

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(8302 Pulaski Highway)
15th Election District
7th Council District
Rosedale Investment, LLC
Legal Owner
Auto Point Enterprise, LLC
Lessee
Petitioners**

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2018-0142-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 8302 Pulaski Highway. The Petitions were filed on behalf of Rosedale Investment, LLC, legal owner and Auto Point Enterprise, LLC, lessee (“Petitioners”). The Special Exception petition seeks to use the property for a used motor vehicle sales area separated from sales agency building. The Petition for Variance seeks parking for a non-residential use closer to 10 ft. from right-of-way line to public street. A site plan was marked as Petitioners’ Exhibit 1.

Appearing at the hearing in support of the petitions were Clovis DaCuhna, Andre L. Wilbert, Felix V. Barrera and professional engineer Rick Richardson. Jonathan A. Azrael, 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), the Bureau of Development Plans Review (DPR) and the State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 1.15 acres in size and is zoned B.R- A.S. The site is improved with a commercial building formerly operated as a diner. Petitioners propose to reuse

the existing building for a used car sales facility. In fact, the lessee has for 14 years operated a used car sales facility on the property immediately adjoining the subject property to the east. Thus, the business would simply be relocated to the adjoining lot, which is slightly larger than the present location.

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 that Petitioners satisfied all requirements for special exception relief, and no evidence to the contrary was offered. As such 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 has irregular dimensions and is therefore unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty since they

would be required to remove or relocate the parking spaces which have existed for over 50 years without complaint. 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 absence of community and/or Baltimore County opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21st day of **February, 2018**, 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 parking for a non-residential use 0 ft. from the right-of-way line to a public street in lieu of the required 10 feet, 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. No temporary signage, banners or advertising flags shall be displayed on site.
3. Prior to issuance of permits Petitioners must provide a dumpster enclosure using solid materials in compliance with the Baltimore County Landscape Manual.
4. Prior to issuance of permits Petitioners must install curb stops or a similar solid barrier along the vehicle display area adjacent to Old Philadelphia Road.
5. There shall be no parking or display of vehicles in the public right-of-ways.
6. No storage of damaged or disabled vehicles shall be permitted.

7. No exterior mechanical work or repairs of vehicles shall be performed on site.
8. Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site.
9. Prior to issuance of permits Petitioners must install curb stops or fencing along the eastern tract boundary.

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