

<b>IN RE: PETITIONS FOR SPECIAL HEARING *</b>	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>	
<b>(1400 Coppermine Terrace Road) *</b>	OFFICE OF
3 <sup>rd</sup> Election District	
2 <sup>nd</sup> Council District *	ADMINISTRATIVE HEARINGS
Coppermine, LLC *	
Petitioner *	FOR BALTIMORE COUNTY
	<b>Case No. 2013-0157-SPHX</b>

\* \* \* \* \*

**AMENDED  
OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed by Jason T. Vettori, Esquire on behalf of Coppermine LLC, the legal owner. This Amended Opinion and Order shall supersede and replace the Order issued on March 26, 2013 in the above captioned matter. The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to: (1) approve and determine the parking required for a commercial recreational facility; or in the alternative; (2) to approve a modified parking plan. In addition, a Petition for Special Exception was filed to approve a commercial recreational facility pursuant to B.C.Z.R. § 253.2.D.3.

Appearing at the public hearing in support of the requests was Alex Jacobs and Michael Pieranunzi, a landscape architect who prepared the site plans. Jeffrey Budnitz of the Ruxton Riderwood Lake Roland Area Improvement Association (RRLRAIA) attended the hearing and indicated that the Association met and voted to “conditionally support” the petitions. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. The file does not contain any letters of opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive comment was from the Department of Planning (DOP), which supported the petitions, and noted that Falls Road is a designated scenic route which may require enhanced landscaping and aesthetic upgrades.

Testimony and evidence offered at the hearing revealed that the subject property is 11.06 acres and is zoned ML and MLR. The Petitioner operates on site a recreation facility that provides a myriad of programs ranging from gymnastics to flag football. The Petitioner is proposing to construct additional facilities on site to accommodate increased program offerings, but to do so requires zoning relief. The Petitioner indicated that the contemplated improvements will be subject to the full development process, as noted in the DOP's ZAC comment.

### **Special Hearing**

The Petition for Special Hearing seeks **(1)** to approve and determine the parking required for a commercial recreational facility; or in the alternative; **(2)** to approve a modified parking plan. As an initial matter, the facility which exists at the premises (and which is proposed to be expanded) is properly characterized as a commercial recreation facility. The B.C.Z.R. defines such a facility as one "whose principal purpose is to provide space and equipment for non-professional athletic activities." B.C.Z.R. §101.1. The DOP supports this characterization, and the numerous brochures submitted (Exhibits 6A - 6T) detailing the many programs offered also establish that this is a commercial recreational facility.

The next order of business is to determine the size and scale of the parking lot that will serve this facility. The B.C.Z.R. does not contain specific requirements for a commercial recreation facility. The site is isolated geographically and topographically, and as discussed at the hearing, there are no adjacent properties on which customers could safely park, so there is

little danger that any parking shortage would negatively impact the community. At present, Petitioner provides 91 spaces for the existing facility. The Petitioner proposes to add 178 spaces in connection with the expansion project, such that 269 spaces would be provided for the facility.

The most important fact driving the parking analysis is that the Petitioner provides scheduled athletic programming, with defined time slots during which participants (or in most cases, their parents) will enter and exit the facility. Thus, the business model here is unlike a health or athletic club, where members are free to drop in at anytime. As such, I believe the parking requirements for such a facility are much more modest than with commercial health clubs. In light of the scheduling and activity programming described by Petitioner, I believe parking at a ratio of 2.0 spaces per 1,000 sq. ft. of building space is appropriate.

As noted at the outset, the RRLRAIA “conditionally” supports the Petitions, and the terms of the endorsement were discussed by Mr. Budnitz at the hearing and set forth in a memorandum he presented. *See* Citizens’ Exhibit 1. The Petitioner indicated it was amenable to these requests, and the relief granted herein will be expressly subject to these conditions.

### **Special Exception Standards**

Special exception uses are presumptively valid and consistent with the comprehensive zoning plan, People’s Counsel v. Loyola College, 406 Md. 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption. As such, the commercial recreation facility use shall be permitted in the ML/MLR zone by special exception.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioner’s Special Hearing and Special Exception requests should be granted.

THEREFORE, IT IS ORDERED this 23<sup>rd</sup> day of April, 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing relief to determine the parking required for a commercial recreational facility, wherein parking shall be provided at a ratio of 2.0 spaces per 1,000 sq. ft. of building space (and in no event shall fewer than 269 spaces be provided), be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Special Exception request from B.C.Z.R. §253.2.D.3, to approve a commercial recreational facility, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of 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. Compliance with the five (5) conditions set forth in a memorandum from the RRLRAIA, attached as an Exhibit hereto.

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/dlw