

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(8106 Harford Road)**

9th Election District
6th Council District
Prism Realty Enterprises, LLC
Legal Owner
DaShawn Bailey
Lessee

Petitioners

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No: 2020-0152-XA

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 8106 Harford Road (the “Property”). The Petitions were filed on behalf of Prism Realty Enterprises, LLC, and legal owner, and DaShawn Bailey, lessee of the Property (“Petitioners”). The Special Exception petition seeks relief from § 230.3 of the Baltimore County Zoning Regulations (“BCZR”), to allow the use of a service garage. The Petition for Variance seeks relief from BCZR, §409.4.A to allow two-way traffic in an existing driveway with a width of 15 ft. in lieu of the required 20 ft. minimum.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Appearing in support of the Petitions were Mr. Apostolo, a member of Prism Realty Enterprises, LLC, and DaShawn Bailey, the tenant of the service garage. Patrick Richardson, Jr., P.E. appeared on behalf of the Petitioners and prepared the site plan (the “Site Plan”). (Pet. Ex. 1). There were no Protestants in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability by a report dated July 15, 2020 who did not oppose the requested relief. Department of Planning (“DOP”) submitted comments dated July 31, 2020 and did not oppose the requested relief, subject to proposed conditions as contained therein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Property is approximately one-third (1/3) of an acre and fronts on Harford Rd. in Parkville. The Property is located in a Commercial Revitalization District and is zoned business-light, with a commercial community core district overlay (BL-CCC). It contains a two-story building with retail on the first floor. (Pet. Ex. 2). The building was constructed in or around 1956 and was used as a doctor’s office along with 4 apartments on the second floor. In 1999, Mr. Apostolo obtained a building permit to construct a one-story garage behind the retail building. As part of the permit process, he also installed a fence on the north-western end of the Property and planted a buffer of trees/shrubs to shield the Property from nearby residences.

Since December of 2016, Mr. Apostolo has rented the garage to DaShawn Bailey (“Mr. Bailey”). Mr. Bailey is self-employed and operates an automobile detailing business. The garage is open Monday-Saturday between the hours of 8:30-5:30. The garage is clean, well-organized with space for only one (1) automobile at a time. (Pet. Ex. 3). To clean the automobiles brought into the garage, Mr. Bailey uses vacuum cleaners, a hose, as well as standard, household cleaning supplies. There is a parking lot behind the garage with striped spaces, where customers park. There is no mechanical or repair-type work being conducted in the garage; no excessive noise from machines or otherwise.

A narrow driveway is shared between the Property and the adjacent businesses located at 8108 Harford Rd. It provides access to the rear from Harford Rd. As depicted on the Site Plan,

the driveway entrance measures 15 ft. wide; one-half (1/2) of which is located within the Property boundary. Charles P. Challandes, Jr., who owns the property at 8108 Harford Rd., provided a letter in support of the requested relief. (Pet. Ex. 4). In addition, a concrete sidewalk and steps traverse along the north-eastern Property line and consume part of the Petitioners' half of the drive aisle, thereby reducing the width. Mr. Richardson testified that this narrow width allows only one vehicle to pass at a time. The Property is an elongated, rectangle and was developed before the BCZR was enacted.

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 (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.

Based on the record evidence in this case as above, I find that the requested service garage use meets all of the factors set forth in BCZR, §502.1. The garage will not be used for mechanical or automotive repair. Mr. Bailey's automotive detailing business will not adversely affect the health, safety or general welfare of the locality. This detailing garage will not have any adverse impacts at this particular location above and beyond those inherently associated with a service garage use. I find that this proposed use will not: create congestion in the roads; create hazards from fire or other danger; overcrowd the land; interfere with public improvements; be detrimental to impervious surfaces or to the environment.

VARIANCE

The general rule is that “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. 43, 71(2007). This is because “a variance is an authorization for that which is prohibited by a zoning ordinance.” *Cromwell v. Ward*, 102 Md. App. 691, 699 (1995). And because “citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, “[t]he burden is on the applicant to show facts to warrant a variance,” and “the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. at 70.

Under BCZR, §307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, 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 is what necessitates the requested variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, supra. Finally, “unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.” *Mueller, supra*, 177 Md. App. at 70.

With regard to the uniqueness factor, the north-eastern Property boundary only extends to one-half of the already undersized, 15 ft. shared driveway. Both building facades immediately abut the drive aisle on either side of the shared driveway. Adding this uniqueness, the Petitioners’ one-half of the drive aisle is consumed with a concrete sidewalk and steps which

further reduce its drive width. Because the building and driveway were constructed prior to the 20 ft. width requirement for two-way drive aisles as set forth in BCZR, the Petitioners would suffer a practical difficulty and unreasonable hardship if the variance was denied because the driveway is the only access for customers accessing the garage from Harford Rd. Indeed, the Department of Planning's recommendation in its ZAC Comments dated July 31, 2020, for the installation of "slow" signs to warn drivers that vehicles must pass one at a time, are a practical and reasonable solution.

With regard to the Department of Planning Recommended Condition No. 4, BCZR, §405A.1 does not apply in this case because it covers damaged and disabled vehicles being stored for the purpose of repair. The proposed use here is limited to cleaning operable vehicles which are removed by their owners once completed. It does not involve the mechanical repair of vehicles. Further, all cleaning/detailing work is conducted inside the garage and/or on the parking lot behind the garage. For this reason, and because the Property already contains a fence and vegetative buffer on the north-western Property line, the Petitioners will not need to comply with BCZR, §405.A.1.

Finally, Mr. Richardson brought to my attention that, in light of filing the instant case, the rear commercial parking lot of the Property (which is within 25 ft. of a residential zone boundary as described in BCZR, §250.6) should also be approved for use in connection with the service garage. I find this additional request to be both reasonable and necessary as part of the relief requested herein.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this day 8th of **December, 2020** that the Petition for Special Exception to permit pursuant to BCZR, §203.3 to allow the use of a service garage on the property be, and it is

hereby, GRANTED; and

IT IS FURTHER ORDERED that the request for approval of the commercial parking lot in the rear of the Property for use in connection with the service garage and retail building be, and it is hereby, GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from BCZR, §409.4.A to allow two way traffic in an existing driveway with a width of 15 ft. in lieu of the required 20 ft. minimum be, and it is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are 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, Petitioners would be required to return the subject property to its original condition.
- Prior to issuance of permits, Petitioners must comply with the ZAC comments made by the DOP (except for Recommendation No. 4 with regard to compliance with BCZR, §405A.1), a copy of which is attached hereto and made a part hereof.

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

Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm