

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
SE/Corner Brentwood & Fifth Avenues,		
N of Holabird Avenue	*	ZONING COMMISSIONER
<b>(6701 Brentwood Avenue)</b>		
12 <sup>th</sup> Election District	*	OF
7 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Robert E. Rosso		
Petitioner	*	<b>Case No. 2010-0168-SPH</b>

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**ORDER ON THE MOTION FOR RECONSIDERATION**

WHEREAS, this matter came before this Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owner of the subject property, seeking, among other requests, an amendment to previous sanctioned zoning uses and to allow two (2) apartments in the existing building in conjunction with a church and continue the use of 31 business parking spaces in a residential zone, etc. As my Order explains, the allowed and anticipated potential principal uses permitted at this site as a matter of right are complicated due to an apparent error on the Zoning Map for Baltimore County.

By my opinion and Order, dated January 21, 2010, I granted the special hearing request, in accordance with the site plan submitted into evidence as Petitioner’s Exhibit 1, subject to certain terms and conditions. Among the relief granted was Item No. 4 – that the business parking in a residential zone be allowed to continue without the need for an additional hearing as accessory to any future use change (6701 Brentwood Avenue) provided such use is permitted in the zone.<sup>1</sup> Subsequent to the issuance of said Order, a timely Motion for Reconsideration was filed by the Office of People’s Counsel, seeking clarification of the breadth of approval granted with regard to paragraph 4. People’s Counsel aptly points out that the review and approval of

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<sup>1</sup> The Petitioner, his professional engineer and land use attorney, believe the property enjoys a Business, Local classification as opposed to the Density Residential designation shown on the official zoning map.

accessory business parking in a residential zone by necessity should relate to a particular principal use. He opines that the land use impact may be different with respect to another principal use, even a use which is “permitted” in the zone. The Office of People’s Counsel takes the position that the approval of accessory parking in connection with any hypothetical future use without a hearing is, therefore, inappropriate. While I find the Motion filed to raise sufficient grounds for modification of the Commission’s decision, I see no compelling reason to do so in this particular case. I shall explain. The 0.464-acre parcel located in the D.R.5.5 zone on the south side of Fifth Avenue, across from the former Brentwood Inn, has historically been used as a parking lot for decades and has been the subject of prior deliberations and the imposition of limitations. *See* Case Nos. 02-027-SPHA and 03-133-SPHA. In the initial case (2001), restrictions were placed on the accessory business parking in the residential zone that limited the lot’s use to only “cars, vans, ... owned by tenants ... or used by Petitioner ...”. This restriction, however, over time proved to be detrimental. In the second case heard in November, 2002, testimony was received and allowances made to the benefit of the community by allowing local businesses and medical offices, their employees and visitors to use the lot when available for use. This alleviated parking congestion on the community’s neighboring streets. The site plan and approval in the subject case involves Sections 409.8.B.1 and 409.8.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) which apply to business or industrial parking in residential zones. These sections do not address the specific nature of the uses that the residential zone location parking will serve other than they are “business or industrial”.

409.8.B.1(e) of this section is clear on the conditions for the Commissioner’s granting or denying of a petition.

“(1) His findings following the public hearing;

- (2) The character of the surrounding community and the anticipated impact of the proposed use on that community;
- (3) The manner in which the requirements of Section 409.8.B.2 and other applicable requirements are met; and
- (4) Any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.”

B.C.Z.R. Section 409.8.B.2 provides:

- “(a) The land so used must adjoin or be across an alley or street from the business or industry involved.
- (b) Only passenger vehicles, excluding buses, may use the parking facility.
- (c) No loading, service or any use other than parking shall be permitted.
- (d) Lighting shall be regulated as to location, direction, hours of illumination, glare and intensity, as required.
- (e) A satisfactory plan showing parking arrangement and vehicular access must be provided.
- (f) Method and area of operation, provision for maintenance and permitted hours of use shall be specified and regulated as required.
- (g) Any conditions not listed above which, in the judgment of the Zoning Commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties.”

In the case before me, the site plan, Petitioner’s Exhibit 1, clearly lists the conditions of B.C.Z.R. Section 409.8.B.2(a) through (g) as stated above. *See* General Note No. 11 which incorporates these provisions and also references the applicable prior zoning Orders. These Order conditions are therefore by reference made part of the approved site plan and Order in the instant case. There are also conditions and restrictions placed on the accessory parking area by my Order that are intended to address the character of the surrounding community and the

anticipated impact of the proposed use on that community that were substantiated during the hearing through testimony and evidence received. It is, therefore, to be noted that all of the conditions and restrictions serve to limit the parking's "land use impact" in a manner that satisfied this Commissioner. In other words, a change of use – if permitted in the building at 6701 Brentwood Avenue by subsequent zoning change that is either "business or industrial" would have to adhere to the site plan and satisfy the above stated conditions of B.C.Z.R. Section 409.8.B.1(e) as it relates to this parking area. Accordingly, this Commission's Opinion and Order issued on January 21, 2010 remains the final decision in this matter.

IT IS THEREFORE ORDERED this 25<sup>th</sup> day of February, 2010, that the Motion for Reconsideration, filed in this matter is DENIED.

Any appeal of this decision must be filed within thirty (30) days hereof and in accordance with the applicable provisions of law.

WJW:dlw

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

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