

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(2000 Leland Avenue)
15th Election District
6th Council District
Middle River Volunteer Fire &
Rescue Company, Inc.
Legal Owner
Keith Johnson
Contract Purchaser/Lessee
Petitioners**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No: 2021-0182-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 2000 Leland Avenue. The Petitions were filed on behalf of Middle River Volunteer Fire & Rescue Company, Inc., legal owner and Keith Johnson, the contract purchaser of the subject property (“Petitioners”). The Special Exception petition requests relief under Baltimore County Zoning Regulation (“BCZR”) § 253.2.B to permit a service garage, and for a finding that such use will primarily serve the industrial uses and related activities in the surrounding industrial area. In addition, variance relief was requested from BCZR §§ 255.1 and 238.2, to permit a non-residential building rear yard setback of 25 ft. in lieu of the required 30 ft.

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. William Connelly of the Middle River Volunteer Fire and Rescue and Keith Johnson from Baltimore Motor Works appeared in support of the petition. Lawrence Schmidt, Esquire of Smith, Gildea & Schmidt, LLC represented the Petitioners. Patrick (“Rick”) Richardson also appeared. The site plan that he

prepared and sealed was admitted as Petitioner's Exhibit 2. No protestants or interested citizens appeared at the hearing.

Substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Environmental Protection and Sustainability Development Coordination ("DEPS"), from the Department of Planning ("DOP") and the Bureau of Development Plan Review ("DPR"). They did not oppose the requested relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property is 37,500 sq. ft. and is zoned ML, ML-IM. Mr. Schmidt proffered the following facts. The existing building has housed the Middle River Volunteer Fire Company since 1954. That Volunteer Company recently merged with another Volunteer Company and they are jointly constructing a new firehouse. The contract purchaser, Mr. Johnson, is the owner of Baltimore Motor Works, an automobile service center that is currently operating at a location approximately two miles from the subject location. The existing structure will undergo interior modifications but no exterior modifications or additions are proposed. The expected hours of operation will be Monday through Friday from approximately 8 a.m. until 5 p.m. It is possible that some Saturday hours will be added in the future. The existing firehouse has 3 bays, and Mr. Johnson anticipates that another 3 service bays will be added. There will be six or seven employees. The site plan demonstrates that 36 parking spaces will be provided, which exceeds the required 32 spaces. The site is surrounded by thick forest on two sides. There is a single family residence to the east that is separated and screened by a board on board fence that spans the entire east side of the subject property. A large light industrial use occupies the site across Leland Ave from the subject site. An active rail line runs behind that property. Mr. Schmidt noted that he and the Petitioners had presented the proposed plan and zoning requests to the Essex Middle River Civic

Council, and that they had voted to support the requested relief. An email to that effect was admitted as Petitioners' Exhibit 4.

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 should be granted. Specifically, I find that the proposed automobile service station at this site will be less intrusive than in many other locations within the zone. I further find that this location will primarily serve and benefit the surrounding light industrial commercial uses, and those employed there. Finally, I find that the proposed service facility complies with the requirements of BCZR § 502.1. This proposed re-purposing of the existing firehouse is an optimal use of the property and will enable an existing county business to expand and thrive.

VARIANCE

Under BCZR Sec. 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 is unique in several ways. It is an irregular trapezoid shaped parcel that is bounded on two sides by heavily wooded parcels. Further, it is located on a dead end street and it faces a large light industrial use. If the modest setback variance were denied the Petitioner would suffer practical difficulty and hardship because the existing structure would need to be partially razed.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **24th** day of **August, 2021** that the Petition for Special Exception pursuant to BCZR § 253.2.B to permit a service garage that will serve primarily the industrial uses and related activities in the surrounding industrial area **BE, and hereby IS, GRANTED**; and

IT IS FURTHER ORDERED that the Petition for Variance pursuant to BCZR §§ 255.1 and 238.2 to permit a non-residential building rear yard setback of 25 ft. in lieu of the required 30 ft., **BE, and hereby IS, 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.

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