

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(925 Todds Lane)
15th Election District
7th Councilmanic District
925 Todds Lane, LLC/*Legal Owner*
Petitioner**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2014-0028-XA**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 925 Todds Lane. The Petitions were filed by David H. Karceski, Esq., on behalf of 925 Todds Lane LLC, the legal owner of the subject property and Insurance Auto Auctions, Inc. (IAA), Lessee. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) for temporary storage of unlicensed or inoperative motor vehicles with no dismantling of vehicles (“junkyard” use category), pursuant to B.C.Z.R. § 256.2. The Petition for Variance seeks relief under B.C.Z.R. §§ 409.8.A.2 and 409.8.A.6: to allow an off-street parking facility with a non-durable and dustless surface and unstriped parking spaces in lieu of the requirements for a durable and dustless surface and striped parking spaces. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the hearing in support of the Petitions were Justin Williams, Esquire, Michael J. Madden, Rich Hoopis, Joe Ucciferro, Mark Emond and Michael Clark . David H. Karceski, Esq. represented the Petitioners. There were no Protestants or interested citizens in attendance and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive ZAC comments were received from the Department of Planning (DOP) and Bureau of Development Plans Review (DPR). The DPR indicated that a landscape plan must be approved prior to issuance of any permits, and the DOP does not oppose the petition.

Testimony and evidence offered at the hearing revealed that the subject property is 61.18 acres and is zoned MH-IM and SE. IAA proposes to use a five acre portion of the overall tract (as outlined in red on the site plan) for storage of damaged passenger vehicles. The County Zoning office deemed this a “junkyard,” for which Special Exception relief is required. Even so, the Petitioners noted that the facility will not be open to the public, and there will be no dismantling of vehicles or retail sales of vehicles or parts. IAA operates a similar facility in Baltimore City, and photographs of that operation were admitted as Exhibit 5A-5C. The use was described in the petition as “temporary” storage of inoperable motor vehicles, and Petitioners explained that is because on average any given vehicle will only remain on site for 30-60 days.

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 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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. There was no such evidence presented in this case. The site is located in a heavily industrial area, and there is no reason to believe the operation would endanger the public’s health, safety, or welfare. Mr.

Ucciferro testified, via proffer, that the B.C.Z.R. §502.1 factors had been satisfied, and I agree.

VARIANCE

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. The property is irregularly shaped and is also bisected by a public road. Thus, it is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, in that they would be required to pave the parking area, and Petitioners explained that the heavy equipment and machinery used to move and reposition the vehicles would quickly damage the paving. In addition, Mr. Kennedy indicated his agency was not opposed to this relief. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 7th day of October, 2013, that Petitioners' request for Special Exception relief under the B.C.Z.R., for temporary storage of unlicensed or inoperative motor vehicles with no dismantling of vehicles (junkyard use category), pursuant to B.C.Z.R. § 256.2, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance relief from B.C.Z.R. §§ 409.8.A.2 and 409.8.A.6: to allow an off-street parking facility with a non-durable and dustless surface and unstriped parking spaces in lieu of the requirements for a durable and dustless surface and striped parking spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for appropriate permits and/or licenses and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioners must utilize the Special Exception within two years of the date of this Order.
3. The approved "Special Exception area" shall be the five (5) acre portion of the site outlined in red on the plan marked as Exhibit 1.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln