

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(10499 Campbell Boulevard)	*	ADMINISTRATIVE HEARINGS
15th Election District	*	
4 th Council District	*	
JMD Campbell, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>	*	
Sheetz, Inc.	*	Case No: 2021-0257-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 10499 Campbell Blvd., Nottingham by JMD Campbell, LLC, legal owner and Sheetz, Inc., lessee, (“Petitioners”). The Special Exception Petition requests approval under the Baltimore County Zoning Regulations (“BCZR”), §§405.2.B.1 and 405.4.E.1 to allow a fuel service station on an individual site in combination with a convenience store and carry-out restaurant with a gross floor area larger than 6,000 sf. Variance relief was also requested from the BCZR, §§409.6, 450.5.B.8.a and 450.4 to allow:

- (1) a total of 39 off-street parking spaces in lieu of the required 43 parking spaces;
- (2) a sign to extend below the end of the face of the fuel service station canopy (Sign 5);
- (3) directional signs with a maximum sign area of 14 and 13 sf in lieu of the permitted 8 sf (Signs 6, 4) with non-directional content that exceeds 30% of the total sign area (Sign 4); and
- (4) freestanding directional signs with maximum height of 15.5 ft. in lieu of the permitted 6 ft. (Signs 6, 7, 8).

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. Lee May, Engineering and Permit Manager for Sheetz and Anthony Foderano, Real Estate Department for Sheetz, Inc., appeared in support of the Petitions, along with Valek Zarski, PE of Baltimore Land Design Group, Inc. who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). Adam Rosenblatt, Esquire and Venable, LLP represented the Petitioners. There were several interested citizens or Protestants as mentioned herein who appeared at the hearing.

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 Development Plans Review (“DPR”) which agencies did not oppose the requested relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the southeast corner of Campbell Blvd. and White Marsh Blvd. sits a tract of unimproved land measuring 6.92 acres +/- . It is zoned Business, Local with an Automotive Services overlay district (BL-AS) having been rezoned in the 2020 CZMP. (Pet. Ex. 6). As a result, uses permitted by Special Exception in the BL-AS zone include fuel service stations, convenience stores and carryout restaurants. (BCZR, §230.3, §405.2.B.1). The unimproved tract has been granted a limited exemption to be subdivided into 2 lots under the development process as set forth in BCC, Article 32, Title 4. On Lot 1, Petitioner proposes to construct a Sheetz fuel service station with 16 fueling stations, in combination with a 6,077 sf convenience store and carry out restaurant. Lot 1 measures 1.873 acres +/- (the “Property”). (Pet. Ex. 1). Lot 2 measuring 4.990 acres +/- is not being developed at this time and is not subject to review in this case.

Valek Zarski, PE was accepted as an expert in civil engineering and professional land planning, with special knowledge in BCZR. (Pet. Ex. 4). As shown on the Site Plan, State Highway Administration (SHA) owns a parcel of land located north and east, separating it from White Marsh Blvd. South of the Property is a BGE transmission line. Aerial and street view photographs were provided. (Pet. Ex. 5). Mr. Zarski opined that the proposed use meets each of the BCZR, §502.1 Special Exception factors, as well as the requirements of BCZR, §405.2.B.1 and §405.4.E.1.

Lee May testified that this would be the first Sheetz in Baltimore County. Sheetz is a family owned and operated company and will 28 employees plus 7 in management at this location. A maximum of 7 employees will work at this store at a given time. Sheetz stores are known for their made-to-order food which can be purchased inside the store or via the drive-thru. (Pet. Ex. 2). Sheetz stores are open 24 hours per day, 7 days per week, and 365 days per year. A site rendering of a typical Sheetz store and fuel service station as well as building elevations were provided. (Pet Exs. 2, 3).

The proposed layout was superimposed onto an aerial photograph. (Pet. Ex. 7). This rendering shows 2 access points in/out of the Property, both from Campbell Blvd. The northern entrance closest to White Marsh Blvd. is a right-out only lane; the southern entrance will permit a right or left turn out of the Property. Wooded areas outside the Special Exception area will remain on the northern, southern and eastern sides. The superimposed aerial photograph also revealed that the shape of the Property is irregular and will have a storm water management facility on the south-eastern corner.

Mark Keeley with Traffic Concepts, Inc. was accepted as an expert in traffic planning. (Pet. Ex. 9). In regard to parking spaces, the total required for this use is 43 spaces, and 39 will be

provided. The drive-thru lane will have 7 total stacking spaces. Mr. Keeley prepared an Access and Circulation diagram showing the flow of incoming and outgoing traffic. He also prepared a truck turning exhibit. (Pet. Ex. 10). Mr. Keeley opined that: (1) the intersection of White Marsh Blvd. and Campbell Blvd. functions at an acceptable level of service; (2) the proposed Sheetz store will not cause congestion onto Campbell Blvd.; and (3) to the extent that a truck would enter the Property, it has an ample space to turn-around. Mr. Keeley used the largest Sheetz trucks to calculate the turn-around axis.

In regard to the forest and wetland delineations, slope analysis, and forest buffers, those environmental factors were approved by DEPS on March 20, 2020. A Forest Buffer and Forest Conservation Plan will be prepared and filed as part of the limited development process. Lot I does not require any environmental variances to be filed. Petitioners submitted an Environmental and Site Constraints exhibit depicting the extent of the Forest Buffer and Forest Conservation Easement. (Pet. Ex. 8). A Final Landscaping Plan and a Lighting Plan will also be filed as part of the limited exemption development process. All lighting installed on the Property will be directed downward so as not to reflect beyond the Property boundaries.

As noted by DOP and as reflected on the Site Plan, the proposal here is to provide landscaping buffers and 8 ft. wide sidewalk along Campbell Blvd. The sidewalk is large enough for pedestrians and bikes such walkers and bike riders will have their own access to the Property. DOP noted that the proposal was consistent with The Middle River Employment Center Area Plan.

Mr. Valek testified that the parking variances and sign variances are both being requested due to the Property's uniqueness including its shape, its grade changes (66 ft. to 52 ft.), and its limited developable space caused by its boundaries defined by the SHA property and BGE transmission lines. Mr. Valek opined that the unique shape and steep grade change made the layout

of the Sheetz building, drive-thru, and required parking spaces on the Property difficult, and, if strict compliance with the BCZR were required, a fuel service station in BL-AS would not be permitted. He emphasized that 39 off-street parking spaces are sufficient for this use and the addition of the drive-thru further reduces the need for 43 parking spaces. He explained that the drive-thru necessitates the directional signs as depicted on the Site Plan. (Pet. Ex. 1C). The signs needing variance relief are as follows:

- Sign 4 – a larger directional sign indicating the drive-thru is open 27/7;
- Sign 5 – Sheetz logo to hang below the end of the face of the fuel service canopy (3 signs);
- Sign 6 – larger and taller drive-thru directional sign showing where to enter drive thru
- Signs 7, 8 – taller drive-thru freestanding directional signs

Due to the uniqueness of the Property, Petitioner contends that the signs as proposed are needed for visibility to alert customers how to enter and exit the store, fuel pumps, and drive-thru efficiently. Accordingly, Mr. Zarski opined that there would be no impact on health, safety or general welfare if parking and sign variances were granted.

Protestants' Case.

All Protestants and interested citizens were permitted to ask questions and/or to testify. Cherry Dy, 1042 Ramble Run Rd. testified in opposition. Ms. Dy, whose property is located south of the BGE transmission lines, believes there is a risk that the fuel pumps could explode if struck by vehicles. She is concerned about the removal of wooded area around the Property. Mr. May responded that Sheetz complies with all state and federal safety regulations through a 24/7 monitoring system, by having an emergency response team in place, by the construction of bollards in front of gas tanks, by an automatic shut-off system, and by using double-wall fuel tanks. Mr. May added that all improvements for this case are north of the BGE transmission lines and that

the wooded area will remain undisturbed as part of the Forest Buffer and Forest Conservation Easement.

Janet Miller, 2140 Coralthorn Rd. requested information on the number of customers who would be coming to the Sheetz store per day for fuel, food and groceries. She was concerned about traffic stacking up onto Campbell Blvd. from the proposed drive-thru as has occurred at other nearby fast food restaurants. Anthony Foderano of Sheetz Real Estate department responded that the number of customers depends on the Sheetz location. Mr. Keeley stated that 76% of customers coming in the peak morning hours are pass-by trips for people traveling to work or school. He added that the ITE Manual indicated that 137 new trips would be added in the morning and 100 in the afternoon. In regard to the concern about traffic spilling onto Campbell Blvd. from the drive-thru lane, Mr. May responded that with the use of a touch-screen at the drive-thru, orders are filled within 4 minutes. He highlighted that Sheetz does not attract the same number of customers during peak hours as other drive-thru fast food restaurants which may see 100-120 vehicles per hour.

Ruby Dalal, 10518 Braddock Run Rd., who is opposed to a commercial use at this Property, expressed concern for: security of a 24/7 business; the safety of her children who walk along Campbell Blvd.; increased trash; decline of property values; as well as environmental concerns. Mr. May explained that Sheetz stores have extensive security using cameras inside and outside the stores. Sheetz also has remote monitoring of their stores by its headquarters in Pennsylvania. He indicated that the Property would be regularly cleaned and that trash cans would be provided throughout the Property.

Cecelia Johnson, 911 Morgan Run Rd. believes that a better location for the proposed use is next to the Royal Farms store on Market Way. Anthony Foderano responded that while they

did consider that site, Sheetz, who is leasing this Property, concluded that the Property is a better location for its operation.

Jean Jipson, 10201 Campbell Blvd., expressed concern about the existing increase in traffic and the speed of vehicles on Campbell Blvd. even without the additional traffic generated by Sheetz. Ms. Jipson requested that Sheetz install traffic calming and speed traps along Campbell Blvd. It was explained that Sheetz, as a lessee of the Property, has no legal authority to require the County to install traffic calming on Campbell Blvd.

Joan Mealey-Krugar, 1119 Reames Rd., inquired as to the location and dimensions of the concrete median strip in the middle of Campbell Blvd. in relation to the 2 access points into the Property. She also asked about the dimensions of the drive aisles and parking spaces within the Property. Finally, Ms. Mealey-Krugar inquired as to the number of trucks delivering food, groceries and the number of fuel tankers per week. It was explained that there will be 2 breaks in the median strip to correspond to the access points. Campbell Blvd. will be widened so that at the intersection with White Marsh Blvd., there will be a single left turn lane, a left and straight lane as well as a right turn lane. In regard to the number of delivery trucks, Mr. Foderano responded that the number of trucks is tied to the need for the items/fuel.

Linda Felts, 10101-A Bird River Rd. testified on behalf of the Bird River Watershed Restoration Campaign and as President of the Bird River Neighborhood Association. On behalf of these groups, Ms. Felts inquired as to the number of fuel pumps which could accommodate trucks. In response, it was explained that while diesel fuel is available for trucks to fill up at a Sheetz fuel service station, the diesel fuel available from Sheetz is not desirable for trucks and is therefore not regularly purchased. Ms. Felts also provided a formal statement opposition on behalf of the groups she represented whose collective concerns were: (1) increased traffic particularly if

Sheetz advertises on I-95; (2) illuminated and excessively tall signs will increase light pollution; (3) negative effect of storm water run-off next to a 100 year floodplain even with the installation of a storm water management facility; and (4) trees which will be removed for the development on Lot 2.

In response, Mr. Zarski testified that, as shown on the Environmental Constraints exhibit (Pet. Ex. 8), a Forest Buffer and Forest Conservation Easement will be recorded in Land Records to preserve the wooded area, and environmental features will buffer and separate the development from the floodplain. Toward this end, Mr. Zarski confirmed that the Property will comply with the latest storm water management Environmental Site Design (ESD) techniques. With respect to this Property, no waivers are being requested from storm water management regulations and no environmental variances will be sought.

Natis Cifone, Property Manager for the Preserve at Windless Run, 10425 Campbell Blvd., was interested in the timeline for construction and whether fencing would be installed to ensure that customers of Sheetz do not cross into the BGE transmissions line area. Mr. Zarski estimated that the timeline is 15-16 months and that fencing would be installed on the top of retaining walls.

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 evidence in this case, I find that the special exception request to use this Property as a fuel service station in combination with a convenience store and carry-out restaurant with a gross-floor area larger than 6,000 sf, satisfies the requirements of BCZR §502.1 as well as the requirements of BCZR, §405.2.B.1 and §405.4.E.1, and therefore the Special Exception should be granted. Specifically, I find that the proposed use will not have any greater impact at this location than those inherently associated with the Special Exception use.

Specifically, as required by BCZR, §405.2.B.1, this fuel service station is located within the Urban-Rural Demarcation Line (URDL), in an A.S. District and a MD 43 District, and no part of the Property is located in a Manufacturing, Restricted (M.R.) Zone. The MD 43 Overlay District was established to implement the Middle River Employment Center Area Plan. (BCZR, §259.10). Additionally, there was no evidence presented that there was the presence of one abandoned fuel service station, as defined in BCZR, §405.7, within a one-half-mile radius, or two such stations within a one-mile radius of the proposed Sheetz fuel service station.

As required in BCZR, §405.4.E.1, a fuel service station in combination with a convenience store and carry-out restaurant, with a gross floor area larger than 6,000 square feet is permitted provided it meets the Special Exception factors in BCZR, §502.1. In regard to those factors, I find that the proposed Sheetz fuel service station in combination with a convenience store and carry out restaurant will not be detrimental to the health, safety or general welfare of the locality. Here, the limited 1.873 acres (which is also the Special Exception area) is confined by SHA property to the north and east, by BGE transmission lines to the south, and by environmental features to the south and east as contained within Lot 2. I find that the proposed use will not tend to create congestion onto either Campbell Blvd. or White Marsh Blvd., or tend to overcrowd the land, particularly in light of the widening of Campbell Blvd., the stacking spaces allotted for the drive-

thru, and the access and circulation plan. (Pet. Ex. 10) I further find that the proposed use will not create a potential hazard from fire or other danger as extensive safety measures explained by Mr. May and set forth above, will be in place. The proposed use will not interfere with adequate provisions for water, sewerage, transportation because the Property will have its own storm water management facility, and improvements will be made to Campbell Blvd. including road widening and breaks in the concrete median strip in relation to the access points. Likewise, there is no interference with light or air as no other buildings are near the Property to cast a shadow or block air flow.

The proposed use is certainly within the BL-AS zoning classification and as such is consistent with the spirit and intent of the BCZR. While I am cognizant of the Protestants opposition to any commercial use, the County Council sought fit to change the zoning for this Property in the 2020 CZMP. By doing so, the County Council contemplated that a fuel service station, convenience store and carryout restaurant were potential uses for this Property. I have no authority to change this zoning classification. Moreover, the alleged negative impacts described by the Protestants are the type of impacts typically associated with a fuel service station, convenience store and carryout restaurant, and are no worse here than elsewhere in the BL-AS zone. Consequently, there is a presumption of validity for this proposed use, on this Property, which is not adjoining any residential properties.

In regard to impermeable surface and vegetative retention provisions and impacts on environmental features, the evidence is clear that the Property meets the BCZR provisions in this regard. The use will require the approval of a Landscape Plan as well as the recordation of a Forest Buffer and Forest Conservation Easement. The Property does not require environmental variances

and all environmental features are contained within Lot 2 which is not subject to review here.

VARIANCE

Under BCZR, §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 unique due to its irregular shape, grade changes, and isolation caused by the SHA property and BGE transmission lines surrounding it. The Site Plan confirms that there are no residential properties adjoining or abutting the Property. The existence of a drive-thru effectively reduces the number of parking spaces actually needed for this use. The BCZR parking regulations do not account for the increased use of drive-thrus in recent years which improve efficiency of traffic flow and reduce the number of dine-in customers. I note the use of a touch-screen ordering and apps which allow for preordering of food, add to the efficiency. It is clear that the sign variances are needed to direct customers within the Property, particularly the drive-thru signs, which help to alleviate backups within the drive-thru lane or onto Campbell Blvd. during peak hours. I find that the Petitioners would suffer a practical difficulty and unreasonable hardship if the proposed parking and sign variances were not granted because the proposed Sheetz store, and drive-thru, would not be able to be constructed within this irregularly shaped Property. I also find that the requested variance relief can be granted in strict harmony with the spirit and

intent of the BCZR and without injury to the health, safety or general welfare, notwithstanding the testimony in opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **14th** day of **December, 2021** that the Petition for Special Exception BCZR §§ 405.2.B.1 and 405.4.E.1 to allow a fuel service station on an individual site in combination with a convenience store and carry-out restaurant with a gross floor area larger than 6,000 sq. ft., is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Variance relief was also requested from the BCZR, §§409.6, 450.5.B.8.a and 450.4 to allow:

- (1) a total of 39 off-street parking spaces in lieu of the required 43 parking spaces;
- (2) a sign to extend below the end of the face of the fuel service station canopy (Sign 5);
- (3) directional signs with a maximum sign area of 14 and 13 sf in lieu of the permitted 8 sf (Signs 6, 4) with non-directional content that exceeds 30% of the total sign area (Sign 4); and
- (4) freestanding directional signs with maximum height of 15.5 ft. in lieu of the permitted 6 ft. (Signs 6, 7, 8)

be, and they are each hereby, **GRANTED**.

The relief granted herein shall be subject to the following:

1. 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.
2. Prior to issuance of permits, Petitioners must comply with the ZAC comments made by DEPS and DPR which are attached hereto, incorporated herein and made a part hereof.

3. The Site Plan (Pet. Ex. 1) which is attached hereto, shall be incorporated into and made part of this Order.

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