

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(2343 W. Joppa Road)	*	OFFICE OF
9 th Election District		
2nd Council District	*	ADMINISTRATIVE HEARINGS
MG Michael, Inc.		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0285-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 MG Michael, Inc., legal owner (“Petitioner”) for the property located at 2343 W. Joppa Rd. (the “Property”). The Special Hearing relief is to: (1) approve the conversion of a full service station to a combination service station/convenience store by closure of the last service bay and expansion of existing convenience store gross floor area; (2) amend Zoning Case No. 1986-0452-A and other prior zoning relief; (3) approve the existing site conditions as regulated by Baltimore County Zoning Regulations (“BCZR”) §405.4.A; and (4) determine that BCZR, §4A02 (Basic Service Maps) does not apply.

A Variance relief is sought from the BCZR: (1) §405.4.A.1, §405.4.D.2 and §405.4.D.3 if necessary, to permit an existing site area of 0.401 acres in lieu of the minimum 0.583 acres; (2) §405.4.A.3.d if necessary, to permit 12 existing parking spaces, as shown, in lieu of the minimum 18 parking spaces; (3) §405.4.A.2.a if necessary, to permit as close as 3 feet for an existing main structure to street right-of-way in lieu of 35 ft.; as close as 10 ft. for an existing fuel pump to street right-of-way in lieu of 25 ft.; and as close as 1 ft. for an existing canopy to street right-of-way in lieu of 15 feet; and (4) §405.4.A.2.b if necessary, to permit an existing 0 ft. landscape transition area in lieu of 6 ft. and 10 ft.

Due to COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Michael and Timothy Reuter appeared on behalf of the Petitioner along with Mitchell J. Kellman, Director of Zoning Services with Daft-McCune-Walker, Inc. which engineers prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 3). Jennifer Busse, Esquire and Whiteford, Taylor and Preston represented the Petitioner. There were no Protestants or interested citizens who opposed the Petitions.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability Development (“DEPS”) and from the Department of Planning (“DOP”) which agencies did not oppose the requested relief. Additional ZAC comments were received from Office Zoning Review (“OZR”) and Department of Public Works (“DPW”) who had objections to the Petitions.

FACTUAL FINDINGS

Testifying for the Petitioner was Mitchell Kellman, Director of Zoning Services for Daft-McCune-Walker, Inc. who was accepted as an expert in BCZR and BCC in regard to zoning and development. (Pet. Ex. 1). The Property is approximately 0.401 acres (35,022 sf) and is zoned business, light – automotive service district (BL-AS). It is triangular-shaped and is bound by Falls Rd. on the west and Joppa Rd. on the east. Greenspring Station is located on the adjacent eastern property. The Property is improved with an Exxon fuel service station, automotive repair (1 Bay) and Convenience Store with sales area under 1,500 sf (800 sf).

As set forth on the Site Plan, the Property obtained zoning relief to operate as a gas station on July 31, 1945. (Pet. Ex. 3). In 1986, variance relief was granted for setbacks, parking spaces and signs (Case No.: 1986-0452-A) under the BCZR then in effect. Zoning Spirit and Intent letters were approved on September 12, 2012 and May 15, 2013. (*Id.*). In the 2020 Comprehensive

Zoning Map Process (“CZMP”) (Issue 2-007), the Property was rezoned from BL-CR & RO to BL-AS. (*Id.*).

The proposal here is to close the last automotive service bay which is no longer needed. Closing that service bay will add another 200 sf of sales area to the existing 800 sf sales area, waiting room and/or convenience store. Mr. Kellman explained that by closing the last service bay, the automotive service use is eliminated and this change technically generated the instant zoning relief. He added that the convenience store was opened in 2015 and there is no increase to the 2,350 sf footprint of the store, or the 300 sf office space located to the rear of the store. The additional square footage from the closed service bay will be used as cold storage and will permit deliveries from the rear rather than through the front of the store. Mr. Kellman opined that there is no change in use or intensity with these interior improvements. The proposal will improve the efficiency of the existing convenience store. Photographs of the Property were reviewed and reveal an established fuel service station and convenience store. (Pet. Exs. 2, 4A-4G). In 2013, the other two (2) service bays were closed. (Pet. Ex. 4G). With this proposal, there will be no appreciable difference to the existing fuel service station or convenience store.

Moreover, 18 parking spaces required are based on the total gross floor area of the convenience store even though all of the convenience store is not used by customers. The 12 existing parking will remain: 7 spaces in front of the convenience store, 3 spaces on the northern end and 2 new spaces will be added in front of the closed service bays. (Pet. Ex. 3). In Case No.: 1986-0452-A, 5 parking spaces were granted in lieu of 9 spaces required. As a result, Mr. Kellman opined that OZR’s comment does not take into consideration that there is no change to the fuel service pumps or the stacking.

DPW provided a comment that the Property is within ‘F’ Transportation Zone as shown on the 2020 Traffic Basic Services Map. DPW wrote that the Special Hearing request was to “allow the conversion of a full service station to a combination service station and convenience store as well as other uses.” As such, DPW has requested that a Traffic Study signed and sealed by a Maryland professional engineer to be submitted for approval. Based on the failing traffic intersections and parking problems in the area, DPW objects to the requested relief. Mr. Kellman opined that consideration of the Basic Services Map only applies to development cases where a traffic study would be conducted. He emphasized that this Petition only involves interior improvements.

In regard to landscaping, the proposal includes adding landscaping to improve the Property as requested by DOP. A Final Landscaping Plan was prepared by Ed Tom, a registered landscape architect with Daft-McCune-Walker, Inc. who was accepted as an expert in his field. (Pet. Ex. 5). Mr. Tom has been preparing landscape plans in Baltimore County since the 1980s. This Landscape Plan has not yet been approved by Baltimore County. (Pet. Ex. 6). As shown on the Landscape Plan, additional plantings of evergreen and deciduous trees which meet the County landscape requirements will be installed along Falls Rd., along the northern and southern ends and, to the extent possible, along Joppa Rd. All dead trees will be removed. The Petitioner previously erected a 7.5 ft. to 8 ft. board-on-board fence. (*Id.*).

In this case, a variance of a landscape transition of zero ft. in lieu of the required 6 ft – 10 ft. is needed. As mentioned, the Property is bound by existing roads and, if required to install the 6 ft. landscape transition strip, it would be located within the MD Right-of-Way of Falls Rd.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). Based on the evidence, I find that the Special Hearing relief to approve the conversion of a full service station to a combination service station/convenience store by closure of last service bay and expansion of the existing convenience store gross floor area will be granted. The Petitioner is simply closing the unneeded service bay which in turn, will add another 200 sf to the existing 800 sf convenience store. (Pet. Ex. 3). The fuel service station has existed since 1945 and the convenience store has existed since 2015. While the fuel service station regulations have changed over the years, this fuel service station has continued to operate within its confined boundaries.

On paper the requested relief here could lead to the conclusion that it will affect the failing traffic intersections and increase the parking problems in the area. Consequently, it is understandable why DPW would request a traffic study and would be concerned about the addition of new customers to the Property. If anything, I find that the automotive service customers have been eliminated. I also find that adding another 200 sf of interior space will not change the use or intensity. Accordingly, the Traffic Basic Services map does not apply in this case. The remaining

requested Special Hearing relief amending Case No.: 1986-0452-A and approving the existing site conditions as regulated by BCZR, §405.4.A are duplicative of the variance relief and are therefore moot.

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).

The Property was already been found to be unique in Case No. 1986-0452-A and has not changed in terms of its peculiar triangular-shape. I find that the Petitioner will suffer a practical difficulty and unreasonable hardship in having to meet the fuel service station regulations under BCZR, §405.4.A which are designed to regulate new fuel service stations. The area, parking and setbacks have been in existence since at least 1986. The Petition is adding 3 parking spaces to the previously approved 9 spaces. I find that the variance relief can be granted within the spirit and intent of the BCZR, and will not cause injury to the health, safety and general welfare, particularly in light of the lack of opposition to the Petition.

THEREFORE, IT IS ORDERED this 22nd day of **March, 2021**, by this Administrative Law Judge that the Petition for Special Hearing relief to:

- (1) approve the conversion of a full service station to a combination service station/convenience store by closure of the last service bay and expansion of existing convenience store gross floor area be, and it is hereby **GRANTED**;
- (2) amend Zoning Case No. 1986-0452-A and other prior zoning relief be, and it is hereby **MOOT**;

- (3) approve the existing site conditions as regulated by § 405.4.A be, and it is hereby **MOOT**; and
- (4) determine that § 4A02 (Basic Service Maps) does not apply be, and it is hereby **GRANTED**.

IT IS FURTHER ORDERED THAT the Variance relief sought from BCZR:

- (1) §405.4.A.1, §405.4.D.2 and §405.4.D.3 to permit an existing site area of 0.401 acres in lieu of the minimum 0.583 acres be, and it is hereby **GRANTED**;
- (2) §405.4.A.3.d to permit 12 existing parking spaces, as shown, in lieu of the minimum 18 parking spaces be, and it is hereby **GRANTED**;
- (3) §405.4.A.2.a to permit as close as 3 feet for an existing main structure to street right-of-way in lieu of 35 ft.; as close as 10 ft. for an existing fuel pump to street right-of-way in lieu of 25 ft.; and as close as 1 ft. for an existing canopy to street right-of-way in lieu of 15 feet be, and it is hereby **GRANTED**; and
- (4) §405.4.A.2.b to permit an existing 0 ft. landscape transition area in lieu of 6 ft. and 10 ft. be, and it is hereby **GRANTED**.

The relief granted herein shall be subject to 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 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must comply with the DOP ZAC comment, a copy of which are attached hereto and make a part thereof.

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

Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm