

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11021 Pulaski Highway)	*	OFFICE OF
11 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
The Dengler Family, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2019-0217-SPHA
* * * * *		

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 The Dengler Family, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to amend the site plan from the previous case of 2008-0230-SPHA and to confirm that a vehicle storage area for damaged and disable vehicles is a permitted accessory use of the property. In addition, a Petition for Variance was filed pursuant to BCZR for rear yard setbacks of 18' and 19' respectively in lieu of the required 30'; for a side yard setback of 12' between two buildings in lieu of the required 60'; and for a front to side setback between two buildings of 45' in lieu of the required 55'. A site plan was marked as Petitioner’s Exhibit 1.

Professional engineer Rick Richardson 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 Environmental Protection and Sustainability (“DEPS”) and the Department of Planning (“DOP”). Neither of the reviewing agencies oppose the request.

The subject property is rectangular in shape and approximately 3.32 acres in size. The property is located in the White Marsh area of Baltimore County and is split-zoned ML & BR. The site is improved with several structures, all located in the ML-zoned portion of the property. Petitioner recently constructed on the site a small office (720 sq. ft.) and a 1200 sq. ft. garage with three bays. Petitioner operates a used motor vehicle sales business (“Platinum Auto & Truck”) and acquires vehicles for inventory from auctions and elsewhere. Frequently Petitioner will need to perform mechanical and/or body & fender repair on the vehicles before offering them for sale. The new building with service bays is used for this purpose, and the site plan also shows an area for “vehicle storage” which is used to store damaged and/or disabled vehicles purchased from auctions needing service or repair.

SPECIAL HEARING

In addition to amending the site plan approved in a 2008 zoning case, the petition for special hearing seeks confirmation that a storage area for damaged or disabled vehicles is a permitted accessory use on this site. The storage area shown on the plan comprises only a small portion of the overall site and thus it is “subordinate” in area and purpose pursuant to Section 101.1 of the BCZR. The area is located on the same lot as the principal use, and I believe such a storage area is customarily found in larger used car sales operations, where damaged vehicles are often acquired from auctions and restored for sale on the site. As such I believe the storage area qualifies as an “accessory use” as that term is defined in the above-cited section of the zoning regulations.

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 located in the Chesapeake Bay critical area and a large portion of the site is within a floodplain, as shown on the map submitted as Petitioner's Exhibit 3. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be required to raze or relocate the existing structures. 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. In addition, as Mr. Richardson noted at the hearing the variances are internal to the site and will not impact off-site properties.

As requested in the DOP ZAC comment, Mr. Richardson noted on the plan a redlined change showing the five (5) required off-street parking spaces for the sales office. In addition, the plan shows dedicated areas for vehicle inventory and storage of damaged vehicles, as also requested in the DOP comment.

THEREFORE, IT IS ORDERED this 10th day of **April, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") to amend the site plan from the previous case of 2008-0230-SPHA and to confirm that a vehicle storage area for damaged and disable vehicles is a permitted accessory use of the property, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit rear yard setbacks of 18' and 19' respectively in lieu of the required 30'; for a side yard setback of 12' between two buildings in lieu of the required 60'; and for a front to side setback between two buildings of 45' in lieu of the required 55', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioner must comply with critical area regulations.
3. No temporary signs, banners or flags of any type shall be permitted at the subject property.
4. The damaged vehicle storage area must be enclosed with a fence and screened as required by Section 405A of the BCZR.

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