

IN RE: **PETITION FOR SPECIAL EXCEPTION ***
NE/S of Liberty Road, 45' NW of the c/line of
Burmont Avenue *
(9400 Liberty Road) *
2nd Election District *
4th Council District *
9400 Liberty Limited Partnership *
Petitioner *

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
Case No. 2011-0034-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Jacob Antwerpen, the managing member of 9400 Liberty Limited Partnership, by and through their attorney, Arnold E. Jablon, Esquire, of Venable, LLP. The Petitioner requests a special exception to permit a used motor vehicle sales area, separated from the sales agency building, pursuant to Section 236.2 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Arnold E. Jablon, Esquire, Petitioner's attorney, and Thomas A. Church, P.E., with Development Engineering Consultants, Inc., the professional engineer who prepared the site plan for this property. There were no Protestants or other interested persons present nor were there any adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies. It should be noted that the Office of Planning did not oppose the requested special exception and supports the request. *See* its comment, dated August 10, 2010.

Testimony and evidence offered revealed that the subject property is an irregularly shaped site, consisting of three (3) parcels, containing 9.55 gross acres, more or less, 8.17 net

acres, zoned B.R.-A.S., B.R., and a small triangular shaped piece zoned D.R.5.5, as more particularly illustrated on Petitioner's Exhibit 1. The subject site is located on the northeast side of Liberty Road (Md. Rt. 26) between Burmont Avenue and Pikeswood Drive (northwest from the centerline of Burmont Avenue on the east and northeast of the centerline of Pikeswood Drive on the west) in Randallstown. Various Antwerpen Auto Dealerships have been located on the subject property over the past five (5) decades, all of which have closed within the past two (2) years.

The property is improved with two (2) large existing buildings, identified on the site plan as Building No. 1, located adjacent to Burmont Drive, and is 44,450 square feet. The front of Building No. 1 is a "1 story brick showroom", zoned B.R.-A.S., and the rear serves as the parts, service and body shop and is zoned B.R. Adjacent to Pikeswood Drive is Building No. 2, which is 22,258 square feet, part of which is an automobile showroom and service center, zoned B.R.-A.S., and part office and showroom, also zoned B.R.-A.S. As indicated above, the entire property had been for many years a new automobile sales facility and adjoining outdoor sales area. The two (2) buildings are separated by extensive parking areas. Parking is also provided to the front, rear and to the sides of Building No. 1 and front of Building No. 2. Customers access the site from Liberty Road leading to the parking areas. Again, it is worthy to note that there have been new automobile dealerships at this site for some 40 years.

The purpose of this petition is to seek a special exception for a used motor vehicle outdoor sales area, separated from the sales agency building, which would be located in the front of Building No. 1 as shown on Petitioner's Exhibit 1. The used vehicles would be parked as shown on the site plan in the various parking spaces provided. The vehicles would be separated from the sales agency building. The rear of Building No. 1 will serve as a service garage, which

is permitted as of right in the B.R. zone. The used motor vehicle outdoor sales area (as opposed to new car sales) requires a special exception in the B.R. zone. The Petitioner is seeking the special exception area as shown on the site plan for the entire site. There is more than sufficient parking (250 parking spaces required and 304 parking spaces provided).

Mr. Jablon proffered the testimony of Mr. Church, who would be accepted as an expert witness and is familiar with the site and the B.C.Z.R as it relates to the proposed use. As stated, Mr. Church prepared the site plan introduced as Petitioner's Exhibit 1. Mr. Jablon proffered and Mr. Church confirmed the site is primarily zoned B.R.-A.S. and B.R., with D.R.5.5 to the northwest and east, B.R. to the north, B.R., and B.R.-A.S., B.R. and O.R. on the south side of Liberty Road directly across from the subject site. *See* Petitioner's Exhibit 1 - the site plan shows the zoning designations in the immediate vicinity. *See also* Petitioner's Exhibit 3, an aerial of the surrounding neighborhood. Across from the subject site is located another new automobile dealership, a church as well as other commercial uses. Mr. Church confirmed that the parking calculations shown on the site plan are accurate.

In support of the requested special exception, Petitioner's attorney, Mr. Jablon, made clear that the used motor vehicle sales is permitted on the subject property by special exception in the B.R. zone. As shown on the site plan, the site is improved with existing buildings and substantial parking areas previously used for the new car dealerships, which closed approximately two (2) years ago. The site has remained dark and vacant. The Petitioner is proposing to reopen, selling used vehicles. This will enable the Petitioner to re-use the property and place it back into productive use. *See* Petitioner's Exhibit 2, correspondence received from David Iannucci, Director, Baltimore County Department of Economic Development, to Timothy Kotroco, Director, Department of Permits and Development Management, dated July 15, 2010.

Petitioner's Exhibit 3, the aerial, illustrates the commercial character of the area, including other car dealerships. While there are residential communities behind the subject property, it appears that the new car dealerships had no adverse impact on the residential neighborhood. In this regard, Mr. Jablon proffered, and Mr. Church, agreed, the proposed used car lot would also have no adverse impact.

Petitioner's counsel further proffered that if called to testify, Mr. Church would state the proposed used motor vehicle sales area, separated from the sales agency building, would not be detrimental to the health, safety or general welfare of the locale, nor would it have any negative impacts on the community. Mr. Church testified that the proposed use meets all criteria as set forth in Section 502.1 of the B.C.Z.R. and would be consistent with the property's zoning classification and within the spirit and intent of the B.C.Z.R. Further, Mr. Church stated that the proposed used motor vehicle facility would not have any adverse impact above and beyond those inherently associated with such a use and not create more of a problem at the subject location than the same use would have at any other location within the same zone.

Considering all the testimony and the evidence presented, I am persuaded to grant the requested relief for a used motor vehicle sales area, separated from the sales agency building, Section 236.2 of the B.C.Z.R. permits such use by special exception in the B.R. zone. In my judgment, the proposed use will not be detrimental to the community, and, based on the opinion of the Department of Economic Development, the re-opening of the site will serve as an asset to the community with new jobs provided.

I also find that the proposed use meets all of the special exception criteria set forth in Section 502.1 of the B.C.Z.R. Finally, I find that this use at the subject location will not have

any adverse impacts above and beyond those inherently associated with such use irrespective of its location within the zone as construed in *Schultz v. Pritts*, 291 Md. 1 (1981)

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 4th day of October 2010 that the Petition for Special Exception to permit a used motor vehicle sales area, separated from the sales agency building, pursuant to Section 236.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for any necessary permits and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this decision must be taken within thirty (30) days in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

WJJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County