

**IN RE: PETITIONS FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION**

(11424 Pulaski Highway) *
11th Election District *
6th Council District *
White Marsh Truck Stop, LLC *
Legal Owner *

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2018-0140-SPHX

Petitioner *

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of White Marsh Truck Stop, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve reductions in the tract boundaries of the previous special exception by saving and excepting the tract boundaries of the proposed special exception for the used motor vehicle outdoor sales area. A Petition for Special Exception seeks to use a portion of the subject property for a used motor vehicle outdoor sales area separated from sales agency building.

Professional engineer William Bafitis, Peter Brocato and Ronald Parker attended the public hearing in support of the requests. Alfred L. Brennan, Jr., Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Neither agency opposed the request.

The subject property is approximately 2.29 acres in size and is split-zoned BR-AS & ML. A truck stop and service garage/fuel service station have been operated for nearly 40 years on the

property pursuant to special exceptions granted in 1961 & 1971. The service garage is operated by B & B Tire Repair Shop, and that tenant would like to establish a small used car sales facility on the site.

Such a use is permitted by special exception in the BR-AS zone. As noted at the hearing, I do not believe a special exception is required to sell a small number of vehicles in conjunction with the operation of a service garage. The definition of “service garage” in B.C.Z.R. §101.1 indicates the use includes the sale of motor vehicles, and prior orders of the OAH have permitted such sales. Of course the tenant would need to obtain approval from the State of Maryland to sell vehicles, although that fact is irrelevant in the present setting. But since Petitioner seeks a special exception for the use I will address the petition as filed.

SPECIAL HEARING

The special hearing requests that the special exception area for the used car sales facility be demarcated and excepted from the overall special exception area on the property for the truck stop use. The site plan contains a clearly marked 6,533 sq. ft. special exception area for this purpose, and the petition will therefore be granted.

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.

The used vehicle sales operation would occupy only a small portion of the 2.29 acre site, and I do not believe it will interfere with other uses on the property or have a detrimental impact upon the community. No evidence was presented to rebut Petitioner's *prima facie* case or the presumption provided by Maryland law; as such the petition will be granted.

Petitioner submitted at the hearing a revised site plan which addresses all of the concerns identified in DOP's January 25, 2018 ZAC comment. Specifically, the plan shows a 22 ft. drive aisle will be maintained and the parking table was revised to show nine (9) total spaces for the used car sales facility: five (5) employee spaces and four (4) spaces for inventory parking. The plan was also revised to show the propane tanks will not be relocated on the site as had been originally proposed.

THEREFORE, IT IS ORDERED this 2nd day of **February, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing to approve reductions in the tract boundaries of the previous special exception by saving and excepting the tract boundaries of the proposed special exception for the used motor vehicle outdoor sales area, containing 6,533 sq. ft. as shown on the site plan admitted as Exhibit 1, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to use a portion of the subject property for a used motor vehicle outdoor sales area separated from sales agency building, be and is hereby GRANTED.

The relief granted herein shall be subject to 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. Prior to issuance of permits Petitioner must submit for approval by Baltimore County a landscape and lighting plan for the site.

3. No temporary signs, flags, banners, etc. shall be permitted on the subject property.
4. No damaged or disabled motor vehicles may be kept within the special exception area for the used vehicle sales facility.
5. No vehicles may be parked or displayed for sale within the right-of-way or grassed area adjacent to Pulaski Highway.

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