

IN RE: PETITION FOR SPECIAL HEARING Intersection of Sunshine and Belair Roads 11852-60 Belair Road 11th Election District 5th Councilmanic District C.B.S. Partnership Petitioner	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY CASE # 91-250-SPH
---	----------------------------	---

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests, pursuant to the Petition for Special Hearing, a finding that the hereindescribed property known as 11854 Belair Road is a legal nonconforming use as a service garage, as more particularly described on Petitioner's Exhibit 1.

The Petitioner, by Richard W. Benson, Managing Partner, and represented by David A. Rogers, Esquire, appeared and testified. Also appearing on behalf of the Petition were Robin Beers, John L. Sikalis, George E. Heffner, Kenneth A. Klass, Howard Alderman, Esquire, Edward E. Christhilf and Jeffrey S. Insley. There were no Protestants.

Testimony indicated that the subject property known as 11852-60 Belair Road consists of 1.012 acres +/- zoned B.L.-C.R. and is currently improved with the subject service garage.

Richard Benson testified that he has been one of the owners of the subject property since 1981 and that the Petitioner currently leases the subject site to J.S.I., Inc., who operate a service garage and inspection station. He testified that J.S.I. currently does general mechanical and electrical work but, no body, body/fender or painting work. He indicated that J.S.I. does sell tires, batteries, anti-freeze, etc., from the site.

George E. Heffner, formerly of the House of Delegates, testified that he is 68 years old and has resided in this community his entire life. Mr.

Heffner testified that he has personal recollection of the subject property being utilized as a service garage dating back to 1937-38. He testified that he has no recollection of the subject use ever being discontinued for any period of time.

Kenneth Klass testified that he is currently 69 years of age and has personal recollection of the subject site being used as a service garage since approximately 1932-33. Mr. Klass concurred with the comments of Mr. Heffner.

Robin Beers appeared on behalf of the Greater Kingsville Community Association. Mrs. Beers testified in support of the Petitioner's request and placed on the record the essence of their agreement between the Greater Kingsville Community Association and Petitioner regarding the subject site. Mrs. Beers' concerns were primarily with the storage of damaged and/or disabled vehicles within the storage area indicated on Petitioner's Exhibit No. 1. Mrs. Beers testified that the Petitioner agreed to maintain a wood privacy fence around the subject storage area and to clean and maintain the grass area indicated on Petitioner's Exhibit No. 1.

As with all nonconforming use cases, the first task is to determine what lawful nonconforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

Based on the uncontroverted evidence presented in this case, the subject property was clearly utilized as a service garage as that term is defined in the B.C.Z.R. prior to January 2, 1945.

The second principal to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different

ORDER RECEIVED FOR FILING

Date

By

5/11/91
M. D. [Signature]

use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App.257, 385 A2d. 96 (1978).

Clearly, the testimony and evidence in this case demonstrated that there has been no "change in use of the subject property" from the early 1930s.

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."
McKemy v. Baltimore County, Md., supra.

Based on the above, the Petitioner has clearly met the requirements of Section 104 of the B.C.Z.R. and, therefore, the requested relief should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing should be granted.

ORDER RECEIVED FOR FILING
Date 5/11/91
By M. H. H. H.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 1st day of May, 1991 that the Petition for Special Hearing for a determination and finding that the hereindescribed property known as 11854 Belair Road is a legal nonconforming use as a service garage, in accordance with Petitioner's Exhibit No. 1, is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner shall not store damaged or disabled motor vehicles overnight in front of the subject building.
3. The Petitioner shall store all automotive parts, tires, and recyclable materials inside of the premises or in an enclosed area behind the building.
4. The privacy fence located to the rear of the property shall be maintained and kept in good condition by the Petitioner.

ORDER RECEIVED FOR FILING

Date

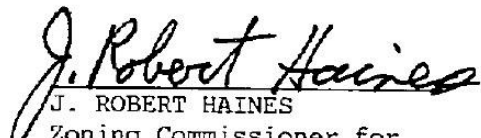
5/1/91

By

M. Novak

JRH:mn

cc: Peoples Counsel


J. ROBERT HAINES
Zoning Commissioner for
Baltimore County