

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(8200 Perry Hall Blvd.)		
14 th Election District	*	OFFICE OF
6 th Council District		
White Marsh Mall, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Dave & Buster's of Maryland, Inc.	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2017-0185-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of White Marsh Mall, LLC, legal owner and Dave & Buster's of Maryland, Inc., lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to use the herein described property for an arcade that has a second exterior entrance in addition to the entrance from the mall's interior concourse.

Jill Valachovic, Joseph Ucciferro, Michael LeFande & Wesley Rebisz appeared in support of the petition. Edward J. Gilliss, Esq. represented the Petitioners. There were no Protestants or interested citizens in attendance. No substantive Zoning Advisory Committee (ZAC) comments were received from County reviewing agencies.

The subject property is approximately 6.59 acres and is zoned BM-CT. The White Marsh Mall is operated at the site, and this case concerns a portion of the mall structure which will become a Dave & Buster's arcade/restaurant. Under the B.C.Z.R., an arcade is permitted by right in a bowling alley, hotel or enclosed mall in a BM zone, but it may have only one means of access, from the interior concourse. B.C.Z.R. §423.1.A. Here, Dave & Buster's proposes to have a mall entrance as well as an exterior entrance. This was precisely the means of ingress/egress used for

years by the Sports Authority store which previously occupied this space. In any event, the zoning office instructed Petitioners to seek special exception relief for the second entrance.

Under Maryland law “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” Schultz v. Pritts, 291 Md. 1, 22-23 (1981).

There was no such evidence presented in this case and professional engineer Joe Ucciferro opined Petitioners satisfied the requirements of B.C.Z.R. §§423 (pertaining to arcades) & 502.1. I concur, and do not believe the use would have a detrimental impact upon the community. The same can be said for the exterior entrance. As noted above, the prior tenant in this space had an exterior entrance, and many large retailers (i.e., “big box” stores) and restaurants situated in enclosed malls do as well. Therefore, granting this request will in no way be injurious to the community.

THEREFORE, IT IS ORDERED this 3rd day of **March, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to use the herein described property for an arcade that has a second exterior entrance in addition to the entrance from the mall’s interior concourse, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject 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/sln