

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
NE/Side of Music Fair Rd., 875' SE	*	ZONING COMMISSIONER
C/line of Painters Mill Road		
(12 Music Fair Road)	*	OF
3 rd Election District	*	BALTIMORE COUNTY
2 nd Council District		
	*	
12 Music Fair Road, LLC, <i>Legal Owner</i>		
PLMD, LLC, <i>Contract Lessee</i>	*	Case No. 2009-0207-SPHX
Petitioners	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owner of the subject property, 12 Music Fair Road, LLC, and PLMD, LLC, (PLMD) contract lessee, through their attorney, Arnold E. Jablon, Esquire with Venable, LLP. The Petitioners request a special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C. Z.R.), to confirm that (1) dispatching of vehicles is accessory to the principal use as offices; and (2) minor repairs of vehicles is accessory to the principal use as offices. In the event it is determined that the special hearing relief requested does not meet the regulation requirements, Petitioners have filed, in the alternative, a petition for special exception to permit a service garage use at this location. The subject property and requested relief are more particularly described on the amended site plan¹ submitted, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing were William C. Krasner, managing member of PLMD; Thomas A. Church, Professional Engineer with Development Engineering

¹ The plan was amended in response to comments received from the Office of Planning who does not oppose the use but asked for revisions to reflect perpendicular parking instead of angled parking, security fencing, site access, etc.

Consultants, Inc., who prepared the site plan for this property, and Arnold E. Jablon, Esquire, on behalf of the Petitioners. There were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies and no one appeared as a Protestant in opposition to the request.

Testimony and evidence offered revealed that the subject property is comprised of three (3) separate lots of record that form an irregular rectangular shaped tract consisting of 0.73 acres (32,034 square feet) of M.L.-I.M. zoned land in Owings Mills. The site is located on the northeast side of Music Fair Road, which is just south and perpendicular to Painter's Mill Road. The property is improved with a one-story warehouse/office building, of approximately 27,000 square feet. PLMD is proposing to lease a portion (10,200 square feet) of the existing building. There will be no new construction and no variances are requested. The existing building is also rectangularly shaped and the contract lessee's use of the building is that portion shown on the site plan surrounded by yellow highlighter or the left-portion of the building, adjacent to 10 Music Fair Road, owned by Real Estate, LLP and used as a construction equipment storage yard and offices.

The purpose of the special hearing request is to confirm that the proposed uses by the Petitioner (PLMD) are permitted as of right. As noted, there is to be no change to the footprint of the existing building, to any other use on site, nor to the site itself. PLMD proposes to have its office and storage space in the front portion of the building (7,968 square feet) and to dispatch non-emergency medical transportation vehicles (specialized vehicles for handicap people) including the ancillary repair and maintenance of these vehicles. The described vehicles as shown on Petitioners' Exhibit 5 will be located outside, to the rear of the building, behind a secure fence and bordered by the existing CRX railroad tracks.

PMLD will employ three (3) to five (5) full-time office workers, including an office manager. The office will maintain all business and financial records. The purpose of the business is to provide non-emergency transportation to those in need due to age or disability from or to home, an alternative living facility, nursing home, hospital, or doctor's office for those who do not have available transportation or cannot transport themselves. In addition, it will employ about 12-15 full-time drivers on any given day and approximately 30 employees who will work directly with assisted living facilities (ALF's), nursing homes, hospitals and doctors. These latter employees will not be located on-site. There will be approximately 12-15 non-emergency vehicles parked on-site. Each of these vehicles is expected to be in service daily. The drivers will park their personal cars in the non-emergency vehicle's parking space delineated on the site plan. PLMD wants to be able to wash the non-emergency vehicles, which will occur only within an 874 square foot rear portion of the building. See Petitioner's Exhibit 1, denoting the area for washing of vehicles. In addition, they propose to perform very minor vehicle repairs, such as oil changes. The 1,400 square foot area for this work is also shown on Exhibit 1. There will be no major vehicle repairs on site. These accessory uses would occur only inside the building. There will be no abandoned, disabled or unlicensed vehicles on site. No vehicles will be for sale and none for hire.

This property is, according to Mr. Church, uniquely qualified for this particular use for the following reasons. First, because of its location. Immediately to the rear of the site and bordering the full length of the site is the CRX tracks. These railroad tracks literally separate more intense manufacturing uses that exist between the tracks and Reisters town Road from the uses on Music Fair Road. See aerial photographs submitted as Petitioners' Exhibits 2 and 3, detailing the instant property and surrounding adjacent properties. The tracks are elevated with

steep grades down to the properties on either side, according to Mr. Church. Second, access to the parking area and to the interior of the building by vehicles is by an existing easement between 12 Music Fair Road, LLC and the owner of 10 Music Fair Road. This arrangement is illustrated on Petitioners' Exhibit 3 as well as on photos submitted as Exhibits 4, 5, 6 and 7. The easement will permit vehicles to use the adjacent driveway, on 10 Music Fair Road, back to the rear of the properties, with egress and ingress into the subject site by way of a driveway, through a gate and into the parking lot area of the subject property. This access is shown on Exhibit 1 as well as the fence and gate displayed in the photos (Exhibits 4-7). The vehicles will at all times be located in a totally secured area, with a fence line on both sides of the site and the tracks to the rear. Third, there is no residential community anywhere near this location. Immediately across the street is a major Toyota vehicle service center. Office uses and other commercial uses are nearby and adjacent. Finally, the site's location has easy access to I-795, Painters Mill Road, Reisterstown Road, Liberty Road, to the Owings Mills and Reisterstown communities, and is perfect for what is proposed.

Mr. Krasner stated the principal use of the building is the office where his full-time employees will maintain all records and provide the normal and customary office use for the business. The accessory uses would be minor repairs and vehicle washes, as described above. Mr. Krasner stated that only the non-emergency vehicles used by the business would be so maintained. Further, the dispatching of the vehicles is not done in the stereotypical way that limos and taxicabs are. These non-emergency vehicles are similar to ambulances, with wheelchair accessibility, but will not be used for emergency transportation. They will not be dispatched by 2-way radios as taxis are; the drivers will be given itineraries and contacted by cell phones. The proposed use is available only to a very specific population, not available to the

public generally. The sole purpose is to permit doctors and hospitals, nursing homes and ALF's to ensure that their patients are afforded the health services they require.

Section 253.1 of the B.C.Z.R. permits office use as of right in the M.L. zone. Section 253.1.F permits accessory uses as of right in the M.L.-I.M. zone. The vehicles, Mr. Jablon's opines, are not cabs or limos; they are not available for hire or sale. It is not the vehicle that forms the service the lessee will provide. Indeed, in the M.L.-I.M. zone, auxiliary service uses are permitted as of right. The service the lessee provides, as described, is to those who need patient management in order to meet their medical needs in a non-emergency setting, where they might not otherwise be able to do so. The use of vehicles to transport them, as was described, is but one element of the overall service provided. The office use is the principal use; the other uses are auxiliary to the office use.

The Petitioners filed, in the alternative, a request for a special exception to permit a service garage use. A service garage is defined, by Section 101 of the B.C.Z.R., as a "garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale." In this regard, I find that the office use is the principal use. I further find that the minor repairs and washing of the lessee's vehicles are accessory.

After due consideration of the testimony and evidence presented, I am persuaded to grant special hearing relief to confirm that (1) the dispatching of the non-emergency vehicles is accessory to the principal use of the office; and (2) the minor repairs of these vehicles is also accessory to the principal use of the subject property as an office. I further find that the petition for special exception to approve a conditional use for a service garage should be dismissed as moot.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein, the Petition for Special Hearing shall be granted. The Petition for Special Exception has been determined to be unnecessary and shall be dismissed as moot.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 1st day of April, 2009, that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), requesting confirmation that (1) the dispatching of vehicles is accessory to the principal use as offices; and (2) that minor repairs of vehicles is accessory to principal use as offices, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception filed in the alternative, to approve a service garage use on the subject property, be and is hereby dismissed as MOOT.

IT IS FURTHER ORDERED, that the relief granted is subject to the following conditions:

1. The Special Hearing relief granted is limited for uses and operations performed by PLMD, LLC and shall not run with the land as to enure to the benefit of any subsequent property lessor or owner.
2. The Petitioners are hereby made aware that proceeding at this is at their own risk until such time as the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
3. No body or fender work shall be performed on the site including the painting of vehicles.
4. There shall be no storage of abandoned, inoperable, damaged and/or disabled vehicles on the premises for longer than thirty (30) days.

5. The decision in this case is not a legal precedent that may be cited as such in any other zoning case involving dispatching of vehicles as accessory to the principal use as offices.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code and filed within thirty (30) days of the date of this Order.

_____ SIGNED _____
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Zoning
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WILLIAM J. WISEMAN, III
Commissioner
Baltimore County