

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(10730 York Road)
8th Election District
3rd Council District
David P. Miller
Legal Owner
Bartban, LLC
Contract Purchaser
Petitioners**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2019-0288-XA**

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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 10730 York Road. The Petitions were filed on behalf of David P. Miller, legal owner of the subject property, and Bartban, LLC, contract purchaser (“Petitioners”). The Special Exception petition seeks to allow a service garage pursuant to BCZR §230.3. The Petition for Variance seeks to permit a partial interior drive to be 12 ft. in width in lieu of the 20 ft. required. A site plan was marked as Petitioners’ Exhibit 1.

Professional surveyor Geoffrey Schultz appeared in support of the Petition. Howard L. Alderman, Esq. represented Petitioners. Stephen Miller, represented by Neil Lanzi, Esq., opposed the request. 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”). Neither agency opposed the request.

The subject property is approximately 13,068 square feet in size and split-zoned BL-AS & ML-IM. The property is located along a commercial stretch of York Road in the Cockeysville area. The property was formerly used by an electrical contracting business. Petitioners propose to operate a 3-bay service garage at the site, a use permitted by special exception. The proposed

service garage would be somewhat specialized and would service approximately five vehicles per day. Stephen Miller, an adjoining neighbor, opposed the request and was primarily concerned with the increase in traffic along the private driveway by which Petitioner proposes to gain access to the subject property.

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. Schultz, who was accepted as an expert, described the property and conceded it was a “difficult site” due to the significant change in grade (approximately 18’) from York Road to the rear of the lot. He explained Petitioners explored whether access from York Road was possible, and in the end determined it would require significant grading which would be cost-prohibitive. He also expressed concern with whether the SHA would approve access to the site via York Road given the constraints and engineering difficulties noted above.

Bruce Doak, a surveyor accepted as an expert, opined that accessing the site via the private drive shown on the plan would be problematic. He testified the drive is 12' wide which would only allow for one-way traffic. He also testified McCann Avenue--off of which the private driveway is located--is narrow and that the increased commercial activity would create dangerous conditions for residents and customers attempting to navigate the area.

Stephen Miller lives at 5 McCann Avenue, which adjoins the subject property to the west. He operates an electrical contracting business at the site. Although he stores work vehicles at the site for several employees, he explained that customers do not visit his property. He purchased the property in 1995, at which time he paved what was until that point a dirt driveway. The driveway accesses his property and Petitioners submitted a deed (Pet. Ex. 2) showing they have a right to use in common with others the driveway in question. Though the road is described in the deed as being 20' wide, only a 12' wide section is paved. Mr. Miller testified the road was too small and narrow to support a service garage business.

Based on the testimony and evidence presented I believe operating a service garage at the subject property would have a greater adverse impact upon vicinal properties than it would at other BL-AS zoned sites. Though located on York Road, the business could only be accessed by way of a narrow private driveway. While all special exception uses generate traffic, the impact here would in my opinion be greatly magnified given the substandard means of access. As Mr. Doak noted, there are numerous service garages along this stretch of York Road and none are accessed in the means proposed by Petitioners which would require customers, employees, and suppliers to traverse a narrow residential street and private drive to access the business. The site is indeed unique and the 18' grade change presents a significant obstacle to development. But it is this uniqueness which (though it might be favorable in a case seeking only a variance) requires Petitioners to design the project as proposed, which in my opinion is convoluted and causes enhanced adverse impacts upon neighboring properties.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 12th day of **June, 2019**, that the Petition for Special Exception to allow a service garage pursuant to BCZR §230.3, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Variance to permit a partial interior drive to be 12 ft. in width in lieu of the 20 ft. required, 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