, Petitioner's engineer met with officials from the DOP to discuss the comment, and the site plan (Petitioner's Exhibit 1) was amended to reflect the positioning of the sidewalk and the dumpster enclosure. As such, the DOP's comments have been satisfied.

A ZAC comment was also received from the Bureau of Development Plans Review (DPR) dated August 8, 2012, which states:

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

Request for 5-foot vs. 6-foot setback abutting non-residential land per Condition F of the Landscape Manual.

Comment: A six foot setback is specified to provide adequate area for planting to survive. However, looking at the submitted plan, besides Condition F another pertinent regulation within the Landscape Manual is specified within Condition J: Slopes, Embankments, and Retaining Walls. The proposal shows two retaining walls adjacent to non-residential properties in the areas in which relief has been requested.

The rear retaining wall appears to rise to approximately nine feet in height and sits within approximately two feet of the interior curb line. Condition J.4 states that a 5-foot wide landscape strip at the base of retaining walls less than five feet in height is required. Condition J.5 states that a 10-foot wide landscape strip is required at the base of walls higher than five feet.

The side yard retaining wall also appears to sit approximately two feet from the interior curb line.

Neither retaining wall conforms to the requirements stated within Condition J and no relief has been requested. Therefore the plan should be revised to reflect conformance with these conditions.

Because the parking lot adjacent to the rear retaining wall appears to sit approximately nine feet from the property line, there is sufficient room to allow the variance for the requirement imposed by Condition F. However, it is suggested that the retaining wall be moved closer to the property line and the drive aisle be reduced from 27.6 to 24-feet, thereby bringing the retaining wall into compliance with Condition J.

It appears that by shifting the proposed amenities to within six feet of the existing interior driveway and reducing the width of the 30-foot drive aisle will provide adequate space for the side retaining wall to comply with both Conditions F and J. Therefore the side yard variance would not be necessary.

Counsel indicated that Petitioner's engineer discussed these comments with Jean Tansey, the County's landscape architect. Submitted as Petitioner's Exhibit 5A is a letter signed by the Department of Permits, Approvals, and Inspections (PAI) Director Arnold Jablon approving certain modifications of standards with respect to the Landscape Manual requirements mentioned

in DPR's ZAC comment. In addition, the Petitioner presented a final Landscape Plan approved by Ms. Tansey. See Exhibit 5B. As such, the ZAC comments from DPR have been addressed.

In addition a ZAC comment was received from the State Highway Administration (SHA) dated August 3, 2012, which indicated that the applicant must contact SHA to obtain an entrance permit (sidewalk to be constructed along US 1 at access to US 1). Petitioner's traffic engineer, Mickey Cornelius, indicated that the site's access point onto Washington Boulevard meets all State requirements, and he fully expects the SHA will grant the requisite approvals.

Testimony and evidence offered at the hearing revealed that the subject property is 1.557 acres and is zoned BR-IM, BL, and BR and is located along the busy Washington Boulevard (Route 1) commercial corridor. The Petitioner proposes to construct a Wawa fuel service station and convenience store, and as reflected by the building elevations, the structure would be attractive and utilizes quality building materials. Exhibit 7.

#### SPECIAL EXCEPTION

As noted above, Petitioner seeks special exception relief from §§ 405.2.B.1, 405.4.E.1, and 405.4.E.10 of the Baltimore County Zoning Regulations B.C.Z.R., to allow a fuel service station use on an individual site and a convenience store having a sales area larger than 1,500 square feet and carry-out restaurant as uses in combination. Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Here, there was no evidence presented that the adverse effects from the operation of the fuel service station and convenience store would be any greater at this location than in any other locations in the zone where the use is permitted by special exception. Indeed, Ms. Zarska testified the project satisfied each of the requirements set forth in B.C.Z.R. § 502.1, and would in no way negatively impact the community's health, safety and welfare. She also noted that this 1.6 +/- acre site sits within a much larger (100+ acres) business and industrial park, and that the service station use would be compatible with the surrounding uses, including a Home Depot store to the immediate north of the site. Mr. Cornelius also noted that all signalized traffic intersections within the vicinity were at an "A" level of service.

Counsel for Petitioner noted that the B.C.Z.R. contains an additional requirement, beyond the standards set forth in § 502.1, for the grant of a special exception for a fuel service station. Specifically, and unless rebutted by market data, the B.C.Z.R. provides that there is no need for a proposed fuel service station if the Zoning Commissioner finds that there is one abandoned station within a one-half-mile radius of the site, or two such stations within one mile. Here, counsel noted that two stations within a one-mile radius had just recently stopped selling gas, but that the stations were in no way "abandoned" as that term is defined in B.C.Z.R. §405.7. Petitioner also presented testimony from Joseph Cronyn, who was accepted as an expert in real estate projects and marketing aspects of such ventures. Exhibit 8. Mr. Cronyn confirmed that neither of the fuel service stations referenced by counsel was "abandoned", (and one station owner was looking for a new lessee to operate the business) and that even if they were, he opined that there was a "need" for the proposed Wawa fuel service station and convenience store.

#### VARIANCE

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).

Petitioner has met this test.

The site has a very irregular shape (counsel referred to it as a “funnel”) and also a sloping topography at the rear of the lot. In addition, the property is burdened by a private access easement serving the adjoining Beltway Motel which causes certain site constraints and generates the need for variance relief concerning the number of vehicle stacking spaces.

If the B.C.Z.R. were strictly enforced, the Petitioner would suffer a practical difficulty and/or hardship. Indeed, Petitioner would need to reconfigure the site and incur additional engineering and design expenses. 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. This is amply demonstrated by the lack of opposition from neighbors or area community associations.

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 Petitioner's Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 6<sup>th</sup> day of September, 2012, that Petitioner's request for Special Exception relief under §§ 405.2.B.1, 405.4.E.1, and 405.4.E.10 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow a fuel service station use on an individual site and a convenience store having a sales area larger than 1,500 square feet and carry-out restaurant as uses in combination, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance relief from §405.4.A.2.b of the B.C.Z.R., to allow a landscape transition area minimum of 5' in lieu of the required 6' for side and rear yards abutting non-residentially zoned land, and from § 405.4.A.3.c(2) of the B.C.Z.R., to allow 6 stacking spaces in lieu of the required 12 stacking spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate 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, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The special exception relief granted herein must be utilized within a period of five (5) years from the date hereof, pursuant to B.C.Z.R. § 502.3.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw