

IN RE: PETITION FOR SPECIAL EXCEPTION*	BEFORE THE
(122 Eastern Avenue)	
15 th Election District	*
7 th Council District	
Essex Plaza, LLC,	*
<i>Legal Owner</i>	
	*
	OFFICE OF
	ADMINISTRATIVE HEARINGS
	FOR BALTIMORE COUNTY
Petitioner	* Case No. 2020-0055-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 Essex Plaza, LLC, legal owner (“Petitioner”). The special exception petition was filed pursuant to § 230.3 of the Baltimore County Zoning Regulations (“BCZR”) to approve the use of a 2,457 sq. ft. tenant suite and parking area with the address of 122 Eastern Avenue for a community building.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Neil Lanzi, Esq. represented the Petitioner, Essex Plaza, LLC. Ms. Kelly Nash appeared in support of the petition on behalf of her company, Destined 4 Greatness, LLC, which is the contract lessee for the subject premises. Bruce Doak, the licensed surveyor who prepared the site plan also attended and was accepted as an expert in land use, surveying, and the BCZR. There were no protestants or interested persons in attendance. A ZAC comment was received from the Department of Plan (“DOP”), which did not oppose the requested relief.

A site plan was marked and admitted as Petitioner’s Exhibit 1. The site is approximately 2.14 acres and zoned in BL. The subject property is one of numerous similar commercial spaces

in the Essex Plaza on Eastern Boulevard. It is 103 ft. deep by 20 ft. wide. Ms. Nash testified that she and her husband have operated a state-licensed day care facility for the last six years in the same strip mall. She explained that they propose to expand into this new space in order to provide after school and weekend programs for children ages 5 to 12 years. The programs will include arts, theater, dance, and martial arts. The new facility will also be state licensed. The undersigned asked Ms. Nash about the traffic control concerns raised by the DOP. Ms. Nash testified that they will have signage at the front of the building directing traffic to the rear of the building for the pick-up and drop-off of children, and that they will have portable traffic control/directional figures in the parking lot to assist with traffic control during hours of operation.

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. Doak testified that the proposed use is fully compliant with each of the factors of BCZR § 502.1. Specifically, he testified that this will be a very low impact use compared to many of the existing businesses in the vicinity. He testified that he has visited the site numerous times and that there is more than adequate parking. He further opined that this use is squarely within the legislative intent for a “community building” use under BCZR § 230.3.

Based on the record evidence I find that the proposed use is fully compliant with the factors in BCZR § 502.1 and that the Petition for Special Exception can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety and welfare.

THEREFORE, IT IS ORDERED this **11th** day of **September, 2020**, by this Administrative Law Judge, that the Petition for Special Exception seeking relief under § 230.3 of the Baltimore County Zoning Regulations (“BCZR”) to approve the use of 2,457 sq. ft. tenant suite and parking area with the address of 122 Eastern Avenue for a community building, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.

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

PMM:dlm