

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
NE Side of Old York Road, 290' SW of c/line of	*	OFFICE OF
Kirkwood Shop Road		
7 th Election District	*	ADMINISTRATIVE HEARINGS
3 rd Councilmanic District		
(19529 Old York Road)	*	FOR BALTIMORE COUNTY
John A. Brown, Jr.		
<i>Legal Owner</i>	*	CASE NO. 2011-0282-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Special Exception filed by the legal property owner, John A. Brown, Jr. The Petitions seek relief, in the alternative, for the continued use of a portion of the property located at 19529 Old York Road (“subject property”) for used motor vehicle outdoor sales area, as well as an amendment to the relief and site plan approved in Case No. 2002-123-SPH.

The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations (“B.C.Z.R.”). Appearing at the public hearing on this Petition were Geoffrey C. Schultz, PLS, President of McKee & Associates, Inc., the engineering/surveying/land planning firm that prepared the plat to accompany the Petitions and John A. Brown, Jr., the owner of the subject property. The Petitioner was represented by Howard L. Alderman, Jr., Esquire. There were three community members present in support of the relief requested; there were no Protestants present.

The proffered testimony indicated in 2001, the subject property, together with adjoining, separately owned property, were the subject of a public hearing on a joint Petition for Special Hearing filed in Case No. 2002-123-SPH (“prior case”). The final Order in the prior case

approved, as a legal non-conforming use, pursuant to Sections 101, 104 and 428 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) use of the then petitioned properties as a junk yard, established and continued in operation without lapse prior to the adoption of the B.C.Z.R. A copy of the final Order in the prior case was offered and accepted as Petitioner’s Exhibit 3.

The Petitioner’s proffered testimony, which Mr. Brown acknowledged and adopted under oath, was that following the death of both parents, he has owned in his individual name the subject property since 2000. Mr. Brown reviewed the Plat which accompanied the Petitions and acknowledged that it identified accurately his property and the areas of the nonconforming junkyard and used car sales uses located thereon. Mr. Brown’s earliest memory of the use of the subject property was in 1948-1949 and since that period he has personally witnessed and/or been involved, either as an employee or owner, with the junkyard and used car sales on the subject property.

Mr. Brown testified that in his lifelong experience, used car sales are a related use associated with junkyards. On the subject property, the land area devoted to used car sales has always been substantially smaller than that used as a junkyard. Mr. Brown affirmed that the principal junkyard use was neither altered nor substantially changed as a result of the accessory used car sales.

In support of the relief requested, the Petitioner presented the affidavit of Lester Paul Brown which was accepted into evidence as Petitioner’s Exhibit 2. Lester Brown, who due to his 85 years of age and related health issues, was unable to attend the public hearing, declared and affirmed that since 1942 the subject property has been used principally as a junkyard and secondarily for the sale of used cars, and that both uses that have continued without abandonment or discontinuance for a period of one year or more. *See*, B.C.Z.R. Section 104.1.

Geoffrey C. Schultz, a licensed Maryland Property Line Surveyor, was offered and accepted as an expert surveyor with particular expertise in Baltimore County zoning matters. His proffered testimony, which he acknowledged and adopted under oath, was that the Plat which accompanied the Petitions depicted accurately the subject property, the area that has been devoted to used car sales and that he sealed and signed the Plat. Mr. Schultz is very familiar with the area of the subject property and affirmed that the 9.94 +/- acres comprising the property was split zoned BR (Business Roadside), MH (Manufacturing Heavy) and RC-2 (Resource Conservation - 2). Of the entire subject property only 4,000 square feet are devoted to used car sales as depicted on the Plat which was accepted as Petitioner's Exhibit 1.

Mr. Schultz identified and acknowledged his familiarity with Petitioner's Exhibit 3, the final Order in the prior case. Mr. Schultz described the Special Hearing relief requested to amend both the relief and site plan approved in the prior case to confirm, as a legally nonconforming the used car sales and area devoted to it. Describing his meeting with officials of the Maryland State Highway Administration on the subject property, Mr. Schultz identified the State approved location on Petitioner's Exhibit 1 for the continued sales of used cars.

In the expert opinion of Mr. Schultz, the accessory, nonconforming used car sales use on the subject property can continue as it has for nearly 7 decades without detrimental effect on the health, safety or general welfare of the community, nor will the continuation of use create any congestion in the road network. Mr. Schultz opined that the continuation of the used car sales would not create a potential hazard, overcrowd the land or interfere with provisions for public facilities and improvements. As a nonconforming use, that would otherwise be capable of being initiated in the BR zone via approval of a Special Exception, Mr. Schultz opined that the used car sales was not inconsistent with the purposes set forth in the BR zone or the spirit and intent of the B.C.Z.R.

In an abundance of caution, the Petitioner filed a separate, Petition for Special Exception as an alternative means of approving the used car sales on the subject property. Mr. Schultz described the area of the Special Exception was 4,000 square feet, approximately 0.92 percent of the subject property, and located entirely in the BR zoned portion of the property. Used car sales are permitted in the BR zone pursuant to Special Exception approval under Sections 236.2 and 502.1 of the B.C.Z.R. Mr. Schultz reviewed the Zoning Advisory Committee (ZAC) comments, none of which opposed or requested conditions on the Special Hearing or alternative Special Exception relief requested. Mr. Schultz then reiterated his professional opinion regarding the standards for Special Exception approval pursuant to B.C.Z.R. Section 502.1 – the same standards testified to regarding approval of the Special Hearing relief requested. There was no testimony or evidence offered in contradiction or in opposition to the relief requested by the Petitioner.

Based on the un-contradicted testimony and evidence presented, it is clear to me that the used car sales use on the subject property could be permitted under the relief requested by either Petition. I find that used car sales have been conducted on a small area of the subject property since 1942 without substantial alteration, impairment or change to the previously established legal nonconforming junkyard use. Testimony and evidence indicated that used car sales, especially on the subject property, have been subordinate in both area and intensity as compared to the junkyard use.

As with all nonconforming use cases, the burden is on the Petitioner to produce evidence that a legal nonconforming use existed on the subject property prior to the year in which a change in the zoning regulations rendered it an unpermitted use. The controlling year in this case is 1945. The evaluation of nonconformity must include a determination of whether there has been a change in the use of the subject property, breaking the continued nature of the nonconforming use. If the use of the subject property has changed to a different use, the current use of the property cannot be

considered as nonconforming. *See*, B.C.Z.R. Section 104; *McKemy v. Baltimore County, Maryland*, 39 Md. App. 257 (1978).

All the testimony and evidence received result in a determination that the nonconforming uses on the subject property have not changed since 1942, three years before the modification of the zoning regulations made them unpermitted uses in the zoning classifications applied to the subject property. Moreover, it was established that used cars have been sold continuously and uninterrupted for more than one year at the subject property.

Pursuant to the advertisement, posting of the subject property and public hearing held and for the reasons set forth above, the Special Hearing relief should be granted. With that grant, the Special Exception relief is rendered moot.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 23rd day of May, 2011, that the Petitioner's request for Special Hearing pursuant to B.C.Z.R. Sections 101, 104 and 500.7, to approve use of the subject property for used motor vehicle outdoor sales area as a legal, nonconforming use as depicted on Petitioner's Exhibit 1, as well as an amendment to the relief and site plan approved in Case No. 2002-123-SPH, be and is hereby APPROVED, and the relief requested by Special Exception is rendered MOOT.

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.

LMS:dlw

Signed
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County