

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>		
<b>(6159 Edmondson Avenue)</b>	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Councilmanic District	*	ADMINISTRATIVE HEARINGS
Catonsville Development Group, LLC		
Petitioner	*	FOR BALTIMORE COUNTY
	*	<b>Case No. 2014-0072-SPHXA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Lawrence E. Schmidt, Esquire from Smith, Gildea & Schmidt, LLC, on behalf of Catonsville Development Group, LLC (“Petitioners”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows: (1) To confirm that a commercial recreational facility is permitted by right in the M.L.R. zone (§ 248.1); (2) If necessary, to permit a commercial recreational facility, warehouse and office in the M.L. zone as uses by right (§ 240.3); (3) To confirm an existing non-conforming setback of 0 ft. in lieu of the required 50 ft. (§ 243.2); (4) To confirm an existing non-conforming setback of 37 ft. to a residential zone boundary in lieu of the required 125 ft. (§ 243.4); (5) To determine the required number of parking spaces for a commercial recreational facility (§ 409.6.A); (6) To approve a shared parking adjustment (§ 409.6.B.3); (7) In the alternative, to approve a modified parking plan (§ 409.12); (8) To confirm that the M.R. zone incorporates uses permitted in the adjoining commercial zone (§ 241.1); and (9) For such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

A Petition for Special Exception was filed pursuant to B.C.Z.R. § 248.2 as follows: (1) In the alternative, to permit a commercial recreational facility; and (2) For such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

Finally, a Petition for Variance was filed pursuant to the B.C.Z.R. as follows: (1) In the alternative, to the Petition for Special Hearing, to permit a side setback to a zoning use division line of 0 ft. in lieu of the required 50 ft. (§ 243.2); (2) In the alternative, to the Petition for Special Hearing, to permit a setback to a residential zone boundary of 37 ft. in lieu of the required 125 ft. (§ 243.4); (3) In the alternative, to the Petition for Special Hearing, to permit a setback of off-street parking and loading of 0 ft. from the right of way in lieu of the required 10 ft. (§ 409.8.A.4); (4) In the alternative, to permit a side yard setback to a property line of 24 ft. in lieu of the required 50 ft. (§ 243.2); and (5) For such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

The subject property and requested relief is more fully depicted on the redlined site plan that was marked and accepted into evidence as Petitioner's Exhibit 1A & 1B. Appearing in support of the requests was Fred Kawa, Rich Beattie and Bill Monk with Morris & Ritchie Associates, Inc., who prepared the site plan for the Petitioner. Lawrence E. Schmidt, Esquire with Smith, Gildea & Schmidt, LLC, appeared as counsel and represented the Petitioner. There were no Protestants in attendance, and the file does not contain letters of protest or opposition. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) on October 23, 2013, indicating that

development of the property must comply with the pertinent environmental regulations set forth in the Baltimore County Code.

The subject property is approximately 6.41± acre in size and is split zoned MLR, MR and DR 5.5. The site is improved with a large building (previously used as a bottling facility for a soft drink manufacturer). In addition, there is a building used as a service garage and two single family dwellings on the eastern portion of the site. This case concerns the western portion of the site, where the Petitioner proposes an adaptive re-use of the vacant warehouse building. Specifically, Petitioner proposes to use the building for a commercial recreational facility and an office/warehouse space for a growing mechanical engineering (HVAC) firm. According to Petitioner, the community is excited about the project, especially given the dearth of indoor athletic facilities in the southwest portion of the County.

The commercial use of the property dates back to long before the adoption of the B.C.Z.R., and Petitioner submitted zoning cases outlining some of the history. Exhibit 2. Given this fact, the Petitioner has sought relief under alternative theories: Special Hearing relief to confirm the nonconforming nature of the site conditions and setbacks, or in the alternative, variances from current B.C.Z.R. setback and parking requirements. The split zoning (the large warehouse is zoned both MR and MLR) also complicates matters somewhat concerning whether the proposed recreation use is permitted by right or special exception, and the Petitioner has again sought relief under alternative theories.

As noted at the outset, the site is large and of very irregular shape. As such, it seems appropriate to consider the variance requests (rather than the special hearing requests), which will prevent the need for an historical analysis of exactly what was constructed and when, even though it is abundantly clear the property has been used in a commercial fashion for probably in

excess of 100 years. For similar reasons, especially given the poorly drafted and ambiguous B.C.Z.R. provisions at issue (which would seem to indicate a commercial recreational facility is permitted as of right and by special exception in the MLR zone), I will consider that use as necessitating special exception relief.

### SPECIAL HEARING

As noted above, the majority of the Special Hearing requests will instead be treated as petitions for variance and special exception. Special Hearing request No. 5 (which will be considered) pertains to parking requirements, and Petitioner indicated that 126 spaces are currently provided on site. After analyzing the plan and proposed uses, I believe that sufficient parking exists, and I will therefore not consider the requests for a shared parking arrangement (No. 6) or a modified parking plan (No. 7). Instead, I will (pursuant to request No. 5) make a determination of the required number of spaces required for a commercial recreational facility, a use not specifically addressed in the Section 409 parking regulations.

The plan contains a parking tabulation chart, which indicates that the office and storage/warehouse uses combined will require 35 spaces. That means 91 spaces can be allocated to the commercial recreational facility, which in my opinion will be more than sufficient. As explained by Petitioner, the facility will have two full sized athletic fields. There will of course be two teams on each field, and each team will have at most 15-20 players. Even assuming for sake of argument there was no car pooling to the facility, I believe the maximum number of vehicles which would be on site at any one time would be in the neighborhood of 80. As such, I believe sufficient parking exists on site and will therefore determine that 91 spaces are required for the commercial recreational use.

### SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. Such evidence was not presented here, and thus the petition will be granted, permitting the commercial recreational facility in the MR/MLR zones by special exception.

### VARIANCES

Based upon the testimony and evidence presented, I will also grant the request for variance relief. To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

The Petitioner has met this test. The site is nearly seven acres in size (6.41± acres) and is of very irregular dimensions, as shown on the zoning map submitted as Exhibit 4. As such, the property is unique.

If the B.C.Z.R. were strictly interpreted, the Petitioner would indeed suffer a practical difficulty, since it would be unable to operate the facility. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the petitions for special hearing, special exception and variance shall be granted.

THEREFORE, IT IS ORDERED this 2<sup>nd</sup> day of December, 2013, by this Administrative Law Judge, that the request for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows: (1) To determine the required number of parking spaces (which shall be 91) for a commercial recreational facility (§ 409.6.A); and (2) To confirm that the M.R. zone incorporates uses permitted in the adjoining commercial zone (§ 241.1), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception filed pursuant to B.C.Z.R. § 248.2, to permit a commercial recreational facility in a MR/MLR zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance relief as follows: (1) to permit a side setback to a zoning use division line of 0 ft. in lieu of the required 50 ft. (§ 243.2); (2) to permit a setback to a residential zone boundary of 37 ft. in lieu of the required 125 ft. (§ 243.4); (3) to permit a setback of off-street parking and loading of 0 ft. from the right of way in lieu of the required 10 ft. (§ 409.8.A.4); and (4) to permit a side yard setback to a property line of 24 ft in lieu of the required 50 ft. (§ 243.2), be and is hereby GRANTED.

IT IS FURTHER ORDERED that all other aspects of special hearing relief as sought in the original petition, and not addressed in this Order, shall be deemed DISMISSED WITHOUT PREJUDICE.

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. Petitioner must comply with the ZAC comment submitted by DEPS (dated 10-23-2013).
3. The Special Exception granted herein must be utilized within two (2) years of the date hereof, unless extended by subsequent Order.

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:sln