

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(3500 3504 Washington Boulevard)	*	ADMINISTRATIVE HEARINGS
13th Election District	*	FOR BALTIMORE COUNTY
1st Council District	*	
Merritt-LB1, LLC	*	
<i>Legal Owner</i>	*	
WLR Holding Company, Inc.	*	Case No: 2020-0242-XA
<i>Contract Purchaser/Lessee</i>	*	
Petitioners	*	

* * * * *

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 3500 3504 Washington Boulevard. The Petitions were filed on behalf of Merritt-LB1, LLC legal owner and WLR Holding Company, Inc., contract purchaser/lessee of the subject property (“Petitioners”). The Special Exception petition seeks relief from §§ 233.3 and 41 of the Baltimore County Zoning Regulations (“BCZR”), to allow a full service car wash in the BM-IM zone. The Petition for Variance seeks relief from BCZR § 419.3 to allow the required number of stacking spaces for the full service car wash to be configured in a different pattern than single-file at the entrance to the tunnel, and to allow a total of 28 off street parking spaces in lieu of the required 34 parking spaces. From the BCZR § 450.4 Table of Sign Regulations 5 (Enterprise) (a) To allow a total of six (6) wall-mounted enterprise signs on a single tenant commercial building (Sign Nos. 1, 2, 3, 4, 5, 6) with a maximum of three (3) signs on any single facade in lieu of the permitted three (3) enterprise signs with no more than two (2) signs on any single façade, to allow directional signs with sign areas/faces between 8.5 and 39 sq. ft. in lieu of the permitted 8 sq. ft. (Sign Nos. 10-16, 18-19, 22-26) and to allow the company name/logo to exceed 30% of the total sign area for directional signs, and from BCZR §

450.4 Table of Sign Regulations 5 (Enterprise) (b) to allow a freestanding enterprise sign with a sign area/face of 96 sq. ft. in lieu of the permitted 75 sq. ft. (Sign No. 7).

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. A site plan was marked and accepted into evidence as Petitioners' Exhibit 1. Randall Simpson and Scott Dorsey appeared in support of the petitions. David Karceski, Esq. represented the Petitioners. There were no protestants in attendance.

A Substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Environmental Protection and Sustainability Development Coordination ("DEPS") and from the Department of Planning ("DOP"). They did not oppose the requested relief, subject to proposed conditions, some of which will be incorporated into the Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property is 2.04 acres and is zoned BM, IM. Mr. Karceski explained the requested relief. Chad Bohn, the Acquisitions and Development Manager for the the Petitioner explained the company's operational model, and specifically the manner in which the standard signage design improves traffic safety and efficiency of flow. Based on this testimony I allowed Petitioner to amend paragraph 4 of the Petition to include variance relief for certain signage and to submit a second redlined site plan showing these changes. In addition, Mr. Karceski explained that as a result of DOP's ZAC comments the Petitioner engaged in discussions with the Halethorpe Civic League and has agreed to withdraw its request for variance from BCZR Sec. 450.4 (paragraph 5 of the Petition). These amendments were filed on February 24, 2021. The amended redlined site plan will be admitted as Petitioners' Exhibit 8.

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, and that the relief requested 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).

The property in this case is unique in that it is irregularly shaped and contains forest buffers and a riverine floodplain. It also has steep topography in places which will require the construction of a retaining wall to keep all structures out of the floodplain. If the variances are not granted the petitioner will experience hardship and practical difficulty because they will not be able to

construct their project as designed. I find that the relief can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, and welfare.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **3rd** day of **March, 2021** that the Petition for Special Exception pursuant to BCZR §§ 233.3 and 419, to allow a full service car wash in the BM-IM zone be and are hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Variance from the BCZR § 419.3 to allow the required number of stacking spaces for the full service car wash to be configured in a different pattern than single-file at the entrance to the tunnel, and to allow a total of 28 off street parking spaces in lieu of the required 34 parking spaces. From the BCZR § 450.4 Table of Sign Regulations 5 (Enterprise) (a) To allow a total of six (6) wall-mounted enterprise signs on a single tenant commercial building (Sign Nos. 1, 2, 3, 4, 5, 6) with a maximum of three (3) signs on any single facade in lieu of the permitted three (3) enterprise signs with no more than two (2) signs on any single façade, to allow directional signs with sign areas/faces between 8.5 and 39 sq. ft. in lieu of the permitted 8 sq. ft. (Sign Nos. 10-13, 15, and 17-20) are 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, a copy of which is attached hereto and made a part hereof.

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