

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(9801 Pulaski Highway) *	OFFICE OF
15 <sup>th</sup> Election District	
6 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
Packer Realty III, LLC	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner *	<b>Case No. 2015-0137-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 on behalf of the legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to identify the classification (enterprise or directory) and location of proposed signs and to permit a sign package for proposed renovations to an existing automobile dealership as more particularly shown on the attached site plan; (2) to confirm and modify the zoning approvals previously granted in Case No. 02-42; (3) to determine and confirm the area of the wall/façade on which proposed wall mounted signs are proposed; and (4) to determine if certain proposed wall mounted enterprise “signs” are “visible” from any adjacent “highway” and thus subject to regulation.

In addition, a Petition for Variance seeks the following: (1) to permit three free standing enterprise signs (shown as existing signs 1, 2 & 3) with a total square footage of 254 sq. ft. in lieu of the permitted two free standing enterprise signs with a total of 126 sq. ft. in Case 02-420-A and B.C.Z.R. §§450.3.5.b and 450.3.5.g; (2) if necessary, to permit seven wall mounted enterprise signs in lieu of the three maximum permitted per premises; (3) if necessary, to permit three wall mounted signs (signs 1, 2, & 3) on a single façade in lieu of the maximum two permitted; (4) if necessary, to permit as many as four wall mounted enterprise signs (signs 4, 5, 6

& 7) on a single façade in lieu of the maximum two permitted; (5) in the alternative to variances 2, 3, and 4 to allow directory signs with lettering greater than 2" in height; and (6) if necessary, to permit buildings with a side/rear setback of less than 30 ft.

A redlined site plan was marked and accepted into evidence as Petitioner's Exhibit 1. Appearing at the public hearing in support of the requests was Donald Huebel and Steven Broyles, a licensed professional engineer whose firm prepared the plans. Lawrence E. Schmidt, Esq. appeared on behalf of the Petitioner. There were no Protestants or interested citizens in attendance.

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) and the Bureau of Development Plans Review.

The subject property is approximately 22 acres and the site is split zoned; the majority of the site is zoned BR-IM. The Al Packer Ford dealership operates on the property. At present, the dealership is expanding and in connection therewith, the signage will be updated. Petitioner submitted elevation drawings of the proposed signs, marked as Exhibit Nos. 4A & 4B. In addition, the Petitioner submitted a series of photos showing existing site conditions, including several directional signs on the premises for which no zoning relief is sought/required.

At the outset, counsel indicated that the special hearing and variance requests were made in the alternative, and that if the variances were granted the petition for special hearing (which would require the undersigned to determine, among other things, whether certain proposed signs would be "visible" from the "highway") would be moot. While the petition for special hearing appears to have merit (i.e., the DOP's ZAC comment indicated certain signs may not be visible from Pulaski Highway) I believe it is preferable to consider only the petition for variance, especially since variances were previously granted for this property, a point discussed below.

The only variance not related to signage is request number 6 in the Petition, which references side yard setback relief for certain buildings. Counsel explained the buildings in question are existing and are located to the rear of the site. They are both minor structures (one is identified as “upholstery and storage” and the other “auto detail”), and their orientation is such that the “front” of the buildings faces south, and not towards the front of the site at Pulaski Highway. As such, side yard setback relief is required under B.C.Z.R. § 238.2 to legitimize this existing condition.

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).

Petitioner has met this test. The site is large (approximately 22 acres), features topographical changes, and has irregular dimensions; Mr. Broyles described it as “trapezoidal.” As such, it is unique. A similar finding was made by the County Board of Appeals in Case No. 02-420-A, a case also involving this property wherein Packer was granted variance relief for signs installed at the (what was then) newly-constructed dealership. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioner would be unable to install the signs required by its franchise agreements. Finally, I find that the variances 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 county and/or community opposition.

The DOP’s ZAC comment identified three issues pertaining to the display, parking and storage of vehicles on the site. The Petitioner submitted photographs showing that vehicles for sale are no longer displayed along Pulaski Highway, and a condition to that effect will be

included in the Order below. In addition, Mr. Broyles testified that Petitioner is installing a porous block product in the “large unimproved field” area identified in the DOP comment, and the site plan was redlined to show that this area is to be used for storage of vehicle inventory, not customer or employee parking. Finally, the plan was also revised to address DOP’s comment regarding the parallel parking of vehicles on the access drive. The access drive area will be used for (and is so labelled on the revised site plan) “overflow inventory storage,” and employee or customer parking will not be permitted in this area.

Since the requested relief will be granted pursuant to the petition for variance, the petition for special hearing will be dismissed without prejudice.

THEREFORE, IT IS ORDERED this 17<sup>th</sup> day of February, 2015, 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”) as follows: (1) to identify the classification (enterprise or directory) and location of proposed signs and to permit a sign package for proposed renovations to an existing automobile dealership as more particularly shown on the attached site plan; (2) to confirm and modify the zoning approvals previously granted in Case No.: 02-42; (3) to determine and confirm the area of the wall/façade on which proposed wall mounted signs are proposed; and (4) to determine if certain proposed wall mounted enterprise “signs” are “visible” from any adjacent “highway” and thus subject to regulation, be and is hereby DISMISSED WITHOUT PREJUDICE;

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to permit three free standing enterprise signs (shown as existing signs 1, 2 & 3) with a total square footage of 254 sq. ft. in lieu of the permitted two free standing enterprise signs with a total of 126 sq. ft. in Case No. 02-420-A and B.C.Z.R. §§450.3.5.b and 450.3.5.g; (2) to permit seven wall mounted enterprise signs (proposed signs 1-7) in lieu of the three maximum permitted per

premises; (3) to permit three wall mounted enterprise signs (proposed signs 1, 2, & 3) on a single façade in lieu of the maximum two permitted; (4) to permit as many as four wall mounted enterprise signs (proposed signs 4, 5, 6 & 7) on a single façade in lieu of the maximum two permitted; (5) to permit a wall mounted enterprise sign (proposed sign 3) of 107 sq. ft. in lieu of the permitted 80 sq. ft.; and (6) to permit buildings (located at the rear of the site adjacent to the storm water management pond) with a side setback of less than 30 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner shall not park, store or display vehicles along the front of the site within the State Highway Administration (SHA) right of way for Pulaski Highway.
3. Prior to issuance of permits, Petitioner must submit for approval by Baltimore County a landscape and lighting plan for the property.

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

JEB/sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County