

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(8202 Pulaski Highway)	*	OFFICE OF
15 th Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
Qaisar Shahzad,		
Legal Owner	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2021-0201-SPHA
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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Fazal, LLC, legal owner (“Petitioner”) for the property located at 8202 Pulaski Hwy., Rosedale (the “Property”). The Special Hearing was filed pursuant to Baltimore County Zoning Regulations (“BCZR”), §500.7 to amend the Opinion and Order in Case No. 2019-0171-XA. Variance relief was also filed from BCZR, §238.2 to permit a zero (0) ft. setback from the rear and side property lines for a 18 ft. high building addition in lieu of the required 30 ft. minimum rear and side yard 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. Qaisar Shahzad, a member of the Petitioner, appeared at the hearing along with Bruce E. Doak, licensed surveyor, who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). C. Edward Hartman IV, Esquire represented the Petitioner. Russell Mirabile, President of Rosedale Community Association, who initially requested a postponement of the hearing, did not appear.

Zoning Advisory Committee (“ZAC”) comments were received from Department of Planning (“DOP”) which agency opposed the requested relief. Department of Environmental

Protection and Sustainability (“DEPS”) also submitted a comment but did not oppose the requested relief.

The Property is approximately .396 acres +/- and is improved with a commercial, 1-story brick building (1,600 sf), housing the operation of a used automobile sales business known as “N. A. Motors” in accordance with the relief granted in Case No. 2019-0171-XA. (Pet. Ex. 3). The Property is zoned Business, Roadside – Automotive, Service (BR-AS). Mr. Shahzad is the operator of the business and currently only sells, but does not repair, vehicles which he purchases. Aerial and street view photographs reveal that the Property faces south on Pulaski Hwy., and is surrounded by other commercial uses including a golf cart business (“B-more Buggies 4 Less”) to the east, an auto repair business to the north (the “Earlbeck Family Auto Repair”), and a liquor store to the west. (Pet. Ex. 4; 6A-N). It was noted that both B-more Buggies 4 Less and the Property use the address 8202 Pulaski Hwy.

A boundary survey and location drawing dated April 19, 2021, was submitted showing the Property boundaries and site area layout for the Petitioner’s business (the “Boundary Survey”). (Pet. Ex. 5). It shows the commercial building, an 8 ft. tall chain link fence surrounding part of the Property, a 6 ft. tall wooden fence along the northern boundary line, as well as paved parking and storage yards. Importantly, as revealed on a plat identified as “Property of R.D. Hesse, Rosedale, MD” (L 12, F 41), there is a 30 ft. +/- wide paper road named Batavia Farm Rd. between the Property and the liquor store. (Pet. Ex. 16).

Mr. Doak marked up a copy of the aerial photograph to show the current use of Batavia Farm Rd. It depicts that the Earlbeck Family Auto Repair business to the north of the Property uses the paper road to park vehicles. (Pet. Exs. 8, 10B). Mr. Shahzad testified that the owners/operators of the Earlbeck Family Auto Repair business have closed off Batavia Farm Rd.

at their property line by installing a chain link fence across the width of the paper road. (Pet. Ex. 10-B). According to Mr. Doak, a Road Closing case has not been filed and the paper road has never been dedicated to the County. That aerial photograph also reveals that beyond the Eastbeck Auto Repair business are single family homes which use the portion of the paper road abutting those properties as part of their yards/driveways.

Mr. Doak also marked up a copy of the Boundary Survey. (Pet. Ex. 9). That Exhibit, in combination with the street view photographs of Batavia Farm Rd., appear to show that the Petitioner's chain link fence does not currently extend into Batavia Farm Rd. (Pet. Exs. 9, 10-A and 10-B). Street view photographs also show that vehicles which do not belong to the Petitioner (as indicated on the photograph) are parked along Batavia Farm Rd. (Pet. Ex. 10-A). However, as Mr. Doak explained, Petitioner is proposing to extend the existing chain link fence 15 ft. into Batavia Farm Rd. (Pet. Ex. 8) and to use that portion of land.

In addition to extending the chain link fence into Batavia Farm Rd., Petitioner is proposing to construct a 1-story addition (6,768 sf) as depicted on the Site Plan. (Pet. Ex. 1). Due to the size of the Property, the addition would extend to the side and rear Property lines with zero setbacks. A letter of support was provided by B-more Buggies 4 Less for the proposed addition. (Pet. Ex. 7). The Petitioner is also proposing to repair the vehicles which he purchases within the new addition. Mr. Doak emphasized that a service garage is permitted by right in the BR-AS zone. Petitioner is proposing that the maximum number of vehicles on the Property either for sale or for repair at one time would be 30. In order to prevent the appearance of a junkyard, all damaged, disabled or inoperable vehicles will be stored and repaired inside the new addition. A lift(s) will also be installed. The addition will be accessed via 2 doors on its southern end, as well as 2 doors on its western end. (Pet. Ex. 1).

In regard to parking, as adjudicated in Case No. 2019-0171-XA, BCZR, §409 is not applicable to inventory of used vehicles which are for-sale, but is applicable to customer and employee parking. As identified on the Site Plan, the total number of parking spaces required is 17 and the total number of parking spaces which will be provided is 17.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

In the instant case, I find that the Petition to amend the Opinion and Order in Case No. 2019-0171-XA to permit the repair of vehicles, in addition to the sale of vehicles, is within the spirit and intent of the BCZR. I agree with the Petitioner that the proposal here which is for a service garage is not for a change in use; rather it is in addition to the sale of vehicles. A service garage is a use permitted by right in the Business-Major (BM) zone under BCZR, §233.1, and therefore under BCZR, §236.1.A, is permitted by right on this Property. Indeed, the Automotive

Service District Overlay provides BCZR, §259.2.B is applied to “certain parcels of land zoned B.L., B.M. or B.R., which are appropriate for uses dominated by the parking and servicing of automobiles or characterized by frequent parking turnover...”

The proposal here is that the addition would house the damaged, disabled and inoperable vehicles which are in need of repair prior to parking the vehicles for sale on the outdoor sales area. I find this proposal is appropriate for the Property and is consistent with the similar auto and golf cart repair businesses surrounding the Property. The proposed addition will be constructed on top of the existing paved surface and therefore no additional impervious surface will be added. Petitioner is proposing to reduce the number of vehicles for sale from 50 (as permitted in Case No. 2019-0171-XA) to 30 vehicles. I note that BCZR, §238.4 permits the storage and display of vehicles in the front yard provided that those vehicles are not parked more than 15 ft. in front of the required front building line.

In regard to Batavia Farm Rd., I cannot grant the Petitioner’s request to move the 8 ft. high chain link fence into Batavia Farm Rd. unless that paper road is legally closed pursuant to a Road Closing Petition. The deeds for the Property and the other properties which abut Batavia Farm Rd., indicate that it is a road to be used “in common.” While this case is not a Road Closing Petition, and while I am not deciding whether or not that paper road should be closed as I do not have all of the evidence on that issue before me, it appears that the Petitioner and adjacent property owners would be served by filing a joint Road Closing Petition in order that each abutting property could then legally use whatever roadbed is provided to each abutting owner pursuant to their respective deeds. The file reflects that the closing of this paper road was an issue which was also raised by the Rosedale Community Association. Finally, given that there was no comment by Development Plans Review (“DPR”) that a formal Landscaping Plan is

required here, and notwithstanding DOP's comment to the contrary, I find that it would be interests of the general welfare and spirit of the BCZR for the Petitioner to plant some bushes, shrubs and/or landscaping in the two (2) grass areas fronting along Pulaski Hwy. I find that a Landscaping Plan is not required to be filed in this case.

VARIANCE

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 noted above, this Property was previously adjudicated to be unique in Case No. 2019-0171-XA. The Property and existing building have not changed since that case. As a result, that factual finding is applicable to this case under the doctrine of collateral estoppel. *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016). (See also *Colandrea v. Wilde Lake Community Ass'n, Inc.*, 361 Md. 391 (2000); *Washington Suburban Sanitary Commission v. TKU Associates*, 281 Md. 1, 18-19 (1977)).

I find that the Petitioner would suffer practical difficulty and hardship if the variance relief was denied because the size of the Property limits the extent of an addition which is needed in order to house disabled, damaged and/or inoperable vehicles from view, thus eliminating the appearance of a junk yard. The size of the proposed addition will enable a lift(s) to be installed in order to repair vehicles indoors. While I am cognizant of DOP's proposed condition to permit 10 ft. side and rear yard setbacks in lieu of the proposed zero foot setbacks, I find no legal requirement for a 10 ft. setback, and granting the same would eliminate a useable service garage. I further find

that the variance is within the spirit and intent of the BCZR and that it will not harm the public health, safety or welfare, particularly in light of the support from adjacent business B-more Buggies 4 Less and lack of opposition from any surrounding property owner.

THEREFORE, IT IS ORDERED this 15th day of **November 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR, §500.7 to amend Case No. 2019-0171-XA is hereby **GRANTED** in accordance with a Redlined Site Plan as conditioned herein, to permit the repair and sale of vehicles purchased by the Petitioner.

IT IS FURTHER ORDERED that the Variance from BCZR, § 238.2 to permit a zero (0) ft. setback from the rear and side property lines for a 18 ft. high building addition in lieu of the required 30 ft. minimum rear and side yard setbacks is hereby **GRANTED**

The relief granted herein shall be subject to the following:

1. 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.
2. All damaged, disabled and/or inoperative vehicles shall be parked and repaired inside the proposed addition until such vehicles are in operable and saleable condition at which point they may be parked on the outdoor sales area.
3. Petitioner may not display, park and/or store more than 30 vehicles at any one time, whether for sale or repair.
4. Petitioner shall stripe all customer and employee parking spaces pursuant to BCZR, §409.
5. Within 15 days of the date hereof, Petitioner shall submit to Baltimore County a redlined site plan indicating where on the Property vehicle inventory will be displayed and the location of all customer and employee parking.

6. Petitioner shall not extend its business operation, including but not limited to any fence, into Batavia Farm Rd. or in any obstruct or close off Batavia Farm Rd. until such paper road, or portion of paper road abutting the Property, is legally closed pursuant to a Road Closing Petition.

7. A formal Landscape Plan is not required to be filed. However, Petitioner shall plant and continue to maintain while under its ownership, bushes, shrubs and/or other landscaping in the two (2) grass areas fronting along Pulaski Hwy. which, in the Petitioner's discretion, can reasonable fit within those areas.

8. No temporary banners, signs or advertising flags shall be permitted on the subject property.

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

PMM/dlm