

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(825 Dulaney Valley Road)		
9 th Election District	*	OFFICE OF
5 th Council District		
Towson TC, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Round 1 Entertainment, Inc.	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2019-0206-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 Towson TC, LLC, legal owner and Round 1 Entertainment, Inc., lessee (“Petitioners”). The special exception petition was filed pursuant to Sections 423 and 502.1 of the Baltimore County Zoning Regulations (“BCZR”) to use property as an arcade that has a second exterior entrance in addition to the entrance from the mall’s interior concourse.

Landscape architect Mike Pieranunzi 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 any county agencies.

The subject property is approximately 23.8 acres in size, although the area of the proposed special exception is 74,442 sq. ft. (1.71 acres) and is zoned BM-DT. The Towson Town Center is located at the site. Petitioners propose to open a restaurant/arcade/entertainment venue at the mall. The arcade portion of the site is permitted in the BM zone by special exception.

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*, 451 Md. 272 (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. Pieranunzi testified (via proffer) Petitioners satisfied the requirements of BCZR §502.1 and the Maryland case law interpreting that provision. No evidence to the contrary was presented and I believe the petition should be granted. The regulations specifically identify enclosed shopping malls as appropriate locations for such businesses, and Petitioners note that a Dave & Buster's (a similar arcade/dining/entertainment venue) has operated successfully for many years at the White Marsh Mall. As such, I do not believe granting the petition would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 19th day of **March, 2019**, by this Administrative Law Judge, that the Petition for Special Exception pursuant to Sections 423 and 502.1 of the BCZR, to use property as 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