

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(2312 York Road)	*	OFFICE OF
8 th Election District		
3 rd Councilmanic District	*	ADMINISTRATIVE HEARINGS
Schaefer-Timonium, LLC, <i>Legal Owner</i>		
Enterprise RAC Co. of Baltimore, LLC,	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	Case No. 2014-0159-SPHXA

* * * * *

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 by David H. Karceski, Esquire from Venable, LLP, on behalf of Schaefer-Timonium, LLC, the legal owner, and Enterprise RAC Co. of Baltimore, LLC, contract purchaser, (“Petitioners”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to amend the Special Exception granted in Case No. 2000-0215-X and to amend the following conditions to the Order in Case No. 2000-0215-X: Condition No. 3 - to allow hand-washing and detailing of inventory vehicles only within the building in a wash/detail bay; Condition No. 8 - for new building elevations to be approved by the Planning Department; and Condition No. 10¹ - for an internally illuminated, pole-mounted sign not turned off outside the hours of operation.

A Petition for Special Exception was filed pursuant to B.C.Z.R. §236.2 for a used motor vehicle outdoor sales area, separated from sales agency building.

¹ At the hearing, Petitioner’s counsel submitted an Amended Petition for Special Hearing, which sought to also amend Condition No. 12, from the 2000 Order. This condition required a 8' fence along the rear of the property. In fact, a 6' fence currently exists, and the County’s landscape architect indicated it could remain. Petitioners will also construct additional fencing along the rear property line as shown by the dashed lines on the site plan. Exhibit 1. This is in my opinion a non-material amendment, and the Petition shall be amended accordingly.

Finally, a Petition for Variance was filed pursuant to B.C.Z.R. §238.2 to allow a rear yard setback of 8' in lieu of the required 30'.

Appearing at the public hearing in support of the requests was William H. Schaefer, Jr., Robert Hanna, Geoff Crawford. Sabrina Saiser, Gavin Watson and Richard E. Matz, with Cobert, Matz and Rosenfelt, Inc., who prepared the site plan. David H. Karceski, Esq., with Venable, LLP, appeared as counsel and represented the Petitioners. There were no Protestants or interested citizens in attendance at the hearing.

The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were submitted by several County agencies. The Bureau of Development Plans Review (DPR) noted Petitioners must submit for approval a landscape plan. The Department of Planning (DOP) supports the plan, noting that the proposed use (used car sales) will be the same as the existing use. That agency also requested certain conditions that it believed were appropriate in any Order granting relief.

The subject property is approximately 0.6 acres in size and is zoned BR-AS. At present, Schaefer sells used cars on the site, and that use will continue when Enterprise purchases the property.

SPECIAL HEARING

The Petition for Special Hearing seeks to amend certain conditions imposed in Case No. 2000-0215-X, which granted special exception relief for the operation of a used car sales facility.

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 People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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.

In this case, no evidence was presented which would rebut this presumption. Mr. Matz, a professional engineer accepted as an expert, opined that Petitioners satisfy the B.C.Z.R. § 502.1 requirements, and I concur. Accordingly, the Petition for Special Exception will be granted.

VARIANCES

Based upon the testimony and evidence presented, I will also grant the request for variance relief. To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

The Petitioners have met this test. The property is irregularly shaped and is comprised of three separate parcels, which in fact gives rise to the need for the (internal lot line) setback relief.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, since they would be essentially unable to construct the new building on site. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the absence of community and/or County agency opposition.

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

THEREFORE, IT IS ORDERED this 25th day of March, 2014, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to reaffirm and amend the Special Exception granted in Case No. 2000-0215-X, be and is hereby GRANTED. The following conditions imposed in Case No. 2000-0215-X: Condition No. 3 – prohibiting washing and detailing of vehicles on site; Condition No. 8 – requiring the construction of a new building as shown on the elevation drawings submitted in that case; Condition No. 10 – requiring a ground mounted sign that would not be illuminated when the business was closed; and Condition No. 12 – requiring a 8' fence along the rear property line, be and hereby are STRICKEN.

IT IS FURTHER ORDERED that the Petition for Special Exception filed pursuant to B.C.Z.R. §236.2 for a used motor vehicle outdoor sales area, separated from sales agency building, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to allow a rear yard setback of 8' in lieu of the required 30', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners must submit for approval by Baltimore County’s landscape architect lighting and landscape plans.
3. Petitioners must satisfy the conditions set forth in the DOP ZAC comment dated March 10, 2014; a copy of which is attached hereto and made a part hereof.
4. The Petitioners shall be permitted to internally illuminate the freestanding sign at the property (which must comply with the B.C.Z.R.).

5. The Petitioners shall be permitted to hand wash and detail inventory vehicles only within the wash/detail bay shown on the plan (Exhibit 1).
6. The Petitioners shall be permitted to retain the existing 6' board on board fence, and shall construct additional fencing of a similar height along the rear property line in the area shown with dashed lines on the plan (Exhibit 1).
7. The Petitioners shall be permitted to construct on site a used auto sales building and wash bay, as shown on the plan marked as Exhibit 1. The Petitioners shall submit for approval by DOP (prior to issuance of permits) architectural elevations for the buildings. The design and construction of the buildings shall comply with the Hunt Valley/Timonium Design Guidelines.

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:dlw