

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(4381 Hollins Ferry Road)		
13 th Election District	*	OFFICE OF
1 st Councilmanic District		
Shreyas and Nisha Panchigar	*	ADMINISTRATIVE HEARINGS
Petitioners	*	
	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0115-X

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 4381 Hollins Ferry Road. The Petition was filed by the legal owners of the subject property, Shreyas and Nisha Panchigar (“Petitioners”). The Special Exception Petition seeks relief pursuant to § 230.13 of the Baltimore County Zoning Regulations (B.C.Z.R.), to use the herein described property for an automotive service garage. 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 was Nisha and Shreyas Panchigar and Patrick C. Richardson, professional engineer with Richardson Engineering, LLC, the consulting firm that prepared the site plan. Also appearing was Elizabeth Yankulov, Everett Hall-McNeill, Kimberly and Robert Maith and Richard Kunz. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Department of Planning (DOP), and the Office of People’s Counsel have indicated they believe the Special Exception must be denied in light of the Order in CBA # CR-07-132-X, which provided the property shall not be used for an automobile service garage.

Testimony and evidence offered at the hearing revealed that the subject property is 51,518 square feet (1.18 acres) and is zoned BL-AS. The Petitioner testified that he previously operated for over 24 years filling stations and auto service garages (under leasehold agreements) on properties adjacent to the subject property. The Petitioner is no longer involved with those ventures, and desires to construct and operate on the subject property - - which he acquired in 2003 - - a service garage to complement the existing car wash facility.

This case is somewhat unusual, given that, as noted above, the CBA opinion in 2006 granted the petition for reclassification (to B.L.-A.S.) but prohibited the operation of a service garage on this site. The Petitioner testified that the community insisted on that restriction in 2006 because, at that time, he was also operating filling stations and service garages on adjacent properties, and the fear was that the Petitioner would expand those operations onto this site. At the present time, the Petitioner is no longer operating any of those facilities, and only operates the car wash at the present site. The Petitioner testified he wants to operate a complimentary business on the site, and he believes an auto service garage would be appropriate and in demand, since such services are not offered at the gasoline stations in the vicinity.

Thus, it would seem as if what was an appropriate restriction in 2006 is no longer justified, especially since the present zoning (BL-AS) is “appropriate for uses dominated by the parking and servicing of automobiles.” B.C.Z.R. § 259.2. I am cognizant of the objections noted by DOP and the Office of People’s Counsel, and it is not my intent to “overrule” the earlier CBA opinion. Rather, I believe that to have the restriction removed, the Petitioner will ultimately need to seek approval from the CBA, and after some research and review of the regulations it appears the Petitioner must begin that process in the Office of Administrative Hearings (OAH), since I was unable to determine any basis for “original jurisdiction” in the CBA. As such, I advised the

Petitioner to file an amended zoning petition adding a request for Special Hearing relief to amend the order in CR-07-132-X. See Exhibit 1. I will grant the Special Hearing relief because I believe it is the appropriate vehicle for the Petitioner to seek an amendment of the earlier CBA Order¹, and as noted below, I also believe Special Exception relief is properly granted in this case.

Petitioners seek special exception relief from § 230.13 of the Baltimore County Zoning Regulations (B.C.Z.R.), to use the herein described property for an automotive service garage. 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 People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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. There was no such evidence in this case, and unlike with the reclassification petition in 2006, the five (5) community members at the hearing indicated they strongly support the Petitioner, and urged that the relief be granted. Finally, it is worth noting that in 2003, former Deputy Zoning Commissioner Murphy granted Special Exception relief for the operation of a service garage at this property (#04-196-X) although the Special Exception was never “utilized” and therefore lapsed as a matter of law. See Exhibit 3.

¹ Under the County Code, when a reclassification petition is granted, the petitioner is obligated to use the property “in accordance with the plan included in the documentation.” Baltimore County Code (B.C.C.) §32-3-514(b). In the 2006 reclassification case, the plan did not prohibit the operation of a service garage. See Exhibit 5, note 3. That restriction is found only in the order in # CR-07-132-X, and thus it is arguable that the Petitioners would not need further relief from the County Board of Appeals.

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 Hearing and Special Exception requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 15th day of January, 2013, that Petitioners' request for Special Exception relief under § 230.13 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to use the herein described property for an automotive service garage, be and is hereby GRANTED.

IT IS FURTHER ORDERED by the Administrative Law Judge for Baltimore County that the Petition for Special Hearing under B.C.Z.R. §500.7, to amend the Order in case # CR-07-132-X in accordance with the terms of this Order, 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.

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

JEB/sln

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County