

bIN RE: PETITION FOR SPECIAL EXCEPTION * (1636 Reisterstown Road) 3 <sup>rd</sup> Election District * 2 <sup>nd</sup> Council District Temescal Wellness of Maryland, LLC * <i>Lessee</i> *	BEFORE THE  OFFICE OF  ADMINISTRATIVE HEARINGS  FOR BALTIMORE COUNTY
Petitioner *	Case No. 2017-0281-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 Temescal Wellness of Maryland, LLC, lessee (“Petitioner”). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a state licensed medical cannabis dispensary to be located in the Pikesville Commercial Revitalization District.

Ted Rebholz and land use planner Mitch Kellman appeared in support of the petition. Adam M. Rosenblatt, Esq. represented the Petitioner. Several members of the community opposed the request, and Howard Needle, an attorney who lives in the adjacent Pine Ridge community, submitted a letter enclosing an April 2017 research study concerning “Marijuana Outlets and Crime....” A copy of these documents is included in the case file. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Neither agency opposed the special exception request.

The subject property is approximately 0.5 acres in size and is zoned BL, although the special exception “area” shown on the plan is 0.3 acres. The property is located within the Pikesville Commercial Revitalization District, and is improved with a strip shopping center. The

property has been vacant for some time. Petitioner was granted from the State of Maryland a medical cannabis dispensary license, and it proposes to open a dispensary facility in a 5,500 sq. ft. portion of the strip center. While a cannabis dispensary is permitted “by right” in a BL zone, a special exception is required when the property is located within a commercial revitalization district. B.C.Z.R. §4D-102.

### 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.

In this case, Petitioner presented expert testimony from Mitchell Kellman, a land use/zoning planner with over 25 years of experience. Pet. Ex. 6. Mr. Kellman opined Petitioner satisfied the standards set forth in B.C.Z.R. §502.1 and that the proposed use would not be detrimental to the community. Thus, as a matter of law, Petitioner has established a prima facie case of entitlement to the special exception.

As described in *Attar*, it is then the community’s burden to adduce evidence rebutting the presumption favoring the Petitioner. I do not believe such evidence was presented in this case, and (but for a procedural issue discussed below) the petition for special exception would be granted. It is entirely understandable the community does not want the dispensary in Pikesville. But as noted at the hearing zoning is not a plebiscite, and cases cannot be decided based on the

number of people favoring versus opposing a project. *Neuman v. City of Baltimore*, 23 Md. App. 13, 16 (1974) (“[z]oning should never be allowed or disallowed on the basis of a plebiscite of the neighborhood”).

Members of the community emphasized that a “special” exception or exemption is required here, which is true. But under the law as described above, special exceptions are in fact not “special” or “exceptions” at all. See *Ogden Fire Co. v. Upper Chichester Twp.*, 504 F.3<sup>rd</sup> 370, 382 (3d Cir. 2007) (noting that a “special exception is not really an exception at all”). In fact they are presumptively proper uses.

Petitioner requested at the hearing (although there was no such request in the Petition itself) it be permitted to provide an 8 ft. wide landscape strip at the front of the site adjoining Reisterstown Road. The zoning regulations and landscape manual require a 10-foot wide landscape strip for parking lots adjacent to public roadways. B.C.Z.R. §409.8.A.1. As such, unless variance or special hearing relief is granted Petitioner must comply with the requirements set forth in the landscape manual.

The final issue concerns the zoning Petition itself. While the property owner’s name (Village Greenwood LLC) is printed at the top of the form, there is no ownership information or signature by an authorized party on the bottom of the petition or on any attachments thereto. In fact, the petition contains an oath and affirmation clause whereby the owner must expressly declare that it is the “legal owner(s) of the property which is the subject of this/these Petition(s).” In these circumstances the petition must therefore be denied. *Fiol v. Howard County*, 67 Md. App. 595, 605 (1986) (zoning board cannot grant a special exception unless the petition is filed by the owner(s) of the property).

THEREFORE, IT IS ORDERED this 23<sup>rd</sup> day of **June, 2017**, by this Administrative Law Judge, that the Petition for Special Exception for a state licensed medical cannabis dispensary to be located in the Pikesville Commercial Revitalization District, be and is hereby DENIED.

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

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(1636 Reisterstown Road)		
3 <sup>rd</sup> Election District	*	OFFICE OF
2 <sup>nd</sup> Council District		
Temescal Wellness of Maryland, LLC	*	ADMINISTRATIVE HEARINGS
<i>Lessee</i>		
	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2017-0281-X
* * * * *		

**OPINION AND ORDER ON MOTION FOR RECONSIDERATION**

Now pending is a Motion for Reconsideration filed by Petitioners. By Order dated June 23, 2017, the petition for special exception was denied in the above case, based solely upon Petitioners’ failure to have the legal owner sign said petition. In their motion, Petitioners explain the signature page was in fact filed by Petitioners, but that it was somehow not included in the Administrative Law Judge’s file. Petitioners included with their motion (Exhibit A) a fully executed copy of the petition. As such, the motion will be granted.

WHEREFORE, for the foregoing reasons, it is this **29<sup>th</sup>** day of **June, 2017** by the Administrative Law Judge for Baltimore County ordered that the Motion for Reconsideration be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for special exception to operate a state licensed medical cannabis dispensary, within the 0.30 acre special exception area shown on the site plan marked as Exhibit 1, be and is hereby GRANTED.

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