

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND SPECIAL EXCEPTION	
(901A and 915 Middle River Road) *	OFFICE OF
15 th Election District	
6 th Council District *	ADMINISTRATIVE HEARINGS
Bradley S. Glaser, Authorized	
Representative of VEI Middle River, LLC *	FOR BALTIMORE COUNTY
<i>Legal Owner</i>	
Jumping Jamboree, LLC *	Case No. 2014-0035-SPHX
<i>Lessee</i>	
* * * * *	

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 with Smith, Gildea and Schmidt, LLC on behalf of VEI Middle River, LLC, the legal owner, and Jumping Jamboree, Lessee, (“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) seeking confirmation that the proposed use constitutes a practice or training physical conditioning facility, which is permitted by right in the ML zone, as provided in B.C.Z.R. Section 253.1.A.42; or in the alternative; (2) that the proposed use constitutes a commercial recreational facility, which is permitted by special exception in the ML zone as provided in B.C.Z.R. Section 253.2.D.3.

Appearing at the public hearing in support of the requests was Sabernia Fresnel and Rick Richardson of Richardson Engineering, LLC, the firm that prepared the site plan. Jason T. Vettori, Esquire with Smith, Gildea and Schmidt, LLC represented the Petitioners. Several area residents attended the hearing and expressed certain concerns (discussed below), and their names are listed in the case file. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

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 Bureau of Development Plans Review which indicated that a landscape plan must be approved prior to any issuance of permits.

Testimony and evidence offered at the hearing revealed that the subject property contains 7,284 SF of space within a larger (4 acres +/-) commercial property and shopping center (the Miramar Shopping Center). The Lessee has since June 2013 operated a facility offering “moonbounces” and accommodations for children’s parties and similar events. A brochure describing the business was submitted as Exhibit 4. Part of the difficulty in this case is taxonomical; i.e., how is such a business classified under the B.C.Z.R., given that it does not fit neatly within any existing categories. The second issue in the case concerns whether arcade/video games should be permitted in the facility, and if so, under what conditions.

Special Hearing

In December 2012 (Exhibit 10) the zoning office in responding to Counsel’s request for zoning verification (Exhibit 9) indicated that a public hearing before the Administrative Law Judge (ALJ) was required to determine the appropriate use category. But in January 2013 (Exhibit 11) the county issued a verification letter finding the use in this case to be considered a “Practice and Physical Conditioning Facility.” Having reviewed the definition for that use, and considering the testimony in the case, I respectfully disagree with this determination. That use category envisions “facilities and fields for amateur or professional sports organizations.” B.C.Z.R. § 253.1.A.42. Including this facility within that category would strain that definition to the breaking point.

In my opinion, the use and activities described should be considered a “commercial recreation facility,” defined under the B.C.Z.R. as:

Facilities whose principal purpose is to provide space and equipment for nonprofessional athletic activities. A commercial recreational facility includes, but is not limited to, a base-ball batting range or cage; golf-driving range; putting green; miniature golf; athletic field; swimming pool; skating rink or course; baseball, racquetball, tennis or squash court; archery range or similar facility; or any combination of the above. For the purpose of these regulations, a commercial recreational facility shall not include a rifle, pistol, skeet or trap range; go-cart course; amusement park; or similar use.

The use here is similar to the non-exhaustive list of uses and activities mentioned in the above definition, and in response to the second Special Hearing request the Lessee’s establishment shall be considered a “commercial recreational facility.”

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. Rick Richardson, a licensed professional engineer who was accepted as an expert, testified that both the commercial recreational facility and arcade uses satisfied the B.C.Z.R. § 502.1 standards. While every Special Exception use will have some impact upon the community, the evidence in this case did not establish that the impact at this location would be greater than at any other location in the ML zone. The citizens who testified expressed concern with the arcade aspect of the facility, and I believe their comments were well founded. As such, the Order granting relief in this case will impose certain conditions that will help to minimize any adverse effects upon the surrounding neighborhood.

One such condition will provide that the Special Exception for the arcade and commercial recreational facility shall terminate when Sabernia Fresnel sells, leases or otherwise ceases to have day to day involvement with the facility. Mrs. Fresnell’s testimony was

compelling, and her background as an educator and the operator (for the past 5 years) of the child-care facility adjacent to this business gave comfort to the community that this business will be operated ethically and as an establishment catering to children and their families.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing and Special Exception requests should be granted in part and denied in part.

THEREFORE, IT IS ORDERED this 10th day of October, 2013, by this Administrative Law Judge, that the Petition for Special Hearing to categorize the proposed use as a practice or training physical conditioning facility, which is permitted by right in the ML zone, as provided in B.C.Z.R. Section 253.1.A.42, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Hearing to categorize the proposed use as a commercial recreational facility, which is permitted by special exception in the ML zone as provided in B.C.Z.R. Section 253.2.D.3, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception seeking approval for: (1) An arcade, in accordance with B.C.Z.R. Sections 423.B and 422.A; and (2) a commercial recreational facility as provided in B.C.Z.R. Section 253.2.D.3, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and/or licenses 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.
2. A maximum of (40) forty arcade or video games shall be permitted on the premises.
3. The hours of the facility shall be 10:00 am to 7:00 pm, except during the period June 15-August 30, when the facility may remain open until 9:00 pm.

4. As depicted on Exhibit A attached to this Order, each of the arcade/video games kept on the premises shall contain a ratings sticker (they are \$0.75 each) as established by the American Amusement Machine Association. Each of the arcade/video machines kept on the premises must be rated Green (suitable for all ages) or Yellow (mild content).
5. The arcade shall be deemed an accessory use to the commercial recreational facility. As such, use of the arcade/video games shall be restricted to paying customers of the “Jumping Jamboree” facility. All minors using the arcade shall be accompanied by their parent or legal guardian.
6. The special exception relief granted herein shall terminate when Jumping Jamboree, LLC and/or Sabernia Fresnel sells, leases, or otherwise ceases to have day-to-day involvement in the operation of the facility approved in this Order.
7. The Petitioners shall submit for approval to Baltimore County a landscape plan, prior to the issuance of permits.

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