

IN RE: PETITIONS FOR SPECIAL HEARING *		BEFORE THE
AND SPECIAL EXCEPTION &	*	OFFICE OF
VARIANCE		
(15 Texas Station Court)	*	ADMINISTRATIVE HEARINGS
8th Election District		
3rd Council District	*	FOR BALTIMORE COUNTY
Vereit SC Timonium MD, LLC		
<i>Legal Owner</i>	*	Case No: 2021-0175-SPHXA
Sam Real Estate Business Trust		
<i>Contract Purchaser</i>	*	

Petitioners

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Vereit SC Timonium MD, LL legal owner and Sam Real Estate Business Trust (“Petitioners”). The Special Hearing was filed per the Baltimore County Zoning Regulation (“BCZR”) § 500.7 to permit a fuel service station canopy signage addition that will be changeable copy. In addition, a Petition for Special Exception was filed pursuant to BCZR § 405.2.B to allow a fuel service station addition. Finally, a Petition for Variances was filed for relief from BCZR § 409.6 to permit a reduced parking count of 460 spaces in lieu of the existing 622 spaces; and from BCZR § 450.4 to permit new/modified canopy and site signage for the proposed fuel service station development; and for any further relief deemed necessary.

Due to the ongoing COVID-19 restrictions a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). They did not oppose the requested relief, subject to proposed

conditions. For the reasons set forth below, these conditions will not be incorporated into the Order. A comment was also received from the Department of Public Works requesting that a traffic/parking study be submitted to support the request for a reduction of parking spaces. As explained below, Petitioner has complied with this request.

Daniel Gross and Colleen Penn appeared on behalf of the Petitioner at the hearing. Thomas Chandler Kleine, Esquire represented the Petitioner. Brian K. Moore, P.E., of Carlson Consulting Engineers, Inc. also attended and was accepted as an expert in engineering, land planning, and the BCZR. The site plan that he prepared and sealed was admitted as Petitioner's Exhibit 1.

There were no protestants or interested citizens in attendance. Mr. Kleine was therefore allowed to proffer the facts and evidence supporting the requested relief. He explaining that the Petitioner has been operating a "Sam's Club" retail store at this site for a number of years and that they propose to add a fuel service station that will, like the retail store, be available on a "members only" basis to Sam's Club members. The site is located in Timonium off of Beaver Dam Road and Texas Station Court. It is 10.498 acres and is split zoned BM, BM-IM, ML-IM. It is adjacent to an existing Lowe's Home Improvement Center. Variances for this site were previously granted in Case No. R-1994-0335; Case No. 1998-0086-A; and Case No. 2000-0283-A.

Mr. Kleine submitted architectural elevations of the proposed fuel station and of the monument and canopy signage, which were admitted as Petitioner's Exhibits 6 and 7, respectively. He also called Joseph Calogerro, P.E., PTOE, PTP, and the Vice President of The Traffic Group. Mr. Calogerro was accepted as an expert in traffic engineering. He submitted a traffic/parking study that he had prepared in connection with this case, which was admitted as Petitioner's Exhibit 5. He testified that he performed an on-site parking study at this site during peak hours on Friday,

July 19, 2019, and Saturday, July 20, 2019 (pre-Covid). He explained that on Friday only 30% of the parking spaces were occupied, and on Saturday only 38% were occupied. Stated otherwise, there were 286 available parking spaces on Friday and 237 available spaces on Saturday. He concluded that the requested reduction of 151 spaces from the existing 622 would not result in any parking shortage at this site. He and Mr. Kleine also explained that the proposed fuel station will not generate any substantial increase in traffic in the area because it will be used only by Sam's Club members who would otherwise already be at the Sam's Club site.

SPECIAL HEARING

A special hearing under BCZR § 500.7 is in the nature of a declaratory judgment proceeding. This section gives the Hearing Officer the authority to interpret and declare the meaning of a given zoning regulation. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). In conducting this inquiry the focus is on whether the proposed interpretation is within the spirit and intent of the BCZR as a whole, and compatible with the surrounding uses.

In the instant case the DOP has found that the size and style of the two changeable copy canopy signs is compatible with BCZR § 450.5.B.8, and also within the spirit and intent of the previous variances granted for signage at the site. Based on the record evidence I concur with the DOP and will grant the requested Special Hearing relief.

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, 11 (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.

The record evidence in this case conclusively shows that the impact of this “members only” fuel station will have *less* impact at this location than a typical fuel station would have at many other locations within these zoning classifications. Again, the DOP also supports this special exception.

VARIANCES

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).

As described above, the site is unique for a variety of reasons, and has been found to be unique in a zoning sense in the prior cases referenced above. The Petitioner will suffer practical difficulty and hardship if the variance relief is denied because they would be unable to construct and identify the proposed fuel station, and the fuel prices. The DOP also supports the requested variances but suggests certain conditions related to “walkability” and the exclusion of buses. With regard to “walkability” in the parking lot, Mr. Kleine explained that because this is an established parking lot it would be impractical and ultimately not helpful to modify the existing pedestrian patterns. He specifically noted that because of the distance between the proposed fuel pumps and the existing Sam’s Club store that customers will almost certainly visit the fuel station on their way to or from the Sam’s Club and will not park at the fuel station and then walk to the Sam’s Club. Therefore, no pedestrian safety issues will arise from the construction of the fuel station. With regard to the DOP’s request to exclude buses from parking in the lot, Mr. Kleine explained

that there are many senior living communities in the area whose residents are transported to the Sam's Club in community buses. He explained that excluding these buses would therefore create an unnecessary hardship because, as noted earlier, the parking study showed that there is a substantial surplus of parking at the site. I am satisfied that the requested variances are all within the spirit and intent of the BCZR and can be granted without causing harm to the public health, safety and welfare.

THEREFORE, IT IS ORDERED this 16th day of **August 2021**, by this Administrative Law Judge that the Petition for Special Hearing pursuant to Baltimore County Zoning Regulations ("BCZR") § 500.7 to permit a fuel service station canopy signage addition with changeable copy is hereby **GRANTED**.

IT IS FURTHER ORDERED, that the Petition for Special Exception filed pursuant to BCZR § 405.2.B to allow a fuel service station addition is hereby **GRANTED**.

IT IS FURTHER ORDERED, that the Petition for Variance from BCZR § 409.6 to permit a reduced parking count of 460 spaces in lieu of the existing 622 spaces; and from BCZR § 450.4 to permit new/modified canopy and site signage for the proposed fuel service station development as presented on the enclosed site plan is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioners 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.

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, flowing style.

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm