

<b>IN RE: PETITIONS FOR SPECIAL HEARING, *</b>	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	OFFICE OF
<b>(8115 Belair Road)</b>	ADMINISTRATIVE HEARINGS
14 <sup>th</sup> Election District	
5 <sup>th</sup> Council District	
Max Real Estate, LLC	
<i>Legal Owner</i>	
The Hertz Corporation	
<i>Lessee</i>	
Petitioners	<b>Case No. 2019-0388-XA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Max Real Estate, LLC, legal owner, and The Hertz Corporation, lessee (“Petitioners”).

At the outset of the hearing Petitioners withdrew their special hearing request and certain variances were also modified based on discussions with the County’s landscape architect. A redlined site plan was submitted (Exhibit 5) and the Petition was amended and seeks the following variance relief: (1) to permit a 6 ft. setback for the storage and display of vehicles in the front yard in lieu of the required 15 ft.; (2) to permit a modification to the landscape manual to permit a 6 ft. wide landscape strip; and (3) to permit a 6 ft. setback to the right of way line of a public street in lieu of the otherwise required 10 ft. Finally, a Petition for Special Exception seeks approval for a used motor vehicle sales area, separated from sales agency building.

Appearing at the public hearing in support of the requests were Dean Hoover, Richard Boblits and Michael Albo. Jennifer Busse, Esq., represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.

The subject property is approximately 5.02 acres +/- in size and is zoned BR. The property was formerly the site of the Schaefer & Strohminger auto dealership, but is now vacant. Hertz proposes to sell used motor vehicles at this location, a use permitted by special exception in the BR zone.

### **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. Hoover opined the use at this location would have no greater detrimental impact upon the community than at any other BR zoned site. No evidence to the contrary was presented and the special exception request will therefore be granted.

### **Variances**

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 large site has an irregular shape and Petitioners must contend with long-existing site improvements. As such the property is unique. If the Regulations were strictly interpreted

Petitioners would experience a practical difficulty because they would be unable to operate the used vehicle sales facility as proposed. 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.

THEREFORE IT IS ORDERED this 26<sup>th</sup> day of **August**, 2019, by this Administrative Law Judge, that the Petition for Special Exception to permit a used motor vehicle sales area, separated from sales agency building, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a 6 ft. setback for the storage and display of vehicles in the front yard in lieu of the required 15 ft.; (2) to permit a modification to the landscape manual to permit a 6 ft. wide landscape strip in lieu of the required 10 ft.; and (3) to permit a 6 ft. setback to the right of way line of a public street in lieu of the otherwise required 10 ft., 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