

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(8202 Pulaski Highway)
15th Election District
7th Council District
Fazal, LLC
*Legal Owner***

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2019-0047-XA**

Petitioner

* * * * *

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 8202 Pulaski Highway. The Petitions were filed on behalf of Fazal, LLC, legal owner of the subject property (“Petitioner”). The Special Exception petition seeks to allow a used motor vehicle outdoor sales area separated from sales agency building in a BR zone. The Petition for Variance seeks: (1) to permit a 0 ft. setback from the rear, side and front property lines for the parking in lieu of the required 10 ft. rear, side and front yard setbacks; and (2) to permit no design, screening and landscaping along all sides of the existing parking area and driveway in lieu of the required design, screening and landscaping in accordance with the Landscape Manual. A site plan was marked as Petitioner’s Exhibit 1.

Appearing in support of the petitions were Qaisar Shahzad and surveyor Bruce Doak. Russ Mirable appeared in opposition to the requests. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”).

The subject property is approximately 0.396 acres in size and zoned BR-AS. The property is improved with a one-story commercial building which until a few years ago housed a fast food

restaurant. The property is now vacant and Petitioner proposes to operate a used motor vehicle sales facility at the site, a use permitted by special exception in the BR-AS zone.

At the outset of the hearing Mr. Mirable raised the issue that the petitioner (a legal entity, or “person” under Maryland law per Md. R. 1-202(t)) was not represented by a lawyer. Mr. Doak assisted Petitioner, and while he is an experienced and knowledgeable surveyor, he is not a lawyer. Mr. Mirable correctly noted the “Zoning Checklist” prepared by the County expressly states a lawyer is required to represent an entity at a hearing before the Administrative Law Judge. Of course this is simply a restatement of long-existing Maryland law which states that an attorney is required to represent a corporation or other legal entity in a judicial or (as in this case) a quasi-judicial proceeding. *Lukas v. Bar Ass’n. of Montgomery County*, 35 Md. App. 442, 444-45 (1977); Md. Bus. Occ. & Prof. Code Ann. §10-206.

In light of the above I am obliged to dismiss the zoning petition. The dismissal will be without prejudice, which means Petitioner could obtain counsel and again seek zoning relief to operate a used car sales facility at the property without being barred by *res judicata* and/or collateral estoppel.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **29th** day of **October, 2018**, 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 **DISMISSED WITHOUT PREJUDICE**; and

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a 0 ft. setback from the rear, side and front property lines for the parking in lieu of the required 10 ft. rear, side and front yard setbacks; and (2) to permit no design, screening and landscaping along all sides of the existing parking area and driveway in lieu of the required design, screening and landscaping in

accordance with the Landscape Manual, be and is hereby DISMISSED WITHOUT PREJUDICE.

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