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| <b>IN RE: PETITION FOR SPECIAL</b>      | * | BEFORE THE                  |
| <b>EXCEPTION</b>                        |   |                             |
| SE side of Belmont Ave. SW side of      | * | OFFICE OF                   |
| White Stone Road                        |   |                             |
| 1 <sup>st</sup> Election District       | * | ADMINISTRATIVE HEARINGS     |
| 4 <sup>th</sup> Councilmanic District   |   |                             |
| <b>(6709 White Stone Road)</b>          | * | FOR                         |
|   |   |                             |
| Generation III. LLC, <i>Legal Owner</i> | * | BALTIMORE COUNTY            |
| Surf's Up Body Shop,                    |   |                             |
| <i>Contract Purchaser</i>               | * | <b>Case No. 2012-0233-X</b> |
| Petitioners                             |   |                             |
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**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings as a Petition for Special Exception filed for property located at 6709 White Stone Road. The Petition was filed by the legal owner of the subject property, Generation III, LLC. The Special Exception Petition seeks approval for a service garage in an M.L.-I.M. zone, pursuant to Baltimore County Zoning Regulations (“B.C.Z.R.”) Section 253.2.B.3. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 2.

Appearing at the hearing on behalf of the Petitioners were Matthew Azrael, owner, Cecil Redmond, Jr. and Kevin A. Fuller, with Surf’s Up Body Shop, Mitchell J. Kellman with Daft McCune Walker, Inc., the firm who prepared the site plan, and David Paulson with Blue and Obrech. Keith S. Franz, Esquire with Azrael, Franz, Schwab and Lipowitz, LLC, attended and represented the Petitioners. There were no Protestants or interested persons in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Planning, dated April

17, 2012, which indicated no opposition to the Petitioner's request. That Department did request the following prior to relief being granted:

1. Clearly delineate customer and employee parking areas on the site plan and on the actual site.
2. Designate a disabled vehicle storage area in the rear of the building. This area should be fenced and screened.
3. Disabled vehicles delivered after hours shall be stored inside the building within 24 hours of drop-off or in the designated disabled vehicle portion of the site.

Testimony and evidence revealed that the subject property is 0.614 acres and zoned M.L.-I.M., and is part of the Meadows Industrial Park. *See* Exhibit 3. The premises are owned by Matthew Azrael, and he is proposing to lease the site to Surf's Up Body Shop for a service garage operation. Cecil Redmond, Jr., one of the principals of Surf's Up, testified he has been in this business for over 20 years, and wants to move his operation from Baltimore City to the subject property. He indicated the property is conveniently located off of the Beltway, and he felt that he could provide service, not only to other businesses and tenants in the industrial park, but also to nearby Social Security Headquarters' employees and other area businesses. The Petitioners submitted letters from the adjoining tenants in 6709 Whitestone Road (a church and a furniture warehouse), both of whom support the special exception request (Exhibits 4 and 5).

In support of the requested relief, Petitioners' engineer, Mitchell Kellman, provided expert testimony that the property's proposed use as a service garage satisfies all the special exception criteria set forth in Section 502.1 of the B.C.Z.R. In particular, Mr. Kellman testified that the proposed use would not be detrimental to the health, safety or general welfare of the locality, would not create congestion in roads or streets, and would not create a potential hazard from fire, panic or other danger. Additionally, the service garage use would not overcrowd the land. He

also opined the use would not interfere with the provision of public services or with adequate light and air, and would not be inconsistent with the property's manufacturing – light zoning classification with an industrial – major District overlay, or with the spirit and intent of the B.C.Z.R., and would not be detrimental to any other applicable special exception criteria.

Section 253.2.B.3 of the B.C.Z.R. permits a service garage as an auxiliary service use in the I.M. District by special exception, provided the criteria set forth in Section 502.1 of the B.C.Z.R. are met. The uncontroverted testimony and evidence from Petitioners' engineer indicates that the proposed use would not have any detrimental impacts on the required Section 502.1 criteria. Therefore, I am convinced that the use proposed at the subject location would not have any adverse effects above and beyond those inherently associated with such a special exception use, irrespective of its location within the zone (See, *Schultz v. Pritts*, 291 Md. 1 (1981) and *People's Counsel v. Loyola College*, 406 Md. 54 (2008)), nor would the use be detrimental to the nearby commercial and manufacturing uses in its vicinity.

Upon review of the site plan and considering the testimony of Mr. Kellman, I do not believe it is necessary for Petitioners to delineate the employee and customer parking. However, I concur with the Department of Planning's comments regarding storage and processing of damaged/disabled vehicles, and will impose a condition to that effect.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception request should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 9<sup>th</sup> day of May, 2012 that Petitioners' request for Special Exception to approve a service

garage in an M.L.-I.M. zone, pursuant to Baltimore County Zoning Regulations (“B.C.Z.R.”) Section 253.2.B.3, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for their building permit 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 store all disabled/damaged vehicles inside the subject premises, and must do so within 24 hours of their receipt of such vehicles. In the event it becomes necessary to store disabled vehicles outside of the leased structure, such vehicles shall be stored only in the rear of the building in a fenced and screened enclosure.

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/dlw