IN RE: **PETITION FOR SPECIAL HEARING**	*	BEFORE THE
(1803 Reisterstown Road)		
3rd Election District	*	OFFICE OF
2nd Council District		
A.I. Glenview, LLC; M&ML Patriot LLC;	*	ADMINISTRATIVE HEARINGS
Hoyne Patriot LLC; & SSB Patriot, LLC		
Legal Owners	*	FOR BALTIMORE COUNTY
Petitioners	*	**Case No: 2022-0097-SPH**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH)" as a Petition for Special Hearing filed by Pikesville Hospitality Investors, LLC, Petitioner, and A.I. Glenview, LLC; M&ML Patriot LLC; Hoyne Patriot, LLC; and SSB Patriot, LLC, legal owners, (collectively "Petitioners") for property located at 1803 Reisterstown Road, Owings Mills (the "Property"). The Special Hearing was filed from the Baltimore County Zoning Regulations ("BCZR"), §500.7 to determine whether the presence of more than five (5) vending machines under the canopy of an existing Fuel Service Station shall be considered a convenience store under BCZR, §405.4.D.6 and therefore require an amendment to the site plan and to the underlying Special Exception approval for the Fuel Service Station use to permit the convenience store, as well as to determine whether off-site freestanding 7-Eleven sign (located on Exxon parcel) is an outdoor advertising sign.

Due to COVID-19, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Ken Talati, authorized representative of Pikesville Hospitality Investors, LLC, appeared at the hearing in support of the Petition along with Stephen Warfield, PE of Matis, Warfield, the civil engineering firm who prepared a site plan filed along with the Petition (the "Site Plan"). (Pet. Ex. 2). Adam Baker, Esquire and Rosenberg,

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Martin, Greenberg, LLP represented the Petitioners. Afshin Attar, the operator and franchisee of the Exxon station and 7-11 convenience store appeared at the hearing ("Mr. Attar") along with his attorney Dino C. La Fiandra, Esquire. No other Protestants or interested citizens were in attendance.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"), Department of Environmental Protection and Sustainability ("DEPS") and Development Plans Review ("DPR") which agencies did not oppose the requested relief.

The Property is an existing Exxon fuel service station which has been in operation since 1973 as well as a companion 7-11 store which has been in operation since 1988 and is located on the corner of Reisterstown Rd. and Hooks Lane, near the entrance to Exit 20 off I-695. It consists of two (2) parcels: (1) Parcel 152 which has the Exxon and 7-11 store; and (2) Parcel 151 which abuts Hooks Lane and contains the freestanding 7-11 sign. (Pet. Ex. 1, 4A, 4B). This case was filed by the owners/operators of another commercial property located approximately ½ mile away at 1721 Reisterstown Rd. Petitioners are seeking a ruling (akin to a declaratory judgment) that because Mr. Attar has more than 5 'vending machines' located outside the existing Exxon kiosk, this use would qualify as a convenience store, and the effect of which would compel Mr. Attar to file an amendment to the 1973 plot plan (the "1973 Plot Plan), to seek Special Exception relief, or to remove those items. (Prot. Ex. 9). The Petitioners also seek a ruling that the existing free standing 7-11 sign at the corner of Reisterstown Rd. and Hooks Lane is an outdoor advertising sign, the effect of which ruling would require Mr. Attar to remove the sign, or to file for zoning relief to allow it to remain.

The case proceeded by way of modified proffer by Mr. Baker. Mr. Warfield was accepted as an expert civil engineer with expertise in zoning and development. (Pet. Ex. 1). Mr. Warfield

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opined that there are 8 refrigeration units lined up along either side of the Exxon kiosk which qualify as 'vending machines' under the BCZR and that, as a result, zoning relief to approve a convenience store for the Exxon, is needed. He testified that he believes that OZR would classify the refrigeration units as 'vending machines' because otherwise, in his view, an unlimited number of refrigeration units could be set up throughout the Property. Street view photographs of the Exxon business and the 7-11 sign were provided. (Pet. Ex. 3). While the Site Plan labels the refrigeration units as 'vending machines', Mr. Warfield agreed that the refrigeration units are not coin-operated; a customer selects a beverage from the refrigerator and pays for it at the kiosk. Although he did not have a date when the refrigeration units were installed, and he agreed that the BCZR in effect on the date of installation of those units would apply as set forth in the Zoning Commissioner's Policy Manual (ZCPM), Mr. Warfield added that the prior zoning approvals in 1973 and 1988 did not permit vending machines. (Pet. Ex. 5). Mr. Warfield further opined that if Mr. Attar was not able to obtain a 'Spirit and Intent Letter' from OZR then he would need to file an amendment to the 1973 Plot Plan and request a zoning hearing. Mr. Warfield measured the Exxon kiosk and refrigeration units as having a gross floor area of between 320 sf – 400 sf.

In regard to the 7-11 sign, it was Mr. Warfield's opinion that, because it is located on a separate parcel (Parcel 152) from the 7-11 store (Parcel 151), it is classified as an 'outdoor advertising sign' for which there was no prior zoning approval.

In response, Mr. Attar testified that he has been the operator of the Exxon for 4 years and the franchisee of the 7-11 for 8 years. The Special Warranty Deed for the Property which is recorded in Land Records for Baltimore County at Liber 34402, page 185, describes both parcels in a single legal description measuring it as 1.51 acres (65,930 sf). (Prot. Ex. 1). The refrigeration units in question were in place before he took over the businesses. However, the vendor of the

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refrigeration units has replaced the old units with new ones. The refrigeration units are not coin or mechanically operated; a customer takes a beverage out of the refrigerator and pays for it at the Exxon kiosk. He added that the only coin operated machines are the air compressor and vacuum. Mr. Attar operates both businesses as one unified business enterprise on a single site including landscaping, paving, striping of parking lot, snow removal and maintenance. Similar products are sold at the Exxon kiosk and in the 7-11 store.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005).

1. Refrigeration Units at the Exxon.

Street view photographs of the refrigeration units lined up in front of the Exxon kiosk accurately depict common refrigeration units, not coin or machine operated units. (Prot. Exs. 3, 4 and 5). As a practical matter, I am not convinced that an operator of the Exxon would place an unlimited number of refrigeration units throughout the Property as there would be no control over ensuring that customers are paying for selected beverages. It makes sense for the refrigeration units to be located within eye view of the kiosk. I note that OZR did not provide a ZAC comment

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to support Petitioner's interpretation here. The term 'vending machines' is not defined in BCZR. As a result, BCZR refers to the definition in Webster's Third New International Dictionary of the English Language, Unabridged. (BCZR, §101.1). As provided by the Protestant, the definition of 'vending machine' in Webster's Dictionary is:

> Vending machine – n. A slot machine for vending merchandise mechanically.

(Prot. Ex. 8). As shown in the street view photographs, the refrigeration units have neither a slot to insert coins, nor are beverages dispensed mechanically. (Prot. Exs. 3, 4, 5). As a result, the refrigeration units do not qualify as 'vending machines'.

I am also in agreement with Protestant's argument that, even if these refrigeration units met the definition of 'vending machines', that a convenience store with a gross floor area up to 6,000 sf is an ancillary use permitted by right in conjunction with any fuel service station under BCZR, §405.4.D.2. As such, even using Mr. Warfield's measurement that the kiosk and refrigeration units measured between 320-400 sf such a use being under 6,000 sf is permitted by right with a fuel service station, without the need for additional zoning relief. Moreover, the Property which measures 65,930 sf as set forth in the Special Warranty Deed for the Property (Prot. Ex. 1; Liber 34402, page 197) would also meet the second requirement of 4 times the square footage of the gross floor area or 1,600 sf. (BCZR, §405.4.D.2). Accordingly, the Special Hearing relief in regard to the refrigeration units must be denied.

2. <u>7-11 Sign</u>.

The Site Plan depicts that the freestanding 7-11 sign on the corner of Hooks Lane and Reisterstown Rd. (Prot. Exs. 6, 7) is on a parcel (Parcel 151) separate from the parcel upon which the Exxon and 7-11 stores operate (Parcel 152). (Pet. Exs. 1, 4A, 4B). As such Petition contends that the 7-11 sign can only be classified as an outdoor advertising sign for which there were no

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prior zoning approvals. Upon review of the 1973 Plot Plan which was jointly filed by both the Exxon Company, USA and Southland Corp (7-11 Stores), and was approved by the then Office of Planning and Zoning on August 9, 1973 (Case No. 72-141-RXA), the Exxon and 7-11 store have operated as a common enterprise, in conjunction with each other, using the Property as one unified parcel. (Prot. Ex. 9). One example is the entrances off Reisterstown Rd. as they exist today providing access to both the Exxon and 7-11 store are the same access points on the 1973 Plot Plan. Importantly, the 7-11 sign depicted on the 1973 Plot Plan is in the same location as it exists today and a rendering of the 7-11 sign, along with its measurements, were shown on that plan. (*Id.*). Thus, for this reason alone, the 7-11 sign, which was previously approved in 1973 in its current location, would be permitted to remain.

Moreover, the 7-11 sign does not become an "outdoor advertising sign" under BCZR, 450:

> 11. **OUTDOOR ADVERTISING**, meaning a non-accessory sign which is commercially maintained principally for calling attention to places, businesses, products services or activities which are located or offered on another premises.

The 1973 Plot Plan confirms that when approved by the County in 1973, the 7-11 sign was located on the same 'premises' as the Exxon and 7-11 store. It also located on the same 'premises' as defined in BCZR, §450.3:

> **PREMISES** — A recorded lot, or in the case of a multi-occupant lot such as a shopping center, office park or industrial park, the total area of the development under common ownership or control. "Premises" also means two or more contiguous lots under common ownership, leasehold or other assignment of interest in real property which are used as a unified parcel.

There is common ownership and control of contiguous lots here. Thus, even under the current BCZR, §450, the 7-11 sign is located on the same 'premises' as the Exxon and 7-11 store and

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therefore, cannot be an outdoor advertising sign. For the reasons set forth herein, the Petition for Special Hearing in regard to the 7-11 sign will also be denied.

THEREFORE, it is ORDERED this **15th** day of **August, 2022** by this Administrative Law Judge, for the reasons set forth herein, the Petition for Special Hearing from the BCZR §500.7 to determine whether the presence of more than five (5) vending machines under the canopy of an existing Fuel Service Station shall be considered a convenience store under BCZR, §405.4.D.6 and therefore require an amendment to the site plan and to the underlying Special Exception approval for the Fuel Service Station use to permit the convenience store, as well as to determine whether off-site freestanding 7-Eleven sign (located on Exxon parcel) is an outdoor advertising sign be, and they are each hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

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By D Mugnon

JOHN A. OLSZEWSKI, JR.
County Executive

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

August 15, 2022

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RE: Petition for Special Hearing
Case No. 2022-0097- SPH
Property: 1803 Reisterstown Road

Dear Mr. Baker and Mrs. La Fiandra:

Enclosed please find a copy of the decision 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,

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm
Enclosure

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Donna Mignon

From:	Administrative Hearings
Sent:	Monday, August 15, 2022 8:08 AM
To:	Adam Baker; 'Dino La Fiandra'
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Subject:	Case No: 2022-0097-SPH 1803 Reisterstown Road
Attachments:	2022-0097-SPH.pdf

Good Morning,

Please find attached ALJ Murphy's Opinion and Order in reference to the above matter.

Have a great and safe day.

Baltimore County Office of Administrative Hearings
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