

<p>IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE E side of Loch Raven Blvd., 1080 feet SW of the c/l of Taylor Avenue 9th Election District 5th Councilmanic District (6809 Loch Raven Blvd.)</p> <p>Arthur F. Gnau & Sons, Inc. <i>Legal Owner</i></p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>BEFORE THE</p> <p>DEPUTY ZONING</p> <p>COMMISSIONER</p> <p>FOR BALTIMORE COUNTY</p> <p>Case No. 2010-0162-SPHXA</p>
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Emma H. Gnau on behalf of the legal owner of the subject property, Arthur F. Gnau & Sons, Inc. The relief requested is as follows:

The Special Hearing relief is requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve:

- A modification of the service garage special exception and accompanying site plan approved in Case No. 72-176-X consistent with the companion Petition for Special Exception submitted herewith; and
- The removal and/or modification of the conditions imposed in Case No.72-176-X consistent with the companion Petition for Special Exception submitted herewith and the testimony and evidence presented at the time of hearing on this Petition.

The Special Exception is requested to use the subject property as follows:

- To permit continued use of a service garage on the subject property in the commerical zone pursuant to Section 230.3 of the B.C.Z.R.

The Variance relief is also requested as follows:

- From Section 409.8.A.1 of the B.C.Z.R. to permit 0 feet of landscaped buffer in lieu of the required 10 feet; and

- From Section 409.4.A of the B.C.Z.R. to permit an existing two-way driveway width of 10 feet in lieu of the 20 feet required; and
- From Section 409.8.A.6 of the B.C.Z.R. to permit existing parking spaces without otherwise required striping.

The subject property and the requested relief are more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the Special Hearing, Special Exception, and Variance requests were Emma H. Gnau, owner and President of Petitioner Arthur F. Gnau & Sons, Inc., and her grandson, Darl M. Gnau, Jr. Howard L. Alderman, Jr., Esquire represented Petitioner at the hearing. Also appearing in support of the requested relief was Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the property line surveyor who prepared and sealed the site plan. Appearing as interested citizens were nearby neighbors Helen Williams of 6809 Collinsdale Road and Sandra Jones of 6719 Collinsdale Road. Ms. Williams and Ms. Jones are also members of the Old Hillendale Community Association. There were no Protestants or other interested citizens in attendance.

Testimony and evidence proceeded by way of a proffer of Mr. Doak's testimony by Mr. Alderman. Mr. Alderman indicated that Mr. Doak has been offered and accepted as an expert in land use, zoning (including the B.C.Z.R.), and development matters numerous times before this Commission, the Board of Appeals, and the Circuit Court, and Mr. Doak was accepted as such in this case. By way of background, Mr. Alderman indicated that the subject property is irregularly shaped, as shown on the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 2, and consists of approximately 36,849 square feet or 0.846 acre, more or less. The property is predominantly zoned B.L.-C.C.C., with a small area also zoned D.R.5.5 (owing to the residential development to the east). The property is located on the east side of

Loch Raven Boulevard, just north of its convergence with Goucher Boulevard, in the Hillendale area of Baltimore County. As shown on the site plan, the property is improved with a two-story stone and wood frame building, and a long macadam panhandle driveway leads from Loch Raven Boulevard to the main area of the property that includes more macadam paving and parking areas, as well as the aforementioned building.

The subject property has been in the Gnau family for many years. It had previously been used as a service garage by Arthur F. Gnau (Emma Gnau's late husband) for his business since approximately 1950 and was the subject of a zoning case in 1972. In Case No. 72-176-X, the service garage use was requested along with related variances for the property that was at that time zoned B.L. The relief was granted by this Commission, and was later granted by the Board of Appeals after being remanded by the Circuit Court. The Board of Appeals Opinion dated February 6, 1975 was marked and accepted into evidence as Petitioner's Exhibit 3. At that time, the property contained 32,140 square feet, but due to changes in lot lines over the years, the property now contains 36,849 square feet. The special exception area included the original building area shown and labeled on the site plan, but did not include a subsequent addition built in the 1980's that is shown as a cross-hatched area on the site plan.

The reason for the instant zoning relief is mainly to legitimize existing conditions as they have changed slightly over time, as well as to bring the property up to current zoning standards where necessary. In particular, the special hearing is to modify the previously granted special exception use and to remove and/or modify certain of the conditions imposed in that case, including the condition that limited the special exception use to seven commercial vehicles that were owned by Mr. Gnau. The special exception seeks to expand the use of the service garage to include the addition to the original building, and to permit the use to go beyond Mr. Gnau's

service garage use so as to include other potential users of the property for that purpose. The variance requests are to permit existing conditions to remain as they are today.

Mr. Alderman indicated that, as previously stated, the subject property has been used as a service garage for almost 60 years. It was used by Mr. Gnau's business, Arthur F. Gnau and Sons, Inc., to repair and store his trucks that were used for wholesale drug deliveries to retail drug outlets. Approximately four years ago, Mr. Gnau passed away and Mrs. Gnau has leased the property to various businesses over the years as a service garage. At this juncture, Mrs. Gnau desires to continue to lease the property as a service garage, but is in need of the aforementioned zoning relief to do so.

In support of the requested relief, Mr. Alderman indicated that the nature of the relief previously granted in 1975 and which has been in use since that time would essentially remain unchanged. There would be no expansion or additional construction, nor would the previously approved use be more intense than what has existed over the years. Photographs of the subject property and adjacent areas were marked and accepted into evidence as Petitioner's Exhibits 4A through 4S. Mr. Alderman also proffered Mr. Doak's expert testimony that the proposed service garage use would meet the special exception criteria set forth in Section 502.1 of the B.C.Z.R.

As to the requested variances, Mr. Doak's proffered testimony indicated that the existing 0 foot landscape buffer in lieu of the required 10 feet is located along the western property line as it abuts another commercial property along Loch Raven Boulevard that is home to a Laundromat. It was explained that the existing buffer more than adequately screens the subject property from the Laundromat, with large, mature evergreen trees separating the properties, making an additional 10 foot buffer superfluous and unnecessary. This was visually confirmed in the photographs that were accepted into evidence as Petitioner's Exhibits 4A and 4C. The

remaining photographs show the existing macadam paving and building, and the configuration and location of the building relative to nearby properties. The variance for the 10 foot two-way driveway width in lieu of the required 20 feet is shown in the photograph that was accepted into evidence as Petitioner's Exhibit 4I. This drive aisle connects two separate parking pad areas, as shown on the site plan. Mr. Doak's proffered testimony indicated that, although a 20 foot width is required, the unusual configuration of the property and the manner in which the property slopes compels the need and desire for variance relief. His expert testimony, and also the anecdotal evidence of Ms. Gnau and her grandson, Darl Gnau, indicates that the existing drive aisle width has been more than sufficient for the service garage use. According to Mr. Doak, widening the drive aisle would also unnecessarily increase the impervious surface area. As to the striping of parking spaces, Mr. Doak's testimony indicates that striping would give the property more of a commercial appearance, which Petitioner seeks to avoid, and the lack of striping has not created any difficulties in the past.

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: Comments were received from the Bureau of Development Plans Review ("DPR") dated December 10, 2009 which indicates that Petitioner should clarify whether there is a use-in-common agreement with the Jake, Jilly and Jane Properties, LLC property for access. If there is not, then the access to Loch Raven Blvd. is too narrow and the driveway median will have to be removed with the area paved over.¹ DPR takes no issue to granting the requested variances; however, they believe the two-way driveway aisle between parking spaces 5 and 6 must be widened to 16 feet. Comments were received from the

¹ I note that Loch Raven Boulevard is a State road (MD 542) and the State Highway Administration ("SHA") reviewed the site plan and performed a field inspection as part of its Zoning Advisory Committee review. Their comment, which is contained in the case file, revealed that the entrance onto Loch Raven Boulevard is consistent with current SHA guidelines and, therefore SHA has no objection to approval for the subject property.

Office of Planning dated January 11, 2010 which indicates that they have major concerns about this service garage that is only 10 feet away from a residential property line and only 50 feet away from a residential structure. The garage was originally built as a residential garage to the neighboring residential estate at 6801 Loch Raven Blvd. In 1972, Case No. 72-176-X approved a service garage at this location. Petitioner should prove that the special exception was utilized and thus vested. The site of the garage, which is behind a gas station off a major arterial, could possibly present several nuisance problems for the nearby adjacent homes. Headlights, noise and debris from a service garage would have a negative impact to the adjacent residential community. The residential homes have no buffer or screening from the proposed service garage, while the property boundary to the Laundromat just east of the property has a large vegetative buffer and is located more than 40 feet away. For those reasons, the Office of Planning does not oppose the Petitioner's variance requests for a 0 foot landscaped buffer provided they adhere to certain conditions including no expansion of the existing paving, landscaping along the southern property line, restricted operating hours and no towing service. Additionally, the Planning Office does not approve of the Petitioner's request for additional zoning relief by variance, special hearing or special exception. The commercially zoned property is ill fitting and sited behind several commercial properties along Loch Raven Blvd. The garage is more suited for its intended original use as a residential garage than as a commercial garage. Since the garage cannot conform to commercial zoning standards and is located within 50 feet of a residential property, no additional zoning relief should be granted.

After considering the testimony and evidence presented, I am persuaded to grant the requested relief. Regarding the special hearing and special exceptions, this property has existed as a service garage for almost 60 years. According to the Planning Office, the building was

originally constructed as a garage building for the original residential estate that existed prior to the extensive commercial and residential development that has occurred in the surrounding area; however, during the ensuing years, the property has been used commercially as a service garage. Although the concerns related to its proximity to a residential area are legitimate and warranted, there has been no evidence presented that the continued use as a service garage would have any additional detrimental impacts beyond those that have existed since the special exception was originally granted in 1975. I also believe that since this use has evolved over time and with the death of Mr. Gnau, that the original condition restricting the use of a service garage to his business vehicles only should be lifted in order to include other potential users of the property in the same manner. There were no Protestants present that opposed the requested relief and I am persuaded by the expert testimony adduced at the hearing that this continued use would not have detrimental impacts on the relevant 502.1 criteria.

Regarding the variances, I am likewise persuaded to grant this relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. The property's history suggests that it has been used as a service garage for almost 60 years and the building and the existing paving and landscaping have been relatively unchanged in its appearance. The unusual shape of the property and its downward slope suggest alterations would be very difficult. The photographs show that the property appears to be well kept. They also show that the property is fairly isolated unto itself, not visible from Loch Raven Boulevard and also only visible on a limited basis from the neighboring residential properties to the east due to its elevation above those properties. Hence, I conclude that the subject property is unique in a zoning sense and that Petitioner would suffer practical difficulty if the variance requests were to be denied. Moreover, in my view, the variances can be

granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. That is not to say I am unconcerned about potential impacts to the adjacent residential properties -- a concern raised by Ms. Williams and Ms. Jones -- so as part of this Order, I will require Petitioner to provide additional landscape evergreen screening along the eastern property line.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered, I find that Petitioner's requests for special exception, special hearing, and variance should be granted.

THEREFORE, IT IS ORDERED this 3rd day of March, 2010 by the Deputy Zoning Commissioner that Petitioner's requests for Special Hearing in accordance with Section 500.7 of the B.C.Z.R. to approve:

- A modification of the service garage special exception and accompanying site plan approved in Case No. 72-176-X consistent with the companion Petition for Special Exception submitted herewith; and
- The removal and/or modification of the conditions imposed in Case No.72-176-X consistent with the companion Petition for Special Exception submitted herewith and the testimony and evidence presented at the time of hearing on this Petition,

be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's request for Special Exception for the continued use of a service garage on the subject property in the commercial zone pursuant to Section 230.3 of the B.C.Z.R. be and is hereby **GRANTED**, and

IT IS FURTHER ORDERED that Petitioner's requests for Variance as follows:

- From Section 409.8.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 0 feet of landscaped buffer in lieu of the required 10 feet; and
- From Section 409.4.A of the B.C.Z.R. to permit an existing two-way driveway width of 10 feet in lieu of the 20 feet required; and

- From Section 409.8.A.6 of the B.C.Z.R. to permit existing parking spaces without otherwise required striping,

be and are hereby **GRANTED**.

The following are conditions precedent to the relief granted herein:

1. Petitioner may apply for its permit 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 will be required to return, and be responsible for returning, said property to its original condition.
2. The condition in prior Case No. 72-176-X restricting the service garage use to the seven commercial vehicles owned by Petitioner shall be removed; however, the use of the subject property as a service garage generally shall be limited to the number of vehicles that can lawfully be parked at the location (14 parking spaces) as denoted on the site plan accepted into evidence as Petitioner's Exhibit 1, and parking shall be limited to those parking spaces shown.
3. Petitioner shall provide landscape screening along the eastern property line, as redlined on the site plan, with evergreen style trees and/or shrubs, in order to shield the adjacent residential properties from view.
4. Motor vehicles shall not be kept on the subject property for remuneration, hire, or sale.
5. The use of the property as a service garage shall not include the painting of vehicles or body work, and there shall be no hazardous materials used or noxious fumes emanating from the subject property.
6. The use of the property as a service garage shall not include the towing of vehicles for hire or remuneration, except towing may be permitted for transportation of vehicles to the subject property for the purpose of repairs.
7. Business hours as a service garage may not exceed Monday through Friday from 7:00 AM to 7:00 PM and Saturdays from 8:00 AM to 5:00 PM.
8. The owners and/or lessees of the subject property shall make the property and the building available for reasonable inspections by County officials during normal business hours to ensure compliance with the above conditions and any applicable laws and regulations.

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