

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(9805 Belair Road)		
11 <sup>th</sup> Election District	*	OFFICE OF
5 <sup>th</sup> Council District		
The Shops at Perry Hall, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Mid Atlantic Lubes, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2018-0327-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 Mid Atlantic Lubes, LLC, lessee (“Petitioners”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to use the subject property for a service garage in the BL & BL-AS zones.

Professional engineer Joshua Sharon appeared in support of the petition. Adam M. Rosenblatt, Esq. represented the Petitioners. One neighbor attended the hearing to obtain additional information about the project. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (“DPR”) and the Department of Planning (“DOP”). Neither agency opposed the request.

The subject property is approximately one (1) acre in size and is split-zoned BL & BL-AS. The site is shown as Lot 2 on a development plan for the Shops at Perry Hall, which is a “planned shopping center” as defined in BCZR §101.1. Pet. Ex. 2. Petitioners propose to construct a Valvoline oil change franchise on the property. Baltimore County considers this to be a “service garage” use, which is permitted by special exception in the zone(s).

### 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 via proffer Petitioners satisfied all requirements in BCZR §502.1 and the case law interpreting that provision. In the absence of any evidence to the contrary the petition will be granted.

THEREFORE, IT IS ORDERED this 6<sup>th</sup> day of **August, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to use the herein described property for a service garage in the BL and BL-AS zones, 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 submitted by DPR & DOP, copies of which are attached.
3. No storage of untagged, damaged and/or inoperable motor vehicles shall be permitted.
4. No overnight parking shall be permitted at the property.

5. Petitioners shall have a period of three (3) years from the date hereof in which to utilize the special exception.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln