

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(9329 Liberty Road) *	OFFICE OF
2 nd Election District *	ADMINISTRATIVE HEARINGS
4 th Council District *	
Dennis K. & Elizabeth J. Agboh *	FOR BALTIMORE COUNTY
<i>Legal Owners</i> *	
Petitioners *	Case No. 2014-0239-SPHA
* * * * *	

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) permit fifty (50) vehicles on the subject property in lieu of the thirty (30) allowed per Case No. 03-147-X; and (2) to permit a 24 ft. x 24 ft. one (1) story metal garage building to be constructed and used for mechanical repair services to cars being sold from the subject property only. The variance petition seeks relief from B.C.Z.R. §§ 409.4.B.2, 409.C and 409.8.A.4 as follows: (1) to permit up to twenty (20) spaces for sales vehicles that do not have direct access to an aisle; (2) to permit one way directional drive aisles with a width of 15 ft. in lieu of the required 22 ft.; and (3) to allow parking spaces 1.0 ft. from a right-of-way of a public street, in lieu of the required 10 ft.

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 Dennis Agboh. Bruce E. Doak, from Bruce E. Doak Consulting, LLC (whose firm prepared the site plan) appeared on behalf of the Petitioners. John and Barb Ness, both of whom operate a business on property adjoining that owned by Petitioners, attended the hearing to express certain concerns regarding the operation of the Petitioners’ business. The

Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) dated July 3, 2014 and the Bureau of Development Plans Review (DPR) dated June 2, 2014.

The petition for special hearing first seeks to permit 50 cars on the site, in lieu of the 30 as allowed in Case No. 03-147-X. In that case, special exception relief was granted for a “used motor vehicle outdoor sales area” on the B.R. zoned property, per B.C.Z.R. §236.2. What Petitioners seek is in fact an amendment to the special exception previously granted, which in my opinion would require a petition for special exception, which was not filed in this case.

In addition, I do not believe that it would be in the public interest to permit more than 30 vehicles on the site. The property contains only 20,000 square feet which is a small parcel on which to display for sale 50 vehicles, especially when taking into account the additional traffic generated by customers, suppliers, etc. The DOP also opposed the request. In fact, that agency opined in its ZAC comment that the 2003 special exception order “already allowed an over intensification of the site.”

The second aspect of the petition for special hearing seeks to permit construction of a 24' x 24' building for mechanical repairs to cars being sold from the property. This would seem to be permitted by right in the B.R. zone, which permits all uses allowed in the B.M. zone per B.C.Z.R. §236.1.A. One such use is a service garage, per B.C.Z.R. §233.1.B. As such, I believe the building and proposed use are permitted by right (provided all B.R. zone height and area regulations are satisfied) at the subject property, although I will grant the petition for special hearing to prevent confusion on the point.

The final issue involves the “5 or less automobiles to be rented,” as described on the site plan. A “neighborhood car rental agency” is a permitted use in the B.L. zone (B.C.Z.R.

§230.1.A.9), and is therefore permitted in the B.R. zone. While what Petitioners propose is actually the rental of motor vehicles as an accessory use, the regulations would nonetheless permit such rentals even if they were the “principal use of land.” As such, this use is permitted on the property, and both the B.L. and B.M. zones (and therefore the B.R. zone as well) permit the “combination of uses” on the same property. B.C.Z.R. §§230.1.A.10 and 233.1.C.

Based upon the testimony and evidence presented, I will also grant the petition for variance, although on slightly different terms than requested in the original petition. The Petition sought approval for a 1 foot setback for parking spaces along the front (Liberty Road) of the site. The County’s landscape architect requested that planter boxes with a vegetative buffer be installed along the front of the site, as shown on the revised site plan marked as Petitioners’ Ex. No. 6. To accommodate this landscaping, the parking spaces will be situated at least 4 feet from the public street right-of-way.

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).

Petitioners have met this test. The Petitioners must contend with existing site conditions on a lot that is narrow and deep. As such the property is unique. Petitioners would experience a practical difficulty if the regulations were strictly interpreted, since they would be unable to continue operating their business in its current configuration. Finally, I believe the relief can be granted without harm to the health, safety and welfare of the public.

THEREFORE, IT IS ORDERED this **3rd** day of December, 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 permit fifty (50) vehicles on the subject property in lieu of the thirty (30) allowed per Case No. 03-147-X, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Hearing to permit a 24 ft. x 24 ft. one (1) story metal garage building to be constructed and used for mechanical repair services to cars being sold from the subject property only, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §§ 409.4.B.2, 409.C and 409.8.A.4 as follows: (1) to permit up to twenty (20) spaces for sales vehicles that do not have direct access to an aisle; (2) to permit one way directional drive aisles with a width of 15 ft. in lieu of the required 22 ft.; and (3) to allow parking spaces 4.0 ft. from a right-of-way of a public street, in lieu of the required 10 ft., 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 may keep on the premises no more than thirty (30) vehicles total, including those offered for sale, rent and/or awaiting repair.
3. Petitioners may store and display on site not more than five (5) vehicles offered for rental. These vehicles must be stored separately from the vehicles offered for sale, and must be clearly labeled “for rent” in a conspicuous manner. Petitioners must also comply with B.C.Z.R. §408A in conducting the car rental operation.
4. Petitioners must, prior to issuance of permits, construct a 6' high board stockade fence along the rear property line. Petitioners must also provide planter boxes with appropriate vegetation (as determined in the sole discretion of the Baltimore County landscape architect) along the Liberty Road frontage of the property.

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