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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| S side of Powers Lane; 58 feet W of | | |
| the c/l of of North Rolling Road | * | DEPUTY ZONING |
| 1 st Election District | | |
| 1 st Councilmanic District | * | COMMISSIONER |
| (6324 Baltimore National Pike, | | |
| 1917 Powers Lane, 1000 North Rolling Road) | * | FOR BALTIMORE COUNTY |
| Russel Family, LLC | | |
| <i>Petitioner</i> | * | CASE NO. 2010-0202-A |

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by F. Steven Russel, Member, on behalf of the legal owner of the subject property, Russel Family, LLC. Petitioner is requesting Variance relief from Section 450.4.F.5.g of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit two (2) freestanding signs for each franchise agreement held by a vehicle dealership in lieu of one (1) freestanding sign for each franchise permitted. The subject property and requested relief are more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Wade Sterry on behalf of Petitioner Russel Family, LLC, and Leslie Pittler, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was Ken Colbert with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan. There were no Protestants or other interested persons in attendance.

Initially, Mr. Pittler moved to amend the Petition to also include a request for a total sign area consisting of 69 square feet in lieu of the permitted 50 square feet for both the existing “Toyota/Scion” sign at the Baltimore National Pike entrance and the proposed sign that is the

subject of the instant hearing. The undersigned permitted the amendment without objection. Testimony and evidence in the case proceeded by way of a proffer by Mr. Pittler and revealed that the subject property is irregular in shape and consists of several parcels with a total area of approximately 6.28 acres, more or less, zoned B.M., B.R., B.R.-A.S., and a small area of D.R.5.5. The property is located near the northwest corner of Rolling Road and Baltimore National Pike (U.S. 40), west of Interstate 695, in the Catonsville area of Baltimore County. The property has frontage along Rolling Road and Baltimore National Pike, but is not located directly at the corner; the property is notched at the corner where a separate property is located and contains a diner/restaurant. The subject property also has frontage to the north along Powers Lane. The property is home to the Toyota/Scion car dealership owned and operated by Russel Motor Cars, Inc. and is improved with an existing one-story building that contains areas for the vehicle showroom, vehicle service and parts, and retail sales. There is also an existing two level parking deck located on the western-most side of the property. The property also contains a number of open parking areas for storage of vehicle inventory, vehicles being serviced, and customer parking.

Additional proffered testimony by Mr. Pittler indicated that the property is located in a large commercial corridor of Baltimore National Pike with significant business and commercial zoning. An aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 2 is also labeled and shows the various commercial uses surrounding the property, including retail offices, auto service garages, restaurants, several retail shopping centers, and stand alone retail buildings. Beyond these areas to the north, south, and east are D.R. zoned residential areas.

Presently, as shown on the site plan, Petitioner has a sign at the main Baltimore National Pike entrance. The sign detail is also depicted on the site plan. Petitioner has recently proceeded

through a substantial and costly renovation and building program for their dealerships. This has included the subject property and has involved a multimillion-dollar project at Russel Toyota/Scion. Petitioner had operated at the subject location since March 2007. The site was previously home to a Circuit City store until the store closed. At this juncture, Petitioner desires to add another freestanding sign to the entrance at Rolling Road and Powers Lane that would be identical to the aforementioned sign at Baltimore National Pike.

In support of the requested relief, Mr. Colbert was offered and accepted as an expert in engineering, land use and site development, and interpretation of the Zoning Regulations. He indicated that the subject property has some natural limitations that drive the need for the sign variance, due to the property's size and topography, as well as the configuration of the property and the nearby traffic patterns. Specifically, as shown on the site plan, the property has a very unusual shape due to its combination of parcels. It also has frontage on three separate public roads. In addition, the location of improvements was essentially predetermined with the presence of the existing Circuit City building when Petitioner acquired the property, creating more limitations. Moreover, due to the presence of the diner/restaurant at the corner, which indents into the subject property and is obviously unrelated to Petitioner's business, it is difficult for customers to know exactly where the dealership is located, and more particularly where the entrances are located -- both on Baltimore National Pike and especially on Powers Lane.

The topography of the property also presents challenges. Mr. Colbert indicated there is a 30 foot increase in elevation from the entrance on Baltimore National Pike to the Powers Lane side of the site. In Mr. Colbert's expert opinion, all of these factors adversely affect the visibility that passersby might have of the site and cause customers traveling south on Rolling Road to unknowingly pass the dealership and cross Baltimore National Pike, and then have to backtrack

to return to the dealership. The situation is depicted in the photo exhibit that was marked and accepted into evidence as Petitioner's Exhibit 3. Mr. Colbert also offered his opinion that the proposed sign would alleviate this problem, with no adverse impacts on the community. The proposed sign would also be consistent with other signage in the area, in terms of overall square footage and height, as particularly compared with the nearby McDonald's, 7-11, and Double T Diner signage.

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 February 23, 2010 which states the property is located within the Baltimore National Pike Commercial Revitalization District. The Planning Office does not oppose the Petitioner's request to construct an additional freestanding enterprise sign as the existing sign along Baltimore National Pike is not visible from Rolling Road and Powers Lane. However, the Planning Office requests that the proposed sign that is roughly 4 feet wide by 24 feet high be reduced in height to 15 feet maximum. Signage of this reduced height would clearly identify the establishment to the audience traveling on Rolling Road.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. In this instance, I agree with the testimony of Mr. Colbert, Petitioner's consulting engineer, that the unusual size and shape of the property, its frontage on three public roads, and the substantial difference in elevation from one side of the property to the other, render the property unique in a zoning sense and drive the need for the variance from the signage regulations. I also find that Petitioner would suffer practical difficulty and unreasonable hardship if the variance were denied.

Finally, I find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. Indeed, the photo exhibit shows the proposed sign superimposed on one of the photographs at the corner of Powers Lane and Rolling Road. The sign is identical to the one presently on Baltimore National Pike, creating uniformity, and it does not appear that the sign will overwhelm the site or create any sight issues for traffic traveling south on Rolling Road. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as interpreted in *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 by Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 14th day of April, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance request from Section 450.4.F.5.g of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit two (2) freestanding signs for each franchise agreement held by a vehicle dealership in lieu of one (1) freestanding sign for each franchise permitted, and to permit a total sign area of 69 square feet in lieu of the permitted 50 square feet for the existing "Toyota/Scion" sign at the Baltimore National Pike entrance and the proposed sign, as shown on the site plan and the photo exhibit, be and are hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its building permit 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.

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