

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
SE side of Belair Road; 32 feet NE of the c/l of Kahlston Road	*	DEPUTY ZONING
11 th Election District	*	COMMISSIONER
5 th Councilmanic District	*	FOR BALTIMORE COUNTY
(9653A and 9655 Belair Road)	*	
Crossroads Reserve, LLC	*	
<i>Legal Owner</i>		
Bismarck Real Estate Partners	*	Case No. 2011-0002-X
<i>Developer/Contract Purchaser</i>	*	
	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Joseph Moran on behalf of the legal owner of the subject property, Crossroads Reserve, LLC, and James Kainer on behalf of the Developer/contract purchaser, Bismarck Real Estate Partners. Petitioner is requesting a Special Exception use to permit a Service Garage pursuant to Section 230.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”). The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special exception was Chad Adams on behalf of Petitioner BFS Retail & Commercial Operations, LLC (hereinafter referred to as “Bridgestone/Firestone”), and James Kainer on behalf of the Developer/contract purchaser, Bismarck Real Estate Partners. Appearing as counsel on behalf of Petitioner were G. Scott Barhight, Esquire and Adam D. Baker, Esquire with Whiteford, Taylor & Preston, LLP. Also appearing in support of the requested relief were Dean Hoover and Matthew Bishop with Morris & Ritchie Associates, Inc., the firm that prepared the site plan and

schematic landscape plan drawings, and Mickey Cornelius with The Traffic Group, Inc. Appearing as Protestants opposed to the requested relief were Debra Beaty, Zoning Committee Chair on behalf of the Perry Hall Improvement Association, Inc., Roy Brehm of 4142 Cliffvale Road, Scott Woods of 9654 Belair Road, and Carl Klausmeier of 9500 Belair Road. Appearing on behalf of the Baltimore County Department of Economic Development was Richard Cobert.

As shown on the site plan, the subject property is irregular shaped and is located on the southeast side of Belair Road (U.S. Rte. 1), just south of Forge Road and north of Chapel Road, in the Perry Hall area of Baltimore County. The subject site is actually comprised of two properties: the property at 9655 Belair Road includes most of the road frontage and consists of approximately 2 acres of land, more or less, zoned B.L. and B.L.R.; the property at 9653A Belair Road has a smaller area of access from the public road and includes a much larger tract consisting of approximately 11.51 acres of land, more or less, zoned B.L., B.L.R., and D.R.3.5H. As shown on the site plan, the requested special exception area includes only a small portion of the B.L. and B.L.R. zoned area of the 9653A Belair Road property, as well as a larger portion of the B.L. and B.L.R. zoned area of the 9655 Belair Road property. The requested special exception area consists of approximately 0.91 acre fronting Belair Road.

Testifying in support of the requested special exception to permit a service garage use on the property was Chad Adams, Real Estate and Development Manager with Bridgestone/Firestone. Mr. Adams indicated that his responsibilities with the company include identifying and evaluating potential new store opportunities based on Bridgestone/Firestone's proprietary information and studies, and to pursue property development for that purpose where necessary and appropriate. He indicated the company is currently in an expansion mode and this property was brought to their attention through Bismark Real Estate Partners.

Mr. Adams then described the typical business operation of a Firestone Complete Auto Care store, as proposed for the subject location. He explained that the service garage building would be one-story elongated rectangular structure consisting of 10 service bays for various automotive services including brakes, steering and suspension, engine repairs (i.e. – tune-ups, oil and filter change, spark plugs, air and fuel filters, emissions, and engine sensors), starting and charging systems, and heating and cooling systems. Other parts of the building would have inventory storage areas, disposal areas, and a showroom and customer area. The operation would service approximately 28 to 37 cars per day and would focus on the aforementioned repairs that can generally be turned around in one day, rather than more specialized and lengthy repairs such as engine rebuilds or replacement, body work, and frame work. As a result, cars are generally not stored overnight. If necessary, vehicles are stored inside the service bays and overnight drop offs are not encouraged so that vehicles are not left unattended. At any given time, there are 7 to 10 employees, including five service technicians that each serve two bays and lower level technicians that provide assistance to the service technicians. There is also a service manager that is responsible for the work in the service bays, a sales manager that takes orders, informs customers of available services, and directs the services that are necessary, and a general manager that is responsible for the overall business operation at a location.

Another area of the operation addressed by Mr. Adams was the storage and disposal of parts and other materials. He indicated that tires would be stored in an area toward the back of the building (approximately 1,500 square feet) on 10 foot high racks. Other parts would be stored in that area as well as in the service areas. Used tires and metal parts as well as various fluids would be stored prior to pick up by licensed and certified recyclers. Particularly as to oil, antifreeze, and other fluids, Mr. Adams explained that the auto care center would have a

recovery tank on the premises. Typically for an oil change, a 15 gallon funnel and storage container, approximately 18 inches in diameter, would be placed under the oil pan of the vehicle; at the end of the day, this container is taken to the larger closed recovery tank and pumped into this double walled system that is 6 feet long by 3 feet wide by 3½ feet high. A recycler would then make weekly pickups and pump the fluids into a storage truck for disposal off the premises. Mr. Adams also testified concerning potential noise associated with the operation. He indicated that Bridgestone/Firestone does perform periodic studies on noise to determine levels. This is done to make sure that a store is not creating too much of a noise impact on the community, but also for the safety of its employees and to comply with OSHA guidelines and regulations. He revealed that the typical store has an average noise level of 45-55 decibels, which he characterized as slightly higher than a normal conversation, and the typical noise level found at a busy street such as Belair Road is 75-90 decibels. He conceded that the noise would be higher at certain times than others, especially when pneumatic air wrenches are used, but also indicated that the company stresses the use of state of the art equipment, including noise reducing electric equipment. In short, Mr. Adams indicated that there would be little impact from noise, especially given this busy commercial corridor of Belair Road.

The next witness to testify in support of the requested relief was Mickey A. Cornelius with the Traffic Group, Inc. Mr. Cornelius is a registered professional engineer and a professional traffic operations engineer (P.T.O.E.), responsible for managing all aspects of the firm's traffic engineering and transportation planning studies. He is experienced in all aspects of traffic engineering and transportation planning, including traffic analysis, traffic forecasting and associated modeling, development of traffic control plans, and transportation systems

management. He is known to this Commission and has testified as an expert in traffic engineering and was accepted as such in this case.

Mr. Cornelius indicated he is familiar with the subject site and the requested relief, as well as the Zoning Advisory Committee (“ZAC”) comments, including the comment dated July 20, 2010 from the State Highway Administration (“SHA”). Among their comments, the SHA states that “[t]he location for the proposed 25’ wide driveway lacks sufficient throat depth and, therefore, is not consistent with AASHTO Guidelines for Roads & Streets. The driveway location could potentially cause operational problems for vehicle ingress/egress accessing US 1 (Belair Road).” As indicated by Mr. Cornelius, AASHTO is a standards setting body that publishes specifications, test protocols, and guidelines which are used in highway design and construction throughout the United States. Responding to the SHA comment, Mr. Cornelius testified that he is familiar with the layout and design of the proposed service garage at the subject site, including the access points and general traffic patterns, and based on his experience and expertise, the plan is consistent with the AASHTO guidelines. He indicated that the throat depth is not a significant issue in this case because traffic will not be very heavy with a volume of 28-37 cars per day, hence there will not be vehicles lined up on Belair Road all at one time trying to enter the site. While throat depths are a valid concern, they are much more important in areas with significant traffic flow into and out of the site, such as shopping malls or larger retail stores and supermarkets with direct access to a public road. He also pointed to the fact that the site distances in this stretch of Belair Road are good and that there are no failing intersections based on the County’s latest Basic Services Map for Transportation. In short, in his opinion, the proposed ingress/egress at Belair Road is safe and the design is in accordance with SHA standards and AASHTO guidelines.

The final witness to testify in support of the request special exception was Dean Hoover with Morris & Ritchie Associates, Inc. Mr. Hoover is a principal with the firm and has a background in land planning and site engineering. He has 22 years of professional experience in Baltimore County and is a member of the Baltimore County Planning Board, Landmarks Preservation Commission, and a past member of the Design Review Panel. Mr. Hoover is also known to this Commission and has testified as an expert in land planning, zoning, site development, and interpretation of the Zoning Regulations and was accepted as such in this case.

Mr. Hoover testified that he is familiar with the site plan (Petitioner's Exhibit 1), as well as the schematic landscape plan prepared by his firm and the colored rendering and elevation drawings prepared by CASCO of St. Louis, MO, which were marked and accepted into evidence as Petitioner's Exhibits 2 and 3, respectively. He also indicated that he has visited the site and is familiar with the surrounding vicinity. Mr. Hoover described the overall site, with a large unimproved area to the rear which comprises most of the B.L.R. and D.R.3.5H zoning, and the portion closer to Belair Road that is the subject of the special exception request. At the entrance to the property from the road, there are two commercial properties on each side and a significant commercial and retail presence in this corridor of Belair Road, as evidenced by the B.L. and B.M. zoning in the area. All of the current improvements to the site are located in the B.L. Zone and includes an existing house and garage slated for removal, and an existing barn. As shown on the site plan, Bridgestone/Firestone proposes to operate a one-story service garage on the site. The proposed special exception area for the service garage is depicted on the site plan in gray. There will be parking in the front, side and rear of the site with an entrance and driveway from Belair Road running along the northern part of the site. From the driveway entrance, there will be two areas of ingress/egress into the service garage, one about 50 feet to the right in the front

of the property and 24 feet wide, and the other further toward the rear of the property also to the right and 58 feet wide. There will also be substantial landscaping in the area of the proposed special exception. As shown on the schematic landscape plan, a deep landscape buffer is planned for the frontage along Belair Road, which Mr. Hoover noted is twice as large as the 10 feet required by the County's Landscape Manual. There will be shade trees lining the site as well as shrubs and seasonal flowers.

Mr. Hoover then offered his expert testimony concerning the special exception criteria set forth in Section 502.1 of the B.C.Z.R. Initially, he indicated that the proposed use of the property for a service garage would not be detrimental to the health, safety, or general welfare of the locale, nor would it generate any additional impacts to the area above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. In particular, the use would not tend to create congestion in roads, streets or alleys. There will be some traffic generated by the new auto service garage, but Mr. Hoover opined it would not be significant; indeed, Mr. Hoover indicated that the B.L. zoning would permit up to a 129,000 square foot building, however, the proposed service garage building will consist of just over 7,500 square feet -- a much less intense use than what could be permissible. In addition, the use would not create a potential hazard from fire, panic or other danger; would not tend to overcrowd land and cause undue concentration of population; would not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements; and would not interfere with adequate light and air. Further, the use would not be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of the Zoning Regulations; it would not be inconsistent with the impermeable surface and vegetative retention provisions of the Zoning

Regulations, nor would it be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains. In fact, Mr. Hoover indicated that, as previously stated, the landscape plan provides for a substantial landscape buffer to York Road of 20 feet, which is double the 10 foot buffer requirement and consistent with the existing buffer along the Safeway store to the south.

As a final matter, in support of the requested special exception, Petitioner's attorney, Mr. Barhight, submitted a letter of support dated August 25, 2010 from David Iannucci, Executive Director of the County's Department of Economic Development, which was marked and accepted into evidence as Baltimore County Exhibit 1. In endorsing Bridgestone/Firestone's project, Mr. Iannucci noted that the Belair Road corridor is undergoing redevelopment of aging buildings into new and updated retail and service facilities. The location is zoned B.L. and the immediate area includes primarily office, service, and retail businesses.

The case also garnered interest in the Perry Hall community, particularly among the nearby business community. Testifying in opposition initially was Debra Beaty. Ms. Beaty submitted a Resolution dated August 23, 2010 from the Perry Hall Improvement Association indicating that Ms. Beaty, among several other members, was authorized to testify on behalf of the Association in zoning matters. The Resolution was marked and accepted into evidence as Protestant's Exhibit 1. In summary, Ms. Beaty expressed concerns that the proposed Bridgestone/Firestone auto care facility would saturate the auto service market in the surrounding area. She pointed to a number of other auto service facilities along this Belair Road corridor, especially ones that are family owned and fixtures in the community, which are likely to be adversely affected by the type of lighter duty, "get in – get out" services offered by Bridgestone/Firestone. She also offered a statistic that as an out-of-state operation such as

Bridgestone/Firestone, only 17% of profits go back into the local economy; and although this project will create several jobs, it also has the likelihood of jeopardizing a number of other jobs in the same auto care industry in the community. Ms. Beaty also expressed concerns over the safety of the unused portions of the subject property, which includes fenced areas and a wooded area to the rear of the site where children could wander to and possibly be hurt after visiting the nearby snowball stand.

Also testifying in opposition to the proposed service garage were Ray Brehm, Scott Woods, and Carl Klausmeier. Mr. Brehm and Mr. Klausmeier own and operate their own automotive service businesses in the vicinity of the proposed service garage. They do not believe another auto service garage is wanted or needed at the subject location. Many of these businesses are family owned and run and have been at their locations for 30, 40, or even 50 years in the community and could be adversely effected by the proposed Bridgestone/Firestone. Mr. Woods is with Rupert Management, LLC and appeared on behalf of the properties located at 9654 and 9660 Belair Road. He echoed the sentiments that another auto service business is not needed in this area and also expressed concern about potential other future uses on the larger, unused portion of the subject property, and particularly the future use of the proposed drive aisle from Belair Road.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comment dated August 24, 2010 from the Office of Planning indicated it has reviewed Petitioner's request and site plan and recommends approval subject to several conditions, which will be expounded on further in this Order. The comment from the Fire Marshal's Office dated July 19, 2010 indicates that the site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or the

beginning of operation. The comment dated July 20, 2010 from the State Highway Administration states that an Access Permit is required to construct improvements within the State right-of-way. In addition, as alluded to in earlier testimony, SHA believes the proposed driveway off Belair Road lacks sufficient throat depth and could potentially cause operational problems for vehicle ingress/egress accessing Belair Road.

Pursuant to Section 230.3 of the B.C.Z.R., a Service Garage is permitted in the B.L. Zone by special exception. A service garage is defined in Section 101 of the B.C.Z.R. as “[a] garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale.” In the instant matter, Petitioner Bridgestone/Firestone proposes a one-story service garage facility for vehicle repairs on a portion of the subject property (shown in gray on the site plan) and requests a special exception in order to do so.

In considering the special exception, I am governed by the criteria set forth in Section 502.1 of the B.C.Z.R. and the relevant case law. The appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *See, Schultz v. Pritts*, 291 Md. 1 (1981) and *People’s Counsel v. Loyola College in Maryland*, 406 Md. 54 (2008).

Based on the testimony and evidence presented, I am persuaded to grant the requested special exception. Petitioner presented in-depth and expert testimony concerning the automotive service operation, the potential impact on traffic and the adequacy of the entrance design into and

out of the site, and the proposed service garage's impact on the special exception criteria set forth in Section 502.1 of the B.C.Z.R. On the other hand, the Protestants in this case presented testimony mainly focused on the potential adverse competitive impact another auto service facility would have on the existing auto service businesses in the area. As is often the case in today's day and age, the larger "box" stores such as Best Buy, Home Depot and Lowe's, Walmart and Target, and Merchant's Tire & Auto Centers, Firestone Auto Care, and NTB Stores threaten the smaller "Mom & Pop" stores that were once fixtures and the business center of communities.

Unfortunately, while I am mindful and appreciative of the Protestants' objections, I cannot deny the requested relief based on a "business competition" argument. Petitioner has presented its case and met its burden of proof through the testimony of its representative, Mr. Adams, and the largely uncontroverted expert testimony of Mr. Cornelius and Mr. Hoover. The case law in Maryland is clear that injury from business competition is generally considered *damnum absque injuria*, which essentially means "damage without a wrong," and that the prevention of business competition is not a proper element to be considered in zoning decisions. Indeed, the primary purpose of zoning in the land use context is to regulate and limit for the public interest the uses in a particular zone by specifically delineating those uses that are permitted in the zone. It is not the proper function of a zoning ordinance to restrict competition or protect a particular enterprise that may be encouraged based on the zoning in that area. *See, Kreatchman v. Ramsburg*, 224 Md. 209 (1961), *Eastern Service Centers, Inc. v. Cloverland Farms Dairy, Inc.*, 130 Md.App. 1 (2000), and *Superior Outdoor Signs, Inc. v. Eller Media Company*, 150 Md.App. 479 (2003). Thus, I am persuaded to grant the requested special exception to use the portion of the property delineated on the site plan for a service garage.

As to the comment from the SHA expressing that the location for the proposed access driveway into the site lacks sufficient throat depth and is not consistent with AASHTO guidelines, I am persuaded by the testimony of Mr. Cornelius and his review of Petitioner's site plan and familiarity with the site that the access is adequate and safe for the proposed use and is in accordance with State Highway standards.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the respective parties, I find that Petitioner's special exception request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 20th day of September, 2010 that Petitioner's request for a Special Exception to permit a Service Garage pursuant to Section 230.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") be and is hereby GRANTED for the shaded area identified on the site plan, and in accordance with the schematic landscape plan and colored rendering and elevation drawings accepted into evidence as Petitioner's Exhibits 1, 2, and 3, respectively, and subject to the following conditions:

1. Petitioner may apply for its necessary building or use permits, as applicable, and be granted same upon receipt this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner shall obtain a State Highway Administration Access Permit to the extent required by the SHA to construct improvements within the State right-of-way.
3. The owner of the property and any successors in interest including Petitioner shall satisfy any outstanding code violations on the property prior to the instant special exception use, and shall henceforth be in compliance with County Code and B.C.Z.R. requirements for the property.

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

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz