

IN RE: PETITION FOR SPECIAL EXCEPTION *		BEFORE THE
(303 E. Pennsylvania Avenue)		
9 th Election District	*	OFFICE OF
5 th Councilman District		
Towson Circle Holdings, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Cinemark USA, Inc.	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2014-0294-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 303 E. Pennsylvania Avenue. The Petition was filed on behalf of the owners of the subject property, Towson Circle Holdings, LLC, and the lessee, Cinemark USA, Inc. (“Petitioners”). The Special Exception petition seeks relief pursuant to §423.1B of the Baltimore County Zoning Regulations (B.C.Z.R.) to use the herein described property for an Arcade in combination with a motion picture theatre. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 2.

Appearing at the hearing in support of the petition was Chad Burch (general manager of the cinema) and surveyor Brian Dietz, whose firm prepared the site plan. Ed Covahey, Esquire represented the Petitioners. There were no Protestants in attendance and the file does not contain any letters of opposition. The Petition was advertised and posted as required by the B.C.Z.R. There were no substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is 1.813 acres and is zoned BM-CT. This property is the new Towson Circle project, which had a “grand opening” in July 2014. The project includes restaurants, stores and a 15 screen movie theatre. Petitioners would like to operate an amusement

device (arcade) in connection with the movie theatre. Mr. Burch, who has worked for Cinemark for over 14 years, testified that all Cinemark facilities feature videogame arcades, which are considered an important element of the “entertainment experience.” The B.C.Z.R. permits an Arcade (defined as a facility with five or more coin operated amusement devices) by special exception in the BM zone, when it is operated in conjunction with an entertainment use, i.e., in this case, a movie theatre.

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, Mr. Dietz, who was accepted as an expert, testified that B.C.Z.R. § 502.1 was satisfied and that the use would not in any way be detrimental to the community. Mr. Burch also testified that all of the arcade machines feature a rating sticker from a national organization, indicating that the content is appropriate for general audiences.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 4th day of September, 2014, that the Petition for Special Exception under § 423.1B of the Baltimore County Zoning Regulations (B.C.Z.R.) to use the herein described property for an Arcade in combination with a motion picture theatre, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw