

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(6821-6899 Loch Raven Blvd.)		
9 th Election District	*	OFFICE OF
6 th Council District		
Hillendale Business Trust	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Planet Fitness Growth Partners	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2017-0209-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 Hillendale Business Trust, legal owner and Planet Fitness Growth Partners, lessee (“Petitioners”). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) to operate a community building devoted to civic, social, recreational and education activities.

Chris Nowalk and professional engineer Matt Sichel appeared in support of the petition. Lawrence E. Schmidt, 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 11.584 acres and is zoned BL-CCC. The property is improved with a strip shopping center constructed in the 1950’s. This case involves an 18,000 sq. ft. storefront space at the center, which for years was occupied by Salvo Auto Parts. That business is relocating nearby, and Planet Fitness (a gym with several locations in Baltimore County) plans to open a facility at this location.

As noted above, this property is zoned BL, and a variety of commercial and retail uses exist in the vicinity. Even so, the B.C.Z.R. does not have a use category corresponding to a gym or

fitness/exercise facility, which is a glaring omission in this day and age. While it would seem a gym would be permitted by right in the BL zone--considering that many more intense uses (like fast food restaurants and outlet shopping centers) are so permitted--the zoning office in this and similar cases instructed petitioner to file a petition for special exception to use the property for a “community building.” Under the B.C.Z.R., a community building is one “devoted to civic, social, recreational and educational activities, including...a catering hall.” B.C.Z.R. §101.1.

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 *Attar v. DMS Tollgate, LLC*, ___ Md. ___, 152 A.3d 765 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

Mr. Sichel testified (via proffer) Petitioner satisfied the criteria set forth in B.C.Z.R. § 502.1, and I concur. No evidence was presented to suggest the use at this location would have non-inherent detrimental impacts upon the community. In fact, this is a long-established commercial center with more than enough parking and convenient means of ingress and egress. As such the petition will be granted.

THEREFORE, IT IS ORDERED this 22nd day of **March, 2017**, by this Administrative Law Judge, that the Petition for Special Exception to approve a community building devoted to civic, social, recreational and education activities, 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