

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(7923, 7925 & 7927 Belair Road) *	OFFICE OF
14 th Election District	
5 th Council District *	ADMINISTRATIVE HEARINGS
FP SUB LLC	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Weis Markets, Inc., <i>Lessee</i>	
Petitioners *	Case No. 2017-0241-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of FP SUB LLC, legal owner and Weis Markets, lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to permit a fuel service station canopy sign with electronic changeable copy components pursuant to B.C.Z.R. §450. In addition, a Petition for Variance seeks to permit a fuel service station in a planned shopping center to be located on a lot that is within 0 ft. of a residentially zoned property in lieu of the required 100 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 5.

Professional engineer Michael Gesell and Jack O’Hara & Alex Ororbia, Sr. (from Weis Markets) appeared in support of the requests. Caroline L. Hecker, Esq. and Justin Williams, Esq. represented the Petitioners. Two neighbors attended the hearing to express certain concerns with the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR), noting landscape and lighting plans would be required.

The subject property is approximately 18.37 acres in size and is primarily zoned BR with small slivers of BL and DR 5.5. A large shopping center (166,322 sq. ft.) known as Fullerton Plaza was

constructed at the site in the 1970s. The former “anchor” tenant (K-Mart) closed its doors about 1 ½ years ago, and Weis Markets proposes to open a large (approximately 60,000 sq. ft.) grocery store in that space. As it has in many other locations, Weis proposes to open a fuel service station as an ancillary use to the grocery store. A fuel service station is permitted by right in the BR zone, since the DOP confirmed in a memorandum dated July 6, 2015 (See Exhibit 3) the Fullerton Plaza qualifies as a “planned shopping center.” B.C.Z.R. §405.2.A.1.

SPECIAL HEARING

The petition for special hearing concerns the request to display gasoline price information on the service station canopy. Similar requests have been made and approved in other zoning cases, and I do not believe the signage would have any adverse impact upon the community. As Petitioners note, state law requires retailers to display fuel price information, and also exempts such signage from the requirements of local zoning laws concerning the size and number of such signs permitted. As such, the special hearing request will be granted.

VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The large site is irregularly shaped and was found to be “unique” in several prior zoning cases. See Case Nos. 1981-0130-A, 1982-0089-A and 2011-0343-A. As such a similar finding is appropriate in this case. Petitioners would experience practical difficulty if the

regulations were strictly interpreted because they would be unable to construct the fuel service station, which is permitted by right under the Regulations.

Though the variance request seeks a 0 ft. setback from a residential zone boundary, this is due to the wording of the applicable regulation (B.C.Z.R. §405.2) which states “no part of the **lot** [may be] within 100 feet of a residentially zoned property.” To be conservative Petitioners considered the “lot” to be the entire shopping center parcel, which has for many years directly abutted a residential zone. The reality is the service station itself will be over 40 ft. from the residential zone while the fuel pumps will be located at least 98 ft. from the residential zone boundary. Finally, certain conditions will be included in the order below to help ensure that granting the request will not have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 3rd day of **May, 2017**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a fuel service station canopy sign with electronic changeable copy components pursuant to B.C.Z.R. §450, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a fuel service station in a planned shopping center to be located on a lot that is within 0 ft. of a residentially zoned property in lieu of the required 100 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Prior to issuance of permits Petitioners must submit for approval by the Baltimore County landscape architect landscape and lighting plans for the site.
3. The fuel service station may not have hours of operation which extend beyond those of the Weis grocery store. In other words, the fuel service station must be closed at such times as the grocery store is also closed.
4. Petitioners shall erect a fence no less than 6 feet in height along the boundary to screen the site from nearby dwellings.
5. The fuel service station must turn off all exterior lighting when it is closed for business.

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

JEB/sln

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County