

IN RE: PETITIONS FOR SPECIAL HEARING *		BEFORE THE
AND SPECIAL EXCEPTION		
(12400 Owings Mills Blvd.)	*	OFFICE OF
4 th Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
Owings Mills Sports Arena		
Partners, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Diamond Automotive Services, LLC	*	Case No. 2019-0067-SPHX
<i>Contract Purchaser</i>		
Petitioners	*	

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Owings Mills Sports Arena Partners, LLC, legal owner and Diamond Automotive Services, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to confirm that the storage of antique/classic vehicles is a parking lot/garage and permitted by right in the ML-IM zone; (2) to amend the Order in Case No. 1997-0563 XA (which granted a variance from BCZR Section 253.4 to allow a commercial recreation facility at the subject property within 100 ft. of a residential zone line) to allow a service garage, parking lot/garage and commercial recreational facility within 100 ft. of a residential zone line; and (3) to confirm that the parking requirements in BCZR Section 409 for the proposed uses are satisfied and that the existing interior and exterior number of parking spaces is compliant. A Petition for Special Exception was filed to permit a service garage in the ML-IM zone.

Landscape architect Kevin Riley and Chuck Heinle on behalf of the contract purchaser attended the public hearing in support of the requests. Lawrence E. Schmidt, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was

advertised as required by the BCZR. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the reviewing county agencies.

SPECIAL HEARING

The subject property is approximately two (2) acres in size and is zoned ML-IM. The property is improved with a large (approximately 41,000 sq. ft.) warehouse building occupied by several tenants. Diamond Automotive Services, LLC (“Diamond”) plans to purchase the property and one existing tenant (a martial arts studio) will remain in its current space. Mr. Heinle confirmed the martial arts studio, which is considered a “commercial recreation facility” under the BCZR, has its own separate entrance/exit and will occupy approximately 6,000 sq. ft. of the warehouse.

There will also be a storage facility for antique/luxury motor vehicles known as the Collectors Car Corral, which will occupy approximately 5,000 sq. ft. of warehouse space. Diamond owns and operates a similar storage facility, also known as Collectors Car Corral, at 10 Music Fair Road in the Owings Mills area. In a 2016 zoning case involving that property the ALJ determined, citing Webster’s Dictionary, the vehicle storage facility was a parking lot or garage, both of which are permitted by right in the ML-IM zone. *See* Case No. 2016-0127-SPHX; BCZR § 253.1.C.18. I believe the same analysis is applicable in this case, and that aspect of the special hearing request will be granted.

The third and final tenant in the building will be a vehicle detailing business which cleans, waxes and polishes motor vehicles, mostly by appointment only. This business would occupy 30,000 sq. ft. of space in the warehouse building and is considered a “service garage” under the BCZR, which is permitted by special exception in the ML-IM zone. *See* Case No. 2016-0127-SPHX; BCZR §253.2.B.

The other aspect of the special hearing request involves off-street parking for the three uses

enumerated above. A commercial recreation facility requires under BCZR Section 409 ten (10) spaces per 1,000 sq. ft. of leased area. The martial arts studio is 6,000 sq. ft.; as such, 60 spaces are required for this use.

The BCZR does not prescribe a particular number of spaces required for a parking lot/garage, which makes sense in cases of this nature where parking/storage is in fact the nature of the service provided by the business in question. There is no store, restaurant or office affiliated with the parking garage upon which a parking calculation can be based. The Collectors Car Corral is a niche business catering to an upscale market, and the antique and luxury vehicles will be parked inside the warehouse and protected from the elements. Thus, the exterior parking spaces attributed to this business would be used only by employees and perhaps customers being dropped off by a family member or friend when retrieving their vehicle from storage. I believe parking at 3.3 spaces per 1,000 sq. ft. (as required for a business office) would be more than sufficient, and for 5,000 sq. ft. 17 spaces would be required.

BCZR Section 409 also does not dictate the number of spaces required for a service garage, although the Zoning Checklist published by the Office of Zoning Review (Pets. Ex. 5) states that 3.3 spaces are required per 1,000 sq. ft. The detailing business (service garage) will occupy 30,000 sq. ft., so 100 spaces are required for this use. As such, 177 spaces are required for the three proposed uses and the plan indicates 204 spaces are provided. Pets. Ex. 1, note 30.

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. Counsel proffered the testimony of his witnesses, both of whom would opine the plan and project satisfies the requirements set forth in BCZR §502.1 and the Maryland case law interpreting that provision. In the absence of any evidence to the contrary I will grant the special exception request.

THEREFORE, IT IS ORDERED this 10th day of **October 2018**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to confirm that the storage of antique/classic vehicles is a parking lot/garage and permitted by right in the ML-IM zone; (2) to amend the Order in Case No. 1997-0563 XA (which granted a variance from BCZR Section 253.4 and permitted a commercial recreation facility within 100 ft. of a residential zone line) to allow the uses proposed herein (a service garage, parking lot/garage and commercial recreational facility) within 100 ft. of a residential zone line; and (3) to confirm that the parking requirements in BCZR Section 409 for the proposed uses are satisfied and that the existing interior and exterior number of parking spaces is compliant, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a service garage in the ML-IM 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.

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