

Tax Map/Block/Parcel  
No. 73-3-461

Case 5529

**OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND**

**APPLICANT:** St. John Properties  
c/o Thomas J. Pilon  
2560 Lord Baltimore Drive  
Baltimore, Maryland 21244

**ATTORNEY:** Clark R. Shaffer

**REQUEST:** An appeal of the Planning Commission's decision restricting hours of operation on the convenience store/gas station (condition #5) for Liberty Exchange.

**LOCATION:** The site is located at 438 West Old Liberty Road, Sykesville, MD 21784, on property zoned "I-R & C" Restricted Industrial and Conservation Districts in Election District 14.

**BASIS:** Code of Public Local Laws and Ordinances, Section 223-186

**HEARING HELD:** January 5 and January 27, 2010

**FINDINGS AND CONCLUSION**

On January 5 and January 27, 2010, the Board of Zoning Appeals (the Board) convened to hear an appeal of the Planning Commission's decision restricting hours of operation on the convenience store/gas station (condition #5) for Liberty Exchange. Based on the testimony and evidence presented, the Board made the following findings and conclusion:

The subject property is 40.15 acres (+/-) at 438 West Old Liberty Road in Eldersburg. It was previously used as a golf driving range and miniature golf course. The property has a mixed zoning designation of "I-R" Restricted Industrial and "C" Conservation. The Conservation zoned portion will remain largely undisturbed. However, the other 30 acres (+/-) is to be redeveloped as a mixed use business park consisting of two office buildings, two light industrial flex space buildings, and two retail buildings. In addition, a convenience store/gas station, a bank and restaurant are planned for that portion of the site closest to Liberty Road.

At the September 15, 2009 meeting of the Carroll County Planning and Zoning Commission ("Planning Commission") a site plan for the development which met or exceeded all applicable subdivision regulations, was approved with eight conditions. One condition, which is the only subject of this appeal, restricted the hours of operation for the convenience

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store/gas station from 5:00 a.m. to midnight. The Appellant is the developer of the site and is objecting to the hours restriction.

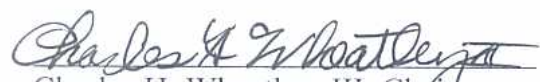
Chapter 103 §19 of the Code of Public Local Laws and Ordinances authorizes the Planning Commission to approve site plans “with modifications and conditions.” The Planning Commission, apparently in response to the concerns about crime, noise, lighting and traffic voiced by residents of neighboring subdivisions, imposed the hours restriction on the convenience store/gas station. Members of the Planning Commission, in oral and written testimony before the Board, opined that the condition was necessary to protect the health, safety and welfare of the neighbors.

While the Planning Commission has the authority to impose conditions regarding the restriction of hours, the condition itself must be supported by facts or proper factual inferences. Turning to the evidence before the Board, a qualified real estate expert testified that a store which is open all night would likely deter crime, more so than an empty, dark store. In addition, testimony from the Appellant’s witnesses showed that these stores are typically open 24 hours and that no other gas stations or convenience stores in Carroll County are subject to any hours restrictions. Traffic generated by the convenience store/gas station was expected to be minimal from midnight to 5:00 A.M. the hours in question (5 per hour). Also noteworthy is the fact that the other uses in this business park, including the restaurant and bank, are not subject to any time restrictions. There was no evidence presented that lighting for the entire business park would be reduced if the convenience store/gas station hours were restricted during the hours at issue.

Some neighbors of the proposed business park testified as to their fear of crime, noise, and light pollution if the convenience store/gas station were to be open 24 hours. Others complained that there was no need for this use at this location. However, there was no empirical evidence presented supporting these contentions. They appear to be based solely on speculation and a general distaste for the overall project at this location.

With all due respect to the Planning Commission, the Board concluded that the hours restriction, while imposed in good faith, did not appear to be supported by any competent evidence. The fears regarding crime were not supported by any facts. Traffic and noise generated by 5 customers per hour during the disputed hours is inconsequential. The fact that no other uses on the site had restricted hours also makes the condition ineffective and irrational. Any perceived adverse effects from the 24 hour operation were based solely on speculation and conjecture, rather than fact. This property is zoned “I-R” Restricted Industrial, and the list of other allowed uses includes far more intense uses with much more deleterious effects than a 24 hour convenience store/gas station. In short, there was no substantial evidence presented to the Planning Commission or this Board which would support the time restriction, and the Board struck Condition #5 from the site plan approval for this project.

February 24, 2010  
Date

  
Charles H. Wheatley, III, Chair