

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2699

PEITITON OF EXXONMOBIL CORPORATION

OPINION OF THE BOARD

(Opinion Adopted July 29, 2009)

(Effective Date of Opinion: September 3, 2009)

Case No. S-2699 is an application for a special exception, pursuant to Section 59-G-2.06 of the Zoning Ordinance, to allow an automobile filling station, including a car wash and a convenience store, on a site currently occupied by an abandoned filling station. The Hearing Examiner for Montgomery County held a public hearing on the application on February 26, 2008, closed the record on June 16, 2008, and on July 1, 2008, issued a Report and Recommendation for approval of the special exception. On July 11, 2008, the Board received a request for Oral Argument in the case from Jody S. Kline, Esquire, on behalf of ExxonMobil, the Petitioner. Mr. Kline requested the opportunity to present argument on several points related to proposed Condition No. 16 in the Hearing Examiner's Report and Recommendation. Oral Argument, limited to the question of the legality of requiring off-site improvements in connection with a special exception, not related to adequate public facilities matters, on confronting properties outside of the boundaries of the proposed special exception, was scheduled for Wednesday, December 10, 2008, and subsequently postponed until Wednesday January 21, 2009 and again, to Wednesday, May 27, 2009.

The Board heard Oral Argument on May 27, 2009. Jody S. Kline, Esquire appeared. Martin Klauber, Peoples Counsel for Montgomery County, also appeared. At the oral argument Mr. Kline withdrew the Petitioner's request to give argument, and asked the Board to defer its consideration for two weeks, to allow him to submit addition information, pertinent to the purpose of Condition No. 16, regarding his negotiations with neighbors of the subject property. Mr. Klauber held his request to present argument in abeyance.

The Board again considered the Hearing Examiner's Report and Recommendation, together with the request for Oral Argument, at its Worksession on July 29, 2009. Mr. Kline, on behalf of ExxonMobil, stated the Petitioner's desire to move forward with the case and expressed ExxonMobil's willingness to accept Condition No. 16 as proposed by the Hearing Examiner.

Opinion of the Board: Special Exception **Granted**, Subject
To Conditions Enumerated Below.

After careful consideration and review of the record in the case, the Board adopts the Hearing Examiner's Report and Recommendation and grants the special exception, subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's Report and in the Opinion of the Board.
2. The use is limited to an automobile filling station with ten (10) pumping stations, a convenience store (with 1,770 square feet of sales area), and a single-bay car wash, with no more than seven (7) employees, and a maximum of four (4) on any shift.
3. Hours of operation of the automobile filling station and the convenience store are limited to 6:00 a.m. to 11:00 p.m., and that of the car wash to 8:00 a.m. to 9:00 p.m., seven days a week.
4. At the time of subdivision, Petitioner must confirm the center line established on the special exception site plan for Old Spencerville Road, in coordination with M-NCPPC Transportation Planning staff, DPWT staff and State Highway Administration (SHA) staff.
5. At the time of subdivision, in coordination with Transportation Planning staff, DPWT staff, and SHA staff, Petitioner must determine the appropriate right-of-way and cross-section for Old Spencerville Road, and must dedicate from the established right-of-way center line a minimum of at least half the road right-of-way as public right-of-way for the entire property frontage.
6. At the time of subdivision, consistent with the 1997 Approved and Adopted *Cloverly Master Plan*, Petitioner must show right-of-way dedication for MD 650 (a minimum of 60 feet from the road right-of-way center line) and MD 198 (a minimum of 60 feet from the road right-of-way center line) on the preliminary plan.
7. At the time of subdivision, in coordination with Transportation Planning staff, DPWT staff, and SHA staff, Petitioner must determine the appropriate design for the intersection of MD 650 and Old Spencerville Road, and must show necessary turn lanes into/out of Old Spencerville Road from/to MD 650 and potential northbound U-turn restrictions along MD 650 between MD 198 and Bay Hill Lane. The intersection improvements and other approved turning restrictions must be in place prior to the release of occupancy permits for the proposed special exception use.
8. Petitioner must improve Old Spencerville Road along the property frontage to the cross-section determined as above within six months of the release of building permits for the proposed special exception use. Given the fact that there currently is no other land use proposed along Old Spencerville Road, the roadway may continue to be temporarily blocked to the east of the eastern driveway to the proposed use.

9. Petitioner must remove the existing sidewalk along the property frontage and must provide a new five-foot wide sidewalk along MD 650 between MD 198 and Old Spencerville Road. The sidewalk must be offset two feet from the property boundary and must be in place prior to the release of occupancy permits for the proposed special exception use.
10. The Petitioner must comply with stormwater and sediment control regulations of the Montgomery County Department of Permitting Services (DPS).
11. Fuel storage tank and fuel pump installation and use, must comply with the control guidelines and air quality permitting requirements of the Maryland Department of the Environment (MDE).
12. Fuel storage tanks must meet required technical standards and must comply with all county, state and federal permitting requirements.
13. Permits must be obtained for the proposed signs, and copies thereof must be filed with the Board of Appeals prior to posting the signs.
14. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.
15. Before this special exception takes effect, Petitioner must redraw its southeastern driveway onto Old Spencerville Road so that it will be perpendicular to the curb or street line in accordance with Zoning Ordinance §59-G-2.06(b)(5), as shown on earlier versions of the site plan. The revised site plan should be submitted to the Board of Appeals for final approval.
16. Before this special exception takes effect, Petitioner must modify its landscape plan to show a six-foot, board-on-board (or solid wood) fence, with plantings at its base and designed in a manner approved by Technical Staff, on the properties of the confronting property owners on Old Spencerville Road, whose addresses are 1127 Parrs Ridge Drive (currently Michael Aladesuru) and 1131 Parrs Ridge Drive (currently Bikram Singh). This condition will apply only if permission for such a fence and plantings is given by the property owners. Petitioner must also make reasonable efforts (*i.e.*, certified mail) to advise the other confronting property owner on Old Spencerville Road, Sunny Varkey, of the fence proposal, and offer to extend the fence onto his property, designed in a manner approved by Technical Staff. The revised landscape plan must be submitted to the Board of Appeals for final approval.
17. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special

exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Carolyn J. Shawaker, seconded by Walter S. Booth, with Stanley B. Boyd, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of September, 2009.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.