

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

**Case 5538**

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

**APPLICANT:** Brian and Virginia DiMaggio LLC  
1909 Suffolk Road  
Finksburg, Maryland 21048

**ATTORNEY:** Clark R. Shaffer

**REQUEST:** An application for removal, modification or clarification of Condition #2 (BZA Case #5273) to allow for the repair of school buses and other similar size vehicles (excluding tractors, coach style buses and three axle trucks).

**LOCATION:** The site is located at Old Gamber Road & Rt. 91, Finksburg, MD 21074, on property zoned "B-NR" Neighborhood Retail Business District in Election District 4.

**BASIS:** Code of Public Local Laws and Ordinances, Chapter 223-100 (F)

**HEARING HELD:** February 24 & 25, 2010

**FINDINGS AND CONCLUSION**

On February 24 and 25, 2010, the Board of Zoning Appeals (the Board) convened to hear a request for the removal, modification or clarification of Condition #2 (BZA Case #5273) to allow for the repair of school buses and other similar size vehicles (excluding tractors, coach style buses and three axle trucks). Based on the testimony and evidence presented, the Board made the following findings and conclusion:

The subject of the application is 4.219 acres (+/-) of land located on the west side of Maryland Route 91 and the east side of Old Gamber Road in Finksburg ("the Property"). The zoning designation for the Property is "BNR" Neighborhood Retail Business District. On January 18, 2007, in Case No. 5273, the Board granted the Applicants' request for a conditional use for an automobile service center on the Property. The Board imposed several conditions on the approval and also denied the Applicants' request for a variance from the maximum building size provisions set forth in 223-105 (B). The Applicants appealed the Board's decision in Case No. 5273 to the Circuit Court, which upheld the grant of the conditional use and the denial of the variance. The Court remanded the case to the Board for a reconsideration of a condition

## OFFICIAL DECISION

Case 5538

Page 2

imposing a limit on the number of employees, which was re-imposed by the Board on November 27, 2007.

The site plan for the Applicants' automobile service center was approved by the Carroll County Planning and Zoning Commission ("Planning Commission") on November 17, 2009. The Planning Commission approval included numerous conditions, including one which mirrored the Board's Condition #2 in Case No. 5273, and provided that the approval was "for an automobile service center as defined in the Carroll County Code of 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." The Applicants did not file an appeal of the Planning Commission's Decision. However, they have returned to the Board asking it to delete Condition #2 in Case No. 5273 or to modify or interpret it in such a manner as to allow for the repair of school buses and all two axle vehicles at Applicants' automobile service center. The Applicants concede that repairs to coach style buses, tractor trailers and three (3) axle vehicles are not permitted in an automobile service center as defined in the Code.

In conditional use cases, the Board may impose any conditions, based on the evidence presented, which are designed and calculated to ensure that the use authorized would be compatible with the neighborhood and that it would not adversely affect the health and safety of the residents of the area. Condition #2 in Case No. 5273, which is the subject of this Application, reads as follows:

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.

Automobile service facilities are to be distinguished from "vehicle repair shops", which are defined in §223-2 as "(1)and or buildings where motor vehicles, trailers, or other types of equipment are repaired, stored, or equipped for operation including automotive repairs, vehicle painting or spray booths..."

The Applicants has asked that Condition #2 be modified or re-interpreted to allow for the repair of school buses, shuttle buses, panel trucks, and all other "2 axle" vehicles. They base this request on their assertion that these types of vehicles are typically found in neighborhoods and could thus be properly repaired in the BNR Neighborhood Business zone.

The Board declined to interpret Condition #2 so as to allow for the repair of shuttle buses, panel trucks and all other 2 axle vehicles on the Property. The condition specifically excludes "buses, tractor trailers and the like." There is no distinction between school buses and coach

**OFFICIAL DECISION**

**Case 5538**

**Page 3**

type buses in this condition, and “automobiles, pickup trucks, and similar passenger type vehicles” cannot be plausibly read to include larger panel trucks and shuttle buses. While Applicants’ proposed use would squarely fit under the definition of a vehicle repair shop, it does not fit under the definition of automobile repair facility or under Condition #2 as written.

Next, the Applicants request that Condition #2 be modified by the Board to accommodate their desire to work on school buses and all other 2-axle vehicles at this automobile repair facility. The Board notes that conditions are not routinely modified and modifications are generally reserved for situations where mistakes were made by the Board or circumstances have changed at the site such that a condition is no longer warranted or practical. In this case, no mistake by the Board was shown and the facility has yet to open, therefore no change in circumstances can be shown to support a modification. Furthermore, the Board found that what the Applicants are requesting clearly fits within the definition of a “vehicle repair shop” rather than an automobile service center which is specifically limited to smaller vehicles such as “automobiles, pickup trucks and similar passenger type vehicles.” Vehicle repair shops are not a permitted or conditional use in the BNR zone. The Board has no authority to rewrite or amend the Zoning Ordinance which was enacted by the County Commissioners. What is being requested would require a legislative “fix” by the County Commissioners in the form of a more expansive definition of “automobile service center” which cannot be effected by a decision of this Board.

For the foregoing reasons, the Applicants’ request was Denied.

March 22, 2010  
Date

Charles H. Wheatley, III  
Charles H. Wheatley, III, Chairman