

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(400 W. Padonia Road)	*	ADMINISTRATIVE HEARINGS
8th Election District	*	FOR BALTIMORE COUNTY
3 rd Council District	*	
Timonium SAB, LLC	*	
<i>Legal Owner</i>	*	
Fairgrounds Ventures, LLC	*	Case No: 2021-0258-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 400 W. Padonia Road. The Petitions were filed on behalf of Timonium SAB LLC, legal owner and Fairgrounds Ventures, LLC, contract purchaser/lessee (“Petitioners”). The Special Exception petition seeks relief from the Baltimore County Zoning Regulations (“BCZR”) § 253.2.D.4 to permit the use of the property as a car wash.

The Petition for Special Variance seeks relief under BCZR § 4A02.4.G to allow a car wash within a traffic shed for an intersection with an "F" level service rating.

The Petition was properly advertised and posted. Several interested citizens attended the hearing, some in opposition and some in support. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection (“DEPS”). These agencies did not oppose the requested relief, subject to proposed conditions, 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 Pinnock, the contract purchaser, appeared in

support of the petitions. Timothy M. Kotroco, Esquire represented the Petitioners. Patrick Richardson, the engineer who prepared and sealed the site plan also attended, as did Mark Keeley, a traffic engineer, and Henry Weinschenck, a consultant in the car wash industry.

RECORD EVIDENCE

The subject property is at the northwest corner of West Padonia Road and Beaver Dam Road in Timonium. The parcel is 1.48 acres and is zoned ML, IM. Mr. Kotroco gave an overview of the existing site conditions and the proposed car wash operations. He explained that the hours of operation will be from 8 a.m. until dusk, and that the entrances and exits will be gated and locked when it is closed. He explained that he had met with the Greater Timonium Community Council and submitted a letter of support for the project from its President, Eric Rockel. (Petitioner's Exhibit 7).

Mr. Richardson was accepted as an expert in engineering, site design and the BCZR. He testified in detail about the site plan and the surrounding area and uses. He explained that the site is currently occupied by an empty building that was formerly a Bob Evans restaurant. The restaurant closed a couple years ago and the site has not been well maintained. It is surrounded by a temporary six foot chain link security fence. The surrounding area contains a mix of office, hotel, self-storage facilities, mixed commercial, and light industrial uses. It is within the Hunt Valley/Timonium Master Plan area. Mr. Richardson pointed out that there are concrete medians on both Padonia and Beaver Dam roads so that only right turns are permitted into and out of the site, which will help traffic flow and safety. He submitted architectural elevations of the proposed car wash that were admitted as Petitioner's Exhibit 6. He testified that the existing restaurant will be razed and replaced by the proposed car wash. He noted that the zoning regulations require 19 stacking spaces for the car wash but that the plan proposes 31 spaces, and that overflow capacity

rights on the adjacent property have been negotiated. He further explained that all other provisions of the zoning regulations will be met and that no variance relief is requested. Finally, he averred that the proposal met all the special exception criteria of BCZR § 502.1, and that the Special Variance standards were also satisfied.

Petitioner then called Mr. Keeley who was accepted as an expert in traffic engineering. He explained a Traffic Impact study that he performed, which was admitted as Petitioner's Exhibit 12. He explained that the study was based on the Institute of Transportation Engineers ("ITE") Trip Generation Manual, as required by the Baltimore County Department of Public Works ("DPW"). He explained that per the ITE Manual the proposed car wash will generate fewer peak rush hour trips than were generated by the Bob Evans restaurant, or any other "high turnover sit-down restaurant." He also described how the median strips on Padonia and Beaver Dam roads will facilitate safe traffic flow in and out of the site. Of note, he testified that the vast majority of traffic in and out of this site will be "parasitic," meaning that it will be vehicles that are already on the area roads travelling to other destinations – in this case, to the offices and other businesses in the surrounding ML – IM zone.

Finally, Mr. Weinschenk, the business consultant, testified. He explained that he has been in the car wash business since the 1970s and has developed a proprietary Site Yield Analysis software to assess the viability of a given location. He also explained that the traffic coming in and out of this site will come from the existing businesses in the immediate vicinity and that it will not draw additional traffic like a Home Depot or similar large retail business would. He further explained that the busiest time for car washes is mid-day, when people in the area are on their lunch breaks. As a result, car washes do not really impact the morning or evening rush hours.

Several residents from the surrounding neighborhoods were allowed to extensively question these witnesses. At the close of Petitioner's case they were also given the opportunity to express their views on the proposed car wash. Those in opposition focused almost exclusively on the traffic conditions in the area, which they described as horrible and dangerous. They testified that there are long backups during rush hour and that there are frequent accidents. Those in favor of the project explained that the existing vacant restaurant has become an eyesore and that they would prefer to see a successful business on the site.

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. Mr. Richardson, who was accepted as an expert in the BCZR, testified that the proposal conforms with § 502.1. With specific regard to the traffic issue he explained that the median strips prohibiting left hand turns into the site make this site safer than many other locations in the zone would be. Mr. Keeley, the traffic engineer, explained that the peak hour traffic generated by the proposed car

wash will be less than that generated by the former Bob Evans, or many other uses that are permitted in this zone by right or by special exception. Finally, Mr. Weinschenk, the business consultant, echoed Mr. Keeley's testimony concerning the "parasitic" nature of the traffic associated with the car wash; namely, that the vast majority the car wash traffic will come from motorists that are already on Padonia and Beaver Dam roads travelling to work, or as customers of other businesses in the vicinity.

SPECIAL VARIANCE

Under BCZR § 4A02.4.G.1:

1. The Zoning Commissioner may, after a public hearing, grant a petition for a special variance from a provision of this subsection, only to an extent that will not violate that provisions provision's purpose, pursuant to a finding:
 - (a) That the demand or impact of the development proposed will be less than that assumed by the district standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal; and
 - (b) That the granting of the petition will not adversely affect a person whose application was filed prior the petitioner's application in accordance with Section 4A02.3.G.2.b.
2. The Department of Planning shall give a report on the petition on the Zoning Commissioner prior to his consideration of the petition.

In the instant case the Department of Planning has recommended approval of the proposed car wash, subject to certain conditions. The Department of Public Works did not submit any ZAC comments opposing the requested Special Variance. Further, based on the record evidence concerning traffic, as recited above, I find that the impact of the proposed car wash will be less than that assumed by the district standard.¹ In light of the above I find that the Special Variance should be granted.

¹ Petitioner submitted Inter-Office Memoranda from the Bureau Chief of Traffic Engineering to the Director of Public Works for the years 2019 and 2020 wherein the Bureau of Traffic Engineering recommended that the intersection of

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **13th** day of **December, 2021** that the Petition for Special Exception pursuant to BCZR§ 253.2.D.4 to permit the use of the property as a car wash is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Special Variance under § 4A02.4.G to allow a car wash within a traffic shed for an intersection with an "F" level service rating 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.
- Prior to issuance of permits, Petitioners must comply with the DOP and DEPS comments, which are 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

Beaver Dam and West Padonia roads be upgraded from an "F" to a "C" on the Basic Services Maps. For reasons not explained at the hearing, the County Council evidently did not make the recommended changes.