

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	*	OFFICE OF
<b>(8434 Pulaski Highway)</b>	*	ADMINISTRATIVE HEARINGS
15 <sup>th</sup> Election District	*	FOR BALTIMORE COUNTY
7 <sup>th</sup> Councilmanic District	*	<b>Case No. 2014-0198-SPHXA</b>
Makhanjit Singh & Rajinder Kaur,	*	
<i>Legal Owners</i>	*	
Petitioners	*	

\* \* \* \* \*

**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 Timothy M. Kotroco, Esquire from Whiteford, Taylor & Preston, on behalf of Makhanjit Singh & Rajinder Kaur (“Petitioners”).

The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit automobile sales accessory to Service Garage use. A Petition for Special Exception was filed pursuant to B.C.Z.R. § 253.2.B.3 to permit a Service Garage in the ML-IM zone. Finally, a Petition for Variance was filed pursuant to § 255.1 of the B.C.Z.R. to permit a side yard setback of 1 ft. in lieu of the required 30 ft. and a rear yard setback of 25 ft. in lieu of the required 30 ft.

The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were received from Department of Planning (DOP) dated May 2, 2014 and the Bureau of Development Plans Review (DPR) dated April 10, 2014. The comments and concerns identified in these agency responses will be addressed by the imposition of conditions in the Order which follows.

The subject property is approximately 0.77 acre in size and is zoned BR & ML-IM. The property is unimproved, and is bounded by Pulaski Highway. Petitioners purchased the property, and proposes to operate an automotive repair facility, with vehicle sales as an accessory use. To do so requires zoning relief.

#### SPECIAL HEARING

The Special Hearing petition seeks permission to sell vehicles from the site. This is a common request in such scenarios, since repair shops often obtain salvage vehicles or vehicles whose owners have not paid the repair fees. In such cases, the owner prefers to have the ability to sell such vehicles, without needing to hire a broker. This is a reasonable request, and the number of vehicles permitted to be sold from the site will be restricted in the Order below.

#### 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, Mr. Richardson (a licensed professional engineer accepted as an expert) opined Petitioners satisfied B.C.Z.R. § 502.1, and he also testified (via proffer) that the use would serve primarily the industrial uses in the surrounding industrial area, as required by B.C.Z.R. § 253.2.B.3. There was no testimony to the contrary, and thus the favorable presumption under Maryland law would apply in this case.

## 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. If the B.C.Z.R. were strictly interpreted, the Petitioners would indeed suffer a practical difficulty, since they would be unable to open the proposed facility or make productive use of this remnant parcel of land. 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.

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

THEREFORE, IT IS ORDERED this 30<sup>th</sup> day of May, 2014, by this Administrative Law Judge, that the request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to permit automobile sales accessory to Service Garage use, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception filed pursuant to B.C.Z.R. § 253.2.B.3, to permit a Service Garage in the ML-IM zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to § 255.1 of the B.C.Z.R. to permit a side yard setback of 1 ft. in lieu of the required 30 ft. and a rear yard setback of 25 ft. in lieu of the required 30 ft. , be and is hereby GRANTED.

