

01N RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(202-204 Eastern Blvd.)</b>		
15 <sup>th</sup> Election District	*	OFFICE OF ADMINISTRATIVE
7 <sup>th</sup> Councilmanic District		
Albert Koon Yu & Kirby Hom,	*	HEARINGS FOR
<i>Legal Owners</i>		
Howard L. & Judith M. Dubick	*	BALTIMORE COUNTY
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	CASE NO. 2014-0023-SPH
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**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Hearing filed by Edward C. Covahey, Jr., Esquire, on behalf of the legal owners, Albert Koon Yu & Kirby Hom, and the contract purchaser, Howard L. & Judith M. Dubick, (“Petitioners”). The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the relocation of Essex Pawn Shop from 136-140 Eastern Boulevard, Essex, Baltimore County, MD 21221 to 202-204 Eastern Boulevard. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 12.

Appearing at the public hearing held for this case was Howard and Judith Dubick and Brian Dietz, a licensed surveyor who prepared the site plan. Edward C. Covahey, Jr., Esquire appeared and represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the file does not contain any letters of protest or opposition.

Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Bureau of Development Plans Review (DPR), indicating

that a landscape plan must be received and approved prior to the issuance of any permits.

Testimony and evidence revealed that the subject property is 0.563 +/- acres and is zoned BL. Pawnshops are not permitted as of right or by special exception in the BL zone, but Mr. Dubick has operated his pawnshop (“Essex Pawn”) for over 22 years. Since he was operating on the effective date of Bill No. 112-1995, the operation is grandfathered. Exhibit 13. Counsel for Petitioners presented a chart prepared and maintained by the County indicating that Mr. Dubick’s business was a “pawn shop with pre- 7/6/95 approval.” Exhibit 14. Carl Richards, the Director of the County’s Office of Zoning, testified he would have permitted the business to move within the strip of stores to which it is attached without a hearing, but that he believed a petition for Special Hearing was required in this case, where the shop is proposing to relocate to a newly constructed building which is approximately 150 feet from the existing location.

Mr. Dubick testified he has never been convicted of a crime, and that he operates his business with integrity. As evidence of that fact he presented a “Distinguished Citizen’s Award” he received from the Baltimore County Police Department in 2010. Exhibit 11. The Petitioner also presented letters of support from the community and the owner of the business that would abut the new operation. Exhibits 5 & 6. Mr. Dubick testified he now leases space, but wants to purchase the dilapidated property located next door and construct a new building on the lot. Exhibits 7-10 (color photos). The Petitioner would be investing over \$500,000 in purchasing the land and constructing a new building for his shop. Proposed elevation drawings were submitted (Exhibit 4), showing plans for an attractive new store at the location, which will no doubt be a significant “facelift” for this property.

Section 6 of Bill 112-95 provides that pawnshops in operation before July 6, 1995 are not subject to B.C.Z.R. §436.4, which provides (among other things) that there may not be “more than

two pawn shops . . . in a Councilmanic district.” The evidence here established there are 3 pawn shops in the 7<sup>th</sup> District, Exhibit 3, although the Petitioner is grandfathered and not subject to this provision. Mr. Dubick explained that the nearest pawn shop is located approximately 3 miles from his, in Dundalk, and that his was the only pawn shop in Essex.

In legal parlance, the Petitioner enjoys non-conforming use status with respect to the pawn shop operation at 136-140 Eastern Boulevard. Should the operation be moved to a new location, using different facilities, structures, etc., Maryland law - - which disfavors non-conforming uses - - provides that the status would be lost, and the Petitioner would then need to comply with current zoning regulations.

In this case, that rule produces a harsh result. The Petitioner proposes to move to an adjacent parcel, and would in the process be constructing an attractive building to replace a dilapidated eyesore that has been vacant for over five years. But the danger in permitting the relocation (at least without conditions, discussed below) is that the owner of the property at 136-140 Eastern Boulevard would be entitled to continue the operation of a pawn shop at the original location. An “established nonconforming use runs with the land, and hence a change in ownership will not destroy the right to continue the use.” 8A McQuillin, the Law of Municipal Corporations, § 25.183.50. In addition, “a nonconforming use is not personal to the current owner or tenant, but attaches to the land itself.” 83 Am. Jur. 2d, Zoning and Planning, § 587. This would increase the number of pawn shops in the County and would thereby be at odds with the goals articulated in Bill No. 112-1995.

But I believe there is a way in which the proposed relocation can be accommodated. If Mr. Dubick secures from his landlord an affidavit wherein the owner unequivocally relinquishes whatever right he or a future tenant might enjoy to operate a pawn shop on the premises as a non-

conforming use, the status quo would be preserved. In other words, there would then be no increase in the number of pawn shops in the County and the Petitioner would continue operating the same business he has for over 20 years, albeit at a new (and improved) location just down the block.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing request should be granted. The Petitioner operates a reputable, long-standing pawn shop, and has the support of the community and neighboring businesses. Granting the Petition with conditions will not increase the number of pawn shops in the county, but will simply allow the business to move to an attractive new building immediately adjacent to its existing location.

THEREFORE, IT IS ORDERED, this 30<sup>th</sup> day of September, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the relocation of Essex Pawn Shop from 136-140 Eastern Boulevard, Essex, Baltimore County, MD 21221 to 202-204 Eastern Boulevard, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition
2. Petitioners must within 30 days of the date of this Order provide to the Office of Administrative Hearings and to Carl Richards at the zoning office a copy of the affidavit referenced in the above Opinion.
3. Petitioners must submit for approval by Baltimore County a landscape plan, prior to the issuance of any permits.

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

Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln