

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
S side of East Joppa Road, 473 feet	*	ADMINISTRATIVE HEARINGS
W of the c/line of Oakleigh Road	*	FOR BALTIMORE COUNTY
9 th Election District		
5 th Councilmanic District		
(1763 East Joppa Road)		
Bahram R. Bagheri	*	Case No. 2012-0005-XA
<i>Legal Owner</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Exception and Variance filed by Deborah Dopkin, Esquire on behalf of Bahram R. Bagheri, legal property owner. The Special Exception is to permit a used motor vehicle outdoor sales area, separated from a sales agency building in accordance with Section 236.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and to terminate the previously granted Special Exception for Fuel Service Station in accordance with Section 405.7 of the B.C.Z.R. The Variance request is from Sections 238.1 and 303.2 of the B.C.Z.R., to permit a front yard of 57 feet in lieu of the required 70.5 feet and from Section 238.2 of the B.C.Z.R., to permit a rear yard of 8 feet in lieu of the required 30 feet.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 2.

Appearing at the public hearing in support of the Special Exception and Variance requests were Petitioner Bahram R. Bagheri, the legal property owner, and Kenneth J. Colbert, P.E., with Colbert Matz Rosenfelt, Inc., the consulting firm who prepared the site plan. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition or protest.

Testimony and evidence revealed that the subject property is the former used car lot used by Schaefer & Strohminger. See Petitioner's Exhibits 5A-D. The site contains 11,950 square feet, and is presently vacant. The Petitioner proposes to resume the sale of used motor vehicles at the site, and he presently operates similar businesses. The property is zoned BR, with a very small portion of BM zoned land.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. There were no adverse comments received from any of the County reviewing agencies.

I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests, that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship, and that the variance request 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. See Trinity Assembly v. People's Counsel, 407 Md. 53 (2008). In this case, Mr. Colbert opined that the property is unique since the building presently exists on site, and the surrounding and adjoining structures -- which generated the need for variance relief -- were constructed after the building on the subject property.

As for the Special Exception, Mr. Colbert testified he was intimately familiar with the factors set forth in B.C.Z.R. § 502.1, as interpreted in Schultz v. Pritts, 291 Md. 1 (1981), and that the Petitioner's proposal satisfied each of the conditions set forth in the aforementioned regulation.

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 Petitioner's Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 26th day of August, 2011, that Petitioner's request for a Special Exception to permit a used motor vehicle outdoor sales area, separated from a sales agency building pursuant to Section 236.2 of the Baltimore County Zoning Regulations ("B.C.Z.R."), and to terminate the Special Exception for Fuel Service Station (granted in Case No. 4029-X (1957)) in accordance with Section 405.7 of the B.C.Z.R., be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Variance requests pursuant to Sections 238.1 and 303.2 of the B.C.Z.R., to permit a front yard of 57 feet in lieu of the required 70.5 feet and from Section 238.2 of the B.C.Z.R., to permit a rear yard of 8 feet in lieu of the required 30 feet, be and are hereby GRANTED.

The granting of the above relief shall be subject, however, to the following conditions:

1. Petitioner may apply for any permits required and be granted same upon receipt this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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 may service only motor vehicles offered for sale at the subject property. No other motor vehicle repair and/or service is permitted on the subject property.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/pz