

<b>IN RE: PETITIONS FOR SPECIAL</b>	*	BEFORE THE
<b>EXCEPTION AND VARIANCE</b>	*	OFFICE OF
<b>(13 Margaret Avenue)</b>	*	ADMINISTRATIVE HEARINGS
15 <sup>th</sup> Election District	*	FOR BALTIMORE COUNTY
7 <sup>th</sup> Council District	*	
John Inscore & Elizabeth Collins	*	
<i>Legal Owners</i>	*	
<b>Petitioners</b>	*	<b>Case No. 2019-0204-XA</b>
* * * * *		

**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 John Inscore & Elizabeth Collins, legal owners of the subject property (“Petitioners”). The Special Exception petition seeks: (1) approval for a service garage to allow maintenance work to be performed on trucks owned by the Petitioners’ trucking company; and (2) to permit the continued use of a second floor apartment (living quarters in a commercial building). The Petition for Variance seeks to permit 9 parking spaces in lieu of the required 10 parking spaces. A site plan was marked as Petitioners’ Exhibit 1.

Appearing in support of the petitions were Dave Billingsley, John Inscore, and Elizabeth Collins. Timothy M. Kotroco, Esq. represented the Petitioners. Several neighbors attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the BCZR. 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 requests.

The subject property is approximately 13,125 square feet in size and zoned BL-CCC. The property is improved with a 2-story structure which in the past was used for professional offices.

At present, the second floor is occupied by tenants and Petitioners propose to use the first floor as a small office for their trucking business. Petitioners propose to construct a detached garage on the property so that Mr. Inscore could perform routine maintenance and repairs on the trucks he owns. Even though Petitioners will not work on vehicles owned by others (so that vehicles will not be “repaired for remuneration” as stated in BCZR Section 101.1) the County instructed Petitioners to obtain a special exception for a service garage.

### 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. Billingsley testified via proffer Petitioners satisfied all requirements set forth in BCZR Section 502.1 and no evidence to the contrary was presented. 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).

The property is narrow and long (i.e., 50 ft. x 150 ft.) and is therefore unique. If the BCZR were strictly interpreted Petitioners would suffer a practical difficulty since they would not be able to construct the proposed garage. Finally, I find that the variances 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 absence of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21<sup>st</sup> day of **March, 2019**, that the Petition for Special Exception seeking: (1) approval for a service garage to allow maintenance work to be performed on trucks owned by the Petitioners' trucking company; and (2) to permit the continued use of a second floor apartment (living quarters in a commercial building), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit 9 parking spaces in lieu of the required 10 parking spaces and to not stripe the parking spaces in lieu of the striping requirement, 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. Petitioners must comply with the ZAC comments submitted by DOP and DPR, copies of which are attached.
3. Petitioners shall not drive south of Maryland Avenue trucks being repaired at the site.

4. The special exception approval granted herein shall be personal to the above-named Petitioners. Should Petitioners sell the property or otherwise cease using the proposed garage, the special exception shall terminate by operation of law.

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/dlw