

| | | |
|---|---|-----------------------------|
| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| SW side Baltimore National Pike; 3,830 feet | | |
| NW of the c/l of Geipe Road | * | DEPUTY ZONING |
| 1 st Election District | | |
| 1 st Councilmanic District | * | COMMISSIONER |
| (6631 Baltimore National Pike) | | |
| | * | FOR BALTIMORE COUNTY |
| H-K Real Estate Holdings, Inc. | | |
| <i>Legal Owner</i> | * | |
| 6631 Baltimore Pike Corp. | | |
| <i>Contract Purchaser</i> | * | CASE NO. 2010-0180-A |

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, H-K Real Estate Holdings, Inc., and the contract purchaser, 6631 Baltimore Pike Corp. Petitioners are requesting Variance relief as follows:

- From Section 238.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a 45 foot front yard setback in lieu of the required 50 feet; and
- From Section 238.2 of the B.C.Z.R. to permit a 0 foot side yard setback in lieu of the required 30 feet; and
- From Section 450.4.5(g) of the B.C.Z.R. to permit a free-standing enterprise sign with a sign face of 196 square feet in lieu of the permitted 50 square feet, unless it is confirmed that it may replace an existing free-standing enterprise sign that is nonconforming; and
- From Section 450.4.4 of the B.C.Z.R. to permit a wall-mounted directional sign with a sign face area of 24 square feet in lieu of the permitted 8 square feet; and
- From Section 450.4.5(a) of the B.C.Z.R. to permit a wall-mounted enterprise sign with a sign face area of 159 square feet in lieu of the permitted 150 square feet; and
- From Section 409.8.A.4 of the B.C.Z.R. to permit existing parking spaces in a surface parking facility for a non-residential use to be as close as 0 feet to right right-of-way of a public street in lieu of the required 10 feet, unless it is confirmed that the existing parking spaces are nonconforming; and

- To permit a 0 foot wide landscape strip in lieu of 10 feet as required by the Baltimore County Landscape Manual, unless it is confirmed that the 0 foot wide landscape strip is nonconforming.

The subject property and requested relief are more fully described on the three page site plan which was marked and accepted into evidence as Petitioners' Exhibits 1A through 1C.

Appearing at the requisite public hearing in support of the variance requests were Terry Rafih, President of 6631 Baltimore Pike Corp, a new Mercedes dealership, and Stanford Hess, in-house counsel to H-K Real Estate Holdings, Inc., t/a Antwerpen Automotive Group. Appearing as counsel on behalf of Petitioners were Arnold Jablon, Esquire and David Karceski, Esquire with Venable, LLP. Also appearing in support of the requested relief was Thomas Church, a registered professional civil engineer, who prepared the site plan. Mr. Church has been recognized and accepted as an expert witness on land use and zoning before the Zoning Commissioner and was accepted as an expert in the instant matter, specifically as to Sections 238, 409, 450 of the B.C.Z.R., the Baltimore County Landscape Manual, and Section 307 of the B.C.Z.R. There were no Protestants or other interested persons in attendance.

As a preliminary matter, Mr. Jablon stated that Petitioner 6631 Baltimore Pike Corp. now owns the property at issue, having settled with H-K Real Estate Holdings, Inc. subsequent to the filing of the instant petition. Thus, H-K Real Estate Holdings, Inc. now has no interest in the property, and hereafter, reference to "Petitioner" is to 6631 Baltimore National Pike.

H-K Real Estate Holdings, Inc. trades as Antwerpen Automotive Group, which operates numerous and various automobile dealerships. H-K Real Estate Holdings, Inc. operated an automobile dealership on the subject property for many years, the last being a Hyundai dealership, until its sale of the property to Petitioner. The Hyundai dealership was not closed but moved to the north side of U.S. 40 Baltimore National Pike (hereinafter referred to as "Route 40") to another Antwerpen site. Petitioner also purchased the adjacent property to the west, cited

by both the Office of Planning and Stephen Weber with Baltimore County's Bureau of Traffic Engineering in their comments (which will be expounded on further in this Order), known as 6635 Baltimore National Pike. Mr. Jablon proffered that Petitioner is new to Maryland and is opening a new Mercedes dealership on the subject property. Petitioner was awarded a new Mercedes territory for the Howard County area (which includes this area of Baltimore County as well) as there are no Mercedes dealerships between Owings Mills and Laurel. Testimony and evidence offered revealed the requested relief involves 6631 Baltimore National Pike, as more particularly shown on the first page of the site plan that was accepted into evidence as Petitioner's Exhibit 1A.¹

The subject property consists of approximately 7.33 gross acres and 6.89 net acres, more or less, and is split zoned B.R. and D.R.2. The property is an elongated rectangular parcel located on the south side of Route 40, a four lane highway, divided by a median strip, running east and west. As indicated above, the lot of record immediately to the west is now also owned by Petitioner and is identified on the site plan as 6635 Baltimore National Pike. As noted by Mr. Weber's comment, and confirmed by an aerial photograph of the area that was marked and accepted into evidence as Petitioner's Exhibit 5, this parcel, zoned B.R., has been used and will continue to be used for inventory parking of vehicles. The subject property has approximately 630 feet of road frontage on Route 40. The D.R.2 zoned portion of the property is to the rear of the property – small, triangularly shaped -- and is marked by a steep slope denoted by the zone line, and to its rear by the D.R.5.5 zone line. A floodplain exists in the D.R.2 portion of the property. As confirmed on the topography map that was marked and accepted into evidence as Petitioner's Exhibit 4, Mr. Church testified that the topography of the property is relatively flat

¹ The site plan refers to "6440 Baltimore National Pike," but Mr. Church explained this is the business address for H-K Real Estate, a/k/a Antwerpen Automotive Group.

from Route 40 to the rear until the property literally drops off. The floodplain exists in the “floor” where the steep slope ends and the property levels off. The B.R. zoned portion of the property makes up most of the site; however, there is a stream in the rear of the B.R. portion of the property, near but not adjoining the zone line, which runs parallel to Route 40. There is also an existing drain and utility easement running parallel to the stream. In addition, Mr. Jablon proffered and Mr. Church agreed there is an existing forest buffer in the rear of both 6631 and 6635 Baltimore National Pike, parallel to Route 40, that further limits development of 6631 and 6635. In short, the site is marked and limited by unique topographical features.

There are two points of existing ingress and egress from Route 40, as shown on the second page of the site plan that was accepted into evidence as Petitioner’s Exhibit 1B, which more clearly delineates the traffic flow on the property. No new access is proposed. As shown on the first page of the site plan, the site is improved with two buildings, the main building of approximately 21,280 square feet, and a smaller building of approximately 1,440 square feet. The main building is in the northwestern part of the property and the smaller building to the southeast part of the site. There are two additions proposed, both to the main building. One addition will be 6,824± square feet and the other 2,774± square feet. The existing main building is a one-story frame building and has been used for an auto dealership, including the normal uses of a dealership, e.g., showroom, offices and auto repairs. 162 parking spaces are required and provided with 19 service bays and four “service-write-up” spaces, including six handicap spaces with two of those spaces being van accessible. The parking data and layout plan is shown on Petitioner’s Exhibit 1B.

The larger of the two additions (6,824 square feet) is proposed to the western side of the main building and will have a 0 foot setback to the adjacent lot of record, 6635 Baltimore National Pike. The smaller addition (2,774 square feet) is proposed for the eastern side of the

main building. This addition will have a 45 foot front yard setback. B.C.Z.R. Section 238.1 requires a 50 foot front yard setback and B.C.Z.R. Section 238.2 requires a 30 foot side yard setback. Mr. Jablon proffered and Mr. Church confirmed that the subject property has been used as a car dealership for at least 50 years. Mr. Hess confirmed that various dealerships have owned and used the site for dealerships. The front of the existing main building has a 48 foot front yard setback. Mr. Church indicated that he believes the setback is nonconforming because there was no required front yard setback when the building was first constructed. He testified that the front building line of the proposed addition to the south side of the building will be in line with the front building line of the existing building. However, due to the subtle angles of Route 40 and of the property line, the proposed addition will have a front setback of 45 feet. Mr. Church stated that the front building line of the main building and the slightly angled alignment of Route 40 converge as they extend to the east, thus the three foot difference. While the existing front yard setback of the existing building may be nonconforming, the purpose of the variance request is to bring the building up to current standards, since there is no way to move the existing building.

Mr. Rafih testified that Petitioner will have invested approximately \$15 million in land and improvements costs, and will employ about 70 employees with an average income of approximately \$100,000.00. Petitioner will entirely refit the exterior of the existing buildings, as depicted in the renderings that were marked and accepted into evidence as Petitioner's Exhibit 2.

As with all dealerships, signage is an integral part of their business and Mr. Jablon indicated this situation is no different. Petitioner seeks approval for the following signage, as referenced on the third page of the site plan showing the sign details that was accepted into evidence as Petitioner's Exhibit 1C: (a) a free-standing enterprise sign of 196 square feet in lieu of the permitted 50 square feet pursuant to B.C.Z.R. Section 450.4.5(g); (b) a wall-mounted directional sign with a sign face of 24 square feet in lieu of 8 square feet pursuant to B.C.Z.R.

Section 450.4.4; and (c) a wall-mounted enterprise sign with a sign face of 159 square feet in lieu of the permitted 150 square feet pursuant to B.C.Z.R. Section 450.4.5(a).

The proposed enterprise sign has the Mercedes logo on its top and the words “Mercedes Benz of Baltimore” on the bottom. The sign would replace one of the two existing free-standing enterprise signs on Route 40, the location of which are indicated on Petitioner’s Exhibit 1C. The proposed new sign is denoted as (a). Testimony presented by Mr. Church, which was confirmed by Mr. Hess, indicated that historically there were the two free-standing enterprise signs on the site. The sign to be replaced was approximately 80 square feet. This sign has already been removed and the new sign would be in the same location. The second sign, for which no square footage was provided, is to be removed as recommended by the Office of Planning. Recent photographs of the site that were marked and accepted into evidence as Petitioner's Exhibits 3A and 3B show the sign to be removed. In effect, both of the existing free-standing enterprise signs would be replaced with one, albeit larger than either of the two individually, but perhaps not collectively. In support of this requested variance, Mr. Jablon notes, as did the Office of Planning, the uniqueness of the site due to its relationship to Route 40; that is, its 150 foot right-of-way, the angles and curves of the road as it traverses up an incline from west to east from Howard County toward the subject property, where the road levels out. He also notes Route 40 on both sides is improved with auto dealerships, as shown on Petitioner's Exhibit 5 aerial photograph. The grade and incline approaching the site make it difficult for traffic to identify the user of the property. Petitioner proposes the larger enterprise sign to facilitate the identification of the Mercedes dealership to attract potential customers and identify the site properly. Mr. Rafih testified the increased signage was needed to insure the success of this new business, and to justify the costs associated with its establishment. The subject property and the topography of Route 40 make this property unique in a zoning sense.

The wall-mounted directional sign, the detail of which is shown on the second and third pages of the site plan (Petitioner's Exhibits 3B and 3C, respectively), is to direct customers to the service reception area, which is to be in the addition proposed to the south side of the main building. The wall-mounted enterprise sign, the detail of which is shown on Petitioner's Exhibit 1C, is to replace the wall-mounted enterprise sign on the front of the existing main building and will read "Mercedes Benz of Baltimore." The location of the proposed sign is illustrated on the rendering of the exterior of the building that was accepted into evidence as Petitioner's Exhibit 2.

Two other variances are also requested. One is to permit the existing parking spaces to be 0 feet to the right-of-way of a public street in lieu of the required 10 feet pursuant to B.C.Z.R. Section 409.8.A.4. The other is to permit the existing 0 foot wide landscape strip in lieu of 10 feet as required by the Baltimore County Landscape Manual. Mr. Church explained that both requests emanate from the same cause. He testified that the cause of both requests is the existence of a BGE guy wire, which is anchored to a concrete base located on the subject property at the property line with Route 40, and which has historically been situated at its present location, as depicted in the photograph of the utility pole and guy wire that was marked and accepted into evidence as Petitioner's Exhibit 3A. This pole and guy wire anchors BGE wires crossing Route 40 and cannot be moved. The parking spaces are on either side of the guy wire. Parking spaces have always existed in their present location, perpendicular to Route 40 along the entire road frontage of the subject property. The 0 foot setback to the Route 40 right-of-way and the 0 foot wide landscape strip have always existed. There is no room to provide a landscape strip, plus moving the parking spaces back from Route 40 to satisfy the requisite setbacks would create other problems. To do so, the parking spaces would intrude into the existing drive aisle, which then would be limited by the location of the guy wire as the drive aisle moves closer to Route 40. The location of the existing parking spaces takes advantage of the guy wire; to move

the drive aisle into the area where the parking spaces extend could not. Essentially, the free flow of traffic would be impaired and another variance needed.

In 2001, H-K Real Estate Holdings, Inc. received approval for a helistop in the rear of the subject property, now zoned D.R.2 but then zoned B.R., in Case No. 01-368-SPH. Mr. Hess testified the helistop was seldom used and has not been used for a number of years. Mr. Jablon proffered and Mr. Rafih agreed that should the relief in the instant matter be granted, the relief granted in Case No. 01-368-SPH would be abandoned.

As shown on the aerial photograph, the subject property is surrounded by commercial uses. The entire neighboring area, on both sides of Route 40, is zoned B.R. In support of the variances requested, Mr. Jablon proffered and Mr. Church confirmed that the property has several unusual characteristics that drive the need for the variances. Most notable as shown on the site plan, are the size, shape and location of the subject property. It is also important to note that the subject site is historically commercial and has been used as a automobile dealership.

In terms of practical difficulty, Mr. Jablon pointed out that variances are requested so as to take advantage of the existing site conditions and not to create additional impact. To provide the 10 foot wide landscape strip to Route 40 would reduce the drive aisle significantly and would cause the need for a drive aisle variance. The same would be true if the 50 foot setback to Route 40 were to be required, as shown on the site plan that illustrates the traffic flow and parking on site. If conformity is required, the aisles would be reduced for no reason and require variances.

It was the opinion of Mr. Church that there would be no adverse impact on the community by the proposed variances. Neither the proposed signage nor the setback variances cumulatively would have detrimental impact on the surrounding locale and would not be detrimental to the health, safety or general welfare of the locale and would have no negative impact on the community. As Mr. Jablon stated, the location of this dealership is surrounded by

other dealerships. He further proffered and Mr. Church confirmed his expert opinion that the strictures of B.C.Z.R. Section 307.1 were satisfied and that a practical difficulty would exist if the variances were to be denied. Mr. Church would also testify that in his opinion the property was unique in a zoning sense, reiterating the uniqueness of the property as described above.

Finally, inasmuch as Petitioner owns both 6631 and 6635 Baltimore National Pike, I believe the doctrine of zoning merger applies. B.C.Z.R. Section 238.2 requires a 30 foot side yard setback. I find that this specific variance request is not required. Zoning merger occurs as a result of a property owner's use of contiguous lots under the same ownership. *Friends of the Ridge v. Baltimore Gas & Electric Co*, 352 Md. 645 (1999). In this case, both lots are owned by the same party and effectively are merged by their use. For zoning purposes, 6631 and 6635 Baltimore National Pike shall be considered as one lot, and, therefore, no side yard variance is necessary under B.C.Z.R. Section 238.2. Alternatively, even if the doctrine of zoning merger does not apply, I find that the proposed side yard of 0 feet satisfies the criteria required by B.C.Z.R. Section 307.1, and would be in strict harmony with the spirit and intent of zoning regulations, specifically Section 238.2.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management dated February 2, 2010 which indicates that there may be an old groundwater contamination case still pending with the Maryland Department of the Environment for this site, though the Environmental Impact Review Section does not have any comments on this variance. Comments were also received from the Office of Planning dated January 20, 2010 indicating it does not oppose any of the requested relief; however, Planning requested that an existing free-standing sign, located between the easternmost vehicular entrance and the eastern property line, be removed. Planning further noted that the adjoining lot of

record, to the west side of the property, for which the 0 foot setback is requested, is owned by Petitioner and would eliminate the need for this variance request. Finally, Planning noted that, while it recognized the proposed free-standing enterprise sign requires a major variance, it does not oppose it, concluding that the proposed sign at this particular location, on a major highway and at a motor vehicle dealership, is appropriate. Also received in the file was a letter dated January 15, 2010 from People's Counsel, which forwarded an e-mail from Stephen Weber of the Department of Public Works, Bureau of Traffic Engineering, in which Mr. Weber found no significant traffic concerns or issues. Inasmuch as Route 40 is a State highway, the State Highway Administration noted it did not object to the approval of the variances.

Considering all the testimony and the evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure that is the subject of the variance requests. Clearly, the subject property has constraints that are inherent to the property. Its irregular, rectangular shape, its frontage on Route 40, the proximity to a stream, the existing drain and utility easement, the extensive forest buffer, and the steep slope and floodplain leads me to find the property unique in a zoning sense. I further find that the strict application of limitations imposed by B.C.Z.R. Sections 238.1, 450.4.5(g), 450.4.4, 450.4.5(a), 409.8.A.4, and the Baltimore County Landscape Manual would cause practical difficulty.

Finally, I find that the variances 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. Thus, I find that these variances can be granted in such a manner as to meet the requirements of B.C.Z.R. Section 307.1, as established by *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 22nd day of February, 2010 by this Deputy Zoning Commissioner, that Petitioner's Variance requests as follows:

- From Section 238.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a 45 foot front yard setback in lieu of the required 50 feet; and
- From Section 450.4.5(g) of the B.C.Z.R. to permit a free-standing enterprise sign with a sign face of 196 square feet in lieu of the permitted 50 square feet, unless it is confirmed that it may replace an existing free-standing enterprise sign that is nonconforming; and
- From Section 450.4.4 of the B.C.Z.R. to permit a wall-mounted directional sign with a sign face area of 24 square feet in lieu of the permitted 8 square feet; and
- From Section 450.4.5(a) of the B.C.Z.R. to permit a wall-mounted enterprise sign with a sign face area of 159 square feet in lieu of the permitted 150 square feet; and
- From Section 409.8.A.4 of the B.C.Z.R. to permit existing parking spaces in a surface parking facility for a non-residential use to be as close as 0 feet to right right-of-way of a public street in lieu of the required 10 feet, unless it is confirmed that the existing parking spaces are nonconforming; and
- To permit a 0 foot wide landscape strip in lieu of 10 feet as required by the Baltimore County Landscape Manual, unless it is confirmed that the 0 foot wide landscape strip is nonconforming,

be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED that the request for Variance from Section 238.2 of the B.C.Z.R. to permit a 0 foot side yard setback in lieu of the required 30 feet, as shown on Petitioner's Exhibit 1A, is permitted as of right and, therefore, this request for variance is **DISMISSED** as moot.

The relief granted herein shall be subject to the following:

1. Petitioner is advised that it may apply for any required building 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 shall remove the existing free-standing enterprise sign located to the east side of the property at Route 40, consistent with the ZAC comment from the Office of Planning.
3. Petitioner shall provide landscaping around the base of the proposed free-standing enterprise sign.
4. The relief granted in Case No. 01-368-SPH for a helistop shall be, and is hereby, abandoned from the date the relief granted herein becomes final.

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