

IN THE MATTER OF	*	BEFORE THE
A.I. GLENVIEW, LLC, LEGAL OWNER		
TIKVA, LLC, CONTRACT PURCHASER	*	BOARD OF APPEALS
PETITIONERS FOR SPECIAL HEARING		
AND SPECIAL EXCEPTION ON	*	OF
THE PROPERTY LOCATED AT		
800 GOUCHER BOULEVARD	*	BALTIMORE COUNTY
9 <sup>TH</sup> ELECTION DISTRICT	*	Case No.: 23-262-SPHX
6 <sup>TH</sup> COUNCIL DISTRICT		

\* \* \* \* \*

**OPINION**

This matter comes before the Board of Appeals following an appeal filed by Petitioners, A.I. Glenview, LLC and Tikva LLC, (hereinafter “Petitioners”), from a decision dated February 26, 2024, by Administrative Law Judge (“ALJ”) Andrew M. Belt. In that opinion, the ALJ denied a Petition for Special Exception to permit a roll-over car wash in combination with an existing fuel service station and convenience store. In addition, the ALJ denied a Petition for a Special Hearing to amend a previously approved site plan in order to reflect the car wash. The Board held an in-person hearing on August 15, 2024. The Petitioner was represented by Dino C. La Fiandra, Esquire. No one appeared in opposition to the request. The Board held a public deliberation on October 10, 2024.

**BACKGROUND**

The first witness was civil engineer Wayne Newton, P.E. of Messick and Associates. He was certified as an expert in civil engineering, land planning, and land development including the Baltimore County Zoning Regulations (“BCZR”) and associated development regulations. He testified that the subject property is approximately 1.44 acres located on the northwest corner of the controlled intersection of Goucher Boulevard and Putty Hill Avenue. The property is zoned BL AS. At the present time, there is an Exxon gas station and an 1,100 square foot

convenience store. There are two exit/entrances onto Goucher Boulevard and one onto Putty Hill Avenue. All of the zoning, setback, and size requirements for a roll-over car wash are satisfied on the subject property. Surrounding the property are apartment complexes to the north and south, apartments and houses to the west, the large Towson Place commercial retail development to the east, and Calvert Hall High School to the southeast. Several new restaurants have been built on the edge of the Towson Place development close to the subject property.

Petitioner modified the orientation of the proposed car wash from that presented to the ALJ by about 20 degrees. Consequently, the car wash exit would now face directly to Putty Hill and away from any residential areas. This new orientation also ameliorates noise from the blowers. Mr. Newton testified that they also intend to have a noise abatement wall to reflect noise away from any residences. The apartment complex to the west is well above the subject property which has a stone retaining wall and a relatively dense row of trees which shields the subject property, and any activity on it, from the apartment complex.

Mr. Newton testified that the roll-over car wash would most likely not be a destination car wash. Rather it would be more a service offered to customers using the facility to re-fuel. He indicated that this is a very large commercial site for what is presently at the location which, according to him, means that it is an under-utilized commercial location. He specifically stated that this is “a very large site for a very small use.” Also, there is no other location on the site that can accommodate the car wash because an abandoned right-of-way runs along the west wall of the proposed car wash.

Finally, Mr. Newton testified that the proposed development would result in an improved stormwater management system, provide needed car wash services in the immediate area, and lead to the only appropriate modification for the under-utilized site.

The next witness was Mark Keeley of Traffic Concept, Inc. Mr. Keely is a Professional Traffic Planner (“PTP”). He acknowledged that although the Putty Hill/Goucher Blvd. intersection had a D ranking, the data indicated that from 2021 the volume has been stable. He also indicated that Institute of Transportation Engineers Use Code, 11<sup>th</sup> Edition, indicated at Section 9.44 the presence of a roll-over car wash does not typically increase the number of uses at a given location.

The final witness was Afshin Attar. He indicated that he and his brother own Tikva, LLC (“Tikva”) which owns the site. Mr. Attar stated that Tikva owns four other gas stations. One of those stations is located in Carroll County and has a roll-over car wash. Based on that experience, he echoed the earlier testimony that the car wash was not a destination in and of itself and that it did not measurably increase traffic. According to Mr. Attar, the car wash was profitable because the pre-existing fuel customers utilized it.

As indicated above, no one appeared in opposition to the petitions.

### **DISCUSSION**

In order to grant a request for a Special Exception under BCZR, §502.1, it must appear that the use for which the Special Exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

In *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981), the Supreme Court of Maryland held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and therefore should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." The Supreme Court of Maryland in *People's Counsel for Baltimore County v. Loyola College* in Md. 406 Md. 54, 106 (2008) upheld that longstanding *Shultz* analysis, explaining that a Special Exception use has "certain [inherent] adverse effects... [which] are likely to occur." Recognition of those adverse effects, however, must be tempered by the fact that a special exception use reflects legislative pre-approval of such a use, absent a failure to meet the §502.1 criteria. In its analysis, the Loyola Court observed that "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." (*Id.* at 71.)

The only two features that arguably run afoul §502.1 are increased traffic and noise. All of the Petitioner's witnesses testified that there would be no appreciable increase in traffic because of the addition of the roll-over car wash. As to noise, Mr. Newton testified that in the revised plan submitted to the Board, the source of the noise – the drying units – had been oriented away from the residential units, thus reducing any potential noise impact in that direction. Additionally, Petitioner is itself proposing a six foot noise abating fence. In its deliberations, the Board determined that the hours of operation for the car wash would be limited to 7:00 am to 9:00 pm, further reducing the effect that the noise could have on any neighboring residences.

Finally, the site is eight to ten feet below the adjacent apartment complex further mitigating any noise issue. In short, the Board concluded that neither the traffic impact nor the noise from this car wash would have a greater adverse effect than one would typically associate with a car wash generally. For these reasons, the Board finds that the special exception was warranted.<sup>1</sup>

The special hearing request is simply to approve an amendment to the previously approved site plan in case 1989-0479-SPHXA to allow a roll-over car wash as a use in combination with the existing fuel station. Given the Board's determination that the special exception is warranted, the relief sought in the Petition for Special Hearing is likewise granted.

### **COLLATERAL ESTOPPEL<sup>2</sup>**

There were two prior zoning decisions in this matter: 1989-0479-SPHXA and 1996-0029-SPHX. The ALJ found that these two prior zoning matters precluded the present special exception request because the same issue was decided in these two cases. The ALJ held that Petitioner could not now challenge the underlying factual finding in those cases that a special exception for a roll-over car wash not permitted within BCZR §502.1. Petitioner argued that there was no collateral estoppel because there had never been a final decision on the merits. Petitioner correctly noted that the 1996 decision did not address the question of the car wash, and consequently could not be a basis for collateral estoppel. As to the possible binding effect of the 1989 decision, the Board did not reach a conclusion. As to that matter, there had been a finding

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<sup>1</sup> The Board also finds that the Towson Community Plan is not an impediment to the proposed improvement. The Board adopts as its reasoning the argument presented in Petitioner's Memorandum at p. 9-12.

<sup>2</sup> The ALJ in this case found that collateral estoppel barred the present Petitions. Upon appeal to the Board, no one appeared in opposition to the Petitions, and no one argued to the Board that collateral estoppel *did* apply. Arguably the collateral estoppel question was not therefore presented to the Board because the Board is not "reviewing" the ALJ decision. In the absence of a party raising a legal issue, is the issue even operative? Even though the appeal is *de novo*, it is difficult to unring the collateral estoppel bell. The Board itself raised the question with Petitioner's counsel who was fully prepared to address it, properly before the Board or not. We therefore treat the issue as one that has been raised by the Board regardless of the source that may have generated the inquiry.

by the Deputy Zoning Commissioner that the proposed uses, *i.e.* a convenience store, gas station, and car wash did not justify a special exception. On appeal to the Board of Appeals, the 1989 petitioners abandoned the request for the car wash. The Board approved the request for the gas station and convenience store with limiting conditions not relevant to this matter. The legal question in this matter, then, was whether the unappealed 1989 decision by the Deputy Zoning Commissioner was “final” for these purposes or whether the fact of the *de novo* appeal that excluded the car wash issue had the effect of completely erasing the ALJ decision in its entirety even as to unappealed conclusions. In other words, did the failure to include the car wash issue in the 1989 appeal to the Board mean that the car wash issue was final for all future purposes, or did the filing of a *de novo* appeal completely eradicate any significance that the 1989 Zoning Commissioner decision may have had meaning that there was no binding factual conclusions that could be attributed to that decision?

There is no need for the Board to resolve this rather arcane legal question. The Board members were all familiar with this intersection and recognized that the density and commercial activity has increased in the thirty-five years since the 1989 decision. Because the circumstances have changed, collateral estoppel is not a bar to the relief presently sought. *Woodlawn Assn. v. Board of County Commissioners*, 241 Md. 187, 197 (1965); *Marshall v. Fitzgerald*, 47 Md. App. 319, 326 (1980).

### **CONCLUSION**

For the reasons stated above, the Board finds that the relief sought in the two Petitions is permitted, with the limitations included in both the revised site plan offered as Petitioner’s Exhibit 3 and the accompanying Order. In addition, the Board further finds that collateral estoppel does not preclude the requested relief.

**ORDER**

**THEREFORE, IT IS THIS** 17th day of December, 2024, by the Board of Appeals of Baltimore County, hereby:

**ORDERED**, that the Petition for a Special Exception to add a roll-over car wash at 800 Goucher Boulevard is approved conditioned upon any and all improvements being made in accordance with the revised site plan introduced as Exhibit 3 before the Board of Appeals, including the installation of a six-foot sound barrier as reflected in that revised site plan, and the additional condition that the car wash only be operated between 7:00 a.m. and 9:00 p.m.; and it is further

**ORDERED**, that the Petition for Special Hearing is granted to approve an amendment reflecting the installation of the roll-over car wash to the previously approved site plan in Board of Appeals case 1989-0479-SPHXA.




In the matter of: A.I. Glenview, LLC, Legal Owner  
Tikva, LLC, Contract Purchaser  
Case No.: 23-262-SPHX

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
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Joseph L. Evans, Chair

  
\_\_\_\_\_  
Bryan T. Pennington

  
\_\_\_\_\_  
William H. Paulshock, Sr.





## Board of Appeals of Baltimore County

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SECOND FLOOR, SUITE 203  
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December 17, 2024

Dino C. La Fiandra, Esquire  
Law Office of Dino C. La Fiandra, LLC  
100 W. Pennsylvania Avenue, Suite 305  
Towson, Maryland 21204

RE: In the matter of: *A.I. Glenview, LLC – Legal Owner*  
*Tivka, LLC – Contract Purchaser*  
Case No.: 23-262-SPHX

Dear Mr. La Fiandra:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Hay".

Krysundra "Sunny" Cannington  
Executive Secretary

KLC/taz  
Enclosure

c: Marilyn Lustbader, Manager/A.I. Glenview, LLC  
Afshin Attar/ Tivka, LLC  
Jacob Attar/Tivka, LLC  
Office of People's Counsel  
Maureen E. Murphy, Chief Administrative Law Judge  
Stephen Lafferty, Director/Department of Planning  
C. Pete Gutwald, Director/PAI  
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