

IN RE: PETITIONS FOR SPECIAL HEARING *		BEFORE THE
AND SPECIAL EXCEPTION		OFFICE OF
(8306, 8310 & 8312 Harford Road)	*	
9 th Election District		ADMINISTRATIVE HEARINGS
6 th Council District	*	
Mudgett Properties, LLC		FOR BALTIMORE COUNTY
<i>Legal Owner</i>	*	
		Case No. 2017-0186-SPHX
Petitioner	*	
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Mudgett Properties, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to permit business parking in a residential zone; (2) to confirm that an existing service garage may include vehicles that are kept for remuneration, hire or sale as an accessory use with limitations; and (3) to provide design, screening and landscaping as shown on the site plan. A Petition for Special Exception was filed: (1) to permit a service garage at 8312 Harford Road in a B.L-A.S. zone, as part of an existing service garage located at 8306-8310 Harford Road; and (2) to permit vehicles on the property that are kept for remuneration, hire or sale.

Appearing at the public hearing in support of the requests was Jim Mudgett and surveyor Dan Staley. Jason Vettori, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 0.75 acres in size and is split-zoned BL-AS and DR

5.5. Petitioner operates a service garage (known as “Maryland Collision Center”) at the property. Petitioner proposes to expand the operation onto an adjoining parcel, which would involve the construction of a one-story garage with six service bays. Petitioner also seeks to expand the off-street parking in the DR 5.5 zone, which was originally approved in Case No. 2014-0029-SPH. The property is located in the Parkville Commercial Revitalization District, and Petitioner indicated he has invested a significant sum of money to improve the appearance of the site.

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*, ___ Md. ___, 152 A.3d 765 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court reaffirmed 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. *Id.*

A special exception was granted in 1983 to operate a service garage (i.e., auto body shop) at this property. Thus, a garage has operated here for almost 35 years, and Petitioner noted when he acquired the business in 2013 the building and site were in poor condition. Petitioner has improved the appearance and functionality of the site. At present Petitioner seeks only to enlarge the area in which the special exception use will be conducted. No evidence was presented in opposition to the request, and I believe Petitioner is entitled to the special exception.

SPECIAL HEARING

The special hearing petition contains two requests, the first of which pertains to keeping vehicles for “remuneration, hire or sale” at a service garage. I do not believe special hearing

relief is required for this determination. The definition of “service garage” expressly includes vehicles “kept for remuneration, hire or sale.” B.C.Z.R. §101.1. In a prior zoning case (No. 2014-0029-SPH) certain conditions were imposed upon the operation of this service garage, and those shall continue in full force and effect.

The other aspect of the special hearing petition concerns business parking in a residential zone. Such parking (pursuant to B.C.Z.R. §409.8) was permitted in Case No. 2014-0029, and in this case Petitioner seeks to expand that parking onto an adjoining parcel of roughly equal size. Though there is a dwelling on Onyx Road adjacent to the proposed parking, there is an existing eight (8) ft. high board fence with vegetation to screen the parking lot.

While I appreciate and acknowledge the DOP’s concern with expanding the business parking, I do not believe granting the request will have a detrimental impact upon the community. As noted, this site is in a commercial revitalization zone. In 2013, the County Council enacted legislation specifying that business parking in a DR zone approved under B.C.Z.R. §409.8 was not subject to the residential transition area (RTA) regulations. *See* Bill 36-13. That same legislation permits business parking in a DR zone by right “if there is an existing parking facility.”

Here, it is at least arguable Petitioner would be entitled by right to the expanded parking since a business “parking facility” already exists at the site. Though Petitioner has not made such an argument, I make the point simply to underscore that the County Council has relaxed the restrictions on business parking in DR zones located in commercial revitalization areas. Petitioner is reminded that disabled or damaged motor vehicles may not be stored in the DR 5.5 portion of the property to which this special hearing request relates. Such vehicles may only be stored in the area labeled on the plan (Petitioner’s Ex. No. 4) as “Existing Disabled Vehicle

Storage” as approved in Case No. 83-219-SPHX.

THEREFORE, IT IS ORDERED this 17th day of March 2017, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to permit business parking in a residential zone; and (2) to confirm that an existing service garage may include vehicles that are kept for remuneration, hire or sale, as provided in the definition of “service garage” in B.C.Z.R. §101.1, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a service garage at 8312 Harford Road in a B.L-A.S. zone, as part of an existing service garage located at 8306-8310 Harford Road, be and 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 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.
2. All conditions set forth in the order in Case No. 2014-0029-SPH shall continue in full force and effect.
3. Petitioner shall provide landscaping and lighting at the site as determined in the sole discretion of the Baltimore County landscape architect.
4. Disabled or damaged motor vehicles may only be stored in the area labeled on the plan as “Existing Disabled Vehicle Storage” as approved in Case No. 83-219-SPHX.

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