

-IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
13 <sup>th</sup> Election District *	OFFICE OF
1 <sup>st</sup> Councilman District	
<b>(3318 Hollins Ferry Road)</b> *	ADMINISTRATIVE HEARINGS
3318 Hollins Ferry LLC	
Legal Owner *	FOR BALTIMORE COUNTY
	<b>Case No. 2013-0155-SPHA</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Isaac Makings, Member on behalf of 3318 Hollins Ferry, LLC, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve: **(1)** A non-conforming use to permit the sale of motor vehicles; or in the alternative, permit the sale of motor vehicles as a component of the use of the property as a service garage; **(2)** Existing non-conforming improvements on the property (building and parking lot); and **(3)** Modified parking plan (non-durable and non-dustless). The Petition for Variance seeks the following relief: **(1)** to permit a non-durable and non-dustless parking lot surface in lieu of the required durable and dustless surface; and **(2)** to permit a front yard setback of 10 ft. in lieu of the required 15 ft. for the existing building. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Isaac Makings and Bernadette Moskunas. Lawrence E. Schmidt, Esquire represented the Petitioner. The file reveals that the Petition was properly posted and advertised as required by the Baltimore County Zoning Regulations. There were no interested citizens in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Department of Planning (DOP) issued a comment supporting the petitions, while Bureau of Development Plans Review (DPR) expressed concern with the lack of a durable and dustless surface for the parking area.

The subject property is approximately 0.673 acres and is zoned predominately BM, with very small portions zoned CB and ML. Mr. Makings acquired the property in March 2012, and it continues to function as an auto service garage and body shop. The Petitioner would like to sell a limited number of used cars at the site (estimated at approximately 80 per year), as has been done at the property for many years. Indeed, the Petitioner presented motor vehicle dealer sales licenses issued by the State of Maryland (as far back as 1978) to the prior owner, Nolley Fisher. See exhibits 3A-3C. Apparently, Nolley Fisher (and his father) operated a service garage on this site since 1939, and it was a continually operated family business until last year, when Mr. Fisher (whose health is failing) sold the business to Petitioner.

As for the Special Hearing relief, I believe the sale of motor vehicles at the site is permitted as an aspect of a “service garage,” which the B.C.Z.R. defines to include the “sale” of motor vehicles. B.C.Z.R. §101.1. In the alternative, the (limited) sale of motor vehicles is permitted as an accessory use to the service garage (which is permitted as of right in the BM zone).

Based upon the testimony and evidence presented, I will also grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People’s Counsel*, 407 Md. 53, 80 (2008).

The Petitioner has met this test. As shown on the site plan, the property is irregularly shaped and is therefore unique. In addition, the Petitioner (who is not proposing any improvements) must contend with existing conditions that have been in place for many years. The Petitioner would experience a practical difficulty if relief were denied, given it would be required to invest a large sum of money to reconfigure the building and parking lot to comply with the regulations. Specifically, and with regard to the lack of a durable and dustless parking surface, the Petitioner indicated the lot has been in its current state for many years, and that there have never been complaints from neighbors or the county. In these circumstances, I would be loathe to require a small business owner to install a macadam parking lot, when the existing facilities have functioned appropriately for over 70 years.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and the public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 14<sup>th</sup> day of March, 2013, by the Administrative Law Judge, that the Petition for Special Hearing seeking relief from § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to: (1) permit the sale of motor vehicles (a maximum of 80 vehicles a year) as a component of the use of the property as a service garage, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to permit a non-durable and non-dustless parking lot surface in lieu of the required durable and dustless surface; and (2) to permit a front yard setback of 10 ft. in lieu of the required 15 ft. for the existing building, be and is hereby GRANTED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln