

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
E/S York Road, (Md. Rte. 45), 650' N of		
Mt. Carmel Road	*	ZONING COMMISSIONER
<b>(17034 York Road)</b>		
7 <sup>th</sup> Election District	*	OF
3 <sup>rd</sup> Council District		
	*	BALTIMORE COUNTY
David Lock, Sr., et al		
<i>Petitioners</i>	*	<b>Case No. 2011-0090-SPH</b>
* * * * *		

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, David Lock, Sr., Donna Lock (his wife), and Patrick Meadowcroft, by and through their attorney, Lawrence E. Schmidt, Esquire. The Petitioners request a special hearing in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the parking and storage areas for vehicles and equipment *accessory* to the principal use (service garage) as a continuing nonconforming use, in accordance with B.C.Z.R. Section 104.1. In the alternative, relief is requested as follows: **(1)** From B.C.Z.R. Section 409.12.B to approve a modified parking plan, and/or, in the alternative, **(2)** off-site parking spaces, for uses other than residential and lodging, within 500 feet walking distance of a building entrance to use that such spaces serve, in accordance with B.C.Z.R. Section 409.7.B.1, and **(3)** to approve a use permit for the use of land in a residential zone for parking facilities to meet the requirements of B.C.Z.R. Section 409.6, pursuant to Section 409.8. The subject property and the requested relief are more particularly described on the amended red-lined site plan submitted, which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were David Lock, Sr., on behalf of the property owners; Kenneth J. Wells, of kj Wells, Inc., the property line surveyor

who prepared the amended site plan, and several longtime residents of the area including, Harold “Doc” Burton, Emory E. Leight, and Herman Kupisch. Appearing as interested persons were adjacent neighbors and property owners, Jayne and Dennis Wasmer. The Petitioners were represented by Lawrence E. Schmidt, Esquire with Gildea & Schmidt, LLC.

Notwithstanding the complexity of the wording of the relief sought as described in the Petition and as outlined above, the relief which is requested and circumstances involved is readily understandable through an examination of the site plan. David Lock, Sr., co-Petitioner, operates a commercial service garage/towing business at 17027 York Road in the Parkton community of northern Baltimore County. Mr. Lock has operated this business at the site for nearly 20 years and the same property was used for a similar purpose even before that for another 19 years. The subject property under consideration is immediately across the street (east side) from the service garage operation (west side). The address of the subject property is 17034 York Road. The property is approximately 2.58 acres in area and split-zoned R.C.5 and B.L.-C.R. The largest portion of the property is zoned R.C.5 (2.21 acres). The southern portion of the site is zoned B.L.-C.R. (.37 acres).

Mr. Lock desires zoning approval in order to validate the long standing use of the property as a component of his towing/garage business. The petition requests such approval through a designation of the use of the site as non-conforming, pursuant to B.C.Z.R. Section 104. In the alternative, the Petitioner seeks other relief through the special hearing process, including approval of a modified parking plan and/or use permit. For reasons set forth below, I find that relief should be granted under the non-conforming use designation and that the alternate relief requested is therefore not necessary.

As noted above, the subject property fronts on the east side of York Road just north of the

Monkton and Mt. Carmel Road intersections in Parkton. Insofar as any building, the property is unimproved. However, much of the lot is paved either by way of macadam, stone and/or compacted crushed asphalt millings. Additionally, there is an enclosed 8' high chain link fence area which is designated and shown on the plan as a vehicle storage area.

Mr. Lock stated that he is a licensed towler with the Maryland State Police and Baltimore County Police Department. As such, he is on call to remove vehicles involved in accidents either on County roadways or the nearby I-83, the major north/south interstate corridor in this area of the County. Additionally, his towing operation is utilized in conjunction with the service garage business across the street, where vehicles are repaired and maintained. During his years of operation, Mr. Lock has used the subject property for vehicle and equipment storage. This is notwithstanding the fact that much of the area used is zoned R.C.5, which would not allow by right this type of storage operation.

The Petitioner solicited the testimony of "Doc" Burton, Emory Leight and Herman Kupisch regarding the historic use of the property. Doc Burton is a longtime resident of the area and owns property nearby. He is now 86 years old and has familiarity with the use of the site and the neighborhood as he was born and raised in this area of northern Baltimore County. Similarly, Mr. Leight (a childhood friend of Doc Burton) is also 86 and familiar with the site and lives on York Road in the immediate neighborhood. Collectively and based upon their personal recollection, both of these gentlemen testified that the subject property was originally developed as a Pontiac automobile dealership in the late 1930's. In this regard, they testified that the property and the adjacent site to the south were improved with a showroom building and it was one of the few automobile dealerships located in the then very rural northern portion of the County. In addition to the showroom and sales facility, the subject property also contained a

garage building where automobile maintenance was undertaken and also a storage area for new and used cars and related equipment. Thus, Doc Burton and Mr. Leight testified that the subject site began its usage as a vehicle/equipment storage facility in conjunction with the Pontiac dealership and associated service garage over 70 years ago. Apparently, the Pontiac facility continued in existence for many years and was eventually replaced in the 1950's by an oil company business.<sup>1</sup> In those years, the oil company kept a fleet of trucks on the site, as well as, other equipment and vehicles associated with the oil delivery operation. Mr. Kupisch testified that he worked for the oil companies and was familiar with the use of the property during that time. There apparently was a series of oil companies that occupied the site, however, the use of the property for storage of vehicles and equipment was continuous. Ultimately, the oil business vacated the property and the site was immediately acquired by Mr. Lock. The storage use of the property associated with his garage commenced without delay and has continued uninterrupted since his acquisition. In addition to the testimony of these witnesses, numerous written affidavits and letters were submitted at the hearing to confirm the nonconforming designation. *See* Petitioners' Exhibit 2 – 71 letters from area residents.

B.C.Z.R. Section 101.1 defines nonconforming use as “a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use.” B.C.Z.R. Section 104 regulates nonconforming uses. Essentially, the nonconforming use designation is conferred, when appropriate to grandfather an otherwise non-permitted use. That is, if a property was used in a particular manner which was subsequently rendered illegal due to the adoption of a zoning regulation, then the use may continue as nonconforming. There are restrictions on the expansion and intensification of nonconforming uses. Moreover, the

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<sup>1</sup> Both The Blue Ridge Oil Company and Arrow Oil Company operated at this site following the car dealership. Herman Kupisch, a Monkton resident, now 67, worked at this site since 1960 until his retirement in 1987.

nonconforming use must be shown to be continuous and not abandoned. (*See* B.C.Z.R. Section 104.1 et seq.).

Zoning first came to Baltimore County in 1945. At that time, the County's first comprehensive zoning regulations were adopted. These regulations were amended in 1955 and have continued (albeit with amendments over the years) through the current day. Both the original regulations and the current regulations recognize the nonconforming doctrine.

In this case, the uncontradicted testimony and evidence presented was that the subject property has been used for vehicular and equipment storage on a continuous and uninterrupted basis since the early 1940's. As noted above, the original use was associated with a Pontiac automobile dealership and service garage operation. Later, vehicular and equipment storage existed through a series of oil companies which occupied the property; Mr. Lock's service garage business across the street has continued the operational use.

Based on the uncontradicted testimony and evidence, I find that the nonconforming designation is appropriate and thus will grant the first request outlined in the petition for special hearing. The alternate relief requests are therefore rendered moot by this determination.

During the hearing for this case, it was observed that the issue presented was limited in context as to whether the nonconforming designation was appropriate. That is, unlike a petition for special exception, the impacts of the proposed use are irrelevant to that determination. If the use is nonconforming, it may continue, notwithstanding, impacts on adjacent properties for so long as it complies with B.C.Z.R. Section 104.1. Nonetheless, Mr. Lock and his counsel indicated that he wanted to cooperate with the most affected neighbors (Mr. and Mrs. Wasmer who reside and own a rental property adjacent to the site's eastern boundary) so as to reduce and/or eliminate the impacts of the use on the residential neighbors nearby. In this regard, Mr.

Wells amended the plan, by redline, in open hearing to clearly designate the limits of the nonconforming use. This is consistent with the historic use of the property, as is evidenced by the grades and areas of existing paving on the site. The limitation of area shown on the amended plan will retain and actually expand a wooded evergreen area which serves as a buffer from the rear of the site and the adjacent residential community. Additionally, in order to address certain of the Wasimers' concerns, Mr. Lock agreed to further evergreen plantings and a prohibition on any long term storage of vehicles other than equipment and vehicles owned by him. That is, he agreed to a restriction by which no vehicle not owned by him can be stored at the subject property for a period of over six (6) months. Obviously, his equipment will remain on the site for so long as his business remains in operation. However, to ensure that the property does not deteriorate into a junk yard or place for storage of abandoned vehicles, this limitation on the period of storage shall be added as a restriction to the relief granted. Additionally, the areas of landscaping (both existing and proposed) and fencing would be retained as more particularly shown on the plan. These efforts appear to be a reasonable concession by the property owners to address the neighbors concerns.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted as follows.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 26<sup>th</sup> day of November 2010, that the Petition for Special Hearing to approve the parking and storage areas for vehicles and equipment *accessory* (*See* definition in B.C.Z.R. Section 101.1) to the principal use (service garage) as a continuing nonconforming use, in accordance with B.C.Z.R. Section 104.1 and Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. The nonconforming use is limited only to area delineated on the amended red-lined plan.
2. No vehicles/equipment not owned by the Petitioner may be stored or allowed to remain on the property for more than six (6) months.
3. To assure the current and future use of the subject property will not impact adversely upon nearby residential areas, additional year-round evergreen screenings will be planted between the existing landscape buffer to the east and the nonconforming use area as specified on the approve site plan.

IT IS FURTHER ORDERED, that the remaining alternative relief requested, namely, a modified parking plan in accordance with B.C.Z.R. Section 409.12.B; and/or, in the alternative, off-site parking spaces, for uses other than residential and lodging, within 500 feet walking distance of a building entrance to use that such spaces serve in accordance with B.C.Z.R. Section 409.7.B.1; and, a use permit for the use of land in a residential zone for parking facilities to meet the requirements of B.C.Z.R. Section 409.6, pursuant to B.C.Z.R. Section 409.8; be and are hereby DISMISSED AS MOOT.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

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