



Board of Appeals of Baltimore County

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June 15, 2015

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RE: *In the Matter of: TTV Properties III, LLC – Petitioner*
(a/k/a Volvo Dealership)
Case Nos.: CBA-14-039 and CBA-15-011

Dear Counsel:

Enclosed please find a copy of the final Majority Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter. Also enclosed is a copy of Mr. Alston's Dissenting Opinion.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: TTV Properties, III, LLC
Benjamin Kulp/Site Resources, Inc.
Becky Gerber
Richard A. Zeller/State Highway Administration
Office of People's Counsel
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Dept. of Planning
Michael Field, County Attorney/Office of Law

Mitchell and Nancy Williams
Jim and Lisa McBean
John and Amy Spencer
Mary Slafkosky
Chris Bowman
Jan Cook, Acting Development Manager/PAI
Nancy C. West, Assistant County Attorney

IN THE MATTER OF
TTV Properties III, LLC
(aka Volvo Dealership)
10630 York Road
DRC #s 042214A & 042214B

8th Election District
3rd Councilmanic District

Re: Appeal of Director of PAI's approval of a
limited exemption under BCC § 32-4-106 and
Appeal of Development Plan approval

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY

*
*

Case Nos.: CBA-14-039 &
CBA-15-011

* * * * *

MAJORITY OPINION AND ORDER

This matter comes before the Board as two separate appeals of Administrative Orders and Decisions. The Board must first consider the appeal of the Administrative Order and Decision granting a limited exemption from the full development review and approval process and if the Board determines that a limited exemption is appropriate, the Board is to consider the merits of the Development Plan itself pursuant to the regulations and applicable policies, rules and regulations adopted in accordance with Article 3, Title 7 of the Code which entitles it to approval. Both appeals, as provided by Sections 602 and 603 of the Baltimore County Charter ("Charter"), are subject to a *de novo* standard of review. The hearing on the respective appeals was held on April 30, 2015 and June 4, 2015.

This matter comes before this Board on appeal filed by J. Carroll Holzer, Esquire on behalf of Protestants/Appellants, Becky Gerber, Jim and Lisa McBean, John and Amy Spencer, Mitchell and Nancy Williams, Mary Slafkosky, and Chris Bowman, from the decision letter dated May 12, 2014 from Arnold Jablon, Director of the Department of Permits, Approvals and Inspections, wherein he adopted the recommendations of the Development Review Committee (DRC) who determined

that the proposed project met the requirements of a limited exemption under Section 32-4-106(b)(8) which allows for a minor development.

The Board convened for a hearing on September 11, 2014. Lawrence E. Schmidt, Esquire appeared on behalf of TTV Properties, III, LLC, Legal Owner. J. Carroll Holzer, Esquire appeared on behalf of the above listed Protestants/Appellants, and People's Counsel for Baltimore County was represented by Carole S. Demilio, Deputy People's Counsel.

On September 23, 2014, the Board issued an Order wherein the appeal was stayed "...until such time as the Petitioner has a final development plan approved, or one that this Board can approve, and has filed for all other zoning relief and approvals, if any, which are necessary for consideration by this Board of the development issues pertaining to all renovation, and redevelopment of the subject property in order that this Board shall conduct a single hearing on all the requested relief..."

The development plan review concluded with PAT's conditional approval on February 23, 2015. After supplemental cautionary appeals of this approval, the CBA reconvened for a *de novo* hearing on April 30, 2015 and June 4, 2015.

Background

The property at issue is 10630 York Road (the "Property"). It is located on the west side of York Road approximately one-third of a mile north of Warren Road. It is split zoned Business, Local ("BL") with an Automotive Service ("AS") District Overlay ("BL-AS"), Manufacturing, Light ("ML") with an Industrial, Major ("IM") District Overlay ("ML-IM") and Business, Major ("BM") with an IM District Overlay ("BM-IM"). Petitioner's Exhibit No. 12. The front portion of the property is split zoned with the two business classifications whereas the rear of the property is zoned manufacturing.

The Property lies inside the Urban Rural Demarcation Line ("URDL"). It is currently served by public water and sewer. The Property has been purchased by the Appellee from Roger L. Hale and Bonita W. Hale, as reflected in a deed dated March 20, 2014, which is recorded in the Land Records of Baltimore County in Liber 34821, Folio 465. As noted above, the property is located with frontage on York Road (Md. Rte. 45), a major north/south corridor in central Baltimore County. York Road extends from Baltimore City to the south to the Mason Dixon Line and Pennsylvania to the north. Within the section of York Road at and near this property, the land uses are commercial in character. Businesses front York Road from Baltimore City to the south to beyond Hunt Valley to the north. Members of the Sherwood Hill Improvement Association were present at the hearing before this Board and testified on behalf of the Protestants. This community is located on the side of York Road, opposite the proposed development. This community is situated on a hill overlooking the York Road corridor, making the proposed development visible from the homes of some of the residents.

The Protestants who testified believe that the proposal represents the first car dealership fronting York Road north of Warren Road, while the Petitioner claims that there was previously a SAAB dealership nearby in this block. Petitioner notes that there are tire stores, body shops, service garages and other automotive related uses both north and south of the property. It is noteworthy that, the AS (Automobile service) district designation has been applied to the property, giving some indication of the County's legislative intent and preference that that this property be used for automotive related uses. Other nearby uses include shopping centers and retail uses; as well as service businesses and offices. Protestants note that nearby properties include several historical structures as well as the long established antique shops north of the property.

For nearly the past two decades, the Property has been used as a Self Service Car Wash. The operation is open twenty four hours a day and includes eight self service bays and one full service bay. In Case No. 1995-35-XA, in a decision dated September 22, 1994, Zoning Commissioner Lawrence E. Schmidt granted Special Exception relief to permit a car wash operation as well as variance relief to permit a front yard setback of 46 feet in lieu of the required 90 feet, an 11 feet wide bypass lane in lieu of a 12 foot driveway and tunnel exits from car wash facilities to be as close as 17 feet from the exit drive in lieu of the required 50 feet and a rear yard setback of 22 feet in lieu of the required 30 feet. Petitioner's Exhibit No. 18a. This was a combined hearing, so the zoning decision was combined with Case No. VIII-635, and the Zoning Commissioner/Hearing Officer also granted Development Plan approval. Approximately a decade later, in Case No. 2005-0596-SPHX, in a decision dated July 21, 2005, Zoning Commissioner Bill Wiseman granted Special Hearing and Special Exception relief to permit the alteration and expansion of the existing car wash operation previously approved in Case Nos. 95-35-XA and VIII-635. Petitioner's Exhibit No. 18b. The decision was appealed, but the Appellants moved for dismissal and the Board of Appeals issued an Order of Dismissal dated July 27, 2007. The Protestants noted those decisions and particularly certain language thereon which restricted the building materials used for the car wash.

The property owner, TTV Properties III, LLC presently operates automobile dealerships under the name Bill Kidd's Toyota and Bill Kidd's Volvo at a single location south of the subject property (approximately one half mile away) Due to requirements of his franchisor (Toyota International) the Petitioner is required to relocate the existing Volvo dealership to a different premises, so two different manufacturers do not share the same location. What is being proposed in this matter is the removal of the car wash operation and the redevelopment of the site with a

4,500 square foot building which will be used as an automobile showroom. In addition, there will be outside areas for parking for customers and employees as well as space for the storage of inventory. The expected volume of Volvos to be sold monthly is minimal (approximately 20) and the commercial transaction will occur in the dealership building.

Discussion

I. Requested Exemption

In the case at bar, the Petitioner filed the DRC Application and requested a BCC § 32-4-106(a)(1)(vi) exemption from the full development review and approval process. In the Board's de novo review of this request for limited exemption, the Board may find a limited exemption pursuant to BCC § 32-4-106(b)(8), agree with the Petitioner's request for full exemption for full development review pursuant to BCC § 32-4-106(a)(1)(vi), or determine that the Petitioner is not entitled to either the A or B exemption and therefore is subject to the full development review and approval process.

BCC § 32-4-106(a)(1)(vi) provides an exemption from the development review process for the construction of a minor commercial structure. That section specifically articulates the exemption as follows:

(vi) the construction of residential accessory structures or minor commercial structures.

The term "minor commercial structure" is not defined in the Code. The term minor commercial structure thus has to be defined by utilizing a reasonable interpretation of the words used in the language of the exception. Therefore, the Board must find what constitutes a minor commercial structure and make factual findings with respect to whether the proposed development constitutes as minor commercial structure.

In listening to the relevant testimony as to this issue presented to the Board, although the term “minor commercial structure” is not clearly defined in the code, this Board is persuaded that the development contemplated for this site is not a minor commercial structure. However, the Board does find that an exemption is appropriate pursuant to BCC § 32-4-106(b)(8) as the contemplated development does comport with the definition of a minor development as defined in BCC § 32-4-101(aa)(1) as:

- (1) A development without a public works agreement;
- (2) A residential development with a public works agreement involving only road widening; or
- (3) A development in which the improvements are determined by the Director of PAI as minimal under § 32-4-304(e) of this title.

This finding is supported by the testimony of Mr. Michael Fisher, Vice President of Site Resources, who testified that this property was already served by public utilities and no public works agreement (“PWA”) is required. Only extensions of existing water and sewer to the building, which do not necessitate a PWA, will be needed. No road improvements are required. Further, Jennifer Nugent, of Department of Planning, testified that the development plan was administratively reviewed for compliance with applicable rules and regulations.

In conclusion, this Board finds that the exemption pursuant BCC § 32-4-106(b)(8) in the case at bar, allowing the Board to now contemplate the merits of the Development Plan itself.

II. Development Plan

The Board must find in review of the Development Plan that the Development Plan “complies with these development regulations and applicable policies, rules and regulations adopted in accordance with Article 3, Title 7 of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions, and safeguards set forth therein”, as provided in BCC § 32-4-229(b)(1).

The required County agencies have reviewed the Petitioner's Development Plan and concluded that it meets all requirements.

Absent evidence showing that reviewing county agencies failed to conduct a proper review of a development's compliance with the applicable regulations which are in effect, or claims that County officials acted in an arbitrary and capricious manner in making their recommendations, administrative officers are presumed to have properly performed their duties. *People's Counsel v. Elm Street Dev., Inc.*, 172 Md.App. 690, 701 (2007) (quoting *Md. Securities Com'r v. U.S. Securities Corp.*, 122 Md. App. 574, 588 (1998)). Consequently, if County agencies give recommendations in approval of a Development plan, it becomes the Protestant's burden to produce the agencies recommendations. Such rebuttal evidence would usually come in the form of expert testimony. Former Planning Director, Arnold "Pat" Keller was called by People's Counsel to testify as to permitted uses on the proposed site. No further experts were called by the Protestants.

Zoning of proposed development

The property at issue contains three (3) different zoning designations: B.L., and B.M. in the front portion of the proposed site and M.L. in the rear, where the Petitioner has proposed storage of automotive inventory.

The Petitioners contend that the proposed uses of the property can be divided into three (3) categories; the actual brick and mortar structure of the sales facility, off street parking, and storage of inventory. The Petitioners contend that car sales and the off-street parking are permitted by right in both the B.L. and B.M. zones. The Petitioners also concede that car sales are prohibited in the ML zone. Petitioners contend that the BCZR § 259.2.B provides that a parcel of land that

is assigned with a combination of BM-IM and BL-AS zoning is also permitted to allow uses permitted in the BM-IM zone on that portion of the Property which is zoned BL-AS.

Bill 2-14

During the hearing, both Protestants and People's Counsel presented arguments challenging the applicability of the language in Bill No. 2-14 to the case at bar and further challenged the validity of the Bill itself; arguing that the bill was invalid in that it was in essence tailor-made for the property at issue specifically. This Board heard testimony that at least one other property would be effected by this legislation and therefore declines to find the bill to be invalid. Consequently, the Board finds that Bill No. 2-14 is clearly applicable to the case at bar. The BCZR clearly defines the relationship between zones and districts in BCZR §§ 100.1 & 259.

BCZR § 100.1.A.1 generally explains the purpose of zones as follows:
For the purpose of promoting the health, security, comfort, convenience, prosperity, orderly development and other aspects of the general welfare of the community, zones are intended to provide broad regulation of the use and manner of use of land, in accordance with comprehensive plans.

Districts are superimposed upon zones. BCZR § 100.1.B.1 provides that "[t]o further the purposes of zones, districts are intended to provide greater refinement in land-use regulation." BCZR § 259.1 further provides the legislative intent regarding zones and districts as follows:

In any district, the use, height, area and other regulations applicable in the underlying zone(s) or district(s) upon which the district is superimposed shall govern except as may specifically be enlarged, modified or limited by the district regulations in this section. In the case of conflict between the provisions of an underlying zone and overlaying district(s), the most recently enacted provision shall prevail.

Bill No. 2-14 ensures that BCZR § 259.2.B, the regulation applying to the AS district, prevails over BCZR § 230.1, the regulation generally applying to the underlying BL zone.

In short, the Board finds that the use of the B.L. and B.M. portion of the proposed site for the sale of automobiles and customer parking to be lawful and appropriate within the BCZR.

III. M.L.-I.M. Automobile Storage

It is on the issue of the permitted uses of the M.L.-I.M. portion of the proposed site that the Board has fractured its opinion to a two-to-one majority, with Board member Benfred Alston dissenting (attached hereto.)

The M.L. zone (BCZR 253.1 A. and B.) provides for “manufacturing and assembling of goods”; concomitantly and logically storage on the site is necessary until the products are delivered to the commercial zones (B.L. B.M. B.R.) where they can be sold. The language of BCZR 253.1 A. B., however, does not expressly allow for the storage of automobile inventory as contemplated in conjunction with the petitioner’s proposed automobile dealership.

The Petitioner argues that since BCZR 253.1 A.2 permits automobile assembly as a use permitted by right in the ML zone, it would only make logical sense that the said product, automobile, could be stored in the ML portion of the property.

The Board in determining what use would be most disruptive to the surrounding properties when comparing the manufacturing of automobiles to the simple storage of them, the Board is convinced as a matter of pragmatic logical thinking that the storage of automobiles would be permitted in the ML zone. While the Board heard competing expert testimony as to whether the storage of vehicles was or was not permitted in the ML zone, we are persuaded with the Petitioner’s contention that such a use is permitted.

IV. Challenges to zoning

The Appellants contend that the Property was mistakenly zoned BM-IM. Testimony was provided that the strip of land zoned BM-IM was specifically raised as an "issue", as that term is defined in BCC § 32-3-211, in the 2008 Comprehensive Zoning Map Process ("CZMP").

Assuming that some error has been made, such issues should be raised through the CZMP process, a request for zoning reclassification, or in a request for Map Correction as enumerated in the Baltimore County Code. Consequently, these issues are beyond the Board's authority.

V. Community Concerns

While the concerns of the surrounding community were not all presented in the form of expert testimony, this Board gives great weight and deference to the opinions and concerns of the residents in the community surrounding the proposed development site. The concerns of the community include the impact such a development would have with regard to lighting, traffic, noise, and the visual appearance of the redeveloped site. Protestants witness Eric Rockel testified that the proposed development did not follow the design guidelines established in the Hunt Valley/Timonium Plan in that the proposed car dealership did not fit into the historic theme of the surrounding antique and arts and crafts retail establishments. Mr. Rockel further testified that the proposed car dealership's actual brick and mortar structure was not in keeping with the red brick and green metal roof appearance noted by the Zoning Commissioner in previous opinions.

These concerns were echoed by community members, Carol Taylor, Michael Pierce, and Becky Gerber. Although not accepted by this Board as an expert, community member James McBean provided this Board with a compelling presentation regarding his concerns with the lighting of the proposed development and how that lighting compares to the minimal light intrusion found presently at the carwash now operating on the proposed site. While the Board appreciates Mr. McBean's concerns as to the proposed site's future lighting, it is impossible to ensure that there will be no light spillage from the proposed car dealership. However, the proposed development is required to submit a lighting plan in keeping with County regulations and

requirements and this Board will impose additional lighting restrictions to minimize the amount of intruding light.

While the Board finds that all of the community concerns are valid, this Board does not find that these concerns reach a level which should preclude the approval of the proposed development. This Board heard testimony from Petitioner William Kidd who assured this Board that no loud speaker or outdoor intercom device would be used on the site. Additionally, Mr. Kidd testified that deliveries of new inventory would be made at one of Mr. Kidd's other automotive retail establishments and that no car carriers would be unloading inventory at the proposed site. Mr. Kidd further testified that the back portion of the proposed site which is zoned ML would be off limits to customers during business hours and that customers would be shown perspective vehicles for purchase after they had been driven to the front of the proposed development by a car dealership employee. The Board also notes that Mr. Kidd testified that he foresees the sale of approximately twenty (20) vehicles monthly and that the sales activity at the proposed Volvo dealership is not as intensive as that found at dealerships of more popular brands.

Conclusion

In reviewing the proposed development to ensure that it complies with the development regulations and applicable, rules and regulations adopted in accordance with Article 3, Title 7 of the Code and all the appropriate standards, rules, regulations, and safeguards as provided in BCC 32-4-229(b)(1), this Board finds that the Petitioner's development plan is approved with conditions.

ORDER

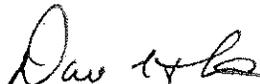
THEREFORE, IT IS THIS 15th day of June, 2015, by the Board of Appeals for Baltimore County,

ORDERED, that

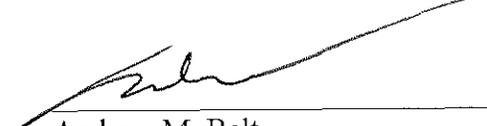
1. The Developer is granted a limited exemption pursuant to BCC § 32-4-106(B)(8).
2. The Development Plan, received into evidence as Developer's Exhibit 12, be and is hereby APPROVED, subject to the following conditions/restrictions:
 - a. The hours of operation for the new and used automobile sales facility shall be restricted to no earlier than 9:00 a.m. and no later than 9:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. There shall be no automobile sales on Sunday.
 - b. Signage shall be as shown on Developers Exhibit 14, specifically, the sign shall be a monument sign and not a freestanding pole sign.
 - c. No service garage shall be permitted. No automobile repairs, mechanical or body, shall be conducted on the site.
 - d. Deliveries of automobiles by car carrier 18-wheel trucks, shall not be permitted. As indicated at the hearing, vehicles are delivered to TTV Properties III, LLC's service location on Industry Lane and this practice shall continue.
 - e. There shall be no outdoor speakers.
 - f. Lighting and landscaping shall be as shown on Developer's Exhibit 14. Lighting has been designed with new technology to prevent light spillage outside of the property. As clarified by the County's landscape architect, lighting shall be dimmed and/or unnecessary lighting turned off during non-business hours.
 - g. The commercial transaction for the sale of motor vehicles shall occur only in the BM-IM and BL-AS zone.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



David L. Thurston, Panel Chair



Andrew M. Belt

IN THE MATTER OF
TTV PROPERTIES, III, LLC
(A.K.A. Bill Kidd's Volvo Dealership)
10630 York Road

DRC # 042214A

8th Election District
3rd Councilmanic District

Re: Appeal of Director of PAI's
Approval of a limited exemption
Under BCC § 32-4-106 and
Appeal of Development Plan

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-14-039 and
* CBA-15-011

* * * * *

DISSENTING OPINION

I disagree with the Majority as it relates to their interpretation of Sections 253.1.A.2 and Section 253.1.B.16 of the Baltimore County Zoning Regulations (BCZR) concerning the uses permitted as of right in a Manufacturing, Light ("ML) zone.

The subject property at is located at 10630 York Road (the "Subject Property"). It is located on the west side of York Road approximately one-third of a mile north of Warren Road. It is split zoned Business, Local ("BL") with an Automotive Service ("AS") District Overlay ("BL-AS"), Manufacturing, Light ("ML") with an Industrial, Major ("IM") District Overlay ("ML-IM") and Business, Major ("BM") with an IM District Overlay ("BM-IM") (Petitioner's Exhibit No. 12 – The Development Plan). The front portion of the property is split zoned with the two business classifications whereas the rear of the property is zoned Manufacturing, Light ("ML"). The Petitioner's Development Plan (Petitioner's Exhibit 12) calls for new and used cars to be situated on the ML portion of the Subject Property as "Inventory" to be sold in the ordinary course of the Petitioner's business; namely, "Bill Kidd's Volvo Dealership".

The Majority has determined that the language of BCZR Section 253.1.A. and BCZR 253.1.B.16 permit the storage of new or used car inventory in the ML Zone portion of the Subject Property. BCZR Section 253.1.A.2 permits “automobile assembly” by right in the zone and BCZR § 253.1.B.16 permits “storage...of any product...whose sale (retailer or wholesale) or final processing or production is permitted as of right as a principal use in the ML zones”¹. In any automobile dealership, Inventory is the central part to the successful operation of the dealership, as such; it is unlikely that a dealership can operate it. The Development Plan, Exhibit 12, and testimony from witnesses provide that anywhere from 60 – 90 cars will be situated in the rear section of the Subject Property.

The Petitioner put forth the appropriate question for the Board of Appeals (the “Board”) when it stated that:

“.... does the Development Plan comply with the development regulations and applicable policies, rules and regulations adopted in accordance with Article 3, Title 7 of the Code which entitles it to approval?”²

The Petitioner asserts that because an ML zone permits Automobile Assembly and Storage ... of any product whose sale or final processing or production is permitted as of right that translates to permitting a highly regulated retail activity such as the placement of inventory which will be used for the purposes of operating a car dealership. Although arguably the assemblage of automobiles maybe a more intense use on property as opposed to the operation of a car dealership, it is not the prerogative of the Board to expand the plain meaning of words in the BCZR. There is nothing in the BCZR 253 that leads one to believe that the storage of automobile inventory in a ML zone is a use permitted by right. If the County Council wanted new car dealerships to operate in an ML zone, it could have articulated such in plain language

¹ The storage of inventory is permitted in the BM and BL zones as provided in BCZR §§ 233.1 & 259.2.B.

² Baltimore County Code Section 32-4-229(b)(1)

but it did not. Moreover, in one case the County Board of Appeals resolved this matter and concluded that an automobile dealership is not a permitted use in the M.L. Zone. See, The Matter of Application of Auto Properties, LLC, Case No. 06-109-SPH, decided April 6, 2007, affirmed (Norman, J.), Circuit Court Case 03-C-07-4792, (January 10, 2008).

Pursuant to the facts presented, approval of the Petitioner's Development Plan must be denied. For all of the above reasons, therefore, I dissent to the opinion of the Majority in this case.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**

June 15, 2015
Date

Benfred B. Alston
Benfred B. Alston