

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(2710 Hammonds Ferry Road)**
13th Election District
1st Council District
2710 Hammonds Ferry Road, LLC
Legal Owner

Petitioner *

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
*
FOR BALTIMORE COUNTY

* **Case No. 2016-0053-XA**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 2710 Hammonds Ferry Road. The Petitions were filed on behalf of 2701 Hammonds Ferry Road, LLC, legal owner of the subject property (“Petitioner”). The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) §236.2 to allow a used motor vehicle outdoor sales area. The Petition for Variance seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) for a front yard setback of 9 ft. in lieu of the required 25 ft. per § 238.1; (2) for a rear yard setback of 0 ft. in lieu of the required 30 ft. per §238.2; and (3) for parking setback of as little as 3 ft. in lieu of the required 10 ft. to the right-of-way line of a public street per §409.8.A.4. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit No. 1.

Appearing at the hearing in support of the petitions was Mr. and Mrs. Panchigar, who are members of the entity which owns the property. The Petition was advertised and posted as required by the B.C.Z.R. No protestants or interested citizens attended the hearing. Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case.

Substantive ZAC comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). The comments from these agencies will be included as conditions in the Order below.

The subject property is approximately 43,185 square feet and is zoned BR (Business Roadside). Petitioner purchased the property at auction in 2015, at which time it was in very poor condition. Mr. Panchigar has been a member of the Lansdowne community for over 25 years, and operates a service garage in the neighborhood. Petitioner proposes to continue operating the existing restaurant/bar at the site, and would also like to have a small used car sales facility. Both variance and special exception relief is required before the property can be used in the manner proposed.

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 such evidence was presented, and I do not believe the used car facility would adversely impact the community. Petitioner indicated there is a need for such a business in the area, and 16 or fewer cars would be displayed at any one time. As such, I believe the used car sales operation would have at most a minimal impact upon the neighborhood, but there is no reason to believe that any adverse impact would be above and beyond that inherent in such a use. In addition, Petitioner submitted a letter of support from the Lansdowne Improvement Association

(Ex. 3) as well as a petition signed by numerous members of the community (Ex. 4).

VARIANCE

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).

Petitioners have met this test. The property has an irregular shape, and the existing structure (in which the restaurant is operated) was constructed in 1930, long before the B.C.Z.R. As such the property is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that it would be unable to construct the proposed improvements. 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.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 3rd day of November, 2015, that the Petition for Special Exception under B.C.Z.R. §236.2 to allow a used motor vehicle outdoor sales area, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance per Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) for a front yard setback of 9 ft. in lieu of the required 25 ft. per § 238.1; (2) for a rear yard setback of 0 ft. in lieu of the required 30 ft. per §238.2; and (3) for parking setback of as little as 3 ft. in lieu of the required 10 ft. to the right-of-way line of a public street per §409.8.A.4, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. The used motor vehicle sales business may have on site no more than 16 cars on display and/or offered for sale.
3. Petitioner must comply with the ZAC comment of the DOP (dated October 26, 2015), which is attached hereto and incorporated herein.

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/sln