

<b>IN RE: PETITIONS FOR SPECIAL HEARING *</b>		BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		OFFICE OF
(1641 Joppa Road)	*	
9 <sup>th</sup> Election District		ADMINISTRATIVE HEARINGS
5 <sup>th</sup> Council District	*	
Howard Bank		FOR BALTIMORE COUNTY
<i>Legal Owner</i>	*	
Mid-Atlantic Lubes, LLC		<b>Case No. 2019-0070-SPHX</b>
<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 Howard Bank, legal owner and Mid-Atlantic Lubes, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve an amendment to the previously approved zoning site plan in Case No. 99-251-A. A Petition for Special Exception was filed to permit a service garage in a BL zone.

Randolph Kazazian, Ken Schmid, and Josh Sharon attended the public hearing in support of the requests. Dino C. La Fiandra, Esq. represented the Petitioners. Several members of the community opposed the requests. The Petition was advertised as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”), the Bureau of Development Plans Review (“DPR”) and the State Highway Administration (“SHA”). None of the reviewing agencies opposed the requests.

The subject property is 20,082 square feet in size and zoned BL. The property is improved with a commercial building formerly used as a First Mariner Bank. The bank has closed and the property is vacant. Petitioners propose to construct and operate at the site a Valvoline oil change business.

## SPECIAL HEARING

The Petitioner for special hearing does not seek substantive zoning relief like a variance or special exception. Instead, it is essentially a housekeeping matter included in the Petition at the behest of the Office of Zoning Review. That agency prefers for record-keeping purposes to have an updated site plan for all new projects along with a reference to any earlier zoning case(s) being modified or amended by the current case.

## 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.

In this case Josh Sharon, a professional engineer accepted as an expert, described the project in detail and opined Petitioners complied with the requirements of BCZR §502.1 and the Maryland case law interpreting that provision. Ken Schmid, a traffic engineer accepted as an expert, testified the project is not located within a “failing” traffic shed as shown on the Baltimore County Basic Services Transportation Map. Pet. Ex. 10. Mr. Schmid noted the intersection at Loch Raven Boulevard & E. Joppa Road was rated “F” on the 2016 map, but that the County Council changed the designation to a “D” on the 2018 Map, which is applicable in this case. Pet. Ex. 10A. Mr. Schmid opined the Valvoline location will generate approximately 160 daily vehicle trips, with 12 trips during the AM peak period and 19 trips in the peak PM period. He noted these totals, according

to a manual produced by the Institute of Traffic Engineers, are less than the amount of traffic projected to be generated by a bank, which was of course the previous use at this site.

Members of the community oppose the project and testified there are already several oil change facilities in the area. As an eastern gateway to Towson both the community and elected representatives would prefer to have an attractive structure at the site (like the existing bank building which is by all accounts well-designed) and a business or medical office which could repurpose the existing structure. Community members note the site is within the Loch Raven Commercial Revitalization District, which is designed to foster the opening and growth of diverse businesses to serve the neighborhood.

While I appreciate the concerns expressed by the community and understand how they view the transition back to a service garage as a step backwards, I do not believe this testimony is sufficient to rebut the Petitioners' *prima facie* case as outlined above. There are several commercial revitalization areas in Baltimore County and a service garage is a permitted use by special exception in the BL zones in such districts. No evidence was presented which would tend to establish the adverse effects would be more pronounced at this location than at some other BL zoned site within a revitalization district. The Community contends an attractive building would be replaced by a generic one, but I do not believe that can be considered an adverse impact associated with the operation of a service garage. The focus is upon the proposed use itself.

THEREFORE, IT IS ORDERED this 15<sup>th</sup> day of **November, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing to approve an amendment to the previously approved zoning site plan in Case No. 99-251-A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a service garage, 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 DOP, DPR and SHA ZAC comments, copies of which are attached hereto and made a part hereof.

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