

IN RE: PETITIONS FOR SPECIAL EXCEPTION	*	BEFORE THE
AND VARIANCE		
E side of Beachwood Road; 879 feet NE of	*	DEPUTY ZONING
the c/l of I-695		
15 th Election District	*	COMMISSIONER
6 th Councilmanic District		
(8143 Beachwood Road)	*	FOR BALTIMORE COUNTY
MJM Associates, LLC	*	
<i>Legal Owner</i>		
Salvage Direct, Inc.		
<i>Contract Purchaser</i>	*	Case No. 2010-0159-XA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by Martin Marano, Member, on behalf of MJM Associates, LLC, the legal property owner, and Robert T. Joyce, President of Salvage Direct, Inc., the contract purchaser. The Special Exception is requested for a junkyard (temporary storage of unlicensed or inoperative motor vehicles with no dismantling of vehicles) pursuant to Section 256.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”). The Variance requests are as follows:

- From Section 408.1 of the B.C.Z.R. to allow 16.7 acres of land to be used for the junkyard in lieu of the permitted 5 acres; and
- From Section 408.2 of the B.C.Z.R. to allow automobiles and vehicles not in running condition to be located as close as 0 feet from other adjoining properties in lieu of the required 30 feet, and as close as 0 feet from any other zone in lieu of the required 300 feet.

The subject property and requested relief are more fully described on the redlined site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the Special Exception and Variance requests were Martin Marano and Adam Weidner on behalf of MJM Associates, LLC, the legal property owner, and Robert T. Joyce, President, and Shelly Los, in-house counsel, for Salvage Direct, Inc., the contract purchaser (hereinafter "Petitioners"). David H. Karceski, Esquire appeared as attorney for Petitioners. Also appearing in support of the requested relief was David Martin with Martin & Phillips Design Associates, Inc., the landscape architect who prepared and sealed the site plan. There were no Protestants or interested persons in attendance.

Testimony and evidence in the case revealed that the subject property is irregular-shaped and consists of approximately 16.683 acres, more or less, zoned M.H.-I.M. The property is located on the south side of Beachwood Road, with Interstate 695 situated to the west and an existing railroad line to the east, in the Dundalk / Edgemere area of Baltimore County. As depicted on the site plan and shown in the aerial photograph with site plan overlay that was marked and accepted into evidence as Petitioners' Exhibit 2, the property is presently improved with several buildings situated at the northern end of the property. The property is somewhat unusual in that it is surrounded by a mix of zoning, including R.C.20 to the east, D.R.1 to the south, and M.L. to the northeast; the properties to the west have similar M.H.-I.M. zoning, as well as M.L.-I.M. Another feature of the property, as shown on the aerial photograph, is that it is well buffered -- surrounded by trees and vegetation.

Salvage Direct was founded in 1997 by Robert Joyce, who had previous experience working with an insurance company in managing the salvage process and developing creative solutions for marketing salvage. He introduced the original, on-line only salvage vehicle auction concept. Today, the company is a leading online remarketer of many different vehicles, including cars, trucks, motorcycles, power sports, watercraft, commercial equipment and

vehicles. Salvage Direct remarkets all kinds of vehicles that have been recovered, repossessed, damaged and non-damaged, and salvage and non-salvage. It has nearly 100 facilities in 18 States, with concentrations in the Mid-Atlantic States, including Maryland, Pennsylvania, Virginia, Delaware, West Virginia, and Ohio. The company typically stores vehicles for the relative short term (approximately 60 days) before they are sold or otherwise transferred. Most of the salvage units are total losses for the insurance companies. A few are recovered vehicles from theft or storm damage. All are settled with the original owner and titled for salvage through Salvage Direct's titling department. The company also works with rental companies and fleet operators to sell unwanted units, and sells only to licensed buyers including rebuilders, used and new vehicle dealers, dismantlers, and importers and exporters worldwide.

At this juncture, Salvage Direct desires to utilize the subject property for one of its salvage facilities. Photographs that were marked and accepted into evidence as Petitioners' Exhibits 3A and 3B illustrate a typical storage lot configuration at one of its facilities. A rendering of the anticipated parking configuration on the subject property was marked and accepted into evidence as Petitioners' Exhibit 4 and shows how the vehicles would be stored in organized rows. The vehicles would be accessed by tow trucks, fork lifts, or similar equipment, as depicted in the photographs that were marked and accepted into evidence as Petitioners' Exhibits 5A and 5B. Generally, the facility hours would be Monday through Friday from 8:00 AM to 5:00 PM with five employees that include an office manager, a site manager, and three yard workers. Because of the nature of Salvage Direct's business and the clients they serve, there would be limitations on access to the site, to include vehicle carriers (flatbeds and tow trucks), insurance company representatives, and registered buyers. There would be no direct access to the public.

Mr. Joyce, the President of the company, testified that typically when looking for potential sites, they try to find properties that are relatively flat so as to maximize their storage area, and with good access to major roads or highways, as well as existing improvements for office space and storage of equipment and prepping of vehicles, which would not necessitate wholesale changes or modifications to a site. They also look for a site that is already paved with asphalt or some other form of durable and dustless surface. On just about all these points, Mr. Joyce indicated the subject site is ideal for Salvage Direct's operation and facility needs.

In addition, although the instant Petition for Special Exception requests to use the property for a junkyard, Mr. Joyce believes this is somewhat of a misnomer. The definition of a "junkyard" in Section 101 of the B.C.Z.R. does include the storage of unlicensed or inoperative motor vehicles -- similar to Salvage Direct's operation. But the definition also includes a number of elements such as storage or sale of scrap metal, wastepaper, rags or other junk, and dismantling or storage of vehicles or parts thereof, or used machinery, which is not characteristic of their operation. His company also stores vehicles on a relative short term basis. He views his company's operation as more of a "warehouse" storage, though it obviously includes outdoor storage as well.

Also testifying in support of the relief was David Martin, Petitioners' landscape architect. Mr. Martin's resume was marked and accepted into evidence as Petitioners' Exhibit 8. He was offered and accepted as an expert in land use, development, and zoning, with specific knowledge and interpretation of the B.C.Z.R. Mr. Martin testified that the proposed use would fit in well and be consistent with the surrounding industrial uses. Mr. Martin first referred to the American Yeast Corporation located to the north and east of the subject property. As shown on the zoning map aerial photograph that was marked and accepted into evidence as Petitioners' Exhibit 6,

further north on Fisher Road are heavy trucking facilities with containers, and to the west are more commercial/industrial uses and trucking facilities. Mr. Martin testified that Morse Lane and Lynhurst Road are major trucking roads. To the south of the subject property are more residential and environmentally sensitive areas.

Presently, the property is used as a trucking and container storage facility. Photographs of the existing conditions at the site were marked and accepted into evidence as Petitioners' Exhibits 7A through 7D. A driveway from the Beachwood Road entrance of the property leads approximately 700 feet through a wooded area to the main, open area of the property. This leads to several buildings and an extensive paved area where the trucks and containers are stored. Mr. Martin testified that the proposed "technical" use as a junkyard would be no more intense than the present use as a trucking and container storage facility -- and likely less intense based on the nature of Salvage Direct's business. Mr. Martin also agreed that the proposed use is more of a departure from the traditional "junkyard" use as that term is defined in the regulations. Because of the creative and innovative manner in which Salvage Direct manages and markets the salvage process, the proposed use does not fit completely within the definition of a junkyard, although it does have some of the characteristics as indicated previously (storage of unlicensed or inoperative motor vehicles); however, Mr. Martin testified that the salvage facility would be a fairly innocuous use and would not negatively impact the special exception criteria set forth in Section 502.1 of the B.C.Z.R. On the contrary, the proposed use would be wholly consistent with the commercial and industrial uses permitted in the M.H.-I.M Zone.

As to the variances, Mr. Martin indicated that generally, a junkyard area may not consist of less than one acre, but not more than five acres of land. In the instant matter, Petitioners are proposing an area of approximately 16.7 acres. In support of this request, Petitioners again point

to the fact that the proposed use as a salvage facility in the manner operated by Salvage Direct is not the traditional “junkyard” as that term is defined in the Regulations. There will be no storage or sale of scrap metal, wastepaper, rags or other junk, and no dismantling or storage of vehicles or parts thereof, or used machinery. Salvage Direct generally stores vehicles for less than 60 days and goes through an organized process that begins with acquisition and ends in the sale of the particular vehicle at auction. This includes vehicle intake, assessing the preservation needs to put the vehicle in the best possible condition, staging (where photographs are taken and information on the vehicle is uploaded via proprietary software onto a custom online bid page), and storing the vehicle in the storage yard (which often includes both indoor and outdoor storage areas, paved storage areas, management of groundwater, and fencing).

In support of the variances related to the storage of vehicles not in running condition within 300 feet of any other zone and within 30 feet of any adjoining property, Mr. Martin explained that this relief is largely necessitated by the odd configuration of the different zone lines near the property. As shown on the site plan, the zoning to the west and south of the property is M.L.-I.M. and the zoning to the east is M.L., with R.C.20 zoning even further east. These zone lines effectively pinch the area on the subject property that would permit the storage of Salvage Direct’s vehicles, leaving a very small area in which to do so. The property is also constrained by its irregular shape and because it is sandwiched between the Baltimore Beltway (Interstate 695) and a railroad line. It also has an extensive vegetative buffer that surrounds the property on all sides. Mr. Martin also emphasized that the property has a history of industrial use and would be used in the same manner without any detrimental impacts or negative effects on the area.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. The comments received from the Department of Environmental Protection and Resource Management (DEPRM) dated January 22, 2010 indicates that development of the property must comply with the Chesapeake Bay Critical Area Regulations. In addition, comments from the Office of Planning dated January 26, 2010 indicate that it supports the limited use as termed a junkyard and as described by Petitioners as a temporary storage yard of inoperative motor vehicles for insurance inspection and appraisal. The Office of Planning does not support the other uses described in the definition of junkyard in the B.C.Z.R. As to the variance relief to store vehicles within 30 feet of any adjoining property line, Planning opposes the granting of this relief. Finally, the Office of Planning recommends that certain conditions be imposed if granting the relief; however, it appears these conditions have already been incorporated on the site plan as “Project Proposal Notes.”

Turning first to the requested special exception to use the property as a junkyard, I am persuaded to grant the relief. Based on the testimony and evidence presented, it is clear that Petitioners’ proposed use would not be a traditional “junkyard” as that term is defined in the Regulations. This would be more of a short term storage of various types of vehicles and salvage units and it appears that the facility would be well organized and maintained in good order. The evidence indicates that part of what makes Salvage Direct’s business successful is keeping the vehicles in the best possible condition in anticipation of sale, and in an orderly and efficient environment. I am convinced that the proposed use at the subject property will not have the perceived negative connotations that a junkyard generally has, and that it will not have any detrimental impacts on the 502.1 criteria, nor will the use result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would

otherwise result from the development of such a special exception use located anywhere within the Zone.

In regard to the variance requests, based on the testimony and evidence, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. In my judgment, the irregular shape of the property, combined with the unusual configuration of the zoning lines near the property, significantly limit the area available for the storage of vehicles and drive the need for the variance relief. These are the kinds of peculiar circumstances that make the regulations impact this property disproportionately compared to others in the district. Therefore I find the property unique in a zoning sense.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Clearly, Petitioners would not be able to use the land for a purpose that has been utilized similarly in the past, and the curvature of the zoning lines would leave only a small area for the permitted storage, which would not be practical.

Finally, I find these variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare; however, in an abundance of caution, I shall require that the 30 foot distance between the storage of vehicle/salvage inventory not in running condition and the nearest property line be maintained at the southernmost corner of the property. This is shown in the blue-lined crosshatched area of Petitioners' Exhibit 2. This particular area of the subject property is closest to the residentially zoned R.C.20 and D.R.1 areas and could potentially have some visual impact on those areas with the storage of vehicles and other salvage units in close proximity to those property lines.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception request and the Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 10th day of March, 2010 that Petitioners' request for Special Exception for a junk yard (temporary storage of unlicensed or inoperative motor vehicles with no dismantling of vehicles) pursuant to Section 256.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") be and is hereby **GRANTED**, consistent with the redlined site plan and the blue-lined aerial photograph with site plan overlay that were accepted into evidence as Petitioners' Exhibits 1 and 2, respectively; and

IT IS FURTHER ORDERED that Petitioners' Variance requests as follows:

- From Section 408.1 of the B.C.Z.R. to allow 16.7 acres of land to be used for the junk yard in lieu of the permitted 5 acres; and
- From Section 408.2 of the B.C.Z.R. to allow automobiles and vehicles not in running condition to be located as close as 0 feet from other adjoining properties in lieu of the required 30 feet and as close as 0 feet from any other zone in lieu of the required 300 feet.

be and are hereby **GRANTED**.

The granting of the above relief shall be subject, however, to the following conditions precedent:

1. Petitioners may apply for any permits required and be granted same upon receipt 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. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
3. Petitioners shall comply with the “Project Proposal Notes” denoted on the redlined site plan accepted into evidence as Petitioners’ Exhibit 1.
4. The granting of the variance relief to allow automobiles and vehicles not in running condition to be located as close as 0 feet from other adjoining properties in lieu of the required 30 feet shall not include the blue-lined crosshatched area of the aerial photograph with site plan overlay accepted into evidence as Petitioners’ Exhibit 2. There shall be no storage of vehicles or other salvage units in the crosshatched area.

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