

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		
<b>(10813 Davis Avenue)</b>	*	OFFICE OF
2 <sup>nd</sup> Election District		
4 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
William E. and Kathleen Skullney	*	FOR BALTIMORE COUNTY
Petitioners	*	
	*	<b>Case No. 2013-0117-SPHX</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed by the legal owners, William E. and Kathleen S. Skullney. The Petition for Special Hearing was filed pursuant to § 409.8.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to determine whether or not the Administrative Law Judge should approve business parking in a residential zone. In addition, a Petition for Special Exception was filed pursuant to B.C.Z.R. §1A04.2.16 and 402.2, to use the herein described property for a Tearoom.

Appearing at the public hearing in support of the requests were William E. and Kathleen S. Skullney and Bernadette Moskunus, with Site Rite Surveying, Inc., the consulting firm that prepared the site plan. Citizens who attended were Paul Dorsey, Beverly M. Griffith, Karen Koelbel, Joyce Utmar and Marthetta Kelley. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. The file does not contain any letters of opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive comment was from the Department of Planning (DOP), which expressed its support for the project.

Testimony and evidence offered at the hearing revealed that the subject property is 2.03 acres and is zoned RC-5. The property is improved with an historic dwelling, constructed in 1873. The Petitioners propose to use 750 square feet of the dwelling's first floor as a tea room, and they will continue to occupy the 2<sup>nd</sup> and 3<sup>rd</sup> floors of the dwelling as their principal residence.

### **Special Hearing**

The Petition for Special Hearing seeks approval for business parking in a residential zone under (B.C.Z.R.) Baltimore County Zoning Regulations § 409.8.B. William Skullney testified that the church which is adjacent to their home has agreed (See Exhibit 2) to allow Petitioners to use 12 parking spaces on its lot for use by tea room patrons. The site plan shows that Petitioners will construct a walking path connecting their home to the church's parking lot, making it safe and easy for tea room customers to access the site. As noted, these are pre-existing parking spaces, and I do not believe that using 12 of the spaces (the church lot has over 80 spaces in total) for the tea room would in any way negatively impact the community.

### **Special Exception Standards**

Special exception uses are presumptively valid and consistent with the comprehensive zoning plan, People's Counsel v. Loyola College, 406 Md. 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption. In fact, several members of the community attended the hearing and expressed enthusiastic support for the project. In addition, the Granite Historic Society, at its November 12, 2012 meeting, voted to support the Petition. Exhibit 4. Finally, Petitioners also submitted letters of support from 22 members of the community. Exhibit 5.

Pursuant to the advertisement, posting of the property, and public hearing, 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 this 7th day of January, 2013, by this Administrative Law Judge, that Petitioners request for Special Hearing to determine whether or not the Administrative Law Judge should approve business parking in a residential zone, be and is hereby APPROVED, and

IT IS FURTHER ORDERED that Petitioner's Special Exception request from B.C.Z.R. §1A04.2.16 and 402.2, to use the herein described property for a Tearoom, 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.
2. The Tearoom hours of operation shall be restricted to Thursday through Saturday from 11:00 a.m. to 4:30 p.m.

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

