

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/S Baltimore National Pike, (US Rte. 40),	*	ZONING COMMISSIONER
1,600' W of Nuwood Road	*	
(6624 Baltimore National Pike)	*	OF
	*	
1 st Election District	*	BALTIMORE COUNTY
1 st Council District	*	
	*	
Russels, LLC	*	Case No. 2010-0336-A
Petitioner	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by F. Steven Russel, managing member of Russels, LLC, the owner of the property, by and through their attorney, Leslie M. Pittler, Esquire. The Petitioner requests variance relief from: (1) Sections 238.1 and 303.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 52 feet in lieu of the required averaged setback of 57.5 feet, and (2) from B.C.Z.R. Section 238.2 to permit a side yard of 20 feet in lieu of the required 30 feet. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Kenneth J. Colbert, Professional Engineer with Colbert, Matz, Rosenfelt, Inc., the consultant who prepared the site plan for this property, and Leslie M. Pittler, Esquire, Petitioner’s attorney. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is an irregular (gun shaped) parcel located on the north side of Baltimore National Pike (MD Rte. 40) just west of its intersection with Nuwood Road in Catonsville. The property consists of a gross area of 5.0819 acres, more or less, zoned B.R. and is the site of new car dealerships owned by the Petitioner.

The Russel family of automobile dealerships is well-known in the Baltimore/Metropolitan area and, in fact, operates other dealerships on nearby property. As shown on the site plan, the subject property features two (2) new car showrooms for Mazda/Subaru and Volkswagen automobiles, a large area for mechanical services, a body/fender repair shop, and a large macadam paved area for the storage of vehicles and customer parking.

The subject of the variance is the Mazda/Subaru new car showroom that is being remodeled in an effort to satisfy requirements imposed by Subaru to equal out its display area in conformance with its new business model. Testimony and evidence offered establishes that the specific need for the variances are generated by the uniqueness of the property. The 6,697 square foot dealership building has existed at this location for many years. As illustrated on Petitioner's site plan and aerial photograph, it was built towards the front and in the southwest corner of the site some 55 feet off of U.S. Route 40 and 20 feet west of the property line.¹

To maintain its valued connection between the Subaru manufacturer and the Petitioner, Russels, LLC, has designed a 525 square foot addition that will provide the additional showroom space required by Subaru. This will be done by extending the existing western building line 50 feet further south to meet the front exterior building wall. This in essence will present a new showroom image by filling in 10.5 feet of the 30.5 of open space that presently exists at the southwest corner. This is in keeping with the 20 foot side yard space that presently exists and a greater setback than was granted by this Commission in 1964.

As Mr. Colbert pointed out, there is no other feasible area to place the needed addition. There is no space available to the front or rear and the east side is occupied by the service

¹ The zoning history evidences that on July 9, 1964 then Zoning Commissioner John Rose granted a variance from B.C.Z.R. Section 238.2 permitting a side yard setback of 10.76 feet in lieu of the required 30 feet – *See* Case No. 2643-5 received in evidence as Petitioner's Exhibit 3C. Petitioner, however, located its showroom 20 feet from the property line as opposed to the 10.76 feet granted.

center's drive aisle. Suffice it to say, these characteristics create substantial and unusual architectural challenges in locating a building addition on the site that will provide a reasonable and significant use. *See, Belvoir Farms v. North*, 355 Md. 259 (1999) and *White v. North*, 356 Md. 31 (1999).

The front setback variance is from the “averaging” of setbacks required by B.C.Z.R. Section 303.2. As shown on the aerial photograph (Petitioner's Exhibit 2), many of the existing commercial buildings on either side of Baltimore National Pike are setback as close as 20 feet from the road edge. The front setback variance in this case is driven due to the setback distances of adjoining commercial uses. To the west the Professional Enterprise's two-story building at 64 feet – to the east Russels' Volkswagen showroom at 51 feet. This creates the average setback distance of 57.5 feet ($64' + 51' \div 2 = 57.5'$). The setback required by the B.C.Z.R. appears particularly inappropriate here given the fact that the site and building(s) have existed for decades. The southwest corner of the new addition will only sit 1.8 foot closer to the right-of-way. This is due in chief to the fact that the existing showroom is not parallel with US Route 40. (They get closer as you proceed from east to west). Thus, the requested 52 foot variance is necessary.

Based upon the testimony and evidence presented, I am persuaded to grant the relief. It is clear that the use proposed is appropriate for this site and consistent with the area. The requested relief will allow modernization of the building that has existed at this location for over four (4) decades. The variances are warranted in view of the unique configuration of the lot and dynamic structural changes brought about by the uses that have previously existed on this property. There were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. Thus, it is clear that the requested relief can be granted without detrimental

impact to the health, safety or general welfare of the surrounding locale. I find that the Petitioner has satisfied the requirements of B.C.Z.R. Section 307 as it relates to the requested zoning variances. To do otherwise would cause an exceptional hardship to Russels, LLC that has operated at this site for many years without objection.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE IT IS ORDERED by the Zoning Commissioner for Baltimore County this 27th day of July 2010, that the Petition for Variance seeking relief from Sections 238.1 and 303.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a front setback of 52 feet in lieu of the required 57.5 feet averaged setback, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from B.C.Z.R. Section 238.2 to permit a side yard setback of 20 feet in lieu of the required 30 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1. The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this Order shall be taken in accordance with Baltimore County Code (B.C.C.) Section 32-3-401.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County