

**IN RE: PETITIONS FOR SPECIAL HEARING,
SPECIAL EXCEPTION & VARIANCE**
corner NW Side of Washington Blvd.
and SW side of South Street
13th Election District
1st Councilmanic District
(5230 Washington Boulevard)

Joann Garrity, *Legal Owner*
Martin Schwartz, *Contract Purchaser*
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY

* **CASE NO. 2011-0258-SPHXA**

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ORDER AND OPINION

This matter comes before the Office of Administrative Hearings for Baltimore County pursuant to Petitions for Special Hearing, Special Exception and Variance for the property located a 5230 Washington Boulevard in Halethorpe. The Petitions were filed by Joann Garrity, legal owner, and Martin Schwartz, authorized representative for Vehicles for Change. Special Hearing relief is requested to approve a modified parking plan pursuant to Section 409.12 of the Baltimore County Zoning Regulations (“BCZR”); and, if necessary, a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6 of the BCZR, pursuant to Section 409.8 of the BCZR, and for such other relief as may be deemed necessary by the Administrative Law Judge for Baltimore County. Petitioners are also requesting Special Exception relief to approve a used motor vehicle outdoor sales area, separated from sales agency building in accordance with BCZR Section 236.2, and for such other and further relief as may be required by the Administrative Law Judge. In addition, Petitioners are requesting Variance relief to allow the storage and display of vehicles within 0 feet of the front property line in lieu of the minimum permitted 10 feet (15 feet in front of the required building line [25 feet]), pursuant to BCZR Section 238.4; to allow existing buildings with front/rear/side yard setbacks of 4.5 feet

between buildings (Building Nos. 1 and 2) in lieu of the minimum 60 feet required for front/rear/side yard setbacks, pursuant to BCZR Sections 238.1 and 238.2; to allow existing buildings with front/rear/side yard setbacks of 17.9 feet between buildings (Building Nos. 2 and 3) in lieu of the minimum 60 feet required for front/rear/side yard setbacks, pursuant to Sections 238.1 and 238.2; to allow existing building (Building No. 3) with a front/rear/side yard setback from the property line of 24 feet (and 4 feet from the zone division line) in lieu of the minimum required 30 feet for front/rear/side yard setbacks, pursuant to Sections 238.1 and 238.2; and for other and further relief as deemed necessary by the Administrative Law Judge for Baltimore County. The subject property and requested relief are more particularly shown on the Plat to Accompany the Petition for Special Hearing, received into evidence as Petitioners' Exhibit 1.

It should be noted that this matter was originally set before this Administrative Law Judge on Monday, April 4, 2011, at 10:00 AM in Room 205 of the Jefferson Building in Towson, Maryland. Appearing at the hearing at that time were Marty Schwartz, a representative of Vehicles for Change, Paul Lee, a professional engineer with Century Engineering and Lawrence E. Schmidt, attorney at law representing the Petitioner. There were no Protestants in attendance. However, the morning of the hearing, a number of phone calls were received by the Office of Administrative Hearings relative to this case. Several residents from the surrounding community objected to the hearing indicating that signs that were posted on the property were not conspicuously posted and they were unable to see them in time to attend the hearing. Therefore, at the hearing on April 4, 2011, it was agreed that should these citizens continue to have objections regarding this zoning request, that the matter would be reset for a new hearing where the surrounding members of the community could attend. As a result, the matter came before me for a

second hearing on June 13, 2011, where several members of the surrounding community did appear and participate in the proceeding.

Appearing at the second hearing on behalf of the Applicant were Marty Schwartz, representing Vehicles for Change, Paul Lee, a professional engineer who prepared the site plans of the property, and Lawrence E. Schmidt, Esquire, representing the Applicant. Appearing in opposition to the request were those same citizens who showed concern over the hearing occurring in April, namely Kimberly Box, J. Andrew Plitt, Theresa Lowry, Bill and Faith Herman, and Greg Senkus.

Testimony and evidence offered at the hearing demonstrated that the property which is the subject of this request, consists of 1.48 acres the majority of which is zoned BR with a small strip of land located to the rear of the site zoned RC 2. The property is improved with several brick buildings and a newly placed 2,770 square feet office trailer. The property is the home of a business known as Vehicles for Change which Mr. Schwartz has operated on the property since 2005.

It should be noted that Vehicles for Change was awarded a conditional permit to open and operate their business back in 2005 by the undersigned in my former capacity as Director of Permits and Development Management. That permit was issued on condition that Vehicles for Change file a Petition with the Zoning Commissioner to have the property approved for the purpose of operating a used motor vehicle outdoor sales agency in accordance with Section 236.2 of the B.C.Z.R. It was agreed that the Petition would be filed in a timely manner so as to get the requisite formal approval to operate Vehicles for Change on this property. Now, approximately 5.5 years after conditional approval was given, the Applicant has finally made his request for special exception to operate his business on this property. It should also be noted that the Petition

for zoning relief filed at this time was filed as a result of a Code violation case brought against the owner by the Department of Permits, Approvals and Inspections. That violation involves constructing a 2,770 square foot sales office trailer on the property without the benefit of first obtaining a building permit for its placement. One has to question whether the zoning relief would have ever been filed for this property were it not for the Code violation case filed against the property owner by Glen Berry, Chief of the Division of Code Inspections and Enforcement for the Department of the Department of Permits, Approvals and Inspections. The violation case has called into question a floodplain that exists on the property and whether the new office trailer that has been constructed may be permitted to remain. However, it should be noted that the floodplain issue is not a matter that is pending before this Administrative Law Judge at this time. That matter will be dealt with by the Building Engineer of Baltimore County outside this hearing.

A brief explanation of the business that is operating on this property is in order. At the present time, Vehicles for Change leases the subject property from Joann Garrity, the owner of the property. Vehicles for Change is a 501c(3) charitable organization who is in the business of providing low cost automobiles to families in need of assistance. These families receive reliable transportation for work purposes and to assist them in transporting their children and family to various school and recreational related activities. Vehicles for Change operates in Carroll, Anne Arundel and Montgomery Counties as well as Baltimore City and surrounding areas. It is common to hear advertisements on local radio stations for Vehicles for Change soliciting donations of used vehicles from members of the public for the purpose of rehabilitating those vehicles and then awarding the refurbished vehicle to a family in need. The program has been very successful and many families have become owners of these vehicles and hopefully have improved their station in life.

Vehicles for Change works with surrounding service garages, automobile parts suppliers and other corporate partners who also assist in providing low cost transportation to these families. In addition to Vehicles for Change, a second type of sales operation has also grown out of this business. The Applicant also operates a business known as Freedom Wheels which sells automobiles from the subject property to members of the general public, not necessarily those families in need. By way of further explanation, Vehicles for Change takes the newer, more valuable vehicles that are donated by members of the public and sells them at fair market value to members of the general public. The proceeds from the sale of these new vehicles goes back into the charity and those funds are used to refurbish the vehicles that are sold to qualifying needy families. Freedom Wheels is a separate entity, but operates under the umbrella of Vehicles for Change.

What distinguishes this type of used motor vehicle sales operation from others typically found around Baltimore County is the manner by which this business obtains the cars they sell to the public. All of the inventory that is provided to Vehicles for Change are by way of charitable donations from members of the general public. These individuals arrange to drop off their used vehicles at this location, in return for which they receive a generous tax deduction from their personal income tax filings. Vehicles for Change also provides a towing service for those vehicles that are inoperable. The towing service is provided free of charge to the donor of the vehicle. This is very different from a typical used car sales operation in that the manager of a more typical used car lot would purchase their vehicles from a wholesale auction house or would acquire them from new car sales businesses after an individual has traded in a used vehicle. There is an important distinction to be made between these two types of businesses.

Vehicles for Change does not have the ability to control the inventory that is brought to their premises. Donations of vehicles from the general public are not turned away. Mr. Schwartz testified that they accept all donations from citizens and on any given day donations could amount to as many as 20 or 30 cars being brought to the property in one day. Donations of vehicles are even greater at the end of year when citizens are looking for tax deductions. Unlike other used car facilities, Vehicles for Change does not have control over how many members of the public decide to make donations of vehicles. According to the citizens who appeared in opposition to the request, this causes many cars to be dispersed about the property in a disorderly and hap-hazard fashion. Cars are even sometimes left out on South Street which is the residential road that leads back to their community.

A typical used car sales facility will limit the amount of inventory they purchase from a wholesale auction house by the general manager simply deciding that they have enough inventory offered for sale on the lot at any given time. Therefore, the general manager of a typical used car sales facility would wait until cars are sold and his inventory is reduced before he goes out and purchases more inventory to be sold. This does not occur with Vehicles for Change. They take what cars they can from the general public when they are willing to make the donation of those automobiles to Vehicles for Change.

Compounding this inventory control problem is the fact that the property, which is the subject of this special exception request, is only 1.48 acres in size with a limited area for vehicle storage. In fact, the rear portion of the property is zoned RC 2, the same as the adjacent Patapsco State Park property. Vehicles for Change has expanded into the RC 2 zoned portion of their property in order to gain much needed storage space. Part of the special hearing relief before me is to allow that storage of cars to continue to occur in that RC 2 area of the property. It should also

be noted that the State Highway Administration's right-of-way line for Washington Blvd. (US Route 1) also extends onto the area of the property used by Vehicles for Change. Prior to the filing of the Petition herein, Vehicles for Change was engaged in the practice of storing their automobiles for sale in the State right-of-way of US Route 1. A representative from the State Highway Administration visited the property and approached the business asking them to move these vehicles for display off of the State Highway property and onto the property leased by Vehicles for Change.

The Applicant is requesting a special exception to approve a used motor vehicle outdoor sales area on the subject property. In my 12 years as Deputy Zoning Commissioner prior to becoming Director of Permits and Development Management, I have approved many such special exception uses. However, the type of business being operated at this location is far more intense than a typical used car sales operation. In addition to being a used car sales lot, this property is also operates as a vehicle donation facility for those folks in the Baltimore metropolitan area who choose to donate and drop off their used, inoperable, and damaged vehicles for either resale on the property or for processing through automobile wholesale auctions or simply further transport to vehicle dismantling facilities or junkyards. There is simply too much occurring on this property for it to be able to continue without a detrimental impact on the surrounding community. The owner has no control over the amount of inventory that is brought to this property. In my opinion, the vehicle donation operation should occur on another parcel of land, separate and apart from this property and that this property should simply operate as a used car lot. However, that is not the request before me at this time. The request before me is a special exception to approve the use as is occurring on the property today. As the testimony before me demonstrated, the use is too intense for this property, it has extended into the RC 2 portion of the property adjacent to the

Patapsco State Park, and out into the right-of-way area for US Route 1. At certain times cars are stored out along South Street, the residential street leading back to the Patapsco State Park and the residential communities in this area.

I find that based on the totality of the evidence presented at the hearing that the use as it exists today would be detrimental to the health, safety or general welfare of the locality involved and the special exception request to approve that use should be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this matter held, and after considering the testimony and evidence offered,

IT IS ORDERED this 15 day of July, 2011, by this Administrative Law Judge, that the Petition for Special Exception to approve a used motor vehicle outdoor sales area separated from a sales agency building, be and is hereby DENIED.

IT IS FURTHER ORDERED, having denied the Special Exception use, the Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12 of the Baltimore County Zoning Regulations (“BCZR”); and, if necessary, a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6 of the BCZR, pursuant to Section 409.8 of the BCZR, and for such other relief as may be deemed necessary by the Administrative Law Judge for Baltimore County, be and is hereby DENIED.

IT IS FURTHER ORDERED, having denied the Special Exception use, that the Petition for Variance to allow the storage and display of vehicles within 0 feet of the front property line in lieu of the minimum permitted 10 feet (15 feet in front of the required building line [25 feet]), pursuant to BCZR Section 238.4; to allow existing buildings with front/rear/side yard setbacks of 4.5 feet between buildings (Building Nos. 1 and 2) in lieu of the minimum 60 feet required for front/rear/side yard setbacks, pursuant to BCZR Sections 238.1 and 238.2; to allow existing

buildings with front/rear/side yard setbacks of 17.9 feet between buildings (Building Nos. 2 and 3) in lieu of the minimum 60 feet required for front/rear/side yard setbacks, pursuant to Sections 238.1 and 238.2; to allow existing building (Building No. 3) with a front/rear/side yard setback from the property line of 24 feet (and 4 feet from the zone division line) in lieu of the minimum required 30 feet for front/rear/side yard setbacks, pursuant to Sections 238.1 and 238.2, be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date hereof.

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK:pz