

Tax Map/Block/Parcel
No. 64-3-499
Case 5273R

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Brian and Ginger DiMaggio
1909 Suffolk Rd.
Finksburg, MD 21048

ATTORNEY: Isaac Menasche for Protestants

REQUEST: *Remand from the Circuit Court* – for further proceedings to deliberate on a condition limiting the Applicant to 14 employees in the proposed automobile service center.

LOCATION: The site is located at the corner of Old Gamber Road and Rt. 91, Finksburg, on property zoned “B-NR” Neighborhood Retail Business District in Election District 4.

BASIS: Code of Public Local Laws and Ordinances, Section 223-100 (F), 223-105 (B) and 223-186 A (3)

HEARING HELD: November 27, 2007

FINDINGS AND CONCLUSION

On November 27, 2007, the Board of Zoning Appeals (the Board) convened to hear a *remand from the Circuit Court* – for further proceedings to deliberate on a condition limiting the Applicant to 14 employees in the proposed automobile service center. The Board made the following findings and conclusion:

On January 18, 2007, the Board issued a decision in which it granted the Applicant a conditional use for an automobile service center at the corner of Old Gamber Road and Route 91 in Finksburg. The grant of the conditional use had numerous conditions, including a limitation on the number of employees to 14. This condition was not a part of the motion adopted by the Board. A requested variance from the 10,000 square foot building was denied. The Honorable J. Barry Hughes, in an Opinion and Order in Case No. 06-C-07-04198, upheld the Board’s decision in this case, but remanded the case for further deliberations and a vote on the employee limitation condition.

The subject property is located within the “BNR” Neighborhood Retail District. The purpose of the district is to provide for logical locations where the retail services needed by a neighborhood population can be made available per the Carroll County Public Local Laws and Ordinances 223-97. To that end, businesses and other buildings in this district are limited to

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10,000 square feet gross floor area, presumably to ensure that intense, large scale facilities do not locate there.

In this case, the Applicant presented a plan for an automobile service center. The Applicant testified before the Board on November 29, 2006 that he currently had 10 employees (including the Applicant) at his current location and he "would hope to hire at least three or four technicians over the course of the next several years if things work out" (T. 36). In considering conditional use cases, the Board must consider the criteria set forth in 223-191, namely:

- A. The number of people residing or working in the immediate area concerned.
- B. The orderly growth of a community.
- C. Traffic conditions and facilities.
- D. The effect of the proposed use upon the peaceful enjoyment of people in their homes.
- E. The conservation of property values.
- F. The effect of odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon the use of surrounding property values.
- G. The most appropriate use of land and structures.
- H. The purpose of this chapter as set forth herein.
- I. Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.
- J. Compatibility.
- K. Public convenience and necessity.

In this case, after applying this criteria the Board determined that the imposition of a limit on the number of employees was appropriate. It was based on the Applicant's own testimony as to his needs at the proposed automobile service center. The limitation ensures that the proposed center will remain limited in size and in the volume of customers and this condition serves the purpose of the B-NR district. In addition, it will constrict potential traffic, both of customers and employees, and will reduce congestion and keep the facility from overcrowding the surrounding neighborhood.

It is also noteworthy that the Applicant's assertion that 14 employees would be an adequate workforce for the service center was based on the proposed 13,000 square foot building, rather than the smaller 10,000 square foot building approved by the Board. If a staff of 14 employees is adequate for a 13,000 square foot building, it follows that it will certainly be adequate for a 10,000 square foot facility. The limitation is reasonable, and will reduce the above stated adverse effects. Accordingly, the condition limiting the Applicant to 14 employees was approved.

Date

12/26/07

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Jacob M. Yingling
Jacob M. Yingling, Chairman

Tax Map/Block/Parcel
No. 64-3-499

Building Permit/Zoning
Certificate No. 06-2861

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**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANT: Brian and Ginger DiMaggio
1909 Suffolk Rd.
Finksburg, MD 21048

ATTORNEY: Clark Shaffer

REQUEST: Conditional use for an automobile service center and variance request from the 10,000 sq. ft. maximum size of use to 13,000 sq. ft.

LOCATION: The site is located at the corner of Old Gamber Road and Rt. 91, Finksburg, on property zoned "B-NR" Neighborhood Retail Business District in Election District 4.

BASIS: Code of Public Local Laws and Ordinances, Section 223-100 (F), 223-105 (B) and 223-186 A (3)

HEARING HELD: November 29, 2006 and January 3, 2007

FINDINGS AND CONCLUSION

On November 29, 2006, and January 3, 2007, the Board of Zoning Appeals (the Board) convened to hear a request for a conditional use for an automobile service center and variance from the 10,000 sq. ft. maximum size of use to 13,000 sq. ft. The Board made the following findings and conclusion:

The Applicant operates an automobile repair facility at 1940 Bethel Road in the County. He is seeking to relocate the repair facility. He purchased the subject property at the corner of Old Gamber Road and MD Route 91 in Finksburg in August of 2005 when it was zoned "B-L" Light Business. In 2006 in BZA Case No. 5181, the Applicant requested conditional use approved for a 32,000 square foot automobile repair facility at this location. On May 30, 2006, the County Commissioners by Ordinance 06-08, deleted the "B-L" zoning designation and replaced it with the "B-NR" Neighborhood Retail Business District, the purpose of which "is to provide for logical locations where the retail services needed by a neighborhood population can be made available.", Carroll County Public Local Laws and Ordinances § 223-97. There was no provision for an automobile service center in the new "B-NR" zone, and the Applicant withdrew his application to the Board. The County later adopted Ordinance 06-11, which allows automobile service centers as conditional uses in the "B-NR" zone provided they do not exceed 10,000 square feet gross floor area. The Applicant submitted a new conditional use request to

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the Board which is the subject of this decision. In addition, the Applicant has requested a variance from the 10,000 square feet gross floor area restriction to 13,000 square foot for a proposed garage building.

The Applicant testified that he will have between 9 and 13 employees at the facility. He anticipates an average of 7 to 10 customers per day for automobile repairs. In addition, he would like to perform maintenance on a limited number of buses and larger trucks. All repairs would occur within the garage building. Hours of operation would be from 7:00 a.m. to 5:00 p.m. Most, if not all vehicles requiring overnight storage would be moved inside the building to protect them against theft and from the elements. The most discernable noise would be from the starting up of vehicles under repair at the facility.

The property is located in a mix of rural and residential uses. In addition, a Colonial Pipeline service station is located across from the property. Although the property fronts the heavily traveled MD Rte. 91, there will be no direct access. Customers will use Old Gamber Road to enter and exit the facility. The proposed location is in the Liberty Reservoir watershed. As such, the Applicant will be required to implement pollution control mechanisms and storm water management facilities to control and contain any potentially harmful substances from the garage.

The Applicant testified that traffic generated by the automobile repair facility will be insignificant, with 18 daily peak hour trips by his employees and 2 customers per hour. In addition, there would be 5 to 10 parts delivery trucks arriving daily during "non-peak" traffic hours.

Opposition to the proposed facility focused on the close proximity of several residential developments to the proposed facility and its possible impact on the Liberty Reservoir. In addition, opponents testified that they believed the automobile repair facility was not needed in their community.

The County Commissioners, in enacting Ordinance 8-11, determined that automobile service centers are allowable as conditional uses in the "B-NR" zone. A conditional use request will only fail where the adverse effects from the proposed use would be above and beyond or greater than the adverse effects inherently associated with such use, irrespective of the location within the zone. As such, the Board must distinguish between adverse effects that are common to automobile service centers and those that are unique to the site. Based upon the testimony and evidence presented, there is insufficient evidence to conclude that this facility creates a uniquely adverse effect in this neighborhood. Our Code at Carroll County Public Local Laws and Ordinances 223-191 sets forth criteria relevant to our consideration of whether or not to grant a conditional use. When applying these criteria to the request, the Board finds that the facility is far enough away from most, if not all of the neighborhoods so as not to adversely impact the peaceful enjoyment of people in their homes.

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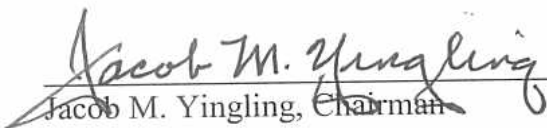
No evidence was presented to contradict the Applicant's estimated minimal traffic numbers and there was no evidence concerning any possible reduction of property values from this use. Noise, glare, dust, gas, smoke, fumes and odors will be minimal and, certainly no worse here than elsewhere. Environmental impacts will be addressed by appropriate County and State agencies. The use appears to be consistent with the purposes of the "B-NR" zone, so long as the actual facility meets the statutory definition of automobile repair facility. In addition, this is an appropriate use in the "B-NR" zone, and will accommodate the public. In short, the adverse effects, if any, would be no greater here than elsewhere. The concerns expressed by the neighbors, while legitimate, would be no different from the concerns of other neighbors were the facility to be located anywhere else in the "B-NR" zone. Accordingly, the conditional use is granted, subject to the following conditions which are designed to ameliorate possible adverse impacts.

1. Hours of Operation shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday.
2. The approval is for an automobile service center as defined in Carroll County Public Local Laws and Ordinances, §223-2, and allowable vehicles include "automobiles, pickup trucks and similar passenger-type vehicles", rather than buses, tractor trailers and the like.
3. There shall be no more than 14 employees (including the Applicant).
4. Pursuant to Carroll County Public Local Laws and Ordinances, 103-19, a site plan shall be required.

Turning to the variance request, it is noteworthy that the Commissioners included a specific size limitation in the "B-NR" zone. The Applicant requests a variance, essentially for the reason that the 10,000 square foot restriction limits his ability to develop the site to its full commercial potential as an automotive repair facility. However, the grant of a variance is appropriate only where the property, not the person, is subject to unnecessary hardship. In this case, the property is well suited to the purpose for which it is zoned and for the proposed use. The Applicant has proven nothing more than that adherence to the size restriction imposes a burden on his personal desire for a larger size garage. Thus, the variance request is not supported by the evidence and is therefore denied.

1-18-07

Date


Jacob M. Yingling, Chairman