

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(9217 Liberty Road)
2nd Election District
4th Council District
Sohan L. Sambhi & Joginder Kaur
Legal Owners
Petitioners**

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2017-0177-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 9217 Liberty Road. The Petitions were filed by Sohan L. Sambhi and Joginder Kaur, legal owners of the subject property. The Special Exception petition per Baltimore County Zoning Regulations (B.C.Z.R.) §236.2 seeks to permit a used motor vehicle outdoor sales area, separated from the sales agency building. The Petition for Variance seeks to permit a 10 ft. rear setback from the property line in lieu of the required 30 ft. rear yard setback. A site plan was marked as Petitioners' Exhibit 1.

Petitioners attended the hearing and were assisted by Bruce Doak, surveyor. Several neighbors attended the hearing and opposed the requests. The Petition was advertised and posted as required by the B.C.Z.R. There were no substantive Zoning Advisory Committee (ZAC) comments received from any of the County agencies.

The subject property is approximately 0.2783 acres and is zoned BR. The property is unimproved. Though it was formerly zoned R.O., in the 2016 CZMP the county council rezoned the property to BR, which permits by special exception used car sales lots.

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.

Here, while the community would prefer not to see any more used car lots on this stretch of Liberty Road, the fact remains the property was rezoned to a classification which permits this use by special exception. And Petitioners made no secret of the fact they sought the rezoning in order to operate a used car lot on the site. Petitioners' Ex. No. 4. Although the community opposed the rezoning, they lost that battle when the property was zoned BR in 2016.

Members of the community expressed concerns about traffic, security, aesthetics and similar issues which they believe will plague the neighborhood. That may be the case, but I believe those sorts of problems are inherent in the operation of a used car lot, regardless of its exact location in a BR zone in Baltimore County. At least no evidence was presented to suggest these are non-inherent adverse impacts associated with a used car business. As such I believe the petition for special exception should be granted.

VARIANCE

But a variance, unlike a special exception, is not presumed to be in the interest of the general welfare. In fact, Maryland cases indicate variances are to be granted "sparingly" since it is "an authorization for [that] ... which is prohibited by a zoning ordinance." *Cromwell v. Ward*, 102

Md. App. 691, 699 (1995). 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.

Id.

Although Mr. Doak argued the rectangular shape of the property rendered it unique, I disagree. Based on the aerial photos submitted, it appears as if other lots in the vicinity are of a similar shape. And no evidence was presented to show the property was “unique” in any other way. As such, I do not believe Petitioners have presented sufficient evidence of “uniqueness” to satisfy the burden imposed by Maryland law.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 2nd day of **March, 2017**, that the Petition for Special Exception pursuant to B.C.Z.R. §236.2 to permit a used motor vehicle outdoor sales area (displaying for sale no more than 12 motor vehicles), separated from the sales agency building, be and is hereby GRANTED subject to the ZAC comment of the Bureau of DPR, which is attached hereto; and

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the B.C.Z.R. to permit a 10 ft. rear setback from the property line in lieu of the required 30 ft. rear yard setback, be and is hereby DENIED.

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