

IN RE: <b>PETITION FOR SPECIAL EXCEPTION*</b>	BEFORE THE
(4313 Ebenezer Road)	
11 <sup>th</sup> Election District	*
5 <sup>th</sup> Council District	
W ARC PH Square Owner, VIII, LLC,	*
<i>Legal Owner</i>	
	*
	OFFICE OF
	ADMINISTRATIVE HEARINGS
	FOR BALTIMORE COUNTY
<b>Petitioner</b>	*
	<b>Case No. 2020-0041-X</b>

\* \* \* \* \*

**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 W ARC PH Square Owner, VIII, LLC, legal owner (“Petitioner”). The special exception petition was filed pursuant to § 230.3 of the Baltimore County Zoning Regulations (“BCZR”) for a community building for recreational purposes (health club).

The Petition was properly advertised. A virtual public hearing was held via WebEx due to the meeting restrictions imposed by the Covid-19 crisis. Mark Arena, the President of ARC Management, Inc. appeared in support of the petition as the agent of the legal owner. David H. Karceski, Esq. represented the Petitioner. Michael Gessel, the engineer who prepared and sealed the site plan also attended and he was accepted as an expert in the fields of engineering and land use, as well as in the BCZR.

**FINDINGS OF FACT**

The site is approximately 15.67 acres in size and zoned BL-CCC and DR 16. As Mr. Karceski explained, the Petitioner wants to infill the space previously occupied by a Salvo Auto store by replacing it with “Maximum Fitness,” a health and fitness club. No exterior

modifications of any kind are proposed. Maximum Fitness has already obtained all the necessary permits for the interior build out and has spent to-date over \$750,000.00.

Mr. Karceski explained that this proposed special exception use will be in accordance with all the requirements of BCZR § 502.1. Specifically, as an in-fill of an existing building in a large existing strip mall, it will not increase traffic or congestion in the area. There is ample parking at the site, especially because Maximum will operate 24 hours a day, thereby spreading out its parking demands. This proposed use will also obviously not cause overcrowding of schools or an undue burden on any public services. To the contrary, as Mr. Karceski pointed out, this proposed use will benefit both the County's residents, and the County's economic vitality.

#### 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, in my view this proposed special exception use will have only positive impacts. Further, the proposed use complies in all respects with BCZR § 502.1 as well as the specific requirements of BCZR § 230.3 concerning a community building for recreational purposes (health club).

THEREFORE, IT IS ORDERED this **2nd** day of **July, 2020**, by this Administrative Law Judge, that the Petition for Special Exception seeking relief from § 230.3 of the Baltimore County

Zoning Regulations (“BCZR”) for a community building for recreational purposes (health club),  
be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner 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:dlw