

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
W/S Broad Avenue, 100' S of c/line of	*	OFFICE OF
Padonia Road		
8 th Election District	*	ADMINISTRATIVE HEARINGS
3 rd Councilmanic District		
(Broad Avenue)	*	FOR BALTIMORE COUNTY
Broad Heights Development, LLC,	*	
<i>Legal Owner</i>		
Brick Bodies Fitness Services, Inc.,	*	CASE NO. 2012-0053-SPHX
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Special Exception filed by Jason T. Vettori, Esquire of Smith, Gildea & Schmidt, LLC, on behalf of Broad Heights Development, LLC, Legal Owner, and Brick Bodies Fitness Services, Inc., Contract Purchaser/Lessee, (“Petitioners”). The Special Hearing was filed pursuant to Section 409.12 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit: (1) A modified parking plan, and (2) For such other and further relief as may be required by the Administrative Law Judge for Baltimore County. In addition, Special Exception relief was filed pursuant to Section 230.3 of the B.C.Z.R. to permit: (1) A community building, swimming pool or other structural or land use devoted to civic, social, recreational and educational activities, including use of the building as a "catering hall" as more particularly described in the plan to accompany this zoning petition as provided in B.C.Z.R. Section 230.3 and the B.C.Z.R. Commissioner's Policy Manual; and (2) For such other and further relief as may be required by the Administrative law Judge for Baltimore County. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the Petitions was Lawrence E. Schmidt, Esquire, and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., property line surveyor who prepared the site plan for this project. Also attending for Petitioners were John Schultz, Chuck Cavolo and Chris Walsh. There were no Protestants or other persons present, and the file does not contain any letters of protest or opposition from neighboring owners.

Testimony and evidence offered revealed that the subject property is a shopping center (of less than 100,000 square feet total) located off of Padonia Road at its intersection with Broad Avenue. Petitioners propose to relocate a Brick Bodies fitness center – which is presently located on the north side of Padonia Road in the same vicinity – to an empty space previously occupied by a grocery store. The site is 58,405 square feet, and the Petitioners’ propose constructing a first class fitness club, with a pool, courts and other amenities.

According to Petitioners’ calculations, 634 parking spaces would be required for the shopping center with the gym, while only 462 spaces are presently provided. However, as noted by counsel, the “dispositive factor” in whether to grant a modified parking plan in this case is the divergent “peak hours” for the businesses at the center. Petitioners stated the gym is busiest in the morning and early evening hours Monday through Thursday. The adjacent Applebee’s restaurant is busiest on weekends and later evenings, and many of the existing tenants (i.e., music store, liquor store) are not even open during the morning hours when the gym would be busy. Simply put, there is nothing to suggest that a parking deficiency would exist at this center, and given the layout of the property – which includes a 6' stockade fence where the center adjoins a D.R. zone, there is really no way that overflow parking (if it ever existed) would spill over to the residential area. I therefore find Petitioners would experience an “undue hardship,” as that term is used in B.C.Z.R. §409.12, if relief was denied, given they would be unable to open their gym at this

location. I would hasten to add that this attractive facility would be a “shot in the arm” for this center, and given that no parking shortage exists or is forecasted, there would be no negative impacts associated with the proposal.

With respect to the Petition for Special Hearing, Petitioners note (correctly) that fitness facilities have been construed as “community buildings” under the B.C.Z.R., and such use is permitted by special exception in the B.L. zone. There is nothing to suggest that the new facility would in anyway have a negative impact upon the community, nor would the project cause overcrowding or traffic congestion. The shopping center entrance/exit is controlled by a traffic signal, and Interstate 83 is less than ¼ mile away, which will facilitate ingress and egress. Also, there are no failing intersections within the traffic-shed. As such, the special exception is properly granted in this scenario. *People’s Counsel v. Loyola College*, 406 Md. 54, 71 (2008) (special exception “deemed prima facie compatible in a given zone”).

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence, I find that Petitioners’ requests for Special Hearing and Special Exception should be granted.

THEREFORE, IT IS ORDERED this 7th day of October, 2011 by the Administrative Law Judge, that Special Hearing relief filed pursuant to Section 409.12 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a modified parking plan as shown on Petitioners’ Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Special Exception relief requested pursuant to Section 230.3 of the B.C.Z.R. to permit a community building, swimming pool or other structural or land use devoted to civic, social, recreational and educational activities, including use of the building as a "catering hall", be and is hereby GRANTED.

The relief granted is subject to the following condition:

1. Petitioners may apply for their permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

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

JEB:dlw

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County