

IN THE MATTER OF
TTV Properties III, LLC
(aka Volvo Dealership)
10630 York Road
DRC #s 042214A & 042214B

8th Election District
3rd Councilmanic District

* BEFORE THE
* FOR
* BOARD OF APPEALS
* BALTIMORE COUNTY
* Case No.: CBA-14-039 and CBA-15-011

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RULING ON MOTION FOR RECONSIDERATION

This matter comes before the Board on a Motion for Reconsideration filed by J. Carroll Holzer, Esquire of Holzer & Lee on behalf of Protestants, of the Board's Majority Opinion and Order issued June 15, 2015 wherein the Development Plan (Dev. Ex. 12) was approved with conditions.

Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt represents the Developer, TTV Properties III, LLC (aka Bill Kidd's Volvo Dealership) and filed Applicant's Response to Motion to Revise the Majority Opinion and Order on July 10, 2015. Carole Demilio, Esquire, Deputy People's Counsel for Baltimore County did not file a response to the Motion for Reconsideration.

Then Chairman of the Board of Appeals, David Thurston, was the Panel Chair during the three days of hearing in this matter. Prior to the conclusion of this matter, Mr. Thurston announced that he would be resigning from the Board of Appeals with his last working day as June 15, 2015. At the last hearing date, June 4, 2015, Counsel agreed to provide closing memoranda on June 12, 2015 and the Board publically deliberated this matter on June 15, 2015. The Majority Opinion, with Dissenting Opinion by Board Member Benfred Alston, were issued by the Board on June 15, 2015. Due to the previous dissenting opinion, current Chairman, Maureen Murphy, was appointed to replace Mr. Thurston in deciding the Motion for Reconsideration.

In considering a Motion for Reconsideration, this Board has previously ruled that a Motion should only be necessary when there has been substantive new case law or enactment of a statute not previously available, which would clearly merit a modification of a Board's previous decision. In this case, there has not been any new substantive case law or the enactment of any new statutes in regard to the issues in this case.

This Board has determined that the point of issue is whether cars can be stored on the ML-IM portion of the property under BCZR 253.1. The majority decision of the Board issued June 15, 2015 determined that the ML-IM portion of the property allows the storage of vehicles by right.

Board member Andrew Belt, a majority decision holder, agrees with the Majority Opinion and Order on June 15, 2015 and adopts the additional analysis and decision set forth below.

Majority Decision

Board Chairman Murphy has reviewed the record and applicable regulations in the BCZR and agrees with the Majority Opinion and Order on June 15, 2015 that automobile storage is permitted in the M.L. zone for the reasons set forth therein. The Majority of the Board provides the following additional legal analysis in further support of its June 15, 2015 Opinion and Order.

First, under BCZR §253.1.B.2 storage of automobiles is permitted as "storage...use," "sales yard, general." Here, the Volvo dealership is storing the automobiles which will be sold to customers in the showroom. Second, the Majority Board also found that storing automobiles is permitted under BCZR §253.1.B.16 which allows for the "storage...of any product whose... final processing or production is **permitted** as of right as a principal use in M.L. Zones..." In plain words, Subsection B.16 provides that the product (Volvo automobiles) can be "stored" on M.L.-I.M. zoned land as long as *the right to assemble an automobile is **permitted** by right in a ML zone.* Here, automotive assembly is permitted by right under 253.1.A.2. To be clear, the storage requirement under Subsection 16 does not expressly require that the use sought (here a car

dealership) must also include the manufacturing of automobiles before automobiles can be stored.

“Storage” is its own type of use.

Toward that end, the County Council separated the types of uses allowed in ML zones into: (1) ‘industrial uses’ under §253.1.A (“A. The following industrial uses”); (2) ‘storage uses’ under §253.1.B (“B. The following transportation, storage or quasi-public uses or utilities”); and (3) ‘auxiliary retail or service uses’ under §253.1.C. (“C. The following auxiliary retail or service uses or semi-industrial uses, provided that any such use is located in a planned industrial park at least 25 acres in net area, in an I.M. District, or in combination of an A.S. and I.M. District”). In doing so, it is clear to the Majority Board that ‘storage’ was a distinct use which further confirms the County Council’s intent to allow the storage of automobiles on the M.L. land.

Third, the Majority Board notes in reviewing the *auxiliary retail uses* in an IM district (M.L.- I.M. zone here) under §253.1.C the County Council included other nearly identical uses involving the storage of automobiles on a lot such as: automobile rental agencies (§253.1.C.1); parking lots or garages (§253.1.C.18); truck rental and truck trailer rental agencies (§253.1.C.27); and service garages provided the land is assigned with a combination of an A.S. and I.M. District (§253.1.C.29.)

Finally, the Protestants advocate that our previous decision *In the Matter of the Application of Auto Properties, L.L.C.*, Case Nos. 03-360-SPHA and 06-109-SPH already decided that the storage of automobiles is not permitted on M.L. zoned land.

Auto Properties concerned D.R. 5.5 zoned land with a small sliver of B.M. It was an unimproved lot surrounded by car dealerships. Because the zoning was D.R. 5.5, the applicant needed a use permit and variances to park the Honda automobile inventory there. The applicant discovered an old use permit which permitted business parking on the residential lot but it was subject to certain requirements and approvals. The facts showed that, because those conditions

were never satisfied, we held that there was no vested right in the parking permit and therefore it could not be used by the applicant. Since the issue here involves the storage of automobiles on M.L.-I.M. zoned land, our decision in *Auto Properties* is not applicable.

Conclusion

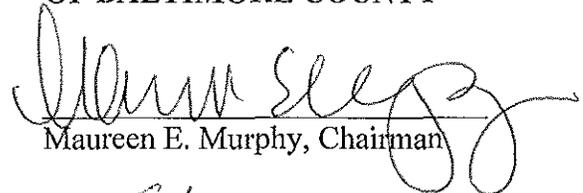
Having reviewed all of the Protestants' arguments on the Motion for Reconsideration and the Response filed by the Developer, the Board's Order dated June 15, 2015, approving the Development Plan with conditions as set forth therein, shall incorporate the additional analysis of the Majority Board as set forth herein, and the approval of the Development Plan shall remain the same.

Board member Benfred Alston, who dissented from the majority decision of the Board, has not changed his Dissenting Opinion but agrees that the Motion for Reconsideration should be denied.

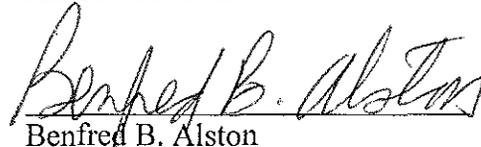
IT IS THEREFORE ORDERED THIS 8th day of October, 2015 by the Board of Appeals for Baltimore County, that the Protestants' Motion for Reconsideration be, and the same is hereby, **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Chairman


Andrew M. Belt


Benfred B. Alston



Board of Appeals of Baltimore County

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October 8, 2015

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RE: *In the Matter of: TTV Properties III, LLC – Petitioner*
(a/k/a Volvo Dealership)
Case Nos.: CBA-14-039 and CBA-15-011

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion for Reconsideration issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: TTV Properties, III, LLC
Benjamin Kulp/Site Resources, Inc.
Becky Gerber
Richard A. Zeller/State Highway Administration
Office of People's Counsel
Arnold Jablon, Director/PAI
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