

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(6667 Security Boulevard)	*	ADMINISTRATIVE HEARINGS
1st Election District	*	FOR BALTIMORE COUNTY
1st Council District	*	
Jake & Jill Properties, LLC	*	
<i>Legal Owner</i>	*	
Petitioner	*	Case No: 2021-0080-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 6667 Security Boulevard. The Petitions were filed on behalf of Jake & Jill Properties, LLC, legal owner (“Petitioner”). The Special Exception petition seeks relief to have a car wash in a B.M-C.C.C zone per the Baltimore County Zoning Regulations (“BCZR”) §§ 233.3 and 419.

The Petition for Variance seeks relief from BCZR § 419.4.B.3 to allow a side landscaped transition area of zero (0) ft. in lieu of the required 6 ft. abutting non-residential zoned land. The Petition was properly advertised and posted. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the State Highway Administrative (“SHA”) and from the Department of Planning. Neither agency opposed the requested relief, subject to proposed conditions, some of which will be incorporated into the Order.

Due to the ongoing COVID-19 restrictions a public WebEx hearing was conducted virtually in lieu of an in-person hearing. John Quartner, the owner and petitioner appeared in support of the petitions. John Gontrum, Esq. represented the Petitioner. Patrick “Rick” Richardson from Richardson Engineering also appeared. His *curriculum vitae* was admitted as Petitioner’s Exhibit 1 and the site plan he prepared and sealed was admitted as Petitioner’s Exhibit

2. There was no opposition or interested persons in attendance. A letter of support from the Security Woodlawn Business Association was admitted as Petitioner's Exhibit 7.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property is 42,383 square feet and is zoned BM-CCC. Mr. Gontrum explained the requested relief. First, he explained that the property had been re-zoned during the last CZMP process to specifically allow the conversion of this site from a laundromat to a car wash. This was confirmed by DOP in their ZAC comments. With the aid of the photos in Petitioner's Exhibits 3, 4, and 5, Mr. Gontrum explained the features of the site and proposed car wash design in detail. He pointed out that the plan calls for double stacking, which will provide 27 stacking spaces in lieu of the required 19. This will alleviate any concerns about traffic backing onto Security Boulevard, even during absolute peak conditions. He explained that it will be a "single bay" car wash that can process approximately one car per minute. Petitioner's Exhibit 5 is a rendering of the proposed architectural design which shows a modern design and quality components in keeping with DOP's ZAC comments. As explained in Petitioner's Exhibit 6, the vacuum systems feature state of the art sound dampening technology that exceeds State noise level standards. Mr. Gontrum also noted that the car wash will operate only from 8 a.m. to 8 p.m. in spring and summer months and from 8 a.m. to 7 p.m. in fall and winter. Regarding the landscaping, he explained that the site is fully paved up to both of the adjoining properties. On the west side there is a retaining wall right on the property line and on the east side a wall of the church is directly on the property line. As a result, landscape buffers along these property lines are impracticable. However, Mr. Gontrum explained that substantial new landscaping will be provided within the interior of the site and along Security Boulevard. Finally, he confirmed that the dumpster enclosures will conform to the Baltimore County Landscape Manual ("BCLM"), and that the rear entrance will be closed except

for servicing of the dumpster. Mr. Gontrum then addressed how the plan satisfies all the conditions of BCZR § 502.1.

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 § 502.1. Finally, I am satisfied that the SHA ZAC comments and concerns will be addressed by the double stacking and other design features provided on the site plan and that no formal traffic impact study is necessary.

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 long and narrow and somewhat irregularly shaped. It also has a retaining wall along the entire west side and the adjoining property to the west is approximately 6 ft. above this site. Further, it is currently paved right up to both adjoining properties. The Petitioner would suffer practical difficulty and hardship if the variance relies were denied because they would have to jack-hammer and remove six feet of paving along these boundaries. 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. As detailed above, the Petitioner will provide ample landscaping within the site and along Security Boulevard and will otherwise improve the site aesthetically. Further, the local business association supports the proposed plan.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **18th** day of **May, 2021** that the Petition for Special Exception pursuant to BCZR §§ 233.3 and 419 to allow a car wash in a BM-CCC zone is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance per § 419.4.B.3 to allow a side landscaped transition area of zero (0) ft. in lieu of the required 6 ft. abutting non-residential zoned land 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 obtain approval from the Baltimore County Landscape Architect.

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

A handwritten signature in black ink, appearing to read "Paul M. Mayhew". The signature is written in a cursive style with a large initial "P".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm