

IN RE: PETITIONS FOR SPECIAL EXCEPTION	*	BEFORE THE
AND VARIANCE		
N side of Pulaski Highway; 630 feet NE side	*	DEPUTY ZONING
of the c/l of Batauia Farm Road		
15 th Election District	*	COMMISSIONER
7 th Councilmanic District		
(8220-8224 Pulaski Highway)	*	FOR BALTIMORE COUNTY
8220 Pulaski Highway, Inc.	*	
<i>Legal Owner</i>		
	*	Case No. 2010-0327-XA
Alberain International, LLC	*	
<i>Proposed Sub-Lessee</i>		

* * * * *

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 Brian Znamirovski on behalf of 8220 Pulaski Highway, Inc., the legal property owner, and Godfrey Alechenu on behalf of Alberain International, LLC, the proposed sub-lessee. The Special Exception is requested to use the herein described property for a used motor vehicle outdoor sales area, separated from the sales agency building, pursuant to Section 236.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”). The related Variance requests are as follows:

- From Section 238.4 of the B.C.Z.R. to permit storage and display of vehicles in the front yard 0 feet from the front property line in lieu of the required 35 feet; and
- From Section 238.4 of the B.C.Z.R. to permit storage and display of vehicles more than 15 feet and as much as 50 feet in front of the required front building line; and
- From Section 238.4 of the B.C.Z.R. to permit a minimum permitted amenity open space ratio of 0.0 in lieu of the required 0.1; and
- From Section 409.4.A of the B.C.Z.R. to permit a driveway of 10 feet wide for one way movement in lieu of the required 12 feet; and
- From Section 409.6.A.2 of the B.C.Z.R. to permit 52 parking spaces in lieu of the required 102 parking spaces; and

- From Section 409.4.B of the B.C.Z.R. to permit 20 parking spaces that do not adjoin and have direct access to an aisle that will have attendant parking; and
- From Section 409.8.A of the B.C.Z.R. not to require design, screening or landscaping on the subject property; and
- From Section 409.8.A.4 of the B.C.Z.R. to permit a parking space in a parking facility to be 0 feet from a right of way line of a public street in lieu of the required 10 feet; and
- From Section 409.8.A.6 of the B.C.Z.R. to permit a dead end aisle without sufficient backup area for the end parking spaces; and
- To affirm the relief granted in Case No. 68-153-A, Case No. 86-391-A, and Case No. 74-148-A.¹

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 Brian Znamirovski on behalf of 8220 Pulaski Highway, Inc., the legal property owner, and Godfrey Alechenu of Alberain International, LLC, the proposed sub-lessee, Damian Tapp, the current lessee of subject property, and Deborah C. Dopkin, Esquire, attorney for Petitioners. Also appearing in support of the requested relief was Bruce Doak with Gerhold, Cross & Etzel, Ltd., the licensed property line surveyor who prepared the site plan for the subject property. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence in the case revealed that the subject property is rectangular in shape, consisting of approximately 1.0 acre, more or less, zoned B.R.-A.S. The property is located in the Rosedale Area of Baltimore County with frontage on the north side of Pulaski Highway (U.S. 40) with ingress/egress from same. The portion of Pulaski Highway accessed by the subject property is a divided highway. The area surrounding the subject property has a

multitude of zoning classifications indicating a plethora of diverse uses including business, commercial, light manufacturing, and residential. The surrounding property can be seen more clearly in the aerial photograph with zoning map overlay that was marked and accepted into evidence as Petitioners' Exhibit 5.

The subject property consists of three separate parcels identified as 8220, 8222, and 8224 Pulaski Highway, respectively. The building located at 8220 Pulaski Highway, constructed in 1969 and owned by Petitioner, has been occupied by W.C. Chapman & Sons, Inc., since 1999.² The business is mostly wholesale sales and warehouse storage of industrial cutting tools, machine shops, metal fabricators, abrasives and large ban saw blades. A very small portion of the business deals in retail sales. The buildings existing on 8222 and 8224 Pulaski Highway were additions made to the principal structure.³ Currently, these metal warehouse style additions are leased by "Tapp's Performance," which specializes in auto repair, electronics installation, and high performance customization. This use is consistent with the B.R.-A.S. zoning of the property -- specifically permitting automotive service use. A plat to accompany photographs and the actual photographs of the subject property were marked and accepted into evidence as Petitioners' Exhibits 2 and 2A through 2Z, respectively.

At this juncture, Tapp's Performance proposes to sub-lease a portion of the property to Mr. Alechenu and his company, Alberain International, LLC, for use as a used car business. Mr. Alechenu has been in the used car business for approximately 17 years and envisions selling 10

¹ Petitioner requested an amendment to the Petition for Variance, specifically Variance request #10 as indicated on the Site Plan marked and accepted into evidence as Petitioner's Exhibit 1, to include prior zoning Case No. 74-148-A. This amendment was granted since it did not alter or change the nature of the relief requested in total.

² The initial construction of the principal structure, currently owned and occupied by Petitioner, was the subject of Case No. 68-153-A, granting side and rear yard Variance requests. A copy of this order and the plat to accompany the Petition for Zoning Variance are enclosed in the case file.

³ Case No. 74-148-A and Case No. 86-391-A, copies of which are enclosed in the case file, granted variance relief to make way for additions to the principal structure, now known respectively as 8222 Pulaski Highway and 8224 Pulaski Highway.

to 15 vehicles at any one time at the location. Mr. Alechenu additionally desires to have a small office for auto sales (Approximately 600 square feet) within the building Mr. Tapp leases for his auto service business. This proposed use necessitates special exception relief pursuant to Section 236.2 of the B.C.Z.R., as well as a myriad of variance requests as enumerated on the site plan. The shaded area on the plan indicates where the used cars would be displayed. An additional site plan, marked and accepted as Petitioner's Exhibit 4, contains a visual color-coding of the individual variance requests.

In support of the zoning relief, Mr. Doak, a registered professional line surveyor whose seal can be found on the site plan and Petitioners' zoning and land use expert, indicated that there would be virtually no change to the function, appearance, and configuration of the property as a result of the proposed additional use. Further, no additional parking or change in the existing improvements would be requested or needed. Mr. Doak explained that there are currently 52 parking spaces available and that an additional area for parking is leased by Mr. Tapp near the subject location. This leased area is shown on the aerial photograph referenced previously and accepted into evidence as Petitioner's Exhibit 5. Both Mr. Znamirovski and Mr. Tapp agreed that the existing parking configuration is sufficient and will continue to be so. Mr. Doak noted that the required parking calculation includes Mr. Znamirovski's retail use; however, retail sales make up only a small percentage of his business at around 10%, and therefore does not require such extensive parking as required by the Regulations. Mr. Tapp added that parking on his portion of the property is adequate because those cars that are not readily needed are stored in "stadium style" parking. It was also revealed that the majority of the variance requests are interior to the property and are necessary mostly to legitimize existing conditions that are expected to remain unchanged even with the special exception request. Thus, according to Mr.

Doak, granting the variances would have little to no detrimental impact to the surrounding area. He also added that a used car business is consistent with the other roadside/commercial businesses in the area, including several automotive services businesses consistent with the A.S. District overlay.

In addition, Mr. Doak provided expert testimony that the special exception request would meet the criteria enumerated in Section 502.1 of the B.C.Z.R. In particular, he offered his opinion that the proposed use would not be detrimental to the health, safety or general welfare of the locality, would not create congestion in roads or streets, and would not create a potential hazard from fire, panic or other danger. Further, since there are no additional improvements necessary for implementation of the used car lot, the use would not interfere with the provision of public services or with adequate light and air, and would be consistent with the property's automotive services District overlay. Moreover, given the various uses of the surrounding area, the granting of the requested relief would be consistent with the spirit and intent of the B.C.Z.R. and would not be detrimental to any other applicable special exception criteria.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Office of Planning dated June 17, 2010 indicate their support of the special exception request, finding that the proposed use is appropriate for the subject area and does not impose a hazard to the health, safety and general welfare of the surrounding community. However, the Office of Planning did have comments related to the requested variances. Specifically, the comment indicated that the storage and display of vehicles may be more than 15 feet from the front building line, but must be at least 10 feet from the front and side property line to provide room for landscaping and amenity open space. Further, that parking spaces must also be 10 feet from the property lines for the same

reasons. The Planning Office supports the additional variances as the subject site is constrained by limited maneuverability. But the Office of Planning recommended landscaping and landscape screening around the front and sides of the site where buildings do not come up to the property line, and that the high barbed wire topped chain link fence be replaced in the front and side of the property in front of the buildings with decorative coated ornamental fencing.

Turning first to the requested special exception for a used motor vehicle outdoor sales area, separated from the sales agency building, subject to the criteria set forth in Section 502.1 of the B.C.Z.R., I am persuaded to grant this relief. An automotive-service station is permitted by special exception pursuant to Section 236.2 of the B.C.Z.R., subject to the conditions of Section 405 of the B.C.Z.R. The uncontroverted testimony from Mr. Doak indicates that the proposed use would not have any detrimental impacts on the required 502.1 criteria. Further consideration of the evidence shows that this use would not have a negative impact on the surrounding area and actually is consistent with the automotive services District overlay and the other commercial uses in the area. As proposed, the used vehicle sales area would be contained completely within the subject property and there would be no additional improvements to the property. Moreover, it is of significance that the Office of Planning recommends approval of the special exception. Hence, I am convinced that the use proposed at the subject location would not have any adverse effects above and beyond those inherently associated with such a special exception use, irrespective of its location within the zone. *See, Schultz v. Pritts*, 291 Md. 1 (1981); *see also People's Counsel v. Loyola College*, 406 Md. 54 (2008).

In regard to the variance requests, based on the testimony and evidence, I am persuaded to grant this relief as well. The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of

Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). The two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result.

In this case, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, the location of the subject property in a corridor along Pulaski Highway specifically zoned for automotive services and containing within the surrounding area a diverse assortment of retail business, commercial, and manufacturing uses lends support to a finding of uniqueness. And as the Office of Planning indicated, constraints to the land resulting in limited maneuverability combine to render the subject property unique in a zoning sense. Further, I find that strict compliance with the Zoning Regulations would create a practical difficulty and unreasonable hardship that would result in a denial of a reasonable and beneficial use of the property. *See, Belvoir Farms v. North* 355 Md. 259 (1999). I also find the variance requests can be granted in strict harmony with the spirit and intent of the Regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare.

Finally, although I am appreciative of the Office of Planning's comments requesting that Petitioners provide enhanced landscaping and fencing, I shall not require Petitioners to do so in this instance. After considering the evidence in the case, including photographs of the subject site and the surrounding area, and the testimony of Mr. Doak concerning the appearance of surrounding properties and the functionality of the subject property, in my view, it is not practical to require Petitioners to provide extensive landscaping and ornamental fencing of the type requested by the Office of Planning. It is clear that this area still has a very unadorned and largely unattractive appearance. The surrounding business and commercial properties are plain,

some with similar chain link fences, with very little regard for their “curb appeal.” As such, I feel the current appearance of the subject property is adequate and appropriate for the time being. Moreover, Petitioners indicated that the current barbed wire and chain link fencing is related to their security needs, in conjunction with their video surveillance and alarm system.

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 Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 9th day of August, 2010 that Petitioners’ request for Special Exception to use the herein described property for a used motor vehicle outdoor sales area, separated from the sales agency building, pursuant to Section 236.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), be and is hereby **GRANTED**; and

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

- From Section 238.4 of the B.C.Z.R. to permit storage and display of vehicles in the front yard 0 feet from the front property line in lieu of the required 35 feet; and
- From Section 238.4 of the B.C.Z.R. to permit storage and display of vehicles more than 15 feet and as much as 50 feet in front of the required front building line; and
- From Section 238.4 of the B.C.Z.R. to permit a minimum permitted amenity open space ratio of 0.0 in lieu of the required 0.1; and
- From Section 409.4.a of the B.C.Z.R. to permit a driveway of 10 feet wide for one way movement in lieu of the required 12 feet; and
- From Section 409.6.A.2 of the B.C.Z.R. to permit 52 parking spaces in lieu of the required 102 parking spaces; and
- From Section 409.4.B of the B.C.Z.R. to permit 20 parking spaces that do not adjoin and have direct access to an aisle that will have attendant parking; and
- From Section 409.8.A of the B.C.Z.R. not to require design, screening or landscaping on the subject property; and

- From Section 409.8.A.4 of the B.C.Z.R. to permit a parking space in a parking facility to be 0 feet from a right of way line of a public street in lieu of the required 10 feet; and
- From Section 409.8.A.6 of the B.C.Z.R. to permit a dead end aisle without sufficient backup area for the end parking spaces; and
- To affirm the relief granted in Case No. 68-153-A, Case No. 74-148-A and Case No. 86-391-A,

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.

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