

IN RE: PETITION FOR SPECIAL EXCEPTION *		BEFORE THE
(8625 Pleasant Plains Road)		
9 th Election District	*	OFFICE OF
5 th Councilman District		
MD Eye Care Real Estate, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
WSA, LLC	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2014-0212-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 8625 Pleasant Plains Road. The Petition was filed by Deborah C. Dopkin, Esquire, on behalf of the owner of the subject property, MD Eye Care Real Estate, LLC, and the lessee, WSA, LLC (“Petitioners”). The Special Exception petition seeks relief pursuant to §230.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a community building in a BL zone. 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 in support of the petition was Josh Price and Kenneth Colbert, Professional Engineer, from Colbert, Matz & Rosenfelt, Inc. the firm that prepared the site plan. Deborah C. Dopkin, Esquire, attended and represented the Petitioners. There were no Protestants in attendance, and the file does not contain any letters of opposition.

The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), dated May 7, 2014. That agency expressed support for the request, and noted the property was within a County Revitalization District.

The subject property is 2.287 acres and is zoned BL. The property was long used as an auto dealership, and was recently converted into an attractive commercial building. Exhibit 3. The majority of the building is used for a physician's eye clinic, and the Petitioners propose to operate a Crossfit gym in a portion (3,600 sf.) of the one (1) story building. The County deems this use to be a "community building," which requires a special exception in the BL zone.

SPECIAL EXCEPTION LAW

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. Here, no evidence was presented to show that the use would be detrimental to the community. Mr. Colbert, who was accepted as an expert, described the proposal and opined that Petitioners satisfied B.C.Z.R. §502.1, and I concur.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 9th day of June, 2014, that the Petition for Special Exception under §230.3 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit a community building in a BL zone, 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.

JEB/sln

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