

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		
(9506 9508 Liberty Road)	*	OFFICE OF ADMINISTRATIVE
2 <sup>nd</sup> Election District		
4 <sup>th</sup> Council District	*	HEARINGS FOR
Solomon Emeke		
Legal Owner	*	BALTIMORE COUNTY
<b>Petitioner</b>	*	<b>Case No. 2021-0181-SPHX</b>
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Exception and Special Hearing filed by Solomon Emeke, legal owner of the property located at 9506 Liberty Rd. (“9506 Liberty”) and Desaiyah, Inc., legal owner of 9508 Liberty Rd. (“9508 Liberty”) (sometimes collectively referred to as the “Properties”). The Special Exception is pursuant to Baltimore County Zoning Regulations (“BCZR”), §236.2 to permit a used motor vehicle outdoor sales area, separated from the sales agency building. The Special Hearing request is pursuant to BCZR, §409.8.B.1 for a use permit to allow business parking in a residential zone.

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. Solomon Emeke appeared individually and as the sole owner of Desaiyah, Inc., (the “Petitioners”) in support of the Petition along with Andrew Stine, registered landscape architect, who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). Jason Vettori, Esquire with Smith, Gildea and Schmidt, LLC represented the Petitioners. There were no interested citizens or Protestants at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) who opposed the Petition and provided proposed conditions. Development Plans Review (“DPR”) and Department of Environmental Protection and Sustainability (“DEPS”) also submitted comments but did not oppose the Petition.

The case proceeded by way of modified proffer by Mr. Vettori with the assistance of Mr. Stine who was admitted as an expert witness in landscape architecture. 9506 Liberty measures 23,870 sf. +/- and is improved with a dwelling constructed in or around 1939. 9508 Liberty measures 20,473 sf. and is improved with a stone dwelling constructed in or around 1940 along with a detached garage. The zoning for both Properties is primarily Business-Roadside, Automotive Service District (BR-AS), with a small area on the south western corner zoned Office Building Residential (OR-2) and a strip of Density Residential (DR 16) zoned land on the northern end of the Property.

Immediately to the east of the Property is a dwelling which has been converted to office use. Traveling further east along Liberty Rd. the uses are all commercial. To the north are single family homes which are currently buffered by existing trees. To the west is the Pikesville Apartment complex. Across Liberty Rd. to the south are townhomes. The Property is within a Commercial Revitalization District which also encompasses commercial uses along Liberty Rd. (Pet. Ex. 5, 6). The types of businesses along Liberty Rd. include other car dealerships, used car lots and/or automotive repair businesses. (Pet. Ex. 7).

Mr. Emeke is in the car buying and selling business. He intends to operate a used car business on the Property with the dwelling at 9506 Liberty being used as the sales agency building. The dwelling on 9508 Liberty and the detached garage will be removed. All of the vehicles to be sold will be operational; there will be no damaged or disabled vehicles parked, stored or sold on

the Property. There will not be any repair of vehicles on the Property including any type of work, painting or detailing on-site. Proposed hours of operation have not been definitively set but Mr. Emeke anticipates that the hours will be Mon-Sat 9:00-6:00. Customers would come to the Property and will be able to test drive vehicles for sale.

The Site Plan outlines the detailed aspects of the business with proposed parking spaces and drive aisles. Petitioners will install a 15 ft. landscape buffer on both sides (east and west) as well as in the rear (north) to screen the business operation from surrounding properties. The landscape buffer will consist of tree planting in those areas. Because of the landscape buffer, Petitioners did not intend to install a fence as well. Petitioner will prepare a landscape plan and a lighting plan in accordance with the Landscape Manual pursuant to BCZR, §409.8.A.1 and 3. There will be one (1) sign for the business which will be posted along Liberty Rd.

In regard to the DPR Comment dated July 22, 2021, Mr. Stine testified that there is no separate parcel of land that traverses between the 9506 Liberty and 9508 Liberty. Mr. Stine explained that the deed for 9506 Liberty includes that 20 ft. area and that the deed was provided to DPR prior to the hearing.

With regard to Special Exception factors, Mr. Stine opined that the proposed use will create no greater impact at this Property than elsewhere in the BR zone. In his view, the fact that the Property was included within the Commercial Revitalization District and is zoned as BR with an AS district overlay is persuasive evidence that a car business is an appropriate use for the Property. As such, Mr. Stine testified that an outdoor car sales area will not be detrimental to the health, safety or general welfare of the area. It will create no more congestion in the neighboring roads or streets than any other used car outdoor business. There is no potential hazard from fire, panic or other danger as no work on vehicles is being conducted on the Property; only the sale of used

vehicles. In addition, the nearest fire hydrant is 378 ft. east on Liberty Rd. He added that this use will not tend to overcrowd the land or cause undue concentration of population any more than normally associated with a customer coming to buy a used car. Mr. Stine agreed that there was no interference with public improvements or schools as the proposed use is not residential, nor would it interfere with adequate light and air as there are no buildings or other structures being erected to cast shadows or block flow of air. As indicated, Mr. Stine contended that the proposed used car outdoor sales area is consistent with the BR-AS zoning and Commercial Revitalization District. Mr. Stine acknowledged that there is no impact on impermeable surface or vegetative retention provisions. The addition of the landscape buffer will improve the vegetation.

The parking surface will comply with the 'durable and dustless surface' in BCZR, §409.8.A.2. Mr. Vettori explained that BCZR, §409.6 requires a total a 59 parking spaces for this use: 9 spaces for retail (5 spaces/1,000 sf) and 50 spaces for the anticipated inventory of cars. The total of 59 spaces includes 7 spaces for employee parking. Mr. Vettori made clear that BCZR does not require a specific number of parking spaces for an outdoor used car area and that the Petitioners do not anticipate having seven (7) employees. However, given that the storage and/or display of vehicles for sale cannot be located in the rear of the Property, those spaces are labeled on the Site Plan as 'employee parking.' Contrary to the DOP comment about parking vehicles in the front along Liberty Rd., Mr. Vettori highlighted that BCZR, §238.4 permits the storage and/or parking of vehicles in the front yard up to a distance of 15 ft. of the front building line of 9506 Liberty Rd.

Mr. Vettori noted that, notwithstanding the DOP ZAC Comment which stated that the proposed use was incompatible with the scale and character of the neighborhood, there is no compatibility requirement here. He emphasized that the proposed outdoor used car area carries a presumption that the use is appropriate for this Property under the BR-AS zoning.

The Site Plan also notes that the proposed use as a used motor vehicle outdoor sales area is entitled to an exemption from Residential Transition Area (RTA) setback and buffer under BCZR, §1B01.1B.1g(17) because it is located in a Commercial Revitalization District. Petitioners produced a copy of the Liberty Rd (West) Commercial Revitalization District map which confirms that the Property is located within the Commercial Revitalization District. (Pet. Ex. 5, 6).

#### 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.

As outlined above, I find that the uncontroverted evidence here by Petitioner's expert, Mr. Stine, was that the proposed use meets each of the Special Exception factors in BCZR, §502.1 and that the adverse impacts of a used car outdoor sales business on this BR-AS zoned Property within this Commercial Revitalization District are no greater here than those inherently associated with this type of business use elsewhere in the zone. As compared to other uses permitted by special exception in a BR zone such as a contractor's equipment storage yard, truck stop, landfill and trailer park, the proposed use is far less intrusive on the surrounding neighborhood. I find the proposed use here will not be detrimental to the health, safety or general welfare of the area. The Property will be properly screened from adjacent uses by virtue of the proposed 15 ft. landscape buffer on 3 sides. As a result, I find that a perimeter fence around the Property is not necessary.

Petitioner will file a Landscape Plan and a Lighting Plan. In addition, I find that the RTA exception under BCZR, §1B01.1B.1g(17) applies here and exempts the use from complying with the RTA setback and buffer.

#### 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). Petitioner here seeks a use permit to allow business parking in a residential zone. This request was made due to the seven (7) parking spaces in the rear of the Property which are partly located in the DR 16 zone. Mr. Vettori attributed the misalignment of the zoning and Property lines to the transition by the County from Mylar films to current computer generated zoning lines in My Neighborhood maps. Mr. Vettori asserts that the zoning line should match the Property lines. Because the lines are not congruent, the instant relief was sought.

I find that the use permit for business parking associated with this use is driven by the strip of the DR 16 zoned land in the rear of the Property. Notwithstanding this DR 16 zoned strip of land, the proposed business parking is actually located within the metes and bounds of the Property of the proposed business and therefore meets the condition in BCZR, §409.8.B.2.a. To be clear,

this is not a case where there is a business use in a business zone, and relief is sought to park cars in a residential neighborhood separate and apart from the business. I find that the Site Plan adequately details both the parking arrangement and vehicular access in accordance with BCZR, §409.8.B.2.e.

I find that the character of the surrounding community is largely commercial along Liberty Rd. Although there are single family homes to the north, I would not characterize this neighborhood as ‘residential’ particularly in light of the BR-AS zone and Commercial Revitalization District designations. As such, I do not find a negative impact on the surrounding community but rather consistency with other similar commercial uses. In regard to the requirements of BCZR, §409.8.B.2, each of those conditions will be addressed in the Order.

I have read the DOP ZAC Comment requesting a condition that there be no parking of vehicles in the front yard on the grass areas facing Liberty Rd. However, as set forth in BCZR, §238.4, in a BR zone, Petitioner is permitted to park vehicles in the front yard up to a distance of 15 ft. of the front building line of 9506 Liberty Rd. I will include this as a condition in the Order.

During the hearing, Mr. Vettori requested to amend the Petition to include Special Hearing relief to approve the dwelling on 9506 Liberty as a non-conforming use as existing prior to the enactment of BCZR. Because the dwelling on 9506 Liberty was constructed in 1939, it cannot meet the side yard setback of 30 ft. for the BR zone. The dwelling on 9506 Liberty is currently setback 13.1 ft.

A valid and lawful nonconforming use is established if the owner can demonstrate that *before and at the time* of the adoption of a new zoning classification/ordinance, the property was being used in a lawful manner that, by later legislation, became non-permitted. *Trip Assoc., Inc.*

*v. Mayor and City Council of Baltimore*, 392 Md. 563, 569 (2006). The definition of non-conforming use in BCZR, §101.1 is:

NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

Given that the Petition specifically requested general relief as “For such other and further relief as may be required by the Administrative Law Judge for Baltimore County” I will grant Petitioner’s request to amend the Petition for Special Hearing and approve the existing side yard setback of 13.1 ft. in lieu of the required 30 ft. Based on the age of the dwelling at 9506 Liberty, I find that the dwelling was non-conforming and cannot meet the BR side setback.

THEREFORE, IT IS ORDERED this **22<sup>nd</sup> day of September, 2021**, by this Administrative Law Judge that the Petition for Special Exception relief pursuant to BCZR § 236.2 to permit a used motor vehicle outdoor sales area, separated from the sales agency building be, and it is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing pursuant to BCZR, §409.8.B.1 for a use permit to allow business parking in a residential zone be, and it is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Special Hearing that the dwelling at 9506 Liberty Rd. which shall remain and be used as a sales agency building, be approved as a nonconforming use pursuant to BCZR, §101.1, be, and it is hereby **GRANTED**.

IT IS FURTHER ORDERED that the request for an exemption from Residential Transition Area (RTA) setback and buffer requirements pursuant to BCZR, §1B01.1B.1g(17) 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 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, Petitioners would be required to return the subject property to its original condition.
2. That the Site Plan (Pet. Ex. 1) shall be incorporated and made part of this Order.
3. The used motor vehicle outdoor sales area shall only park, store and sell operable, undamaged passenger motor vehicles. There shall not be any damaged, inoperable or untagged motor vehicles on the Property. There shall be no buses parked or stored on the Property.
4. There shall not be any repair, alteration, painting, detailing, fixing, servicing and/or maintenance of any kind of the motor vehicles on the Property. There shall be no loading, service or any use other than as a used motor vehicle outdoor sales area.
5. The Petitioner may park motor vehicles in the front yard up to a distance of 15 ft. of the front building line of 9506 Liberty Rd. in accordance with BCZR, §238.4.
6. The hours and days of operation for the used motor vehicle outdoor sales area shall generally be Monday-Saturday between the hours of 9:00 am-6:00 pm.
7. The Petitioner shall file a Landscape Plan and a Lighting Plan in accordance with the Baltimore County Landscape Manual pursuant to BCZR, §409.8.A.1 and 3. The Petitioner shall provide a 15 foot landscape buffer around the north, east and west boundary lines as shown on the Site Plan.
8. All parking surfaces shall be durable and dustless, properly drained and visibly striped in accordance with BCZR, §409.8.A.2 and 6.
9. All signs shall comply with BCZR, §450.
10. Petitioners must comply with the DEPS ZAC comments, a copy of which is attached hereto and made a part thereof.

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

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large, looped initial "M".

MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM:dlm