



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

October 4, 2023

Timothy M. Kotroco, Esquire – tkotroco@gmail.com

**RE: Order on Motion for Reconsideration – Reversing Grant of Extension
of Special Exception Expiration**

Petition for Special Exception

Case No. 2021- 0199-X

Property: 1630 E. Joppa Road

Dear Mr. Kotroco:

Enclosed please find a copy of the Order on Motion for Reconsideration rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), “a person aggrieved or feeling aggrieved” by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink, reading "Paul M. Mayhew".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlw
Enclosure

c: GRS Properties, LLC – jspahn@5304dorsey.com
Green Clean Auto Wash – craig@gcawexpress.com
Matt Bishop – matt.bishop@kimley-horn.com
Peter Max Zimmerman – peoplescounsel@baltimorecountymd.gov

**IN RE: PETITION FOR SPECIAL
EXCEPTION**

(1630 E. Joppa Road)

9th Election District

5th Council District

GRS Properties, LLC

Legal Owner

Green Clean Auto Wash

Contract Purchaser/Lessee

Petitioners

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BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No: 2021-0199-X

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**ORDER ON MOTION FOR RECONSIDERATION
REVERSING GRANT OF EXTENSION OF SPECIAL EXCEPTION EXPIRATION**

On November 2, 2021 Administrative Law Judge (“ALJ”) Maureen E. Murphy granted a special exception in the above captioned case.

On September 12, 2023 counsel for Petitioner submitted a letter addressed to the undersigned, as Managing ALJ, requesting a 3-year extension of time to utilize the special exception. The letter explains that, for a number of reasons, most related to the Covid pandemic, Petitioner has been unable to commence construction of the project.

The undersigned viewed this as a straightforward and reasonable request that was within the ministerial authority of the Managing ALJ under Baltimore County Zoning Regulations (“BCZR”) Section 502.3. The request was therefore granted, with conditions.

On September 22, 2023 People’s Counsel filed a Motion for Reconsideration. The Motion notes that People’s Counsel was not copied on the letter requesting the extension and urges that under principles of Due Process a special hearing is required before an extension may be granted under BCZR Section 502.3. He argues that the granted exception should therefore be reversed, without prejudice. In support of this argument People’s Counsel cites *Baltimore Lodge No. 7 of the*

Benevolent and Protective Order of Elks v. People's Counsel, Court of Special Appeals No. 1625 Sept. Term 1979 (1980) (unreported).¹

Though not binding this case is on point and does hold that a Due Process hearing is required before an extension can be granted under BCZR Section 502.3.

The Motion will therefore be granted.

IT IS THEREFORE ORDERED on this 4th day of **October, 2023** that the Motion for Reconsideration and for Reversal of the Grant of Extension is GRANTED, WITHOUT PREJUDICE.



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlw

¹ People's Counsel argues, and I agree, that although Md. Rule 1-401 prohibits the citation of unreported opinions in Maryland courts, it does not apply in Administrative tribunals such as the Office of Administrative Hearings.

IN RE: PETITION FOR SPECIAL	*	BEFORE THE
EXCEPTION	*	OFFICE OF
(1630 E. Joppa Road)	*	ADMINISTRATIVE HEARINGS
9 th Election District	*	
5 th Council District	*	
GRS Properties, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>	*	
Green Clean Auto Wash	*	
Contract Purchaser/Lessee	*	
Petitioners	*	Case No: 2021-0199-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as Petition for Special Exception filed for the property located at 1630 E. Joppa Rd., Loch Raven (the “Property”). The Petition was filed on behalf of GRS Properties, LLC, legal owner, and Green Clean Auto Wash, lessee (“Petitioners”). The Special Exception Petition seeks relief to have a car wash in a B.M and BR zone pursuant to Baltimore County Zoning Regulations (“BCZR”), §233.3 and §236.2.

The Petition was properly advertised and posted. Due to the ongoing COVID-19 restrictions a public WebEx hearing was conducted virtually in lieu of an in-person hearing. Craig Van Bremen, Vice President of Development and Acquisition for Green Clean appeared in support of the Petition along with Matthew Bishop, R.L.A with Kimley Horn, who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). Timothy M. Kotroco. Esq. represented the Petitioners. There were no Protestants or interested persons in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and Department of Environmental Protection and Sustainability (“DEPS”) which agencies did not oppose the requested relief.

The Property is 0.96 acres +/- (41,995 sf) and is zoned Business Major, Business-Roadside (BM, BR). (Pet. Ex. 8). It is improved with a vacant building previously used as a restaurant/bar. Other than the restaurant, aerial photographs reveal that the entire Property is paved as a parking lot with a wooden fence surrounding it. (Pet. Exs. 4A-4E). The Property fronts on a busy commercial section of Joppa Rd. adjacent to an ABC Equipment Rental business, a Days Inn and a vacant Subway restaurant. (Pet. Exs. 3A, 3B). Located to the east behind the Property is the Injured Workers Insurance Fund (“IWIF”). (Pet. Exs. 4C, 4D). Across Joppa Rd. to the west side of Joppa Rd. is a used car business and fast food restaurants. (Pet. Exs. 3A, 3B).

Petitioners are proposing to raze the vacant restaurant and to construct a car wash as shown on the Site Plan and in a colored rendering of the proposed Property. (Pet. Exs. 1, 2). Green Clean Car Wash is based in Northern Virginia and recently had a car wash approved on Liberty Rd. in Case No.: 2021-0008-XA. Green Clean operates car washes in several states and is expanding into Maryland. It uses biodegradable soap. The Site Plan proposes a “tunnel” car wash with a single entry and exit point off of Joppa Rd. A 3D rendering of the car wash was provided. (Pet. Exs. 6A-6D).

Turning into the Property from E. Joppa Rd., a customer will follow the directional arrows to proceed through the car wash which takes approximately 3 minutes to complete. The colored rendering shows 20 stacking spaces before entering the car wash. (Pet. Ex. 2). Upon completion, a car may exit onto Joppa Rd., or park in one of spaces to use the vacuum equipment. A storm water management device (filterra) will be added. (Pet. Ex. 1). Landscaping will surround the Property as shown on the Schematic Landscape Plan and colored rendering. (Pet. Ex. 5). No variances are needed for the proposed use.

The Property is located within the Baynesville Commercial Revitalization District and within a Design Review Panel Area (“DRP”). DRP met on March 10, 2021 and recommended approval to the DOP and to Permits, Approvals and Inspections (“PAI”) with conditions. On April 14, 2021, a revised site plan was submitted to DOP for review. DOP found that the revised site plan addressed the DRP conditions and as a result, PAI accepted and approved the DRP recommendation. (Pet. Ex. 7). The County requested that the Petitioners permit access to the Days Inn by creating an easement on the east side of the Property which is marked by “Future Access by Others.” (Pet. Ex. 1).

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, is consistent with the BM, BR zone, and the relief requested satisfies the requirements of BCZR §502.1. Specifically, I am satisfied that the evidence confirmed that the proposed use will not be detrimental to the health, safety or general welfare of the locality involved. Indeed, improvement and renovation of the Property, including the removal of a vacant building and impervious surface, with an eco-friendly business, will promote health, safety and general

welfare. This use will not create congestion onto Joppa Rd. or overcrowd the land as more than the required number of stacking spaces are provided along with a 3 minute car wash which will ensure that vehicles will move through the Property. I also find that this particular use will not create a potential hazard from fire, panic or other danger, will not interfere with light or air, or interfere with public improvements. In regard to impermeable surface, the existing parking lot will be removed and some areas repaved but with landscaping which will support the BCZR vegetative retention provisions. Finally, there are no environmental resources on the Property as verified by the lack of comment from DEPS.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **2nd** day of **November, 2021** that the Petition for Special Exception pursuant to BCZR, §233.3 and §236.2 to permit a car wash in a BM, BR zone is 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 obtain approval of a final Landscape Plan from the Baltimore County Landscape Architect.

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