

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(8014 Philadelphia Road)		
14 th Election District	*	OFFICE OF
6 th Council District		
Days Woods Properties, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0206-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 Days Woods Properties, LLC, legal owner (“Petitioner”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to use the property for a service garage.

Pete Altazas and professional surveyor Brian Dietz appeared in support of the petition. Douglas L. Burgess, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP).

The subject property is approximately 31,112 sq. ft. in size and is split-zoned BL-AS and DR 5.5. The property is located in the Rosedale area and is bisected by the Red House Run tributary. Beginning in or about 1958 a Shell gasoline station was operated at this site pursuant to a special exception granted in 1957. Exhibit 10. More recently, the gasoline dispensers were removed and for many years an automobile repair business has operated at the site. The owner discovered through conversations with the Baltimore County Office of Zoning Review a special exception for a service garage was required to continue lawfully operating the business at this location. The service garage will be operated entirely within the BL-AS zoned portion of the

property, and the site plan was amended along with the metes and bounds zoning description to clarify this point.

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. Dietz opined Petitioner satisfied all requirements set forth 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 will be granted.

The DOP ZAC comment was discussed at the hearing, and counsel noted Petitioner would comply with the conditions set forth therein. The DOP indicated there was “unconventional signage” at the property, including the shell of a Corvette automobile on the roof of the premises. Mr. Altazas testified the Corvette has been located on the roof since at least 1979, at which time the business was known as the “Corvette Performance Center.” *See* Exhibit 11. The business is no longer known as the Corvette Performance Center, although Mr. Altazas noted the sign is well-known and recognizable in the area; an iconic landmark of sorts.

In any event, it is unclear whether or not this display should be characterized as a “sign” under the BCZR. The Regulations define “sign” as follows:

Any structure or other object, or part thereof, which displays any word, illustration, decoration or other symbolic representation which:

A. Is used or intended to inform, advertise or otherwise attract attention or convey a message regarding an activity, condition or commercial or noncommercial organization, person, place or thing.

B. Has a "face" that is "visible" from a "highway" as each of these terms is defined in this section.
BCZR §450.3.

This is an exceedingly broad definition, and it would appear to apply to the Corvette in this case, especially given its association with the service garage (i.e., commercial enterprise) operated at this location. Though I was unable to locate any Maryland case law, several courts throughout the country have grappled with similar issues, including whether strobe-lights, murals or other architectural features located at or on commercial properties constituted a sign under the governing regulations. The courts in these cases reached divergent results, and it would be hard to glean any black-letter legal principles from those cases. Counsel notes the BCZR contains a unique provision concerning nonconforming signs with significant “historical, traditional, cultural or aesthetic value.” BCZR §450.8. That regulation authorizes the Director of the DOP, upon application by the owner, to allow a nonconforming sign with significant value (as enumerated above) to remain. As such, a condition will be included below allowing the owner to seek such an exemption in this case.

THEREFORE, IT IS ORDERED this 4th day of **April, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to use the property for a service garage, 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. Subject to Condition No. 3 below, Petitioner must comply with the ZAC comment submitted by the DOP, a copy of which is attached hereto.
3. Petitioner shall have 90 days from the date hereof in which to make application to the Director of the DOP for an exemption for the Corvette “sign” discussed hereinabove. The sign shall be permitted to remain during the pendency of that application and any appeal therefrom.

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