

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(8306 & 8310 Harford Road)		
9 th Election District	*	OFFICE OF
6 th Councilmanic District		
Mudgett Properties, LLC	*	ADMINISTRATIVE HEARINGS
Petitioner		
	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0029-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt, LLC, on behalf of the legal owner, Mudgett Properties, LLC. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows: (1) to permit business parking in a residential zone; (2) to confirm that an existing service garage may include vehicles that are kept for remuneration, hire or sale; and (3) to provide design, screening and landscaping as shown on the site plan.

Appearing at the public hearing in support of the requests was Dwight Little, P.E., and Jim Mudgett. Lawrence E. Schmidt, Esquire appeared and represented the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance at the hearing, although the Office of People’s Counsel submitted a letter expressing certain concerns.

Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). DPR indicated that a landscape plan must be approved prior to the issuance of any building permits and DOP (which

initially indicated they opposed the request) stated in a revised comment that they support the request with the following conditions:

- (1) Parking will be limited to employee parking only, no storage of vehicles;
- (2) The existing fence and overgrown shrubbery must be cleaned up and removed;
- (3) A residential type fence should be constructed to screen the area (8' privacy fence wood/pvc, not chainlink);
- (4) Landscaping must be provided along the newly constructed fence (residential side), class A screening is required; and
- (5) Any lighting proposed must not shine outside of the area.

The subject property is 24,306 +/- square feet in size and is zoned DR 5.5 and BL-AS. It is this split zoning that makes this case somewhat complex. In 1983, a special exception was granted for the operation of a service garage (body and fender repair and towing) on a portion of the property. See Exhibit 2 (Order in No. 83-219). A small portion of the site, shown with cross-hatching on the site plan and zoned DR 5.5., was in 1983 deemed a lawful non-conforming use for the storage of damaged/disabled vehicles. Id. Mr. Mudgett explained this is where cars are stored awaiting body and fender repair, and he stated that the storage of these vehicles has taken place in the same area since 1983, and will not increase or expand in any way. In 1990, (Case No. 90-564-SPH) the owner acquired additional property and expanded the service garage operation, such that the site was improved with two single story garage buildings with a capacity of 10 bays total. The Petitioner in this case seeks Special Hearing relief for business parking in a residential zone, and Mr. Mudgett explained this would be only for customer and employee parking.

Such an arrangement is permitted under B.C.Z.R. §409.8, subject to the standards set forth in the regulations. In this case, the majority of the property in this vicinity is zoned and used in a commercial fashion, although there is a dwelling abutting Petitioner's

property to the north. The body and fender operation has been in place for over 30 years, and no evidence was presented which would indicate that the business has endangered the health, safety, or welfare of the community. In fact, the Petitioner has recently acquired the business and has completed numerous improvements, such that the DOP (when shown updated photos of the new operation, marked as Exhibit 5A-5J) has now expressed support for the petition. In these circumstances, I believe the Petitioner has satisfied the requirements of B.C.Z.R. §409.8.B and this aspect of the petition for Special Hearing will be granted.

The next request concerns the sale of vehicles at the site. Petitioner's counsel stated (and I concur) that the definition of "service garage" in the regulations encompasses the sale of motor vehicles. I also understand that the zoning office has a longstanding policy requiring a public hearing to establish appropriate parameters for the sale of vehicles by a service garage. Mr. Mudgett explained (and in other cases service garage owners have testified in a similar fashion) that on occasion a vehicle towed to his shop by an insurance company or the police will not be reclaimed by its owner. In these circumstances, the vehicle must be sold (in the nature of a garageman's lien, per Md. Comm. Law Code Ann. §§16-201 et.seq.) to satisfy the charges incurred, and this aspect of the petition for Special Hearing will also be granted.

The final request concerns screening and landscaping for the customer and employee parking area. The plan in the case does not contain sufficient detail to determine whether or not an appropriate buffer is provided for the adjoining dwelling. As such, rather than granting this aspect of the petition, I will include a condition requiring

the Petitioner to submit for approval to the County's landscape architect a plan detailing the screening, lighting and landscaping for the site.

Pursuant to the advertisement, posting of the property, and the public hearing, I find that Petitioner's Special Hearing request should be granted, subject to the conditions noted below.

THEREFORE, IT IS ORDERED this 2nd day of October 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), as follows: (1) to permit business parking in a residential zone; and (2) to confirm that an existing service garage may include vehicles that are kept for remuneration, hire or sale, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, 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, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Only customer and employee parking of passenger vehicles shall be permitted in the DR 5.5 portion of the site outlined in yellow on the site plan marked and admitted as Exhibit 1.
3. Prior to the issuance of any permits, the Petitioner shall submit for approval to the County a landscape, screening and lighting plan for the site. The landscaping, screening and lighting shall be designed to minimize the potential impacts upon the adjoining dwelling at 2919 Onyx Road, and the design and sufficiency of the necessary improvements shall be determined in the sole discretion of the County's landscape architect.
4. The Petitioner shall be permitted to sell a maximum of 50 vehicles per year.

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