

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(9635 Liberty)		
2 <sup>nd</sup> Election District	*	OFFICE OF
4 <sup>th</sup> Council District		
Deer Park MZL, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Adetunji Amao	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	<b>Case No. 2019-0393-X</b>

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**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 Section 248.2 of the Baltimore County Zoning Regulations (“BCZR”) for a commercial recreational facility.

Adetunji Amao appeared in support of the petition. Bruce Doak, a licensed property line surveyor, also appeared in support of the position and was accepted as an expert in the relevant fields. Francis Borgerding, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”) suggesting that “the special exception area be expanded to include the required parking spaces.” Mr. Doak testified that the Petition for Special Exception did in fact encompass the entire 29.902 acre property and that the adequacy of parking was, therefore, a non-issue. The property is zoned MLR.

Mr. Amao testified that he is the contract-lessee and the lessor is Deer Park, MZL, LLC. Deer Park was represented at the hearing by Ms. Patricia Palumbo and Mr. Matthew Allen of Deer Park’s affiliate, Klein Enterprises. Mr. Amao explained that he intends to operate an indoor

children's recreational facility. He explained that they will host birthday parties and other family occasions. An artist's rendering and a floor plan of the facility were introduced through Mr. Amao and accepted into evidence as Exhibits 2 and 3, respectively. Mr. Amao stated that he anticipates that most of their business will be on evenings and weekends, until the summer, when he believes they will also be busier during the weekdays. He testified that the other tenants in that section of the development are light manufacturing/warehouse businesses that don't use much of the parking capacity. He testified that he has been to the site at all times of the day and there is never any shortage of parking, especially on weekends.

Mr. Doak then explained the site plan (Exhibit 1) and explained that there are 117 parking spaces immediately in front of the row of businesses that will house this proposed facility. He also testified that he confirmed with Ngone Seye Diop of the Department of Planning that the Petitioner also has the right to have his customers use any of the total of 650 parking spaces in the entire development. Mr. Doak offered into evidence a letter of recommendation from Klein Enterprises to Mr. Michael Malinoff, the Director of Permits and Inspections (Exhibit 4). Mr. Doak also offered an aerial photo of the site from the County's "My Neighborhood" website (Exhibit 5), as well as an additional site drawing with accompanying photos (Exhibit 6). Counsel for Petitioner questioned Mr. Doak about all of the factors in BCZR Sec. 502 and Doak explained to the satisfaction of the undersigned that this proposed use is fully compliant. In fact, Doak stated that this proposed use is perfectly suited to the property and the surrounding area. This testimony was echoed by Ms. Patricia Palumbo, who also noted that Owings Mills Boulevard had recently been extended out to this area and would provide ready accessibility to the proposed recreational facility for the adjoining residential neighborhoods.

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. As explained above, the unrebutted testimony of Mr. Amao, Mr. Doak, and Ms. Palumbo, is that the proposed children’s indoor recreational facility is an ideal use for this unoccupied business space, and that there would be only positive impacts on the surrounding area.

THEREFORE, IT IS ORDERED this 16th day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Exception pursuant to Section 248.2 of the BCZR, for a commercial recreational facility, be and hereby is 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.

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Signed  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/sln