

IN THE MATTER OF : BEFORE THE
AK Ghauri, LLC : HOWARD COUNTY
 Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : Case No. BA-19-039N&V

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DECISION AND ORDER

On July 15, 2024, the undersigned, serving as a Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of **AK Ghauri, LLC**, Petitioner, for modifications of the conditions¹ of the July 24, 2020 Decision and Order of the Hearing Examiner in AK Ghauri, LLC, Case No. BA-19-039N&V, which approved (1) Confirmation of a Nonconforming Use as a motor vehicle fueling facility and convenience store pursuant to Section 129.0.D. of the Howard County Zoning Regulations (the "**Zoning Regulations**"); (2) Enlargement/Extension of a Nonconforming Motor Vehicle Fueling Facility to add a drive thru car wash, storage building, two-bay vehicle repair building and dumpster enclosure filed pursuant to Section 129.0.E of the Zoning Regulations; and (3) Variances to reduce the 30-foot setbacks from a residential zoning district to 2.6 feet on the side and 5 feet on the rear for parking, vehicle stacking, and a dumpster enclosure under Section 130.0.B.2 of the Zoning Regulations.

¹ The section under which the variances were granted (130.0.B.2) and the section under which the enlargement of the nonconforming use was granted (129.0.E), both state that the approvals lapse within 2 or 3 years, and those sections do not expressly provide for an opportunity for the applicant to request an extension. (While the regulations state the approvals lapse in 2 or 3 years, the July 24, 2020, Decision and Order allowed the approvals to lapse in 4 or 5 years as the hearing was held in the worst part of the pandemic shutdowns. Additional time was requested and allowed for that reason.) Since there is not an express right to request an extension of a nonconforming use enlargement, and since there are not express provisions that govern the request for an extension of a variance approval, the requests were made in a Petition to Modify the Conditions of Approval of the Variance under Section 130.0.B.2.d. and included a request for modification of the approval of the enlargement of the nonconforming extending the time allowed to obtain a building permit.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was represented by Adam Baker, Esq., of Rosenberg Martin Greenberg LLP. Patrick Richardson of Richardson Engineering, LLC, and Khalid Azam, a member of AK Ghauri, LLC, appeared in support of the petition. Pamela Kreis, a resident of and speaking on behalf of the Board of Directors of the association of the Gatherings at Jefferson Place, the adjacent residential community, and Francis Comito, a resident of the Gatherings at Jefferson Place, appeared in opposition to the petition and asked questions of the Petitioner's witnesses.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. Subject Property.

The subject property, known as 4235 Montgomery Road, is in a B-2 (Business: General) Zoning District, on that land belonging to the Petitioner (Tax Map 24, Parcel 444) containing about 36,154 SF ("**Property**").

2. Prior Zoning History.

In Case No. BA-96-40E&V, a Special Exception for a gasoline service station/convenience store and a variance to reduce the 30-foot setback from a residential zoning district to 10 feet was granted on December 3, 1996, through Special Exception BA-96-40E&V.

The July 24, 2020 Decision and Order of the Hearing Examiner in AK Ghauri, LLC, Case No. BA-19-039N&V, approved (1) Confirmation of a Nonconforming Use as a motor vehicle fueling facility and convenience store pursuant to Section 129.0.D. of the Zoning

Regulations; (2) Enlargement/Extension of a Nonconforming Motor Vehicle Fueling Facility to add a drive thru car wash, storage building, two-bay vehicle repair building and dumpster enclosure filed pursuant to Section 129.0.E of the Zoning Regulations; and (3) Variances to reduce the 30-foot setbacks from a residential zoning district to 2.6 feet on the side and 5 feet on the rear for parking, vehicle stacking, and a dumpster enclosure under Section 130.0.B.2 of the Zoning Regulations.

The July 24, 2020, Decision and Order, which is incorporated as if fully set forth herein, approved the above relief subject to the following stated conditions:

- As to the approval of the variances granted under Section 130.0.B.2 of the Zoning Regulations, the variances granted shall become void unless the required permits conforming to the plans for which the variances were granted are obtained within four (4) years from the date of the July 24, 2020, Decision and Order and substantial construction in accordance therewith is completed within five (5) years from the date of this Decision and Order; provided, however, that these time periods shall not apply to any project for which plans are being actively processed in compliance with the procedures in Title 16, Subtitles I and II of the Howard County Code or where being actively processed in compliance with those subtitles when the applicable time period established herein expired.; and
- As to the approval of the extension/enlargement of the nonconforming use, the July 24, 2020, Decision and Order shall become void unless a building permit conforming to the plans for which the approval is granted is obtained within four (4) years, and substantial construction in accordance therewith is completed within five (5) years from the date of the decision. If a building permit is not necessary for any structure this Decision and

Order shall become void as to those structures unless the extension or enlargement is implemented within four (4) years from the date of this decision.

3. Exhibits.

- Petitioner's Ex. 1 – Patrick C. Richardson, Jr., PE CV
- Petitioner's Ex. 2 – Decision and Order BA-19-039N&V, July 20, 2024
- Petitioner's Ex. 3 – Plan to Accompany Petition dated 7/8/19
- Petitioner's Ex. 4a-4j – Photographs
- Petitioner's Ex. 5 – Updated Site Layout Plan - 12/8/23 (“**Updated Plan**”)
- Petitioner's Ex. 6 – May 23, 2024, Letter from DPZ – SDP Technically Complete

4. Requests.

The Petitioner seeks to amend the conditions to extend the validity of the variances granted to eight (8) and nine (9) years from the date of the July 24, 2020, Decision and Order so that said variances shall become void if the required permits conforming to the plans for which the variances were granted are not obtained by July 24, 2028, and substantial completion not achieved by July 24, 2029.

The Petitioner seeks to amend the conditions to extend the validity of the approval of the extension/enlargement of the nonconforming use to eight (8) and nine (9) years from the date of the July 24, 2020, Decision and Order so that said extension/enlargement shall become void if the required permits conforming to the plans for which the variances were granted are not obtained by July 24, 2028, and substantial construction in accordance therewith is not completed by July 24, 2029.

5. Testimony.

Mr. Richardson testified that the proposed redevelopment of the Property has changed significantly since the July 24, 2020, Decision and Order was issued. The newly designed development is shown in the Updated Plan, which he explained in detail. He stated that the expansion of the nonconforming use is less of an expansion compared to the 2020 approval. The reason for the change is that the stormwater management facilities have had to be redesigned, resulting in less available area for structures. The stormwater management design has been a major issue and has caused significant delays in the project.

He stated that there is no longer a service garage proposed as part of the redevelopment given the constraints for stormwater management. The equipment storage building has been reduced to 229 sq ft and the car wash has been reduced to 632. He stated that because of the removal of the service garage component, “we were able to remove some of the parking spaces, which allowed us then to meet the stormwater regulations.”

Mr. Richardson also testified as to the progress of the development so far. “So, we obtained approval of our ECP finally, and then we now have technical approval of our site development plan SDP and we're in the process of preparing the final agreements, get the SDP signed and then we would apply for the building permits. . . . Once we obtained the approval and started looking at the, the engineering aspects of the project, we found that the existing storm drains, that we would be draining into were pretty shallow. . . which meant all of our stormwater facilities needed to be expanded wider because we couldn't go deeper and we tried many different process solutions for doing that. So we had a numerous back and forth with the DD folks and trying to gain a tool of our, environmental concept plan. In addition, the COVID pandemic slowed down the processing of plans. . . . Well, it, it certainly made it a lot more

difficult to have an efficient workflow, with people not working all the time or trying to work from home and communication back and forth with the county. . . . It definitely slowed down the process.”

Mr. Richardson stated that because the Updated Plan has a smaller footprint, it will require less of a variance than originally requested and approved.

Ms. Kreis, on behalf of the Gatherings at Jefferson Place, asked Mr. Richardson about the distance between the property to the east and the storm water management, and she also asked about what the storm water management facility would look like. He stated that it would be a sunken landscape area. He also stated in response to Ms. Kreis that the original trees that existed in that area were removed and that there is an approved landscape plan which meets the minimum requirements for the landscaping. Mr. Richardson stated the development “will be less impactful. You've got more space there. It's gonna be more room for green area. It may not be quite landscaping, but it will be a green area that's storm water management and the cars will be pulled further away from the property line.”

Mr. Comito asked about the propane tank next to the convenience store. Mr. Richardson stated that the tank will be removed. Mr. Comito also expressed concern about the potential for overflow from the site's car wash to overtake the stormwater management facility and run into the neighboring facility. Mr. Richardson explained that about “90 % of it [the water] gets recycled, and if there's enough overflow of the recycling or anything, it goes into the sanitary system.”

Mr. Richardson's and Mr. Azam's testimony as well as the documents submitted, show that the proposed use and redevelopment of the site meets all applicable Howard County zoning regulations. The changes in the plan were made due to stormwater management issues, resulting

in a smaller project footprint. The landscape plan has been approved and meets the requirements, but some existing trees were removed. The owner of the property, Mr. Azam, plans to remove the propane area and install a fence for buffering and security.

Ms. Kreis testified and raised concerns about the impact of the development on the Gatherings at Jefferson Place property, including traffic issues and stormwater management. In particular, the owner's association believes an "extension of four more years to obtain additional approvals is excessive by itself, but more importantly does not allow the public and the county to review potential errors related to the original petition." Ms. Kreis stated that there was not adequate notice of the original hearing.²

She proceeded, "2nd, the original petition indicated that the closest building on our property on our property to the fueling facility was office space and concluded that the impact would be minimal. In fact, this building is our community center which is used continuously for multiple types of activities. It will be impacted by additional vehicles and the inherent noises of a car wash, despite the fact that the car wash is located on the, on the west side of, of the property in question. Number three, the recently completed highway expansion in front of the fueling facility now has three car lanes westbound instead of two that were there at the time of the hearing in 2020 plus a bike lane. There have been numerous car accidents at this location as cars try to exit. . . . 4th point I wanted to make is that the setback along the east . . . is very close to a drain drainage culvert that we're required to have and maintain as part of our storm water management system . . . We're concerned about overflowing water from the fueling facility to our property due to the increased cement asphalt surfaces that will be added."

On behalf of the property owner, Mr. Azam expressed a willingness to address these concerns and work with the community, which I support and encourage.

CONCLUSIONS OF LAW

As stated above in Footnote 1, the section under which the variance was granted (130.0.B.2) and the section under which the enlargement of the nonconforming use was granted (129.0.E), both state that the approvals lapse within 2 or 3 years, and those sections do not expressly provide for an opportunity for the applicant to request an extension. While the regulations state the approvals lapse in 2 or 3 years, the July 24, 2020, Decision and Order allowed the approvals to lapse in 4 or 5 years as the hearing was held in the worst part of the pandemic shutdowns and additional time was requested and allowed for that reason. Thus, the effects of the pandemic were considered initially when I allowed an additional 2 years each for the lapsing of the variance and nonconforming use enlargement approvals.

Since there is not an express right to request an extension of a nonconforming use enlargement, and since there are not express regulations that govern the request for an extension of a variance approval, the requests at issue were made in a Petition to Modify the Conditions of Approval of the Variance under Section 130.0.B.2.d. and included a request for modification of the approval of the enlargement of the nonconforming extending the time allowed to obtain a building permit.

² As stated at the hearing, I lack authority to reconsider the original petition. However, I accepted the testimony of the residents to determine if existing conditions are significantly changed or that changes have taken place in the circumstances which led to the original decision to approve the original petition, such that the extensions would not be appropriate.

Petitioner has requested an additional four (4) years for each of the approvals. Because neither the variance nor nonconforming use provisions expressly allow extensions, there are no express criteria under which these requests are required to be considered. However, I will take guidance from Section 131.0.I.3.c – the express provision allowing requests for extensions of conditional use approvals and setting forth criteria to be considered. Further, I note that with regard to the variance approvals, section 130.0.B.2.e.(2) states: that the variances shall not lapse as “to any project for which plans are being actively processed in compliance with the procedures in Title 16, Subtitles I and II of the Howard County Code or where being actively processed in compliance with those subtitles when the applicable time period” expired. That section allows a hearing authority to approve extensions up to a maximum of three (3) years each. The processing of a site development plan is within the scope of Title 16, Subtitle 1.

Having read and considered the Petitioner's request, the documents submitted with the Petition, and the testimony of the witnesses at the hearing, I find the following:

1. That the variance(s) granted by the July 24, 2020, Decision and Order under Section 130.0.B.2 of the Zoning Regulations were to become void unless the required permits conforming to plans for which the variances were granted are obtained no later than July 24, 2024, and substantial construction in accordance therewith is completed by July 24, 2025, and unless the Petitioner was not actively processing a site development plan.

2. That the extension/enlargement of a nonconforming use granted by the July 24, 2020, Decision and Order would become void unless a building permit conforming to the plans for which the approval is granted is no later than July 24, 2024, and substantial construction in accordance therewith is completed by July 24, 2025.
3. That the Petitioner has diligently pursued the establishment of the use in accordance with the plan approved in the July 24, 2020, Decision and Order.
4. That the Petitioner was actively processing the site development plan as of July 20, 2024, and in fact the Department of Planning and Zoning in its May 23, 2024, letter to the Petitioner stated that the SDP was technically complete, and that as a result, the variances did not lapse on July 20, 2024, despite a building permit not having been obtained.
5. That the modification requests to extend the period during which permits must be obtained were timely filed prior to the lapse of the first four (4) years after the date of the Decision and Order;
6. That while the adjacent homeowners who live in the Jefferson Place development raised concerns about the development, those concerns are not issues that I am empowered to consider at this point and, in any event, would likely not have had any effect on the original decision because the stormwater, noise and traffic issues were not considerations in the decision-making process of the original decision. Thus the existing conditions are not significantly changed and changes have not taken place in the circumstances which led to the original decision to approve the original petition, such that the extensions would not be appropriate.

7. That the initial time periods were increased to take account of the effects of delays due to the pandemic shutdown.
8. That the Petitioner stated that it would work with the neighbors and endeavor to address concerns of the neighbors.
9. That under Section 131.0.I.3.c., the longest extension the hearing authority is authorized to approve is three (3) years.

ORDER

Based upon the foregoing, it is this **8th day of August 2024**, by the Howard County Hearing Examiner, **ORDERED**:

1. That the Petition of AK Ghauri, LLC, to extend the validity of the **variances** granted in the July 24, 2020 Decision and Order under Section 130.0.B.2 of the Zoning Regulations for an additional four (4) years, for a total of eight (8) years from the date of the July 24, 2020 Decision and Order (July 24, 2028), for permits conforming to plans for which the variances were granted to be obtained, and for an additional four (4) years, for a total of nine (9) years from the date of the July 24, 2020 Decision and Order (July 24, 2029), for substantial construction in accordance therewith to be completed, is **DENIED** in part and **GRANTED** in part;
2. That the Petition of AK Ghauri, LLC, to extend the approval of the **extension/enlargement of the nonconforming use** granted in the July 24, 2020 Decision and Order under Section 129.0.E of the Zoning Regulations for an additional four (4) years, for a total of eight (8) years from the date of the July 24, 2020 Decision and Order (July 24, 2028), for a building permit conforming to the plans for which the approval is granted to be obtained, and for an additional four (4) years, for a total of nine (9) years

from the date of the July 24, 2020 Decision and Order (July 24, 2029), for the extension or enlargement to be implemented, is **DENIED** in part and **GRANTED** in part;

3. That as to the request for extension of the approval of the **variances** granted by the July 24, 2020 Decision and Order under Section 130.0.B.2 of the Zoning Regulations, the approvals **shall be extended for an additional three (3) years** and the variances granted shall become void unless the required permits conforming to plans for which the variances were granted are obtained within seven (7) years of the July 24, 2020 Decision and Order (July 24, 2027), and substantial construction in accordance therewith is completed within eight (8) years from the date of July 24, 2020 Decision and Order (July 24, 2028); provided, however, that these time periods shall not apply to any project for which plans are being actively processed in compliance with the procedures in Title 16, Subtitles I and II of the Howard County Code or where being actively processed in compliance with those subtitles when the applicable time period established herein expired;
4. That as to the request to extend the approval of the extension/enlargement of the nonconforming use granted in the July 24, 2020 Decision and Order under Section 129.0.E of the Zoning Regulations, the approvals shall be **extended for an additional three (3) years** and shall become void unless a building permit conforming to the plans for which the approval is granted is obtained within seven (7) years of the July 24, 2020 Decision and Order (July 24, 2027), and substantial construction in accordance therewith is completed within eight (8) years from the date of July 24, 2020 Decision and Order (July 24, 2028). If a building permit is not necessary for any structure this Decision and Order shall become void as to those structures unless the extension or enlargement is

implemented within seven (7) years from the date of the July 24, 2020, Decision and Order (July 24, 2027).

5. This Order amends the July 24, 2020, Decision and Order only with regard to the lapse periods; the findings and conclusions set forth in that July 24, 2020, Decision and Order remain in effect as if set forth herein.
6. The grant of the confirmation of a nonconforming use motor vehicle fueling facility and convenience store pursuant to Section 129.0.D of the Howard County Zoning Regulations, as originally approved in the July 24, 2020, Decision and Order, remains in effect.

Provided, however, that the variances and the nonconforming use and extensions and enlargements thereof will apply only to the uses and structures as described in the Petition and Updated Plan submitted and not to any other activities, uses, structures, or additions on the Property.

Further provided, any site development plan, or its equivalent, shall include a note containing all conditions of approval;

Further provided, that Petitioner shall work with the neighbors and residents of the Gatherings at Jefferson Place and endeavor to address concerns of the neighbors; and

Further provided, that Petitioner shall comply with all federal, state, and local laws and regulations.

[signature next page]

**HOWARD COUNTY
HEARING EXAMINER**

Katherine L. Taylor

Date Mailed: _____

NOTICE: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.