

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(520 Reisterstown Road)	*	OFFICE OF
3 rd Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
University BP, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Isaac Yair		
<i>Lessee</i>	*	Case No. 2018-0234-SPHXA
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of University BP, LLC, legal owner, and Isaac Yair, lessee (“Petitioners”).

The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to leave in place the previous approvals granted in Case 2008-0212-SPHXA. In addition, a Petition for Special Exception was filed to allow a used motor vehicle outdoor sales area, separated from sales agency building in a BR zone. Finally, a Petition for Variance seeks approval as follows: (1) to permit an 8 ft. side setback and a 10 ft. rear setback for a proposed sales trailer in lieu of the required 30 ft. rear setback, respectively; (2) to permit a 10 ft. side street setback double frontage for a proposed sales trailer in lieu of the required 25 ft. setback; and, (3) to permit a 35 ft. side street centerline setback (double frontage) for a proposed sales trailer in lieu of the required 50 ft. setback.

Appearing at the public hearing in support of the requests were Isaac Yair and surveyor Bruce Doak. Larry Strauss, Esq., represented the Petitioners. Several members of the community opposed the requests. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of

Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the request.

The subject property is approximately 12,036 square feet in size and is zoned BR. The subject property is one of five contiguous parcels owned by the same entity, at the intersection of Reisterstown and Milford Mill Roads. The property is unimproved at present, although it is paved. Petitioners propose to place on the site a utility trailer to serve as the sales office for a used car business which would be operated at the site.

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).

I do not believe the subject property is unique or that Petitioners would experience a practical difficulty if the request was denied. The property does not have any defining characteristics which make it unlike surrounding properties. In addition, the property can be used for other purposes, as evidenced by the zoning approval granted in Case No. 2008-0212-SPHXA. As such I believe the variance request must be denied.

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. Doak opined the Petitioners satisfied the requirements in BCZR §502.1 and the case law interpreting that provision. I concur, and in light of the presumption provided by Maryland law the petition for special exception will be granted.

Though the petition for special exception to operate a used car sales facility will be granted, the requested variances will be denied. As such, Petitioners can only conduct such an operation if they are able to satisfy the setback, parking and other requirements for that use. In light of this disposition, the special exception approval granted in Case No. 2008-0212-SPHXA shall be stricken, as discussed in greater detail below.

Special Hearing

The special hearing request seeks to “leave in place” the approvals granted in Case No. 2008-0212-SPHXA. As discussed at the hearing, I do not believe a petitioner in a zoning case is permitted to have alternative special exception uses permitted for the same parcel of property. If the request was granted Petitioners would have approval for two special exception uses (i.e., a used car sales facility and a car wash/carryout restaurant) on the same parcel. As such I believe the special hearing must be denied.

THEREFORE, IT IS ORDERED this 17th day of **July, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to leave in place the previous approvals granted in Case 2008-0212-SPHXA, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Exception to allow a used motor vehicle outdoor sales area, separated from sales agency building in a BR zone, be and is hereby

GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an 8 ft. side setback and a 10 ft. rear setback for a proposed sales trailer in lieu of the required 30 ft. rear setback, respectively; (2) to permit a 10 ft. side street setback double frontage for a proposed sales trailer in lieu of the required 25 ft. setback; and (3) to permit a 35 ft. side street centerline setback (double frontage) for a proposed sales trailer in lieu of the required 50 ft. setback, be and is hereby DENIED.

IT IS FURTHER ORDERED that the special exception, special hearing and variance relief granted in Case No. 2008-0212-SPHXA be and is hereby STRICKEN.

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 must comply with the ZAC comment submitted by the DOP, a copy of which is attached hereto and incorporated herein.

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