

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(9740 Reisterstown Road)
3rd Election District
2nd Council District
Two Farms, Inc.
Legal Owner
Petitioner**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2017-0161-XA**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 9740 Reisterstown Road. The petitions were filed on behalf of Two Farms, Inc., legal owner of the subject property. The petition for special exception seeks to permit a fuel service station and a rollover car wash, as a use in combination. Prior to the hearing the petition for variance (pertaining to the height of a freestanding enterprise sign) was withdrawn. A three-sheet site plan was marked as Petitioner’s Exhibit 1.

Appearing at the hearing in support of the petitions was professional engineer Steve Warfield and Jeff Bainbridge. David H. Karceski, Esq. and Jennifer Frankovich, Esq. represented the Petitioner. No protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations (BCZR). Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the request.

The subject property is approximately 5.375 acres in size and zoned BM-IM. A spice manufacturing company previously operated at the site, but it has closed and the structures used by that business are being razed. Royal Farms proposes to operate a fuel service station, rollover

car wash, convenience store and carryout restaurant. Such uses are permitted by special exception in the BM-IM zone.

SPECIAL EXCEPTION

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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. Mr. Warfield, a professional engineer accepted as an expert, opined Petitioner satisfied all requirements in BCZR Section 502.1 and the Maryland case law interpreting that provision. He also noted that in his opinion this site was an ideal location for the Royal Farms. In the absence of any evidence to the contrary the petition for special exception will be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 12th day of **October 2018**, that the Petition for Special Exception to permit a fuel service station and a rollover car wash, as a use in combination, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance to allow a freestanding enterprise sign with a height of 27 ft. in lieu of the permitted height of 25 ft., be and is hereby DISMISSED WITHOUT PREJUDICE.

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

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.

2. Petitioner shall have three (3) years from the date hereof in which to utilize the special exception.
3. The dumpster on site must be enclosed in compliance with Condition H of the Baltimore County Landscape Manual.
4. No temporary signs, banners or flag advertisements shall be permitted on the subject property.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln