

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(8143 Beachwood Road)
15th Election District
7th Councilmanic District
MJM Investment Properties, LLC.
Legal Owner
Insurance Auto Auctions Corp.
*Lessee***

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY

Case No. 2015-0056-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 8143 Beachwood Road. The Petitions were filed on behalf of MJM Investment Properties, LLC, the legal owner of the subject property and Insurance Auto Auctions Corp., lessee (“Petitioners”). The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) §256.2 for a junkyard (temporary storage of unlicensed or inoperative motor vehicles with no dismantling of vehicles). The Petition for Variance seeks relief as follows: (1) to allow a total of 16.4 acres of land to be used as a junkyard in lieu of the permitted 5 acres, pursuant to §408.1; (2) to allow automobiles and vehicles not in running condition to be located as close as 0 feet from other adjoining properties in lieu of the required 30 ft. and as close as 40 ft. from any other zone in lieu of the required 300 ft., pursuant to §408.2; and (3) to allow a non-durable and non-dustless surface for off-street parking, pursuant to §409.8.A.2. 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 Nos. 1A & 1B.

Appearing at the hearing in support of the Petitions were Ryan J. Matthews and Joseph Ucciferro, P.E., whose firm prepared the site plan. David H. Karceski, Esq. represented the Petitioner. Robert Zacherl, President of the Wells-McComas Citizen Improvement Association, Inc. (WMCIA) attended the hearing, as did Robert Romadka. John Gontrum, Esq., represented WMCIA.

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), the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). These comments will be discussed in greater detail below.

Testimony and evidence offered at the hearing revealed that the subject property is approximately 16.34 acres, and is zoned MH-IM. The Petitioner proposes to operate a storage and auction facility on the site. A representative of the lessee testified that damaged motor vehicles are received from insurance companies and are auctioned to licensed buyers within a 45-90 day time frame. Under the B.C.Z.R. this operation constitutes a “junkyard,” an appellation that strikes fear in the heart of the community but which fails to describe the nature of Insurance Auto Auctions’ (IAA) business. The Petitioner undertook extensive discussions and negotiations with WMCIA, resulting in the execution of an agreement setting forth specific terms and conditions for the operation of the business. The community association expressed support for the project, and requested the agreement be incorporated into the final order which follows.

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. In addition, Mr. Ucciferro, a licensed professional engineer accepted as an expert, testified that Petitioner satisfied the B.C.Z.R. § 502.1 standards.

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. The site is irregularly shaped and is accessed via a narrow 700' long private driveway. 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 operate the business at this site. 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.

One comment is in order regarding the variance from the "durable and dustless" surface requirement for off-street parking. The lessee's representative testified that milled roadway materials are used at the site, and that they are bound together through an emulsification process. What results is in fact a durable and dustless surface, although the zoning office instructed Petitioner to seek variance relief. Though the variance will be granted, Petitioner will be required to install the paving material as described at the hearing, and a condition to that effect will be included in the Order which follows.

ZAC COMMENTS

The Department of Planning (DOP) indicated it had no objection to the requests, provided Petitioner satisfied certain conditions set forth in its October 20, 2014 correspondence. DOP stated that the critical area regulations must be satisfied (the critical area regulations were also cited in the Department of Environmental Protection and Sustainability's (DEPS) ZAC comment) and that a certain wooded area on site remain undisturbed. These are both included as conditions in the Order which follows. The DOP also recommended a durable and dustless surface for the access driveway, and as indicated above, the Petitioner intends to create such a surface, and such a condition is also included in the final order. The Bureau of Development Plans Review (DPR) advised that a lighting and landscape plan will be required for the site. I will not include such a condition in the Order; DPR can impose such requirements when permits are requested, at which time that agency will be in a better position to determine what type of site improvements will be required.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 8th day of January, 2015, that the Petition for Special Exception under B.C.Z.R. §256.2 for a junkyard (temporary storage of unlicensed or inoperative motor vehicles with no dismantling of vehicles), be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to allow a total of 16.4 acres of land to be used as a junkyard in lieu of the permitted 5 acres, pursuant to §408.1; (2) to allow automobiles and vehicles not in running condition to be located as close as 0 feet from other adjoining properties in lieu of the required 30 ft. and as close as 40 ft. from any other zone in lieu of the required 300 ft., pursuant to §408.2; and (3) to allow a non-durable and non-dustless surface for off-street parking, pursuant to §409.8.A.2, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Agreement attached hereto as Exhibit A be and is hereby incorporated by reference into this final Order.

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

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must prior to issuance of permits comply with the Critical Area regulations.
3. Petitioner shall leave undisturbed the triangular wooded area located along the rail line at the southeast corner of the property.
4. All access roads/driveways and off-street parking surfaces at this site shall be paved with recycled asphalt millings, in a process Petitioner describes as follows: recycled asphalt millings (grindings) are placed on the surface at a depth of 3 to 4 inches in thickness. Next, the millings are hydrated, bladed, and roll compacted in place 2 to 3 times. After compaction, an emulsifying / binding agent is applied, which is the same product used in virgin asphalt mixture. The agent penetrates the millings to approximately 1 to 1-1/2 inches in depth. A light coating of sand is placed on top of the millings to help "tighten" the surface by filling in any small voids. Vehicular traffic is allowed within 2 to 3 days of completion of this process.

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