

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(8545 Philadelphia Road) *	OFFICE OF
15 <sup>th</sup> Election District	
7 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
Stephen & Darlene Ramsey, <i>Legal Owners</i>	
*	FOR BALTIMORE COUNTY
Petitioners	
*	<b>Case No. 2014-0040-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by John B. Gontrum, Esquire, of Whiteford, Taylor & Preston, LLP, on behalf of Stephen & Darlene Ramsey, the legal owners. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve a non-conforming used car sales business in a BR zone. The Variance petition seeks relief from B.C.Z.R. as follows: (1) to allow macadam and gravel parking in lieu of required durable and dust free surface pursuant to §409.8.A.2; (2) to allow parking at the right of way line of Philadelphia Road in lieu of the required 10 feet setback pursuant to §409.8.A.4; (3) to allow parking without striping and curb stops pursuant to §409.8.A.6; (4) to allow an existing building a front yard setback of 26' from the center line in lieu of the required 50' and 20' from the property line in lieu of the required 25' pursuant to §238.1 ; (5) to allow an existing building to set back 20' from the right of way line in lieu of the average setback of 89' pursuant to §303.2; (6) to allow a side yard setbacks of 2.5' and 22' and of 0' and 11' in lieu of the required 30' for existing buildings pursuant to §238.2; and (7) to allow display of motor vehicles within 10' of a roadway and front building line pursuant to §238.4. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Stephen Ramsey and C. Dudley Campbell, the surveyor whose firm prepared the site plan. John B. Gontrum, Esquire, of Whiteford, Taylor & Preston, LLP, appeared and represented the Petitioners. There were no interested citizens in attendance at the hearing. The file reveals that the Petition was advertised and the site was posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Department of Environmental Protection and Sustainability (DEPS), the Bureau of Development Plans Review (DPR) and the State Highway Administration (SHA). The DOP set forth a list of recommendations, and the Petitioners indicated they would satisfy each of the items listed. The DEPS offered no substantive comment, and the DPR objected to certain of the variances, discussed in greater detail below.

The subject property is 1.212 +/- acres in size and is zoned BR. The Petitioners (and their predecessors) have operated a used car sales and service facility on the site. At present, a new tenant is using the premises and Baltimore County has required the Petitioners to seek zoning relief before certifying to the Motor Vehicle Administration (MVA) that all zoning requirements are satisfied.

The petition for Special Hearing appears to be uncontroversial. Mr. Ramsey testified via proffer that a used car sales and service facility has operated on this site since the 1960s without interruption. Counsel for Petitioners noted that prior to 2001, a used car sales facility was permitted as of right in the BR zone. In Bill 71-2001, the County Council changed the law and required a Special Exception to operate such a business in the BR zone. As further evidence that such a business operated prior to the change in law, Petitioners submitted a document signed in 1994 by Mr. Jablon (who was at the time the Director of "ZADM") stating that the used car facility at the site satisfied "all local zoning requirements." Petitioners' Exhibit 7. In these

circumstances, I believe Petitioners enjoy non-conforming use status permitting the operation of a used car sales business on the site, subject to the requirements and restrictions set forth in B.C.Z.R. §104.

Based upon the testimony and evidence presented, I will grant in part and deny in part the petition for variance. To obtain variance relief a petitioner must show:

- (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 the Petitioners must contend with long existing site conditions. As such, it is unique. The Petitioners would experience a practical difficulty if the regulations were strictly interpreted, since they would be unable to continue the business on site. But, based on the ZAC comments, I will deny certain aspects of the variance petition.

The Bureau of Development Plans Review (DPR), in a ZAC comment dated September 5, 2013, had no objection to variance numbers 4-6, but objected to variance numbers 1-3 & 7. Variance numbers 2 and 7, as shown on the plan, concern the display of the used vehicles for sale. Mr. Kennedy believes that, per the Landscape Manual, vehicle display should be at least 10' away from the adjacent roadway (Philadelphia Road) right-of-way line. I concur with Mr. Kennedy's comments, and believe the auto display area must comply with the regulations, which will improve the appearance of the site.

The Bureau of DPR also believed variance numbers 1 and 3 should be denied. These relate to the paving and striping of the parking lot. In response to the Department of Planning's (DOP) comment, the Petitioners have agreed to pave and stripe all areas between Philadelphia Road and the fence on site, which will ensure the most heavily travelled means of customer

ingress/egress are durable and dustless. But I do not believe the Petitioners should be required to pave the balance of the parking lot, most of which is located in the area of the service building at the rear of the site. This area will be used for vehicles awaiting repair, and I believe that paving would be expensive and unnecessary on this portion of the site, and it could also be easily damaged by tow trucks and similar vehicles used to bring disabled vehicles to the site. As such, I will grant variance numbers 1 and 3 with respect to this portion of the site.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing request should be granted, and the petition for variance should be granted in part, and denied in part.

THEREFORE, IT IS ORDERED this 29th day of October, 2013, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve a non-conforming used car sales business in a B.R. zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance requests (as numbered in the petition) pursuant to the B.C.Z.R. as follows: (1) to allow parking on macadam and gravel surface (other than with regard to the area between the Philadelphia Road sidewalk and chain link fence with green privacy slats, which shall be paved) in lieu of required durable and dust free surface pursuant to §409.8.A.2; (3) to allow parking without striping and curb stops (other than with regard to the area between the Philadelphia Road sidewalk and chain link fence with green privacy slats) pursuant to §409.8.A.6; (4) to allow an existing building front yard setback of 26' from the center line in lieu of the required 50' and 20' from the property line in lieu of the required 25' pursuant to §238.1 ; (5) to allow an existing building to set back 20' from the right of way line in lieu of the average setback of 89' pursuant to §303.2; and (6) to allow side yard setbacks of 2.5' and 22' and of 0' and 11' in lieu of the required 30' for existing buildings

pursuant to §238.2, be and are hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' variance requests (as numbered in the petition) pursuant to the B.C.Z.R. as follows: (2) to allow parking at the right of way line of Philadelphia Road in lieu of the required 10 feet setback pursuant to §409.8.A.4; and (7) to allow display of motor vehicles within 10' of a roadway and front building line pursuant to §238.4, be and are hereby DENIED.

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 comply with the ZAC comment dated September 30, 2013 submitted by the DOP.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County