

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NE side of Main Street, 99 feet NW		
of Walgrove Road	*	OFFICE OF ADMINISTRATIVE
4 th Election District		
3 rd Council District	*	HEARINGS FOR
(605-619 Main)		
	*	BALTIMORE COUNTY
WG Properties, LLC and Sambor, LLC		
<i>Petitioners</i>	*	CASE NO. 2012-0120-SPHA

* * * * *

ORDER AND OPINION

This matter comes before the Administrative Law Judge for consideration of a Petition for Zoning Hearing filed by the owners of the subject properties, WG Properties, LLC and Sambor, LLC, by Mordehai Gur, managing member of both owners, through their attorney, Jason T. Vettori, Esquire. The Petitioners request Special Hearing relief to permit an amendment to the previously approved relief granted in Case No. 10-146-SPH to permit rental of vehicles as a use incidental to the principal use, a service garage, and for such other and further relief as may be determined necessary by the Administrative Law Judge. The subject property and requested relief are more particularly described on the two page site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1A and 1B.

Appearing at the requisite public hearing in support of the requests were Mordehai Gur and Jay Weinberg on behalf of the property owners, Mitchell Kellman with Draft McCune Walker Inc., the zoning and land development consultants who prepared the site plan, and Jason T. Vettori, Esquire, with Smith, Gildea & Schmidt, LLC. No protestants or interested persons attended the public hearing. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons present.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Testimony and evidence proffered revealed that the subject property is a rectangular shaped assemblage of four parcels of property (605, 607, 609 and 619 Main Street) containing approximately 4.29 acres of land split zoned BL, O-3 and RO with a small strip of D.R.3.5 towards the rear of the property. The property is located along the northeast side of Reisterstown Road (also known as Main Street), north of Walgrove Road, on the opposite side of Berrymans Lane. It is currently improved with an approximately 18,625 square foot structure that is used as a service garage, a much smaller structure which was previously used as a produce stand and associated parking.

The larger of the two existing structures was originally approved for use as an automobile service garage in Case No. 05-552-X. That case only involved one of the properties at issue in the instant request for relief, 607 Main Street. Thereafter, Petitioners also applied for and received approval for an expansion of this service garage use which involved tearing down the produce stand and replacing it with an approximate 3,136 sq. ft. building containing seven service bays and associated parking improvements. This proposal to have two separate service garage structures involved 607 and 609 Main Street and was approved in Case No. 08-241-SPHX. However, the improvements noted therein have never been constructed. Next, Petitioners applied for and received approval to construct a 12,457 sq. ft. building containing 13 service bays in lieu of the previously approved 3,136 sq. ft. building in Case No. 10-146-SPH. In addition to the 12,457 sq. ft. building, the request for zoning relief in Case No. 10-146-SPH, which included 605 and 619 Main Street as well as 607 and 609 Main Street, involved expanded parking facilities and

landscaping.

Mr. Gur was called as a witness and testified that the recession has impacted his ability to expand in such a way that he is seeking to utilize the previously approved plan for the service garage without constructing the 12,457 sq. ft. building at this time. The Petitioners are proposing to construct certain improvements which were approved in Case No. 10-146-SPH, namely the parking lot on 605 Main Street at this time. Thereafter, he is proposing to utilize the existing produce stand and the previously approved parking lot on 605 Main Street to rent automobiles. Petitioners still intend to construct the 12,457 sq. ft. building as approved in Case No. 10-146-SPH at some point in the future. The improvements in Case No. 10-146-SPH were approved by William J. Wiseman, III on March 8, 2010. That decision was modified slightly by his Order on a Motion for Reconsideration dated March 31, 2010. Petitioners contend that construction of the aforementioned parking lot will amount to a utilization or vesting of the service garage approval in Case No. 10-146-SPH as provided in Section 502.3 of the Baltimore County Zoning Regulations (B.C.Z.R.). In order to obtain a vested right in an existing zoning use, a valid building permit must be obtained, and additionally, there must be a manifest commencement of construction readily visible and recognizable on inspection of the property by a reasonable member of the general public. *Prince George's County v. Sunrise Development Ltd. P'Ship*, 330 Md. 297 (1993). In addition to the physical construction of the parking lot constituting utilization of the special exception, the use of the property to rent automobiles is within the spirit and intent of the prior service garage approvals.

Petitioners testified that the existing service garage use permits the rental of automobiles. Mr. Kellman, who proffered and was accepted as an expert witness, opined that the B.C.Z.R. and Zoning Commissioner's Policy Manual support this proposition. "Garage, service" is defined in

B.C.Z.R. Section 101 as “[a] garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale.” The index and pages 1-17 and 2-37 from the Zoning Commissioner’s Policy Manual were accepted into evidence and marked as Petitioners’ Exhibit 2A, 2B and 2C, respectively. Exhibit 2B provides that a service garage “includes the use of land or enclosed building where motor vehicles are stored and repaired, pursuant to the operation of truck, car rental, or taxicab businesses.” Exhibit 2C provides that a service garage “includes truck and car rental and taxicab businesses.”

As previously indicated, the special hearing relief being requested is to permit rental of vehicles as a use incidental to the principal use, a service garage. I find that the rental of automobiles is included within the previously approved service garage use but required Petitioners to demonstrate that the temporary automobile rental use satisfies the special exception conditions provided in B.C.Z.R. Section 502.1.

Turning now to those special exception conditions, Mr. Kellman opined that it is clear the proposed use would not pose any danger to the surrounding locale as the footprint of the service garage use is only a fraction of the exact same area which was approved in Case No. 10-146-SPH. The rental of automobiles will involve considerably less noise and disruption than the repair of vehicles. I am convinced that the request meets all of the customary special exception criteria contained in B.C.Z.R. Section 502.1. The adjoining building is already being used as a service garage, and I am persuaded that granting special hearing relief for a use contemplated within the definition of the service garage use will not have any negative effect on the surrounding locale. The proposed layout was already found to satisfy the special exception criteria and the slight alteration of the use will have no discernable impact above and beyond those already considered in the previous cases. By way of example, infrastructure will not be noticeably impacted, adequate

light and air will not be interfered with, there is no potential hazard from fire or other danger, there is adequate parking, and the property is not located in a traffic deficient area. There is no evidence that the proposed use will create adverse impacts greater than or above and beyond those inherent with such a use regardless of its location. Petitioners further testified that the incidental rental business would park no more than approximately 30 vehicles on the premises at any given time, would limit the hours of operation to approximately 7 a.m. to 7 p.m. Monday through Friday, 7 a.m. to 4 p.m. on Saturday and 8 a.m. to 2 p.m. on Sunday, and would add approximately four employees (in addition to the 25 presently employed by the existing service garage). I therefore find that the Petitioners' special hearing request can be granted in strict harmony with the spirit and intent of the regulations and in such manner as to grant relief without injury to the public health, safety or general welfare of the locality.

Pursuant to the advertisement, posting of the property, and public hearing on this matter held, and after considering the testimony and evidence offered, I find that Petitioners' request for Special Hearing relief should be granted.

THEREFORE, IT IS ORDERED by the undersigned Administrative Law Judge of Baltimore County, this ___28th ___ day of December, 2011, that the Petition for Special Hearing relief to permit rental of vehicles as a use incidental to the principal use, a service garage, be and is hereby GRANTED, as more particularly shown on Petitioners' Exhibit No. 1, the Plan to Accompany the Petition for Zoning Hearings; and,

IT IS FURTHER ORDERED by the Administrative Law Judge of Baltimore County that the Petition for Special Hearing approval of Petitioners' request for such other and further relief as may be determined necessary be and is hereby

GRANTED, in order to confirm that the construction of the parking lot and use of same as a service garage constitutes a utilization of the special exception approved in Case No. 10-146-SPH.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

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

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

LMS:pz