

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(1626, 1628 York Road)	*	ADMINISTRATIVE HEARINGS
8 th Election District	*	
3rd Council District	*	
Allegiance, Inc.	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>	*	
Heritage of Towson, III, Inc.	*	Case No: 2021-0254-XA
<i>Lessee</i>	*	
Petitioners	*	

* * * * *

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 1626 and 1628 York Road, Towson (the “Property”). The Petitions were filed on behalf of Allegiance, Inc., legal owner, and Heritage of Towson, III, Inc. t/a Heritage Mazda, lessee of the Property (“Petitioners”). The Petition for Special Exception seeks approval under from the Baltimore County Zoning Regulations (“BCZR”), §230.3 to permit a service garage in a BL Zone. The Petition for Variance seeks relief from the BCZR, §409.4.C to allow a driveway width of 10 ft. for one-way movement in lieu of the required 16 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. Brian Fader, Chief Operating Officer, Heritage of Towson, III, Inc., appeared in support of the Petition along with Michael Pieranunzi, RLA of Century Engineering and Troy Slevin, PE, Associate Vice President of Century Engineering, Inc. who prepared a greenlined site plan (the “Greenlined Site Plan”) along with Joseph Heisler, architect with Ammon, Heisler Sachs who designed the floor plan. David Karceski, Esquire, Katlynn Peach, Esquire and Venable, LLP represented the Petitioners.

Zoning Advisory Committee (“ZAC”) comments were received from Department of Environmental Protection and Sustainability (“DEPS”), Department of Planning (“DOP”), Development Plans Review (“DPR”), and the Office of Zoning Review (“OZR”).

The case proceeded by way of modified proffer by Mr. Karceski. Mr. Pieranunzi was admitted as an expert in landscape architecture, in BCZR, and with regard to variance standards. (Pet. Ex. 3). The Property is 0.29 acres +/- and is improved with a 1-story, brick and stucco commercial building which fronts on York Rd., and is currently used as office space for Heritage Mazda Towson. (Pet. Ex. 2). The Property is split-zoned Business, Major – Business, Local (BM/BL). (Pet. Ex. 6). As depicted on the aerial photograph, the remainder of the Property is paved. (*Id.*). There are two (2) access points onto York Rd. To the north and west of the Property is Heritage Mazda Towson’s new car dealership as reflected in the aerial photograph showing Mazda vehicles.

The Property was formerly the Timonium Animal Hospital. Prior to that, it was a service garage. Street view photos show a Heritage Mazda Towson sign across the front door along with three angled parking spaces. (Pet. Ex. 7). There is one existing free standing sign which will be repurposed. The evidence shows that 1626 York Rd. is an irregularly shaped, long and narrow parcel measuring only 1/3 of an acre. Due to its size and shape, it is not possible to fit both the required number and size of parking spaces, and also have a one-way drive aisle which meets the required 16 ft. Initially, Petitioner requested a one-way 10 ft. drive aisle in the front of the Property. Upon consideration of the DPR Comment which recommended retaining the existing striped parking spaces in the front of the building in order to create a 13 ft. drive aisle, Mr. Piernanunzi prepared the Greenlined Site Plan to incorporate DPR’s recommendation. (Pet. Ex. 2). Because the existing parking spaces are proposed to remain here, the Petition for Variance was

amended to include relief for parking spaces with an 8 ft. width and 15 ft. length, in lieu of the required 8 ½ ft. width and 18 ft. in length. In regard to OZR's comment that the proposed parking and 10 ft. one-way drive aisle will create an unsafe situation for vehicles maneuvering in and out of the parking spaces, it was noted that there is only one point where the drive-aisle is 10 ft., the remainder being 13 ft., and the Greenlined Site Plan meets the 10 ft. setback from the right of way line of York Rd.

The proposed use here is for a companion service garage to repair Mazda vehicles. There will be four (4) garage door bays. A total of 13 parking spaces are required and 13 parking spaces would be provided. (Pet. Ex. 2). Mr. Fader of Heritage Mazda stated that all vehicles will be repaired inside the service garage with the garage doors closed. The proposed hours of operation are Mon.-Fri. 7:30-7:00 pm; Sat 8:00-5:00 pm; Sunday closed. Mr. Fader emphasized that there will not be any heavy mechanical or heavy auto body repair, only light mechanical work including, but not limited to, oil changes, brake repair, new car inspections and cleaning of vehicles. To the extent a damaged or disabled vehicle needs to be stored at the Property, the Petitioner has agreed to park those inside until it is moved to a repair shop.

In regard to the DEPS Comment that the proposed use requires presentation to the Development Review Committee ("DRC") prior to the issuance of any building permits, Mr. Karceski noted that there is no development occurring on the Property other than striping of parking spaces and interior renovations as indicated on the Greenlined Site Plan. Similarly, he explained that in conversation with the Baltimore County Landscape Architect, the restriping of parking spaces and interior renovations would not trigger a Landscape Plan. However, any new light fixture would require a Lighting Plan to be filed.

With regard to the Special Exception factors, the evidence showed that the proposed use would not be detrimental to the health, safety and general welfare and would have no more impact here than elsewhere in the BL zone. York Rd., as a principal arterial road, has commercial uses and with regard to this Property, a car dealership surrounds it on 2 sides. The proffered testimony was that the proposed use meets each of the Special Exception factors.

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 for a service garage should be granted. Specifically, I find that the proposed use will not have any greater impact at this location than those inherently associated with a service garage use elsewhere in the BL zone. I also find that the requested relief satisfies the requirements of BCZR, §502.1. Only Mazda vehicles will be repaired and/or cleaned in order to be offered for sale at the related Heritage Mazda dealership. There is no impact on: surrounding roads; public improvements; schools; light and air; and/or nearby environmental features. The proposed use is also consistent with the BCZR as a listed Special Exception use.

In regard to the DEPS Comment that this project requires presentation to the DRC, that issue is not before me. As a result, I will not include the DEPS Comment as part of the Order in

this case. Finally, in regard to the DOP Comment that the dumpster should not be visible from York Rd., the evidence was that the Heritage Mazda new car dealership and related service garage will share a dumpster which is located behind the Heritage Mazda new car dealership.

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).

As explained above, the Property is unique due to its small size and elongated shape which limits its ability to meet both the required size of the parking spaces and the size of the drive aisle. I find that if strict compliance with the parking space and drive aisle widths were required, the Petitioner would not be able to convert this building into a service garage for the repair of Mazda vehicles. While I appreciate OZR's Comment, there is only one point where the drive aisle is 10 ft. wide; otherwise, drive aisle is now 13 ft. wide as indicated on the Greenlined Site Plan. In my view, this one-way drive aisle between the only ingress and egress points, does not create an unsafe or dangerous situation. Further, I find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 29th day of **November, 2021** that the Petition for Special Exception per the BCZR, §230.3 to permit a service garage in the BL Zone, be, and it is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Petition for Variance from the BCZR, §409.4.C to allow a driveway width of 13 ft. for one-way movement in lieu of the required 16 ft., be, and it is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Petition for Variance from the BCZR, §409.4.C to allow existing angled parking spaces to remain with a width of 8 ft. and length of 15 ft. in lieu of the required 8 ½ ft. in width and 18 ft. in length pursuant to BCZR, §409.3, be, and it is hereby, **GRANTED**.

The relief granted herein shall be subject to the following:

1. 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.
2. The Greenlined Site Plan, a copy of which is attached hereto, shall be incorporated into and made a part of this Order.
3. A Landscape Plan shall not be required per the Baltimore County Landscape Architect. In the event that any light fixture is changed, a Lighting Plan shall be required.
4. No damaged or disabled vehicles shall be stored outside of the service garage, even on temporary basis, unless such damaged or disabled vehicle is being removed or towed off site.
5. The service garage shall only be used for light repair and/or mechanical work including, without limitation, vehicle inspections, oil changes, brake changes, cleaning and/or detailing. All repair work shall be conducted inside the service garage.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm