

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE DEPUTY
NE side of Liberty Road, 250 feet NW	*	ZONING COMMISSIONER
of the c/l of Essex Road		
2 nd Election District	*	FOR
4 th Councilmanic District		
(7110 Liberty Road)	*	BALTIMORE COUNTY
PAK US CO	*	Case No. 2009-0211-X
<i>Petitioner</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Zulfikar Shah, President of PAK US CO, the legal owner of the subject property. Petitioner requests special exception approval to use the subject property for the sale of used motor vehicles, in addition to the present use as a service garage. Petitioner also requests confirmation that the side yard setback variance of 15 feet in lieu of the required 30 feet, approved by the Deputy Zoning Commissioner in Case No. 03-099-A, will be applicable to the use of the property for the sale of used motor vehicles as well as for the existing service garage. 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 1.

Appearing at the requisite public hearing in support of the requested relief were Zulfiker Shah, President of Petitioner PAK US CO, as well as Keith Heindel and Gary Ganjon with Professional Surveys, LLC, the firm that prepared the site plan. Michael L. Snyder, Esquire, appeared and represented Petitioner. There were no Protestants or other interested persons in attendance at the public hearing.

Testimony and evidence offered revealed that the subject property is square-shaped and contains approximately 23,775 square feet or 0.546 acre, more or less, zoned primarily B.R.

(22,257 square feet) with a strip of B.L.R. (1,518 square feet) on the western end of the property. This commercial property is located on the north side of Liberty Road near the intersection of Essex Road, less than a mile east of Interstate 695 in the Lochearn area of Baltimore County. Petitioner submitted an aerial photograph of the subject property that was marked and accepted into evidence as Petitioner's Exhibit 4. The photograph reveals that the property is improved with a one-story service garage that is surrounded by several commercial buildings that line the northern side of Liberty Road. Petitioner also submitted a series of photographs of the subject property and surrounding area. The photographs, which were marked and accepted into evidence as Petitioner's Exhibits 2A through 2J, reveal that the property to the west contains a fast food establishment, and the properties to the east respectively are used as a pawn shop, grocery/convenience store, and fuel service station. Across the street from the subject property is a residential area that is setback from Liberty Road with a tall dividing wall and service road.

Further testimony and evidence revealed that Mr. Zulfikar purchased the subject property approximately three years ago and has operated a business known as Payless Auto Services on a lot that was formerly used as a Meineke Service Center. The company performs minor auto repairs such as oil changes, brake and muffler repairs, and general automobile tune-ups. Petitioner does not perform any paint or body repair work, and testified that he does not intend to expand the services offered by his business even if the special exception is granted.

The requested special exception is to enable Petitioner to sell a small number of used cars in conjunction with his auto repair business. Mr. Zulfikar testified that his customers often ask him where to purchase a reliable used car, and he realizes that he could improve his business by adding a small auto sale component to the repair business, while also benefiting his customers with safe, reliable transportation. As the site plan indicates, Petitioner is not proposing to expand

the existing structure or facilities, and the only change to the property would be a planting area that would add a strip of landscaping to the front of the property. Each of the existing parking spaces is labeled on the site plan as either service or sales parking, and the parking meets the requirements of the B.C.Z.R. Petitioner submitted a supportive letter from the Liberty Road Business Association, an association that represents the interests of businesses in the vicinity of the subject property. The letter, which was marked and accepted into evidence as Petitioner's Exhibit 3, states that the area is in need of a facility that sells good quality used cars, and that the local association supports this request for special exception.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated March 30, 2009 which indicate that the site is located within a Master Plan 2010 designated Revitalization District; however, the proposed use as a service garage and used car sales location is too intense of a use for the subject site. The site plan provided does not clearly delineate parking for sales, service, etc. The Office of Planning recommends denial of the subject request.

After considering all of the testimony and evidence presented at the public hearing, I am convinced that the requested special exception should be granted.¹ It should be noted, however, that Petitioner will not be permitted to run free with his request to sell used cars, as this approval will be subject to several conditions that address the Office of Planning's concerns regarding the intensity of the proposed use on the property. That said, the uncontradicted testimony of Keith Heindel, the professional surveyor who assisted in the preparation of the site plan for Petitioner, has convinced me that this request, when subjected to several limiting conditions, meets the criteria contained in Section 502.1 of the B.C.Z.R.

¹ For clarification, this Petition does not affect the variance that was approved in Case No. 03-099-A for Special Exception. Petitioner will still retain the variance with the added use granted in this Petition.

Specifically, as indicated by the testimony and evidence, I find that the request will not be detrimental to the health, safety or general welfare of the locality involved, as the proposed use will be at most complimentary to a small business located in a commercial Revitalization District along a commercial corridor of Liberty Road. The request will not tend to create congestion in the roads, streets or alleys therein as Petitioner expects primarily to sell used cars to his existing customers. There is no evidence that the relief would create a potential hazard from fire, panic or other danger, or tend to overcrowd land and cause undue concentration of the population. In fact, the request will not have any effect on the density of the property, and the relief will be conditioned so as to limit the number of cars that can remain on the property.

This Petition also will have no effect on the existence of adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, and will not interfere with adequate light and air on the property. The request will not be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations, nor would it be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in a resource conservation zone.

Finally, I find that this request is consistent with the purposes of the property's zoning classification and the relief is consistent with the spirit and intent of the B.C.Z.R. The property is located in a commercial Revitalization District, and this request will assist a small, local business, while being conditioned to prevent any negative impact on the surrounding locale. It is no secret that the dire economic conditions faced throughout the country have drastically reduced the number of new cars being purchased. Indeed, the secondary market has become even more important to consumers these days. I find that permitting Petitioner's local auto repair business

to sell a limited number of used cars would provide an increasingly important service to the local community while fulfilling the spirit and intent of the commercial Revitalization District. Accordingly, after considering all of the evidence and testimony presented at the public hearing, I am convinced that the requested special exception should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering all of the testimony and evidence offered by Petitioner, I find that Petitioner's three special exception requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 6th day of May, 2009, that the Petition for Special Exception to use the subject property for the sale of used motor vehicles, in addition to the present use as a service garage be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for confirmation that the side yard setback variance of 15 feet in lieu of the required 30 feet, approved by the Deputy Zoning Commissioner in Case No. 03-099-A, will be applicable to the use of the property for the sale of used motor vehicles as well as for the existing service garage, be and is hereby GRANTED.

The Special Exception shall be subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner is only permitted to store or maintain up to ten (10) vehicles for sale on the property at any one time. If Petitioner exceeds this number, he will be subject to the civil fines and penalties prescribed by the Baltimore County Code and the B.C.Z.R.

3. Petitioner may not perform any body repair or paint work on the premises and may not expand the repair services already offered by Payless Auto Service.
4. Petitioner must store all replacement parts kept on the premises inside the existing one-story service center.
5. Petitioner's hours of operation are limited to 9:00 am to 5:00 pm Monday through Saturday. Petitioner will not be open for business on Sundays.
6. Petitioner must complete the landscaping in the front of the property that is designated as a planting area on the site plan.
7. Petitioner must obtain all necessary permits or licenses from the MVA before selling automobiles on the premises.
8. Petitioner must ensure that the property remains in compliance with all local fire department regulations.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz