

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(803 Gleneagles Ct.)	*	ADMINISTRATIVE HEARINGS
9 th Election District	*	FOR BALTIMORE COUNTY
5 th Council District	*	
803 Gleneagles, LLC	*	
<i>Legal Owner</i>	*	
Petitioner	*	Case No. 2019-0389-XA
* * * * *		

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 803 Gleneagles Ct.. The Petitions were filed on behalf of 803 Gleneagles, LLC, legal owner of the subject property (“Petitioner”). The Special Exception petition seeks approval pursuant to Section 253.2.B.3 of the Baltimore County Zoning Regulations (“BCZR”) for a service garage. The Petition for Variance seeks: (1) to permit a front building setback of 64 ft. in lieu of the required 75 ft.; (2) to permit a modification to the Landscape Manual; and (3) to permit four parking spaces to be as close as 4 ft. from the right-of-way line of a public street in lieu of the otherwise required 10 ft. A site plan was marked as Petitioner’s Exhibit 3.

Appearing in support of the petitions were Robert Brittain, Tory Pierce and Marc Cohen. Jennifer Busse, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency did not oppose the request.

The subject property is approximately 213,879 square feet (±4.91 acres) in size and zoned ML-IM. The property is improved with a large (32,883 sq. ft.) commercial/warehouse building

which was previously used as a trade school. Petitioner proposes to operate an auto repair/body shop at the site, a use permitted by special exception in the ML-IM 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. Pierce opined via proffer that the use would have no greater detrimental impact upon the community at this particular location than it would at any other ML-IM zoned property. No evidence to the contrary was presented and the 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 the property is therefore unique. If the BCZR were strictly interpreted Petitioner would suffer a practical difficulty since it would be unable to operate the proposed service 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 lack of County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 27th day of **August, 2019**, that the Petition for Special Exception pursuant to Section 253.2.B.3 of the Baltimore County Zoning Regulations (“BCZR”) to permit a service garage, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a front building setback of 64 ft. in lieu of the required 75 ft.; (2) to permit a modification to the Landscape Manual to allow a 4-foot wide landscape strip in lieu of the otherwise required 10 ft.; and (3) to permit four parking spaces to be as close as 4 ft. 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 and conditioned upon 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. All vehicle repairs, body work and/or painting must be done inside the existing building on site.
3. Petitioner must submit to the DOP signage details/elevations prior to obtaining permits for same.

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