

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(2718 North Point Boulevard)		
15 th Election District	*	OFFICE OF
7 th Council District		
13523 Long Green Pike, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0171-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of 13523 Long Green Pike, LLC, legal owner (“Petitioner”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to use the property for auto repair and used car sales on property zoned BR.

Michael Palmisano and professional engineer Pete Mellits appeared in support of the petition. John W. Nowicki, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). The DOP indicated it did not support the plan as proposed.

The subject property is approximately 30,871 sq. ft. in size and is zoned BL. The property was previously zoned ML-AS but was rezoned in 2016 (CZMP Issue 7-001) to BR. Michael Palmisano, who runs the auto sales facility, testified he sought the rezoning so he could relocate his used car sales facility from a nearby site (where he leases space) to the subject property he owns. A used auto sales business is permitted in the BR zone by special exception. B.C.Z.R. §236.2.

Mr. Palmisano testified two businesses (other than his) are operated at the site. A small taxidermy studio (804 sq. ft.) leases space from the Petitioner, although it is open only about three months of the year during hunting season, and Mr. Palmisano testified the business generates almost no traffic. The other business is a welding and industrial gas supply company which Mr. Palmisano stated has been at this location for over 30 years. The business generates a fair amount of traffic, although most of it consists of commercial and trade vehicles which load gas canisters and other industrial supplies at the loading dock area at the southeast end of the building. In other words, these vehicles do not occupy off-street parking at the site for any length of time, and in that respect the use is quite unlike most retail or commercial enterprises.

Mr. Palmisano explained that the vast majority of the auto repair business conducted on this site consists of repair and maintenance work done on used vehicles sold by Petitioner. He testified the repair facility is not like a Firestone franchise where customers bring in their private vehicles for new tires, brakes, etc. As such, I believe it can be fairly argued the small car sales facility (the subject of this petition) and the vehicle repair business are related entities that constitute one business.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. Pete

Mellits, a professional engineer accepted as an expert, testified Petitioner satisfied all requirements for special exception relief as set forth in B.C.Z.R. §502.1. No evidence to the contrary was presented and the petition will therefore be granted.

I reviewed and do not disagree with the DOP's ZAC comments. But this site is located in an industrial area, and Petitioner's clientele are working people looking for inexpensive and reliable transportation. As such, it stands to reason the site will not have the same amenities and appearance as would a facility serving higher-income clientele. The property was rezoned in fact to allow Petitioner to sell used vehicles at the site. The engineer revised the plan in response to the DOP's comments and included a chart showing parking requirements have been met for the entire site. In addition, Petitioner relocated the used car sales trailer which created additional parking for that use.

THEREFORE, IT IS ORDERED this 5th day of **March, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to use the property for auto repair and used car sales on property zoned BR, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.

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