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|---|-----------------------------|
| IN RE: <b>PETITION FOR SPECIAL EXCEPTION*</b> | BEFORE THE                  |
| (11175 Pulaski Highway)                       |                             |
| 11 <sup>th</sup> Election District            | *                           |
| 6 <sup>th</sup> Council District              |                             |
| Barolo LLC                                    | *                           |
| <i>Legal Owner</i>                            |                             |
|   | *                           |
|   | OFFICE OF                   |
|   |                             |
|   | ADMINISTRATIVE HEARINGS     |
|   |                             |
|   | FOR BALTIMORE COUNTY        |
|   |                             |
| <b>Petitioner</b>                             | *                           |
|   | <b>Case No. 2021-0102-X</b> |
|   |                             |
| * * * * *                                     | * * * * *                   |

**AMENDED OPINION AND ORDER<sup>1</sup>**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Exception filed on behalf of Barolo, LLC, legal owner (“Petitioner”). The Special Exception petition was filed per the Baltimore County Zoning Regulation (“BCZR”) § 236.2 to permit a used Motor Vehicle Outdoor Sales Area.

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. Zoning Advisory Committee (“ZAC”) comments were received from the Department of Plan (“DOP”) and the State Highway Administration. These agencies did not oppose the requested relief, subject to proposed conditions, some of which will be incorporated into the Order.

Keith M. Farley of Barolo, LLC attended the hearing in support of the Petition and was represented by Michael Moran, Esquire. Mathew Sichel, a Professional Engineer with KCI Engineering also attended. The amended site plan that he prepared and sealed was marked and accepted into evidence as Petitioners’ Exhibit 1.

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<sup>1</sup> The original Opinion and Order in this case was entered on October 12, 2021 and granted the Special Exception subject to one condition. Namely, that the Petitioner comply with a Zoning Advisory Committee comment from the State Highway Administration. On November 10, 2021 counsel for Petitioner filed a timely Motion for Reconsideration. The Motion explains in some detail that the SHA is now requesting different modifications than they had requested in their ZAC comment, and that Petitioner and SHA are still resolving exactly what modifications will ultimately be required. In the meantime the Petitioner urges that their zoning relief should not be held up by these ancillary negotiations. I agree and will therefore remove the one condition from the original Order.

## RECORD EVIDENCE

Mr. Sichel explained that the site lies at the intersection of Pulaski Highway and Stevens Road. The structure on the property faces Pulaski Highway. Until recently it was a barroom and pool hall known as the Stonewall Tavern. Mr. Farley purchased the property in January 2021 and has retrofitted it to house his business, Redline Muscle Car Garage, which specializes in refurbishing classic American “muscle” cars. Mr. Sichel explained that Mr. Farley now wants to also sell some of these vehicles at the site, which requires the requested special exception. The site is approximately 11,194 sq. feet and zoned BR-AS. Mr. Sichel explained that the “AS” zone is the Automotive Service overlay that the County Council created for zones such as this, which are dominated by automotive related uses.

Upon questioning from Mr. Moran, Mr. Sichel further testified that all the conditions of BCZR § 502.1 are satisfied in this case.

## 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 exhibits and testimony detailed above, I find that the special exception relief should be granted. Specifically, I find that the proposed outdoor automobile sales lot at this location will not have any greater impacts at this location than those inherently associated with

this special exception use. In fact, I believe the opposite is true as this location in this BR-AS zone is ideally suited for this low volume outdoor sales business. I further find that the relief is within the spirit and intent of the BCZR and that it will not cause harm to the public health, safety or welfare.

THEREFORE, IT IS ORDERED this **17th** day of **November, 2021**, by this Administrative Law Judge, that the Petition for Special Exception seeking relief to permit a used Motor Vehicle Outdoor Sales Area pursuant to BCZR § 236.2 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 its 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.

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

Signed

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PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM:dlm