

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(9719 Reisterstown Road)
3rd Election District
2nd Council District
9719 Investment LLC
*Legal Owner***

Petitioner

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2018-0090-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 9719 Reisterstown Road. The Petitions were filed on behalf of 9719 Investment LLC, legal owner of the subject property. The Special Exception petition seeks to permit a used motor vehicle outdoor sales area, separated from sales agency building. The Petition for Variance seeks: (1) to permit the existing condition of a rear building setback of 18 ft. in lieu of the required 30 ft.; (2) to permit the existing condition of a 4 ft. distance from parking spaces to the right-of-way line of a public street in lieu of the required 10 ft.; and (3) to permit the existing design, screening and landscaping conditions in lieu of any other otherwise required conditions within the Landscape Manual and/or other manuals. A site plan was marked as Petitioner’s Exhibit 1.

Appearing at the hearing in support of the petitions were Marc Cohen and professional engineer Rick Richardson. Jennifer R. Busse, Esq. represented Petitioner. There were no protestants or interested citizens in attendance. 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) and the Bureau of Development Plans Review (DPR). With one exception discussed below, neither agency opposed the requests.

The subject property is approximately 29,614 square feet (0.68 acres) in size and is zoned BR. The property is situated along Reisterstown Road in a busy commercial corridor with numerous auto dealerships. The site is improved with a one-story commercial building (3,456 sq. ft. in size) and was previously used as a Mercedes-Benz dealership. Petitioner proposes to use the site for used motor vehicle sales, which requires a special exception in the BR zone.

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 *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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. Mr. Richardson opined, via proffer, Petitioner satisfied all requirements for special exception relief, and no evidence was offered to rebut this conclusion. As such the petition will be granted.

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).

The property was originally developed years ago and Petitioner must contend with existing site improvements and conditions. As such the property is unique. If the B.C.Z.R. were strictly

interpreted Petitioner would suffer a practical difficulty since it would be unable to utilize the existing improvements. 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.

The DOP ZAC comment indicated that agency was opposed to variance request #3, pertaining to existing landscaping and screening at the site. The DOP suggested Petitioner be required to provide, to the extent possible, landscaping and screening as required for automotive sales facilities by the Landscape Manual. I concur, and Petitioner was amenable to that request. As such, the variance request pertaining to existing landscaping will not be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **15th** day of **December, 2017**, that the Petition for Special Exception to permit a used motor vehicle outdoor sales area, separated from sales agency building, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to permit the existing condition of a rear building setback of 18 ft. in lieu of the required 30 ft.; and (2) to permit the existing condition of a 4 ft. distance from parking spaces to the right-of-way line of a public street in lieu of the required 10 ft., 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. Petitioner must submit a landscape plan for the site and provide landscaping/screening and vehicle curb stops as determined in the sole discretion of the Baltimore County Landscape Architect.

3. Prior to issuance of permits the customer parking area must be striped as required by the B.C.Z.R.
4. Prior to issuance of occupancy permit(s) Petitioner must provide to the DOP a “sign package” with elevations and dimensions of each sign proposed for the site.

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