

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(9805 Belair Road)		
1 st Election District	*	OFFICE OF
5 th Council District		
The Shops at Perry Hall, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
AutoBell Car Wash, Inc.	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2018-0172-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 The Shops at Perry Hall, LLC, legal owner and AutoBell Car Wash, Inc., lessee (“Petitioners”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to use the property for a car wash in the BL zone.

Carl Howard, Chief Operating Officer of AutoBell Car Wash, Inc., professional engineer Josh Sharon, and traffic engineer Glenn Cook appeared in support of the petition. Adam M. Rosenblatt, Esq. represented the Petitioners. Two neighbors attended the hearing to obtain additional information regarding the project. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Neither agency opposed the plan.

The subject property is approximately 12.58 acres in the aggregate and is zoned BL. The Director of DOP on November 1, 2017 approved a site plan (Exhibit 2) for the property wherein it was designated as a “planned shopping center.” When complete the center will feature retail stores, restaurants and a large fitness facility. This case involves a small portion of the site (0.54

acres) which AutoBell would lease for the operation of a car wash, a permitted special exception use in the zone pursuant to B.C.Z.R. §233.3.

Petitioners presented testimony from the Chief Operating Officer of AutoBell, who explained the proposed operation in some detail. Mr. Howard noted AutoBell has approximately 80 stores in several states. Mr. Howard described the measures taken to reduce the noise from vacuums and vehicle dryers, and also noted a system will be installed to capture and treat waste water from the car wash. In response to a question posed by one of the neighbors, Mr. Howard indicated he would be willing to hire off duty police officers if needed to control traffic at especially busy times.

Josh Sharon, a licensed professional engineer accepted as an expert, described the site plan (Exhibit 1) and overall shopping center plan (Exhibit 2) in some detail. He also explained the layout of the proposed car wash and described the design considerations which will help to prevent congestion and traffic safety issues at the point of ingress and egress.

Finally, Glenn Cook, who was accepted as an expert in transportation planning, opined the car wash would not generate much “new” traffic, since most patrons will visit the site while in transit for school, work or other purpose. Mr. Cook stated the 21 stacking spaces shown on the site plan were more than enough to prevent traffic impacts upon surrounding roadways, and he testified the site is not located within an area identified as deficient or failing on the 2018 Baltimore County Basic Services transportation map.

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. Mr. Sharon opined the Petitioners satisfied all requirements for special exception relief in B.C.Z.R. §502.1 and the case law interpreting that provision. In the absence of any evidence to the contrary the petition for special exception will be granted.

THEREFORE, IT IS ORDERED this 28th day of **February, 2018**, by this Administrative Law Judge, that the Petition for Special to use the property for a car wash in the BL zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must comply with the ZAC comments of DOP and DPR, copies of which are attached hereto and incorporated herein.
3. When conditions dictate (such as after a snow storm when patrons seek to clean road salt from their vehicles) AutoBell shall hire an off-duty police officer to assist with ingress/egress from 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