

IN RE:PETITION FOR SPECIAL	*	BEFORE THE
EXCEPTION		
N side of Harko Court; 400 feet NW of the	*	DEPUTY ZONING
c/1 of Kelso Drive		
15 th Election District	*	COMMISSIONER
7 th Councilmanic District		
(3 Harko Court)	*	FOR BALTIMORE COUNTY
James Scott Cooper, Harko Court LLC	*	
<i>Petitioner</i>		
	*	Case 2010-0028-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by James Scott Cooper on behalf of the legal owner of the subject property, Harko Court, LLC. Petitioner is requesting a Special Exception pursuant to Section 253.2.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a service garage. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special exception were Petitioner James Scott Cooper on behalf of Harko Court, LLC, and Sebastian A. Cross, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was David Taylor with Morris & Ritchie Associates, Inc., the professional engineer who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is irregular in shape and contains slightly less than 3 acres, zoned M.L.-I.M. The property is located at the south side of the ramp from Pulaski Highway onto Martin Boulevard in the Essex area of Baltimore County. An aerial photograph showing the property and the surrounding areas was marked and

accepted into evidence as Petitioner's Exhibit 2. As shown in the aerial photograph, the subject property is situated just west of the Essex District Court facility located on Kelso Drive. Access to the property is from Harko Court off Kelso Drive to the south of the property. The property is part of a larger commercial/industrial park area that is bordered by Pulaski Highway to the west, and Martin Boulevard and Rossville Boulevard to the north and south, respectively. This particular property was one of the last unimproved properties in this commercial/industrial area. A brief look into the zoning history on this property will put the current request for zoning relief into context.

The property was the subject of a prior zoning case in Case No. 2008-0352-SPH. At that time, Petitioner was the contract purchaser and sought to develop the property and improve it with a 20,000 square foot warehouse building and related parking on each side of building. In order to do so, Petitioner requested special hearing relief for the granting of a waiver of the floodplain regulations in order to permit mitigation of the environmental constraints that were present on the property by grading the riverine floodplain area in order to move it away from the proposed location of the warehouse. In addition, Petitioner would perform stream stabilization pursuant to a stream restoration plan, and would also install a water quality facility and an underground storm water management facility on the property. At the public hearing, Petitioner presented evidence in support of the requested waiver, including testimony from Dave Thomas, a professional engineer with the Baltimore County Department of Public Works (DPW), and a memorandum from Edward C. Adams, Director of DPW, approving the waiver request. In an Order dated May 6, 2008, the undersigned granted the special hearing request for waiver.

Since that time, Petitioner has performed the aforementioned mitigation of the environmental constraints and has constructed the 20,000 square foot warehouse building and

related improvements. At this juncture, Petitioner desires to dedicate a 5,000 square foot area of the warehouse for use as a service garage, as shown on the site plan.

In support of the requested relief, Petitioner's consulting engineer, Mr. Taylor 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. Taylor 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 warehouse and the 5,000 square feet proposed for the service garage would not overcrowd the land. 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.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated August 25, 2009 which indicates that the property is located at the intersection of Pulaski Highway and Martin Boulevard at the highly visible entrance to the Martin residential and commercial community. The storage of cars waiting for repair should not be stored in the travel-way near Martin Boulevard. The parking calculation should be recalculated based on the number of service bays associated with the service garage. Any revisions to the parking configuration based on the new requirements should be reflected on the site plan. Landscaping may be used to enhance the look of the finished siding, but not in its stead. Landscaping must be used to screen the parking and loading areas from the public roads.

In regard to the requested special exception to use the property for a service garage, I am persuaded to grant this relief. 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 and their engineering consultant indicates that the proposed use would not have any detrimental impacts on the required 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.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's special exception request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 7th day of October, 2009 that Petitioner's request for a Special Exception pursuant to Section 253.2.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a service garage as shown on the site plan accepted into evidence as Petitioner's Exhibit 1, be and is hereby **GRANTED**, subject to the following conditions:

1. Petitioner may apply for its necessary building or use permits, as applicable, and be granted same upon receipt 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. The storage of cars waiting for repair should not be stored in the travel-way near Martin Boulevard.
3. The parking calculation should be recalculated based on the number of service bays associated with the service garage. Any revisions to the parking configuration based on the new requirements should be reflected on the site plan.
4. Landscaping may be used to enhance the look of the finished siding, but not in its stead. Landscaping must be used to screen the parking and loading areas from the public roads.

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

____SIGNED____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz