

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(1200 White Avenue)		
15 <sup>th</sup> Election District	*	OFFICE OF
7 <sup>th</sup> Council District		
Davud Musayev	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Sunay Ahmedov	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
	*	Case No. 2018-0105-X
Petitioners	*	
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Davud Musayev, legal owner and Sunay Ahmedov, lessee (“Petitioners”). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to use the herein described property for used motor vehicle outdoor sales.

Professional engineer Mostafa Izadi appeared in support of the petition. There were no protestants or interested citizens in attendance. 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 request.

The subject property is approximately 7,157 square feet and is zoned BR-AS. The property fronts on Pulaski Highway in a busy commercial/industrial corridor. There is a service garage, tire store, nightclub and industrial use adjacent to this site. The property was previously used as a motel, and Petitioners propose to operate a small used car dealership on the premises.

### 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.

Petitioners propose to display only a small number of vehicles (no more than eight) for sale, and the use will therefore have little or no impact upon the surrounding community. As such the petition will be granted.

The final issue concerns the DOP ZAC comment, elements of which are also included in the DPR comment. Petitioners indicated they were amenable to all of the proposed conditions with the exception of providing landscaping on the “painted island” areas shown on the plan. Petitioners explained this is a new small business venture, and removing paving from these areas and installing landscaped islands would pose a financial hardship. In addition, as noted by Mr. Izadi, the property directly across White Avenue is a used car lot/service garage which also has no landscaping. As such, I believe Petitioners should be excused from complying with this aspect of the DOP ZAC comment.

THEREFORE, IT IS ORDERED this 8<sup>th</sup> day of **December, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to use the herein described property for used motor vehicle outdoor sales, be and is hereby GRANTED.

The relief granted herein shall be subject to 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 their 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. Petitioners shall comply with the DOP ZAC comment attached hereto, with the exception of the first highlighted item which has been stricken by the undersigned.
3. A maximum of eight (8) vehicles may be displayed and offered for sale on the premises.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln