



JOHN A. OLSZEWSKI, JR.
County Executive

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

August 9, 2023

John Gontrum, Esquire – jgontrum@wtplaw.com
Whiteford, Taylor and Preston
1 W. Pennsylvania Avenue, Suite 300
Towson, MD 21204

RE: Petitions Special Exception & Variance
Case No. 2023- 0109-XA
Property: 9026 Pulaski Highway

Dear Mr. Gontrum:

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,
A handwritten signature in black ink, appearing to read "Paul M. Mayhew", is written over a light blue horizontal line.

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PEM:dlm

Enclosure

C: Patrick Richardson – rick@richardsonengineering.net
Saff Properties, LLC – guddibaz@aol.com
Akhtar Bashir - pakakhtar@yahoo.com

**IN RE: PETITIONS FOR SPECIAL EXCEPTION
AND VARIANCE**

(9026 Pulaski Highway)

15th Election District

6th Council District

SAFF PROPERTIES, LLC

Legal Owner

Petitioner

BEFORE THE

THE OFFICE

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No: 2023-0109-XA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Exception and Variance filed on behalf of Saff Properties, LLC (“Petitioner”) for the property known 9026 Pulaski Highway. A Petition for Special Exception was filed from the Baltimore County Zoning Regulations (“BCZR”) §§ 236.2 and 419 to permit a full-service car wash in a BR-IM zoning District. Petition for Variance was filed per § 238.2 to permit a side yard setback of 10 ft. in lieu of the required 30 ft.

A public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petitions were properly advertised and posted.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and Development of Environmental Protection and Sustainability (DEPS”). They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order.

The Petitioner, Humayan Sheikh, of SAFF Properties, LLC was present at the hearing. Patrick (“Rick”) Richardson of Richardson Engineering was also present. The Site Plan he prepared was admitted as Petitioner’s Exhibit 1. John Gontrum, Esquire of Whiteford Taylor and Preston represented the Petitioner. There were no protestants or interested citizens in attendance.

Mr. Gontrum was permitted to proffer the facts supporting the requested relief. He explained that the site is approximately 1.90 acres and is split zoned BR-IM ML-IM. It is located on Pulaski Highway and has been the site of a variety of uses over the years, including the Polka Inn and an auto garage. The site is surrounded by other automotive, commercial, and light industrial businesses. Currently there is a motorcycle attire and accessories retail store on a portion of the site. This retail use will remain, as depicted on the site plan. The Petitioner proposes to construct a two-bay car wash. There will be two access points on Pulaski Highway. Both will be right turn in / right turn out only. As noted by DOP in their ZAC comments, the site plan proposes 57 parking spaces, whereas only 43 spaces are required. Mr. Gontrum acknowledged DOP's request that additional landscaping be installed in lieu of the excess parking spaces, and he agreed that Petitioner would do so.

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 establishes that this is such a case. As noted above, the site is surrounded by other automotive and industrial uses and this proposed service garage is quite compatible. I find that the proposed car wash will serve the other commercial and residential uses in the area and that it will have no greater impact at this location than is inherent in the use.

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).

The site is unique for a variety of reasons, it is a long rectangular parcel with an existing retail business. If the variance were denied the petitioner would suffer practical difficulty and hardship because they would not be able to construct the car wash, parking, and access lanes as proposed. The proposed setback variance will not harm the public health, safety or welfare because the reduced setback area is adjacent to an existing storm water management area serving the bowling alley next door. I therefore find that the variance relief is within the spirit and intent of the zoning regulations.

THEREFORE, IT IS ORDERED this 9th day of **August, 2023**, by this Administrative Law Judge, that the Petition for Special Exception filed pursuant to BCZR §§ 236.2 and 419 to permit a full-service car wash in a BR-IM zoning District. Petition for Variance was filed per § 238.2 to permit a side yard setback of 10' in lieu of the required 30 ft. is hereby **GRANTED**, and;

IT IS FURTHER ORDERED, that the Petition for Variance § 238.2 to permit a side yard setback of 10 ft. in lieu of the required 30 ft., is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would be required to return the subject property to its original condition.

- Petitioner must comply with the DOP and DEPS comments, copies of 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.

A handwritten signature in dark ink, appearing to read "Paul M. Mayhew", is written over a horizontal line.

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

64
23.0447

Address 9026 Pulaski Highway Currently Zoned BL-IM, ML-IM

Deed Reference 47463/ 277 10 Digit Tax Account # 1503200460 & 1503200450

Owner(s) Printed Name(s) SAFF Properties, LLC

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

1. a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. X a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

See Attached

3. X a **Variance** from Section(s)

See Attached

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

To Be Presented at Hearing

Property is to be posted and advertised as prescribed by the zoning regulations.

I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

WHITEFORD TAYLOR & PRESTON
Name - Type or Print

Signature

1 PENNSYLVANIA AVE TOWSON MD
Mailing Address City State

21204, 410-832-2055 JGONTRUM@WTPREAN.COM
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

SAFF Properties, LLC

Name #1 - Type or Print

Signature #1

4824 Ridge Road

Mailing Address

21221-3114 / 443-562-2273 / guddibaz@aol.com

Zip Code Telephone #s (Cell and Home) Email Address

Name #2 - Type or Print

Signature #2

Baltimore

City

MD

State

Representative to be contacted:

Richardson Engineering, LLC

Name - Type or Print

Signature

7 Deneison Street

Mailing Address

Timonium

City

MD

State

21093 / 410-560-1502 / rick@richardsonengineering.net
Zip Code Telephone # Email Address

Case Number 23-009-SIX Filing Date 5/16/23 Do Not Schedule Dates Reviewer gh

Zoning Relief

9026 Pulaski Highway

Special Exception

Per Sections 236.2 and 419 to permit a full service car wash in a BR-IM zoning district

Variance

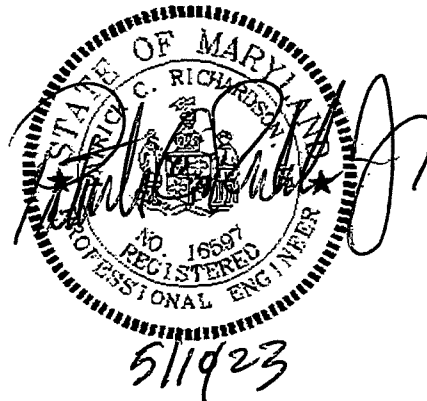
Per Section 238.2 to permit a side yard setback of 10' in lieu of the required 30'

2023-0109-SJH

**ZONING PROPERTY DESCRIPTION FOR
9026 PULASKI HIGHWAY
(U.S. ROUTE #40)
15th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND**

Beginning at a point on the **north** side of **Pulaski Highway** which is **150** feet wide at the directly across from the centerline of Holly Drive, the nearest improved intersecting street. More particularly described as: Binding on the north side of Pulaski Highway (1) North 47 degrees 05 minutes 12 seconds East 250.02 feet, thence leaving the north side of Pulaski Highway for the following courses and distances, (2) North 49 degrees 10 minutes 21 seconds West 332.76 feet, (3) South 47 degrees 12 minutes 48 seconds West 250.00 feet, (4) South 49 degrees 09 minutes 31 seconds East 333.30 feet, to the point of beginning.

Containing a net area of **82,750 Sq.Ft.** or **1.90 Ac.+/-**.



PROFESSIONAL CERTIFICATION:

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE
PREPARED OR APPROVED BY ME, AND THAT I AM A DULY
LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF
THE STATE OF MARYLAND, LICENSE NUMBER 16597,
EXPIRATION DATE: 08-15-2023

2023-0109-3044

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: C. Pete Gutwald
Director, Department of Permits, Approvals and Inspections

DATE: 6/13/2023

FROM: Steve Lafferty
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 2023-109-SPHX

INFORMATION:

Property Address: 9026 Pulaski Highway
Petitioner: SAFF Properties, LLC
Zoning: BL IM, ML IM
Requested Action: Special Exception, Variance

The Department of Planning has reviewed the petition for the following:

Special Exception -

1. Per Sections 236.2 and 419 of the Baltimore County Zoning Regulations (BCZR) to permit a full service car wash in a BR IM zoning district; and

Variance -

2. Per Section 238.2 of the BCZR to permit a side yard setback of 10' in lieu of the required 30'.

The subject site is an approximately 1.9 acre parcel located on Pulaski Highway. It is currently improved with two, one-story commercial structures (9206 Pulaski Highway and 9206-C Pulaski Highway). Per the site plan, their uses are as an auto repair facility, a used car lot, and associated retail. The lot is primarily impervious surface with a grassy strip between the two ingress/egress points. Surrounding uses along Pulaski Highway are primarily commercial and include a building supply store, a sporting goods store, office spaces, and warehouses, per Google. Directly across from the southwest ingress/egress point for the site is the ingress/egress point for an apartment complex and mobile home park; the dwelling units are set off of Pulaski Highway in an area zoned DR 16. Per the site plan, the applicants wish to remove the 2,556 square foot building known as 9026 Pulaski Highway and construct a one-story, 9,130 square foot car wash. 9026-C Pulaski Highway is proposed to remain retail space. The car wash is proposed to have 39 stacking spaces, and the lot, as a whole, is proposed to have 57 parking spaces.

The subject site is within the boundaries of the Eastern Baltimore County Revitalization Strategy and the Eastern Baltimore County Pedestrian and Bicycle Access Plan. The Eastern Baltimore County Revitalization Strategy recognizes this area as an Employment Center and states that "most of the corridor is zoned for light manufacturing uses with heavier business zoning stripping Pulaski Highway" (page 28).

In researching past granted Variances for this block of Pulaski Highway, the Department of Planning found three Variances for side yard setbacks:

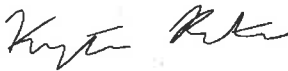
- 1986-0392 for a side yard setback of 3 feet and rear yard of 0 feet in lieu of the required 30 feet for 9020 Pulaski Highway;
- 1998-0010 for a side yard setback of 15 feet in lieu of the required 30 feet for 9315 Pulaski Highway; and
- 2007-0040 for side yard setbacks of 22 feet and 27 feet in lieu of the required 30 feet for 9220 Pulaski Highway.

The site is located in a commercial corridor and surrounded by commercial uses, some of which are automotive in nature. Further, multiple surrounding sites have received Variance approval for reduced side yard setbacks. As such, the Department of Planning has no objections to the requested relief, subject to the following conditions:

1. The project is subject to Comprehensive Manual of Development Policies (CMDP), Division III: Commercial Development within the Urban-Rural Demarcation Line, Section B: Freestanding and the Baltimore County Landscape Manual. As such, landscaping – including, but not limited to, landscaping screening/buffering of major roadways; landscaping the perimeter between adjoining uses; and landscape islands – is expected.
2. According to the site plan, the proposal is over-parked by 14 spaces, as 43 parking spaces are needed for the retail and car wash and 57 are proposed. The Department of Planning recommends the applicant revisit the proposed site layout in order to reduce the number of proposed parking spaces and increase landscaping areas. This will assist in meeting the requirements of the CMDP and the Landscape Manual, and will increase beautification of the site.

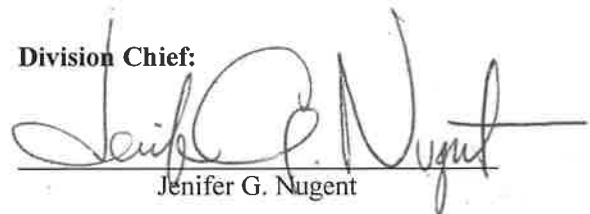
For further information concerning the matters stated herein, please contact Taylor Bensley at 410-887-3482.

Prepared by:



Krystle Patchak

Division Chief:



Jenifer G. Nugent

SL/JGN/KP

c: Richardson Engineering, LLC
 David Birkenthal, Community Planner
 Ngone Seye Diop, Community Planning Division Chief
 Jeff Perlow, Zoning Review
 Kristen Lewis, Zoning Review
 Office of Administrative Hearings
 People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: May 30, 2023

SUBJECT: DEPS Comment for Zoning Item # 2023-0109-SPHX
Address: 9026 Pulaski Hwy
Legal Owner: SAFF Properties, LLC

Zoning Advisory Committee Meeting of May 30, 2023.

The Department of Environmental Protection and Sustainability (DEPS) offers the following comments on the above-referenced zoning item:

1. Development of the property must comply with Baltimore County Code Article 33, Environmental Protection And Sustainability, Title 3, Protection of Water Quality, Streams, Wetlands, and Floodplains. There are known streams and wetlands north of this property that are connected to a swale/depression off the western property line. The property must be evaluated for streams, wetlands, and forest buffer requirements by a qualified professional. The delineation must be submitted to DEPS for review.
2. Development of this property must comply with Baltimore County Code Article 33, Environmental Protection And Sustainability, Title 6, Forest Conservation. This property needs to be evaluated in the field by a qualified professional before the applicability of this law can be determined. A forest conservation waiver may apply if waiver requirements can be met.

Reviewer: Paul Dennis, DEPS-Environmental Impact Review

CERTIFICATE OF POSTING

CASE NO. 2023-0109-XA

PETITIONER/DEVELOPER

Whiteford Law

John Gontrum

DATE OF HEARING/CLOSING

July 28, 2023

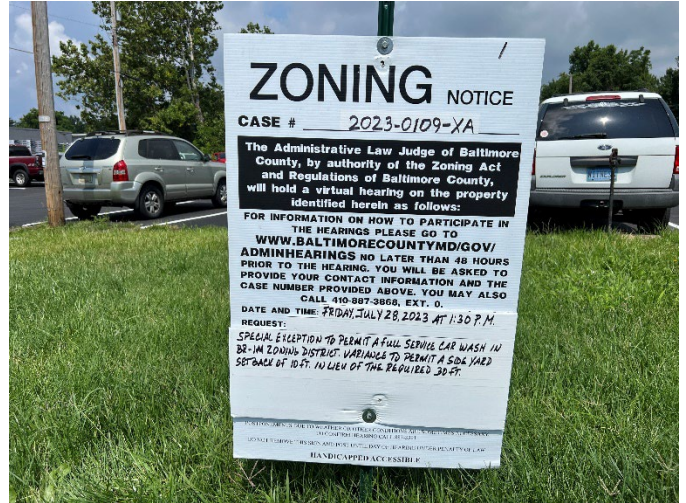
BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE
ATTENTION:

LADIES AND GENTLEMEN:

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE
NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT

9026 Pulaski Highway

Sign 1



THE SIGN(S) POSTED ON July 7, 2023

(MONTH, DAY, YEAR)

SINCERLEY,

MARTIN OGLE

MARTIN OGLE

9912 MAIDBROOK RD.

PARKVILLE, MD 21234

443-629-3411

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: C. Pete Gutwald
Director, Department of Permits, Approvals and Inspections

DATE: 6/13/2023

FROM: Steve Lafferty
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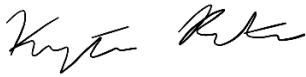
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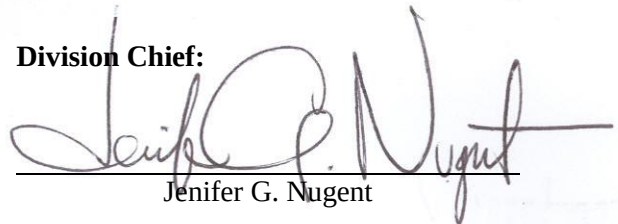
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Prepared by:



Krystle Patchak

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 Kristen Lewis, Zoning Review
 Office of Administrative Hearings
 People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Peter Gutwald, Director
Department of Permits, Approvals

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For May 30, 2023
Item No. 2023-0109-XA

DATE: June 1, 2023

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

If Special Exception and Zoning Relief is granted, a Landscape Plan is required per the requirements in the Landscape Manual. A Lighting Plan will also be required.

An advisory note to developer/owner; there is an existing storm drain pipe under the proposed building that has to be relocated during the Development process.

DPW&T Comment:

A non-tidal flood plain may be on the property flowing overland and through an existing storm drain system. A non-tidal flood study based on ultimate land use conditions according to the Department of Permits, Approvals and Inspections Bureau of Development Plans Review (DPR) Policy Manual and DPWT Design Manual must be submitted and "Accepted for Filing" by DPR before the approval of the Variance for the addition. The proposed addition must also meet DPWT Design Manual Plate DF-1.

* * * * *

VKD: cen
cc: file

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: May 30, 2023

SUBJECT: DEPS Comment for Zoning Item # 2023-0109-SPHX
Address: 9026 Pulaski Hwy
Legal Owner: SAFF Properties, LLC

Zoning Advisory Committee Meeting of May 30, 2023.

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Reviewer: Paul Dennis, DEPS-Environmental Impact Review

