

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(6612 Baltimore National Pike)
1st Election District
1st Council District
Shirlen Company Ltd. Partnership
Legal Owner
National Motors, Inc.
Lessee
Petitioners**

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2018-0109-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 6612 Baltimore National Pike. The Petitions were filed on behalf of Shirlen Company Ltd. Partnership, legal owner and National Motors, Inc., lessee (“Petitioners”). The Special Exception petition seeks to use the property for a used motor vehicle outdoor sales area. The Petition for Variance seeks to allow an existing side yard setback of 27 ft. in lieu of the required 30 ft., and to allow 20 parking spaces in lieu of the required 92 spaces. A site plan was marked as Petitioners’ Exhibit 1.

Appearing at the hearing in support of the petitions were Jordan Levine, Gary Levine and professional engineer Rick Richardson. John B. Gontrum, Esq. represented Petitioners. 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). Neither agency opposed the requests.

The subject property is approximately 1.6 acres in size and is zoned B.R. The property is situated along U.S. Route 40 in the Catonsville area, a very busy commercial corridor. Most

recently a furniture store was operated at the premises. Petitioners propose to utilize the existing improvements for a used car sales facility.

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 testified via proffer Petitioners satisfied the requirements set forth at B.C.Z.R. §502.1, and no evidence was offered to rebut that conclusion. As such, and in light of the presumption provided under Maryland law, the petition for special exception 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).

Petitioners have met this test. The property is irregularly shaped and is therefore unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty since they would be unable to utilize the existing building constructed in 1965. 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. Several conditions designed to minimize the detrimental impacts upon the surrounding community will be included in the order below.

Concerning the variance for off-street parking, Mr. Gontrum noted the Regulations do not specify the number of spaces required for a used car dealership. The Office of Zoning Review determined 92 spaces were required, based on the square footage of the sales, office and car prep areas shown on the plan. While that may be a legitimate requirement for a normal retail establishment, I believe it is far in excess of what is required for a used car lot, which will see much less foot traffic than most commercial or retail uses.

The plan shows 57 spaces will be provided. *See* Ex. 1, note 20. Mr. Richardson allocated 20 spaces for employees and customers (counsel noted the business would have no more than 12 employees) and 37 spaces would be used for vehicle inventory displayed for sale. I believe this arrangement is more than adequate for the use proposed.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 8th day of **December, 2017**, that the Petition for Special Exception to use the property for a used motor vehicle outdoor sales area, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance to allow a side yard setback of 27 ft. in lieu of the required 30 ft., and to allow 20 parking spaces in lieu of the required 92 spaces, 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 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 must submit for approval by Baltimore County landscape and lighting plans for the site.
3. No motor vehicles shall be parked or displayed for sale on the grass island/strip adjacent to Baltimore National Pike.
4. No storage of damaged or disabled vehicles shall be permitted.
5. No exterior mechanical work or repairs of vehicles shall be performed on site.
6. If vehicles are washed or detailed outside of the “car prep area” shown on the plan, such activities shall be permitted only at the rear of the site adjacent to the employee parking area.

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