

<b>IN RE: PETITION FOR SPECIAL EXCEPTION</b>	*	BEFORE THE
<b>(11119 McCormick Road)</b>		
8 <sup>th</sup> Election District	*	OFFICE OF
3 <sup>rd</sup> Councilman District		
Consolidated McCormick, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Two Farms, Inc.,	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	<b>Case No. 2013-0093-X</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 11119 McCormick Road. The Petition was filed by David H, Karceski, Esquire, on behalf of the legal owner of the subject property, Consolidated McCormick, LLC, and the lessee, Two Farms, Inc., (“Petitioners”). The Special Exception Petition seeks relief pursuant to §§ 405.2B.1, 405.4.E.1, 405.4.E.2, and 405.4.E.10 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a fuel service station on an individual site and a convenience store, carry-out restaurant and a roll-over car wash as uses in combination. The subject property and requested relief are more fully described on the five (5) sheet site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1A-E.

Appearing at the hearing was Kenneth Schmid with Traffic Concepts, Inc., Tanya Bensinger and Stephen A. Warfield, both with Matis Warfield, the consulting firm that prepared the site plan, Robert Becker and Todd Tilson of Consolidated McCormick, and Jeff Bainbridge, Director of Real Estate, Royal Farms. David H. Karceski Esquire, and Justin Williams, Esquire, both with Venable, LLP, attended and represented the Petitioners. There were no Protestants in attendance, nor does the file contain any correspondence opposing the project. The file reveals

that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. ZAC comments were received from Department of Planning (DOP) on November 14, 2012, requesting that Petitioner provide sidewalks along McCormick Road and to the store entry. Counsel explained that a sidewalk already exists along McCormick Road, and the plan also shows a sidewalk to the store entrance. Exhibit 6. In addition, a ZAC comment was received from the Bureau of Development Plans Review (DPR) on October 24, 2012, requesting revision of the plan to show a minimum of 22' drive aisle width. This comment was addressed as a red lined revision to the site plan. Exhibit 1.

Testimony and evidence offered at the hearing revealed that the subject property is 145,220 square feet (3.33 acres) and is zoned BM-IM. The site is currently improved with an 8,500 square feet commercial building that will be razed. The petitioner proposes to construct a Royal Farm store fuel service station on the site, and a convenience store, food carryout and car wash will be included as “uses in combination” with the fuel service station, as permitted by B.C.Z.R. § 405E. As shown on the My Neighborhood maps (Exhibits 3 & 4), the subject property is situated among many other commercial and industrial sites in the Hunt Valley business community. Petitioner requires only special exception relief, as the site plan is, in the words of counsel, “variance free.”

#### SPECIAL EXCEPTION

As noted above, Petitioners seek special exception relief under §§ 405.2B.1, 405.4.E.1, 405.4.E.2, and 405.4.E.10 of the Baltimore County Zoning Regulations (B.C.Z.R.), to use a fuel service station on an individual site and a convenience store, carry-out restaurant and a roll-over car wash 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.<sup>1</sup>

Here, there was no evidence presented that the adverse effects from the operation of a fuel service station, convenience store, carry-out restaurant and a roll-over car wash would be any greater at this location than in any other locations in the zone where the use is permitted by special exception. Indeed, Mr. Warfield testified (via proffer) 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. Mr. Warfield stressed that no variances were required and that the site is surrounding by the Hunt Valley business community. In addition, Kenneth Schmid (a traffic engineer who was accepted as an expert) testified that the two signalized intersections closest to the site function at an "A" level of service, and that the store would not cause congestion in or overburden the roadways.

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

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<sup>1</sup> The B.C.Z.R. imposes an additional requirement (above and beyond the § 502.1 standards) for special exception relief in this setting. Specifically, that there not be abandoned fuel service stations in the vicinity of the proposed site. B.C.Z.R. §405.3. Here, Stephen Warfield (a licensed Professional Engineer who was accepted as an expert) testified there is not an abandoned service station within one (1) mile of the subject property.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **11th** day of December, 2012, that the Petitioners' request for relief under §§ 405.2B.1, 405.4.E.1, 405.4.E.2, and 405.4.E.10 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to allow a fuel service station on an individual site and a convenience store, carry-out restaurant and a roll-over car wash as uses in combination, 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.
2. The special exception relief granted herein must be utilized within a period of five (5) years from the date hereof.

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

JEB/sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County