

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND SPECIAL EXCEPTION	
(1 Nicodemus Road) *	OFFICE OF
2 nd Election District	
4 th Council District *	ADMINISTRATIVE HEARINGS
Nicodemus Ventures, LLC	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Pikesville Auto & Body Repair, Inc.	
<i>Lessee</i> *	Case No. 2013-0120-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed by Lawrence E. Schmidt, Esquire, on behalf of the legal owner, Nicodemus Ventures, LLC. The Petition for Special Hearing was filed pursuant to § 409.12 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve a modified parking plan; and (2) for any such other and further relief as the Administrative Law Judge may deem necessary. In addition, a Petition for Special Exception was filed pursuant to B.C.Z.R. §230.3, to permit a service garage for a tow truck operation in a BL zone, and (2) For any such other and further relief as the Administrative Law Judge may deem necessary

Appearing at the public hearing in support of the requests were Louis, Mary Jane and Louis Fritz, Jr., and Kenneth James Wells, with Kj Wells, Inc., the consulting firm that prepared the site plan. Lawrence E. Schmidt, Esquire, with Smith, Gildea & Schmidt, LLC, appeared as counsel and represented the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. The file does not contain any letters of opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Bureau of Development Plans

Review (DPR) on December 3, 2012, indicating that a landscape plan must be received and approved prior to the issuance of any permits. That bureau also objected to the four parking spaces shown on the plan as abutting Delight Road.

Testimony and evidence offered at the hearing revealed that the subject property is 2.08 acres and is zoned B.L and C.B. The proposed business would be operated entirely within the BL zoned portion, which permits by Special Exception a service garage use. The Petitioner is licensed by Baltimore County and the Maryland State Police to provide accident towing, and it owns and operates 4 flat bed tow trucks for that purpose. The Petitioner's towing operation began over 50 years ago, and it is losing its lease at its present location on Pleasant Hill Road. The regulations require that accident towers provide an impound lot in the same geographical area in which they perform towing services. The Petitioner tows in the I-795 corridor area, and the proposed Nicodemus Road location would satisfy the aforementioned regulation.

Special Hearing

The Petition for Special Hearing seeks approval of a modified parking plan under (B.C.Z.R.) Baltimore County Zoning Regulations § 409.12. Mr. Wells testified that, as shown on the site plan (Exhibit 1, note 21) a sufficient number of parking spaces will be provided, and the surface is also durable and dustless. The relief is sought to permit the "stacking" of vehicles in the spaces without the provision of drive aisles as required by the B.C.Z.R.

Mr. Wells indicated this is not typical "customer" parking; indeed, the parking area will be fenced and owners will be prohibited from accessing the vehicles towed to the site without express permission. Many of the vehicles do not have license tags (which are often confiscated by police at the scene of an accident) and are in other ways inoperable, and it certainly seems reasonable and prudent to park the vehicles without drive aisles, as shown on the plan.

One other aspect of relief concerns a 5' setback from the building on site to the nearest parking space, in lieu of the 6' required by the regulations. Again, as with the above issue, this is not the usual scenario where customers or clients of a business are coming and going from parking lot reserved for that purpose. Here, the parking area will be for towed vehicles and "customer" access is extremely limited. The setback relief will have absolutely no offsite impact and will be granted.

As noted earlier, the Bureau of Development Plans Review (DPR) expressed concern with the 4 parking spaces shown on the plan next to Delight Road. Mr. Wells testified those spaces were situated entirely on the Petitioner's property, and would feature parallel parking so as to avoid vehicles backing out onto Delight Road. The Petitioner has provided more than the requisite number of parking spaces, and Mr. Wells indicated these four (4) spaces were included on the plan for the convenience of individuals coming to retrieve their vehicles or the contents thereof.

Special Exception Standards

Special exception uses are presumptively valid and consistent with the comprehensive zoning plan, People's Counsel v. Loyola College, 406 Md. 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption. Petitioner's expert, Kenneth Wells, testified via proffer that the project would satisfy Section 502.1 of the B.C.Z.R., and I concur. The subject property is surrounded by commercial uses, including an auto body shop and restaurant. The nearest residential properties are some distance and are also buffered by a large stand of trees as shown in the photos submitted as Petitioner's Exhibit 2. Thus, I believe the towing operation would in fact have less impact upon surrounding properties than would be the case in other BL-zoned sites where conditions are not as favorable.

One additional issue was discussed at the hearing, concerning the sale by Petitioner of certain vehicles towed to the site. The Petitioner explained that some vehicles are never claimed by their owners, a scenario that happens with greater frequency in tough economic times.

The Petitioner stressed he is not operating a used car or lot akin to a Carmax facility; rather, unclaimed or otherwise abandoned vehicles are sold to defray the towing and storage costs incurred. Such sales are obviously an ancillary or accessory use of the premises, the principal use of which is to receive and store towed vehicles. As such, the Petitioner shall be permitted as an accessory use of the premises to sell motor vehicles in its possession which are unclaimed or otherwise abandoned by the owner (s).

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

THEREFORE, IT IS ORDERED this 31st day of December, 2012, by this Administrative Law Judge, that Petitioner's request for Special Hearing to approve a modified parking plan , be and is hereby APPROVED, and

IT IS FURTHER ORDERED that Petitioner's Special Exception request from B.C.Z.R. §230.3, to permit a service garage for a tow truck operation in a BL zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for his appropriate permits 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.
2. Unless extended by subsequent Order, the special exception approval granted herein must be utilized within two (2) years from the date hereof.
3. Petitioner must submit for approval to the Bureau of Development Plans Review (DPR) a landscape plan prior to the issuance of any permits.
4. Petitioner must revise the site plan marked and admitted as Exhibit 1 to show the removal of the four (4) proposed parking spaces along Delight Road, prior to making application for any permits.

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/sln