

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(1765 and 1777 E. Joppa Road)**
9th Election District
5th Councilmanic District
1765 Joppa LLC, *Legal Owner*
Petitioner

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY

Case No. 2015-0053-XA

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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 1765 and 1777 E. Joppa Road. The Petitions were filed on behalf of 1765 Joppa LLC, the legal owner of the subject property. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) §236.2 for a used motor vehicle outdoor sales area separated from sales agency building. The Petition for Variance seeks relief under B.C.Z.R. §450 for certain signage in connection with the proposed used car dealership. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the hearing in support of the Petitions were Andrew Parnick, a representative of Hertz, and professional engineer Rick Richardson, whose firm prepared the plan. David H. Karceski, Esq. and Justin Williams, Esq. represented the Petitioner. There were no Protestants or interested citizens in attendance and the file does not contain any letters of protest or opposition. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Substantive ZAC comments were received from the Department of Planning (DOP) and Bureau of Development Plans Review (DPR). These comments will be discussed in greater detail below.

The subject property is approximately 3.14 acres and is zoned BR. The site was formerly occupied by the Schaefer & Strohminger Dodge dealership, but is now a BMW and Mini collision repair facility. The Petitioner would like to lease space on its site to Hertz, for a rental car and used vehicle sales operation. While Hertz operates similar businesses throughout the country, Mr. Parnick indicated this was the first such operation in Maryland. To accommodate the Hertz sales and rental facility, the Petitioner would place on the site a modular building, similar to the ones it uses at other locations throughout the country, as shown in the photographs admitted as Petitioner's Ex. 8. Mr. Richardson explained that the building is prefabricated and is brought to the site and bolted onto a concrete slab; i.e., the building does not have a traditional "foundation" and is in that sense temporary. Counsel noted that while Petitioner hopes Hertz will thrive at this location, the modular unit could be unbolted from the slab and removed from the site on the same day.

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. No such evidence was presented in this case. Mr. Richardson testified via proffer that the Petitioner satisfied the B.C.Z.R. §502.1 criteria, and I concur.

VARIANCE

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).

Petitioner has met this test. This commercial property is fairly large and irregular shaped. As such, it is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that it would be unable to provide signage for the new Hertz facility. 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.

ZAC COMMENTS

The DOP did not oppose the requests, but recommended that landscaping be provided along both Joppa and Oakleigh Roads. The Petitioner submitted a conceptual landscape plan (Ex. No. 6) identifying plantings along those frontages, and the Order which follows will be conditioned upon approval of a plan by the County's landscape architect.

Counsel also indicated that through discussions with the DOP and the Office of People's Counsel, Petitioner has agreed to limit to 20 feet (this is the height of the existing BMW Collision Center sign) the height of the proposed freestanding Hertz sign. The site plan was amended to reflect this change (i.e., a maximum height of 20 feet instead of 23 feet as proposed), and a similar condition will be included in the Order below.

The DPR also submitted a ZAC comment, and requested that landscaping be provided for the proposed modular Hertz sales/rental building and the parking associated therewith. This seems like a reasonable requirement which will not only improve the aesthetics of the site, but will also provide boundaries or a transition of sorts for the different uses on this large site.

The DPR also indicated that improvements must be made to the Oakleigh Road frontage. While that may be the case, I do not believe that imposing a condition to that effect would be equitable or consistent with case law on the issue. The Petitioner indicated the modular building for the Hertz facility would cost approximately \$100,000, while Mr. Richardson opined that curb, gutter and roadway improvements on Oakleigh Road could cost \$60,000-\$70,000. If such improvements were required, Mr. Pernick indicated Hertz would probably not continue with its plans for this site.

While the law does allow a local government to demand certain improvements in connection with a development project, there must exist a “nexus” and “rough proportionality” between the extent and cost of the improvements and the proposed impact of the project upon the locality’s infrastructure. *Koontz v. St. Johns River Water Mngmt. Dist.*, 133 S. Ct. 2586 (2013). Requiring \$60,000 in public improvements in exchange for the approval of signage and a modular building for a used car sales and rental operation is excessive, and would lack “rough proportionality.”

In fact, it is arguable that this case does not involve a “development” project of the sort which would allow a local government to demand public improvements. Even though the subject property is within the Loch Raven-Baynesville design review area, the DOP determined that the limited and temporary nature of the improvements did not require review by the Design Review Panel. Likewise, counsel indicated that DRC approval would not be required in this instance.

Mr. Richardson noted that the prior owner of this site proposed in 2007 to construct an 18,525 sq. ft. service and body shop facility alongside the Dodge new car dealership. PDM# 09-804; plan marked as Ex. 7. While those plans never came to fruition, Mr. Richardson stated the owner would have been required to construct curb, gutter and roadway improvements, as shown

on that site plan. Id. In that setting, involving the construction of a large commercial building with the potential for a substantial increase in traffic associated with the new business, I believe there would be a “rough proportionality” between the improvements demanded and the anticipated impact upon municipal services. In this case, I believe the impact from the Hertz operation (conducted from a 2,500 sq. ft. modular building) would be much smaller. As such, I will not require improvements to the Oakleigh Road frontage, but will require the Petitioner to dedicate to Baltimore County (at no cost) the necessary right-of-way along Oakleigh Road, to accommodate future roadway widening and/or improvements.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 30th day of October, 2014, that the Petition for Special Exception under B.C.Z.R. §236.2 for a used motor vehicle outdoor sales area separated from sales agency building, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from B.C.Z.R. §450.4 as follows: (1) to allow a freestanding enterprise sign for a used vehicle dealership with a sign area/face of 61 sq. ft. in lieu of the permitted 50 sq. ft. and to allow a second freestanding sign on the Joppa Road frontage for the dealership; and (2) to allow a total of three wall-mounted enterprise signs on one façade of a single tenant building in lieu of the permitted three signs with no more than two on a single façade, be and is hereby GRANTED.

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

1. Petitioner may apply for appropriate permits and/or licenses and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. Prior to issuance of permits, Petitioner must submit for approval by the County's landscape architect a plan depicting appropriate landscaping for the proposed modular building and parking associated therewith as well as along Joppa and Oakleigh Roads.
3. The Hertz freestanding sign shall be a maximum of 20 feet in height.
4. Petitioner must dedicate to Baltimore County, at no cost and in a form deemed acceptable by the Office of Real Estate Compliance, the necessary right-of-way along Oakleigh Road to accommodate future roadway widening and/or improvements.

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