

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

**(8711 Liberty Road)**

2nd Election District

4<sup>th</sup> Council District

Frances L. Fischer

*Legal Owner*

Green Clean Auto Wash

*Contract Purchaser/Lessee*

**Petitioners**

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BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

**Case No: 2021-0008-XA**

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**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 8711 Liberty Road. The Petitions were filed on behalf of Frances L. Fischer, legal owner and Green Clean Auto Wash, contract purchaser/lessee of the subject property (“Petitioners”). The Special Exception petition requests a car wash use in a BR-AS zone per the Baltimore County Zoning Regulations (“BCZR”), §§ 236.2 and 419.1. The Petition for Variance seeks relief from the BCZR § 238.2 to permit a side yard setback of 27 ft. in lieu of the permitted 30 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Craig Van Bremen appeared in support of the petition. He is the Vice President of Development and Acquisition for Green Clean Auto Wash, Inc. Timothy Kotroco, Esq. represented the Petitioners. Matthew Bishop, the landscape architect who prepared and sealed the site plan also attended. The site plan and red-line site plan were admitted as Petitioner’s Exhibits 1 and 2, respectively. Mr. Bethel, an interested community member also attended. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability

Development Coordination (“DEPS”), from the Department of Planning (“DOP”) and the Department of State Highway Administration (“SHA”). They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property is 1.07 acres and is zoned BR-AS. It is at the intersection of Liberty Road and Brenbrook Road. Mr. Kotroco proffered the following in support of the Petition. The property is currently occupied by a vacant commercial building, which will be razed. The site will be cleaned up and the chain link fence surrounding the property will be removed and replaced by landscaping that conforms with the Baltimore County Landscape Manual (“BCLM”). Green Clean operates car washes in several states and is expanding into Maryland. The red-line site plan incorporates several of the DOP recommendations, including fencing, landscaping and a community focal point. The plan proposes a “tunnel” car wash with a single entry point off of Liberty Road and a single exit onto Brenbrook Road. Sufficient stacking is provided. Mr. Kotroco explained that he and his client have discussed the proposed plan with community leaders, including Shirley Supik, the President of the Liberty Road Community Council. She suggested conditions regarding the landscaping and site maintenance that will be incorporated into the Order. Finally, Mr. Kotroco explained that the irregular shape of the lot necessitates the minor setback variance that is requested.

Mr. Bethel, a community member also testified. He explained that he is the football coach at Randallstown High School. He has plans to open a hand car wash adjacent to the subject site. He intends to provide employment for members of the football team and other community youth. He and Mr. Van Bremen agreed they would discuss working together to try to provide employment opportunities. Mr. Van Bremen explained that they will be hiring approximately 12 employees.

### 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.

Based on the record evidence in this case I find that the special exception request to use this property as a full service car wash should be granted. Specifically, I find that the proposed uses will not have any greater impacts at this location than those inherently associated with the special exception use. I also find that the requested relief satisfies the requirements of BCZR Sec. 502.1.

### VARIANCE

Under BCZR Sec. 307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, 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 is what necessitates the requested 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).

As explained above, the property is a trapezoid, and one of the boundary lines pinches in on the proposed car wash structure, which necessitates a 3 foot setback variance. The Petitioner would suffer practical difficulty because the plan could not be built as designed.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 23<sup>th</sup> day of **March, 2021** that the Petition for Special Exception for a car wash use in a BR-AS zone per the Baltimore County Zoning Regulations (“BCZR”), §§ 236.2 and 419.1 are hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Petition for Variance from the BCZR § 238.2 to permit a side yard setback of 27 ft. in lieu of the permitted 30 ft. is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioner 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.
- Prior to issuance of permits, Petitioner must comply with the ZAC comments made by DEPS, DOP and SHA, except as provided below. Copies of these ZAC comments are attached hereto and made a part hereof.
- Petitioner need not comply with DOP Comment number 4 concerning the stone and brick building materials.
- Green Wash shall submit a landscape plan for review and approval by Baltimore County. Once installed per Baltimore County specifications, Green Wash shall be responsible for the ongoing maintenance of all landscaped areas and shall replace any plantings that die in the future. Green Wash shall also keep the site, including all landscaped areas free from trash and debris.

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

Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm