

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(8241 Eastern Avenue)
15th Election District
7th Council District
Vialy J. Baez-Pena
*Legal Owner***

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
*
* **Case No: 2020-0130-XA**

Petitioner

* * * * *

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 8241 Eastern Avenue. The Petitions were filed on behalf of legal owner, Vialy J. Baez-Pena (“Petitioner”). The Special Exception petition seeks relief from the Baltimore County Zoning Regulations (“BCZR”) § 236.2 to approve a used motor vehicle outdoor sales area. The Variance relief requested is as follows: from BCZR § 238.2 to approve a zero (0) ft. side yard setback in lieu of the required 30 ft. setback; and from BCZR § 238.2 to approve a 3 ft. side yard setback and 3 ft. rear yard setback for a proposed car repair shop in lieu of the required 30 ft. setbacks.

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. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1. Vialy J. Baez Pena appeared in support of the petitions. Timothy Manuelides, Esquire represented the Petitioner. Patrick “Rick” Richardson of Richardson Engineering also appeared and testified. There were no protestants in attendance.

A Substantive Zoning Advisory Committee (“ZAC”) comment was received by the Department of Planning (“DOP”) dated June 25, 2020. They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order. The property is located

within the Chesapeake Bay Critical Area (“CBCA”) and is subject to Critical Area requirements per the report from DOP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property is approximately .88 acres and is zoned BR IM. Mr. Richardson explained the site plan and requested relief. He testified that the site is currently occupied by a service garage which will be converted into a used car business. In the future a service garage is proposed to be built at the rear of the lot. The parking will conform to the BCZR. He explained that the dimensions of the lot make the proposed uses impossible without the variance relief. He and counsel also explained that the proposed used car business will be very compatible with the surrounding uses, which include gas stations, and a variety of automotive based small businesses.

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 I find that the special exception request to use this property as a used motor vehicle outdoor sales area should be granted. Specifically, I find that the proposed uses will not have any greater impacts at this location than those inherently associated with the special exception use, and that the relief requested satisfies the requirements of BCZR § 502.1.

VARIANCE

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, 102 Md. App. 691 (1995).

The property in this case is unique in that it is irregularly shaped and bordered by two public roads. If the variances are not granted the petitioner will experience hardship and practical difficulty because they will not be able to construct their project as designed. I find that the relief can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, and welfare.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **7th** day of **May, 2021** that the Petition for Special Exception pursuant to BCZR § 236.2 to approve a used motor vehicle outdoor sales area is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance from the BCZR §§ 238.2 to approve a zero (0) ft. side yard setback in lieu of the required 30 ft. setback. From BCZR § 238.2 to approve 3 ft. side yard setback and 3 ft. rear yard setback for proposed car repair shop in lieu of the required 30 ft. setbacks are 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.

- Prior to issuance of permits, Petitioner must comply with the ZAC comments made by DOP, 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 _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm