

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(9329 Liberty Road)	*	OFFICE OF
2 <sup>nd</sup> Election District		
2 <sup>nd</sup> Council District	*	ADMINISTRATIVE HEARINGS
Dennis Agboh, <i>Legal Owner</i>		
Valerie Bonanjah	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	<b>Case No. 2019-0170-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Dennis Agboh, legal owner and Valerie Bonanjah, lessee (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to amend the previous Zoning Case Nos. 2003-0147-X and 2014-0239-SPHA and abandon the special exception for a used motor outdoor sales area. In addition, a Petition for Variance was filed pursuant to BCZR Sections 409.A.4, 409.4.C, 409.8.A.1 & 238.2 as follows: (1) to permit non-residential parking 4' from the right of way line of a public street in lieu of the required 10'; (2) to permit a one-way drive aisle 15' wide in lieu of the required 22' wide; (3) to permit a two-way drive aisle as wide 15' in lieu of the required 22'; (4) 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; and (5) to permit a 0' setback from the rear and side property lines for the parking in lieu of the required 10' rear, side, and front yard setbacks. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Valerie Bonanjah and surveyor Bruce Doak appeared in support of the requests. There were no protestants or interested citizens in attendance. 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”).

### SPECIAL HEARING

The Petition for special hearing seeks to abandon a special exception granted in a 2003 zoning case, which permitted a used auto sales lot at the property. The operation of that facility, especially in recent years, was problematic and Baltimore County cited the prior lessee with numerous zoning and code violations. As such, the community will benefit from the proposed change in use (used auto sales to restaurant). A petition for special hearing is the appropriate mechanism to abandon the special exception and the request will therefore 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).

The one story concrete building was constructed in 1964 and sits askew on the lot. This unique positioning generates the need for a variance relief. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to operate the proposed business. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, 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.

Both the DOP and DPR requested in their ZAC comments that landscaping be provided at the site. The problem is that the entire site is paved, and there is no area in which grass or other vegetation could be installed. Petitioners submitted an aerial photo (Ex. 2) and it appears nearly all of the other commercial properties in the vicinity are similarly situated and do not have landscaping. Petitioners would need to remove paving from the site in order to install landscaping, and I do not believe they should be required to do so. The lessee, who is from Cameroon, plans to open a small ethnic restaurant at the site, and providing landscaping would simply be too expensive and burdensome for this small business.

THEREFORE, IT IS ORDERED this 19<sup>th</sup> day of **February, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief from Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to amend the Orders in previous Zoning Case Nos. 2003-0147-X and 2014-0239-SPHA (to reflect the relief granted herein) and to abandon the special exception for a used motor outdoor sales area, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from BCZR Sections 409.A.4, 409.4.C, 409.8.A.1 and 238.2 as follows: (1) to permit non-residential parking 4' from the right of way line of a public street in lieu of the required 10'; (2) to permit one and two-way drive aisles 15' wide in lieu of the required 22' wide; and (3) 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 GRANTED.

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.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln