

IN RE: PETITIONS FOR SPECIAL HEARING *		BEFORE THE
AND SPECIAL EXCEPTION		
(10821-10825 Philadelphia Road)	*	OFFICE OF
11 th Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
James & Marlene Barbey		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2018-0099-SPHX
* * * * *		

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 James & Marlene Barbey, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve an amendment to the previously approved site plan in Case No. 2006-0430-SPH and to allow an expansion of the existing service garage on the subject property with an additional four (4) bays (1606 sq. ft. to 4406 sq. ft.). A Petition for Special Exception was filed to use the herein described property for a service garage.

James & Marlene Barbey attended the public hearing in support of the requests. Frank G. Lidinsky, Esq. represented the Petitioners. 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 Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Neither agency opposed the requests.

This case concerns two parcels (Nos. 883 & 317) known as 10821 and 10825 Philadelphia Road. The property is approximately 38,315 sq. ft. in size and is split-zoned BL-RO and DR 3.5. The property is improved with two single family dwellings, both of which will remain. A service

garage also operates at the rear of the site, pursuant to a special exception granted in 1975. Case No. 1975-0053. Petitioners propose to add four additional service bays, for a total of seven service bays. The existing office used in connection with the service garage would also be relocated slightly and enlarged.

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 noted at the outset, a special exception for a service garage was granted in 1974. As such it is arguable Petitioners do not need another special exception for the expansion of the same use. In any event, motor vehicles have been serviced at this location for over 40 years, and I do not believe the proposed expansion would have a detrimental impact upon the community.

SPECIAL HEARING

The petition for special hearing seeks to amend the site plan approved in the 2006 zoning case. In that case the Zoning Commissioner approved an expansion of the service garage from 2 to 3 bays. Two restrictions were noted in the Order for case No. 2006-0430-SPH, and those will continue in full force and effect and for ease of reference are restated below as Condition Nos. 4 & 5.

THEREFORE, IT IS ORDERED this 17 day of **November 2017**, by this Administrative Law Judge, that the Petition for Special Hearing to approve an amendment to the previously approved site plan in Case No. 2006-0430-SPH and to allow an expansion of the existing service garage on the subject property with an additional four (4) bays (1606 sq. ft. to 4406 sq. ft.), as shown on the site plan marked and admitted as Petitioners' Exhibit 1, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to use the herein described property for a service garage, be and 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 proposed addition shall be constructed of materials which are similar to and complement the appearance of the existing service garage.
3. Prior to issuance of permits Petitioners must submit for approval by Baltimore County a landscape plan for the site.
4. There shall be no outside storage of damaged or disabled vehicles on the premises.
5. Hours of operation shall be limited to 8AM to 8PM, Monday through Saturday. Other than for emergency repairs the service garage shall not operate on Sunday.

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