

IN RE: PETITION FOR SPECIAL	*	BEFORE THE
EXCEPTION		
SE side of Martin Blvd., 400 feet	*	OFFICE OF
NW of the c/l of Kelso Drive		
15 th Election District	*	ADMINISTRATIVE HEARINGS
7 th Councilmanic District		
(3 Harko Circle)	*	FOR BALTIMORE COUNTY
Harko Court, LLC	*	
<i>Petitioner</i>		Case No. 2012-0169-X

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings as a Petition for Special Exception filed for property located at 3 Harko Circle. The Petition was filed by the legal owner of the subject property, Harko Court, LLC. The Special Exception Petition seeks approval for a service garage in an M.L.-I.M. zone, pursuant to Baltimore County Zoning Regulations (“B.C.Z.R.”) Section 253.2.B.3, 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 fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the hearing were Petitioner James Scott Cooper on behalf of Harko Court, LLC, and David G. Taylor with Morris & Ritchie Associates, Inc., the professional engineer who prepared the site plan. Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC attended and represented the Petitioner. There were no Protestants or interested persons in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Testimony and evidence offered revealed that the subject property is irregular in shape and contains slightly less than 3 acres, zoned M.L.-I.M. The property is located in the Essex area of Baltimore County, just west of the Essex District Court facility located on Kelso Drive. Access to the property is from Harko Court off Kelso Drive to the south of the property. The property is part of a larger commercial/industrial park area that is bordered by Pulaski Highway to the west, and Martin Boulevard and Rossville Boulevard to the north and south, respectively. This particular property was one of the last unimproved properties in this commercial/industrial area, and a service garage would appear to be a complementary and appropriate use in this setting.

The property was the subject of two (2) prior zoning cases (Case No. 2010-0028-X and 2008-0352-SPH). In those cases, Deputy Zoning Commissioner Bostwick approved a floodplain waiver and a 20,000 square foot warehouse building and related parking on each side of building. In addition, Mr. Bostwick granted special exception relief to allow Petitioner to dedicate 5,000 square feet of the warehouse for use as a service garage.

Since that time, Petitioner has constructed the 20,000 square foot warehouse building and related improvements. At this juncture, Petitioner desires to dedicate another 5,000 square foot portion of the warehouse for use as a service garage (body and fender shop), as shown on the site plan.

In support of the requested relief, Petitioner's engineer, Mr. Taylor provided expert testimony (via proffer) that the property's proposed use as a service garage satisfies all the special exception criteria set forth in Section 502.1 of the B.C.Z.R. In particular, Mr. Taylor testified that the proposed use would not be detrimental to the health, safety or general welfare of the locality, would not create congestion in roads or streets, and would not create a potential hazard from fire, panic or other danger. Additionally, the 5,000 square feet proposed for the service garage would

not overcrowd the land. The use would not interfere with the provision of public services or with adequate light and air, and would not be inconsistent with the property's manufacturing – light zoning classification with an industrial – major District overlay, or with the spirit and intent of the B.C.Z.R., and would not be detrimental to any other applicable special exception criteria.

Section 253.2.B.3 of the B.C.Z.R. permits a service garage as an auxiliary service use in the I.M. District by special exception, provided the criteria set forth in Section 502.1 of the B.C.Z.R. are met. The uncontroverted testimony and evidence from Petitioner's engineer indicates that the proposed use would not have any detrimental impacts on the required Section 502.1 criteria. Therefore, I am convinced that the use proposed at the subject location would not have any adverse effects above and beyond those inherently associated with such a special exception use, irrespective of its location within the zone (See, *Schultz v. Pritts*, 291 Md. 1 (1981) and *People's Counsel v. Loyola College*, 406 Md. 54 (2008)), nor would the use be detrimental to the nearby commercial and manufacturing uses in its vicinity.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception request should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 29th day of February, 2012 that Petitioner's request for Special Exception to permit a 5,000 square foot service garage pursuant to Baltimore County Zoning Regulations ("B.C.Z.R.") Section 253.2.B.3, and for such other and further relief as may be determined necessary by the Administrative Law Judge, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its building 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 would 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
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw