

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(9115 and 9127 Liberty Road)
2nd Election District
4th Council District
Jas Real Estate III, LLC
*Legal Owner***

Petitioner

*
*
*
*
*

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY

Case No. 2018-0119-XA

* * * * *

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 9115 and 9127 Liberty Road. The Petitions were filed on behalf of Jas Real Estate III, LLC, legal owner of the subject property. The Special Exception petition seeks to use the described property for a used motor vehicle outdoor sales area, separated from sales agency building, along with an ancillary service garage. The Petition for Variance seeks: (1) to permit two wall-mounted signs on the front wall of the main building with a total area of 284.8 sq. ft. in lieu of the 192 sq. ft. (2 ft. x 96 ft., the length of the front wall of the building), and to permit the larger sign to be 199.8 sq. ft. in lieu of the maximum area of each sign of 150 sq. ft.; (2) to permit a free standing sign for a used car dealership that is 85 sq. ft. in lieu of the permitted 50 sq. ft., and to permit a free standing sign with an electronic message board that is less than 50 % of the entire sign's square footage; and (3) to permit a (non-conforming) side yard setback for the existing building of 16 ft. in lieu of the required side yard setback of 30 ft. A site plan was marked as Petitioner's Exhibit 1.

Appearing at the hearing in support of the petitions were Steve Knolle, JoAnne Carey, Masood Boroumand and Brett Koopman. Rachael Breza, 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). The DOP did not object to the requests, although that agency did not support the request pertaining to the wall-mounted signs.

The subject property is approximately four (4) acres in size and is split-zoned BR, BL & DR 3.5. An 84 Lumber store was operated at the site for many years, although it has recently closed. Petitioner proposes to utilize the existing improvements and operate a used car sales and service facility, a use permitted in the zone by special exception.

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.

Bruce Doak, a licensed surveyor who was accepted as an expert, opined Petitioner satisfied the requirements of B.C.Z.R. §502.1, and he noted there are several auto dealerships along this stretch of Liberty Road. I do not believe the use will be detrimental to the community and in the absence of any evidence to the contrary the petition will be granted.

VARIANCES

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).

There is a significant (8 ft. +/-) grade change along the front and western boundary of the site. 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 provide sufficient signage. Mr. Doak explained that given the topographical change at the front of the site, motorists will not have a clear view into the site. He also noted a commercial building on the adjacent property (formerly a post office) is located closer to Liberty Road and also partially obstructs the view of the subject property.

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 County and/or community opposition. In addition, several conditions designed to minimize the impacts upon the surrounding community will be included in the order below.

Counsel noted the size of the freestanding sign was reduced (from 109 sq. ft. to 85 sq. ft.) following discussions with the Office of People's Counsel on November 30, 2017. While I understand the DOP's concerns regarding the wall-mounted signs, I do not believe those signs will be excessive or cause visual clutter, based on similar requests in cases involving auto dealerships. I am also persuaded by Mr. Doak's testimony the signage is required due to the partially obscured view into the site.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 10th day of **January, 2018**, that the Petition for Special Exception to use the described

property for a used motor vehicle outdoor sales area, separated from sales agency building, along with an ancillary service garage, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit two wall-mounted signs on the front wall of the main building with a total area of 284.8 sq. ft. in lieu of the 192 sq. ft. (2 ft. x 96 ft., the length of the front wall of the building), and to permit the larger sign to be 199.8 sq. ft., in lieu of the maximum area of 150 sq. ft. for each sign; (2) to permit a free standing sign for a used car dealership that is 85 sq. ft. in lieu of the permitted 50 sq. ft., and to permit a free standing sign with an electronic message board that is less than 50% of the entire sign's square footage; and (3) to permit a (non-conforming) side yard setback for the existing building of 16 ft. in lieu of the required side yard setback of 30 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. No vehicles may be displayed for sale on the grass strip between Liberty Road and the parking spaces shown on the site plan.
3. Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.
4. Petitioner may display one (1) vehicle for sale immediately adjacent to the existing parking spaces facing Liberty Road, as shown on the redline site plan.
5. Any damaged and/or disabled motor vehicles at the site shall be stored in accordance with B.C.Z.R. §405A.

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