

IN RE: PETITIONS FOR SPECIAL EXCEPTION	*	BEFORE THE
AND VARIANCE		
N side of Philadelphia Road, 56' NW of	*	OFFICE OF
c/line of King Avenue		
14 th Election District	*	ADMINISTRATIVE HEARINGS
6 th Councilmanic District		
(9530 Philadelphia Road)	*	FOR
Kings Court Retail, LLC,	*	BALTIMORE COUNTY
<i>Legal Owner</i>		
Hidden Treasures, LLC,	*	Case No. 2012-0261-XA
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 9530 Philadelphia Road. The Petition was filed by Joseph R. Woolman, III, Esquire on behalf of Kings Court Retail, LLC, the legal owner of the subject property, and Hidden Treasures, LLC, contract purchaser/lessee (the ‘Petitioners’). The Special Exception Petition seeks relief from Sections 423.1 and 422.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to use the property for an arcade with more than four (4) amusement devices. Petitioners withdrew their request for variance relief pertaining to parking spaces, and submitted a June 15, 2012 letter to that effect, which is in the case file. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the hearing were Roscoe Holmes with Hidden Treasure, LLC and Matthew T. Allen, professional engineer with Bohler Engineering, the consultant who prepared the site plan. Joseph R. Woolman, III, Esquire attended and represented Petitioners. There were no

Protestants or interested persons in attendance, and the file does not contain any letters of protest or opposition.

Testimony and evidence offered at the hearing revealed that the site is 6.28 acres and is zoned BL. The site is improved with a strip shopping center, and the Petitioners propose to open and operate an “arcade” in a tenant space formerly occupied by a Dollar store. The Petitioners explained that the operation will contain desktop computer terminals with flat screen monitors. Patrons will purchase internet access time on the computers, and (as an incidental use) would also have the option to participate in a “sweepstakes” promotion. Counsel explained that this was not a “game of chance,” because the results are predetermined, much like checking under a soda bottle cap to determine if you have won a prize.

There were no ZAC comments received from any of the County reviewing agencies.

As for the special exception relief, Mr. Allen (a professional engineer who was accepted as an expert in zoning and land use matters) opined (via proffer) that the proposal satisfied B.C.Z.R. §502.1, and I concur. Under Maryland law, special exception uses are presumptively appropriate within the zone, and no evidence was presented here to rebut that presumption. Schultz v. Pritts, 291 Md. 1 (1981). Petitioners explained that the “sweepstakes” aspect was only promotional, and was not a game of chance or gambling device. In these circumstances, I do not believe the proposed use would be detrimental to the public’s health, safety and welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners’ Special Exception request should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 20 day of June, 2012 that Petitioners' request for Special Exception relief under Sections 423.1 and 422.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to use the property for an arcade with more than four (4) amusement devices, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said 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/pz