

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND SPECIAL EXCEPTION &amp;</b>		
<b>VARIANCE</b>	*	OFFICE OF
(10240 & 10260 York Road)		
8th Election District	*	ADMINISTRATIVE HEARINGS
3rd Council District		
HV Dealership Properties, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
<b>Petitioner</b>	*	<b>Case No. 2021-0067-SPHXA</b>
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of HV Dealership Properties, LLC, legal owner (“Petitioner”). The Special Hearing was filed to amend the previously approved Orders and site plans in Case Nos. 01-288-SPHA and 99-349-SPHXA for property located at 10260 York Road (Lot 1) and Case Nos. 01-289-SPH and 99-350-SPHA for property located at 10240 York Road (Lot 2).

A Petition for Special Exception was filed pursuant to Baltimore County Zoning Regulations (“BCZR”) § 253.2.B.2 (Lot 1) to permit a service garage in the ML Zone.

A Petition for a Variance to permit a side yard setback of 10 ft. in lieu of 30 ft. per BCZR § 238.2 (Lot 1), and to permit a rear setback of 6ft in lieu of 30 ft. per BCZR §§ 255.1 and 238.2 (Lot 1).

Due to the ongoing COVID-19 restrictions a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order.

Jennifer Busse, Esquire represented the Petitioner. Gerry Powell, M.C.E., P.E., of Frederick Ward Associates also attended and was accepted as an expert in engineering, land planning, and the BCZR. The redlined site plan that he prepared and sealed was admitted as Petitioner’s Exhibit 2. There were no protestants or interested citizens in attendance. Ms. Busse gave an overview of the requested relief, explaining that the site is currently occupied by a Cadillac dealership but that a Jaguar dealership is moving in. This necessitates the proposed modifications to the existing buildings and site. Mr. Powell then explained the redlined site plan in some detail. He noted that there is a grade change of 28 feet from York Road up to the rear lot line and that this and the extensive sub-surface rock at the site dictate the building location and access. Aerial photos, ground level photos, and architectural renderings were admitted as Petitioner’s Exhibits 4, 5, and 6, respectively. Ms. Busse explained that the special hearing request is to simply amend the special hearing and special exception relief granted in the prior cases referenced above.

#### SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1, 11 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

The record evidence establishes that this is such a case. As noted above, there is already a car dealership on this property and the requested relief will simply allow the new Jaguar dealership to conform to the design standards required by that brand. There are many other car dealerships in the vicinity, as well as a mix of other similar commercial uses.

### VARIANCES

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

As described above, the site is unique for a variety of reasons, and has been found to be unique in a zoning sense in the prior cases referenced above. The Petitioner will suffer practical difficulty and hardship if the variance relief is denied because they would be unable to make the necessary modifications to the buildings and site.

THEREFORE, IT IS ORDERED this **29th** day of **April, 2021**, by this Administrative Law Judge that the Petition for Special Hearing to amend the previously approved Orders and site plans in Case Nos. 01-288-SPHA and 99-349-SPHXA for property located at 10260 York Road (Lot 1) and Case Nos. 01-289-SPH and 99-350-SPHA for property located at 10240 York Road (Lot 2) is hereby **GRANTED**.

IT IS FURTHER ORDERED, that the Petition for Special Exception filed pursuant to Baltimore County Zoning Regulations (“BCZR”) § 253.2.B.2 (Lot 1) to permit a service garage in the ML Zone is hereby **GRANTED**.

IT IS FURTHER ORDERED, that the Petition for Variance filed to permit a side yard

setback of 10 ft. in lieu of 30 ft. per BCZR § 238.2 (Lot 1), and to permit a rear setback of 6ft in lieu of 30 ft. per BCZR §§ 255.1 and 238.2 (Lot 1) is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
- Petitioner must comply with the DOP ZAC comments, a copy of which is attached hereto and made a part thereof.

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



PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM:dlm