

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(10100 Liberty Road)
2nd Election District
4th Council District
Lucille Widerman
Legal Owner
Makia Properties, LLC
*Contract Purchaser***

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY

Petitioners

Case No. 2016-0085-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 10100 Liberty Road. The Petitions were filed on behalf of Lucille Widerman, legal owner, and Makia Properties, LLC, contract purchaser of the subject property (“Petitioners”). The Special Exception Petition per Baltimore County Zoning Regulations (B.C.Z.R.) §236.2 seeks to use the herein described property for a used motor vehicle outdoor sales area. The Petition for Variance seeks to permit a side building setback of 27 ft. in lieu of the required 30 ft., and, if necessary, a front building setback of 20 ft. in lieu of the required 25 ft. As filed, the Petition sought relief to permit a 22 ft. front building setback, although the request was amended to 20 ft. at the hearing. The Petition was amended accordingly and was initialed by the undersigned. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit No. 1A.

Appearing at the hearing in support of the petitions was James Makia, Ken Colbert, Tom Ratcliffe and Doug Burgess, Esq., who appeared on behalf of the legal owner. Adam Rosenblatt, Esq. represented the contract purchaser. The Petition was advertised and posted as required by the

B.C.Z.R. No protestants or interested citizens attended the hearing. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Neither agency opposed the requests, and their proposed conditions will be included in the Order below.

The subject property is approximately 4.39 acres and is zoned B.R. (Business Roadside). For more than 50 years a recreational vehicle sales and service facility was operated at the property. That business is winding down, and Makia Properties, LLC plans to purchase the property and operate a used motor vehicle sales facility. A special exception is required for that use in the B.R. zone, and the setback variances both concern the existing commercial building on the site, which was constructed in 1961.

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 testimony or evidence in this case which would indicate the use would have a detrimental impact upon the community. Indeed, Ken Colbert, a professional engineer accepted as an expert, opined the Petitioners satisfied B.C.Z.R. §502.1, and I concur.

VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate

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

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. As shown on the site plan, the property has an irregular shape and is constrained by long-existing site conditions. As such the property is unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty, since they would be required to raze or substantially modify the commercial building which has existed at this location for over 50 years. 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. This is demonstrated by the lack of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 31st day of December, 2015, that the Petition for Special Exception pursuant to B.C.Z.R. §236.2 to use the herein described property for a used motor vehicle outdoor sales area, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side building setback of 27 ft. in lieu of the required 30 ft., and a front building setback of 20 ft. in lieu of the required 25 ft., be and is hereby GRANTED.

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

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are 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, Petitioners would be required to return the subject property to its original condition.

2. Prior to issuance of permits Petitioners must submit for approval by Baltimore County landscape and lighting plans for the property.
3. All drive aisles and off street parking spaces must be provided with a durable and dustless surface.

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