

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(217 North Point Boulevard)
12th Election District
7th Council District
8312 Pulaski, LLC
Petitioner**

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2016-0287-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 217 North Point Boulevard. The Petitions were filed by Herbert Burgunder III, Esquire on behalf of 8312 Pulaski, LLC, legal owner of the subject property (“Petitioner”). 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, separate from sales agency building. The Petition for Variance seeks relief as follows:

1. From B.C.Z.R. § 238.3 and § 409.6A to allow one (1) employee parking space and one (1) customer parking space;
2. From B.C.Z.R. § 409.8.A.1 to not require compliance with those conditions specified in the landscape manual and other manuals adopted pursuant to § 32-4-404 of the Baltimore County Code (B.C.C.);
3. From B.C.Z.R. § 238.2 to allow a 10 ft. and 22 ft. side yard setback in lieu of the required 30 ft.;
4. From B.C.Z.R. § 238.2 to allow an 18 ft. rear yard setback in lieu of the required 30 ft.;
5. From B.C.Z.R. § 238.4 to allow a vehicle display area of 36 ft. in lieu of the maximum 15 ft. in front of the required front building line, and
6. For such other relief as may be deemed necessary by the ALJ for Baltimore County.

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 was Kenneth Wells, professional land surveyor with kj Wells, Inc. Herbert Burgunder III, Esquire, represented the Petitioner. No protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the State Highway Administration (SHA). These agencies did not oppose the requests, and their proposed conditions will be included in the Order below.

The subject property is approximately 8,660 sq. ft. and is zoned B.R.-I.M. (Business Roadside, Industrial, Major). The property is situated within an industrial area very close to the Baltimore City boundary. The small lot was at one time improved with a dwelling, but that has been razed and the property has been vacant and unimproved for many years.

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, Kenneth Wells, a professional land surveyor accepted as an expert, opined the Petitioner satisfied B.C.Z.R. §502.1, and I concur. Petitioner proposes a modest used car sales operation (a maximum of 18 vehicles would be on display), an

innocuous use which would not be injurious to the community, especially considering the industrial nature of the vicinity.

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).

Petitioner has met this test. As shown on the site plan, the property has an irregular shape (deep and narrow, approximately 200' x 50') and is therefore unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty since it would be unable to operate the used car business at the site. Finally, I find that the variances 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.

The DOP ZAC comment noted Petitioner failed to show the required setbacks for the sales trailer, and Mr. Wells submitted a revised plan with that detail. Both the DOP and DPR identified landscaping as a concern, and while I agree that in most cases the Landscape Manual should be followed, here the site is simply too small to satisfy the buffer and setback requirements. Rather than requiring a landscape plan I will include a condition requiring Petitioner, to the extent feasible, to provide some vegetative buffer along the western side and rear of the site, as determined by the County's landscape architect.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 20th day of **July, 2016**, 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 separate from sales agency building, 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.) seeking relief as follows:

1. From B.C.Z.R. § 238.3 and § 409.6A to allow one (1) employee parking space and one (1) customer parking space;
2. From B.C.Z.R. § 409.8.A.1 to not require compliance with those conditions specified in the landscape manual and other manuals adopted pursuant to § 32-4-404 of the Baltimore County Code (B.C.C.);
3. From B.C.Z.R. § 238.2 to allow a 10 ft. and 22 foot side yard setback in lieu of the required 30 ft.;
4. From B.C.Z.R. § 238.2 to allow an 18 ft. rear yard setback in lieu of the required 30 ft.; and
5. From B.C.Z.R. § 238.4 to allow a vehicle display area of 36 ft. in lieu of the maximum 15 ft. in front of the required front building line,

be and is hereby GRANTED.

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. No mechanical work, painting or detailing of vehicles is permitted on site.
3. All signage must comply with the requirements of B.C.Z.R. § 450.
4. The Petitioner must contact SHA to obtain an entrance permit.
5. All drive aisles and off-street parking spaces must be provided with a durable and dustless surface.

6. Petitioner must provide landscaping or appropriate vegetative buffer along the western side and rear of the property, as determined in the sole discretion of the Baltimore County landscape architect.

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