

IN RE: PETITION FOR SPECIAL	*	BEFORE THE DEPUTY
EXCEPTION		
360 feet E of Washington Blvd.	*	ZONING COMMISSIONER
and 1300 feet N of intersection with		
Commerce Drive	*	FOR
13 th Election District		
1 st Councilmanic District	*	BALTIMORE COUNTY
(3551 Washington Boulevard)		
	*	
Venture B.G., LLC		
<i>Petitioner</i>	*	Case No. 2009-0222-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by the legal owner of the subject property, Venture B.G., LLC. Petitioner requests special exception approval to permit a health club (community building) in a B.L. Zone, pursuant to Section 230.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”). Additionally, Petitioner seeks approval for a warehouse use (public storage) and living quarters in a commercial building for the warehouse use in a B.L. Zone as special exception uses, pursuant to Section 230.3 of the B.C.Z.R. The living quarters, as a special exception, is only permitted in another commercial use, which in this case is the warehouse use. The subject property and requested relief are more fully described on Petitioner’s redlined two page site plan, which was marked and accepted into evidence as Petitioner’s Exhibits 1A and 1B.

Appearing at the requisite public hearing in support of the requested relief were Howard S. Brown, Manager of Venture B.G., LLC, Ken Bernstein, leasing agent for Petitioner, and Skip Antonucci, Petitioner’s landscape architect. Professional engineer Steve Warfield with Matis Warfield, Inc., the engineering firm that prepared the redlined site plan, was also in attendance on behalf of Petitioner. David Karceski, Esquire appeared as attorney for Petitioner. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence proceeded by way of a proffer by Mr. Karceski and revealed that the subject property consists of approximately 61.2 acres, more or less, is irregular in shape and located northeast of Interstate 695, between Washington Boulevard and Hammonds Ferry Road, in the Lansdowne area of Baltimore County. Washington Boulevard and Hammonds Ferry Road parallel the subject property on its west and east sides, respectively, and run in a north-south direction. Lansdowne Boulevard is north of the property and runs perpendicular to the site in an east-west direction. As shown on the redlined site plan and an aerial photograph for the subject property and surrounding area that was marked and accepted into evidence as Petitioner's Exhibit 3, the property is split-zoned B.L.-A.S. (Business, Local – Automotive Services), M.L.-I.M. (Manufacturing, Light – Industrial, Major) and D.R. 5.5 (Density Residential).

The majority of the site (45.52± acres) is zoned B.L.-A.S., and all of the property's improvements, including its buildings, off-street parking, and the site's two access drives, are located within the B.L.-A.S. Zone. Approximately 14.67 acres of the property are zoned M.L.-I.M., and the remaining 1.03 acres are zoned D.R. The M.L.-I.M. zoning classification is located along the eastern and southern boundaries of the site, while the D.R. 5.5 is located only to the south. These areas are occupied entirely by unimproved and forested areas. The majority of the area surrounding the site to the north is zoned Manufacturing and Business classifications and occupied by numerous industrial and commercial uses. To the west of the property is Washington Boulevard, a five-lane roadway with a center turn lane, and more commercial and industrial uses also zoned Manufacturing and Business classifications. Single-family residential dwellings are located to the east and south of the site; however, these residential areas are separated and buffered from the property by significant forested areas. The property is further separated from the

residential uses located to the east by railroad tracks owned by the Baltimore and Ohio Railroad Company.

As also shown on the redlined site plan, the property is currently improved with an existing shopping center known as “Lansdowne Station,” which was the subject of a prior comprehensive rezoning request during the 2004 Comprehensive Zoning Map Process (“C.Z.M.P.”). As part of this C.Z.M.P., the current B.L.-A.S. zoning was placed on the property for development of the shopping center. Petitioner provided details regarding Lansdowne Station’s tenants and the parking that serves these tenants. The redlined site plan indicates that the shopping center includes more than 320,000 square feet of retail space, more than 54,000 square feet of office space, and more than 14,000 square feet of restaurant space. On-site retailers at this center include a Wal-Mart Supercenter, Office Depot, and Petco. Vehicular access to the center and all of its tenants is available through two existing, signalized entrances onto Washington Boulevard. A total of 2,600 parking spaces provided as surface parking areas and a structured parking facility serve all of the shopping center’s tenants. It is also important to note that the Office of Planning approved the Lansdowne Station center as a “Planned Shopping Center,” in accordance with the definition for planned shopping center contained in Section 101 of the Zoning Regulations. A site plan marked and accepted into evidence as Petitioner’s Exhibit 2 confirms the Office of Planning’s designation of this site as a planned shopping center. As explained below, this designation is relevant to one of the requested special exception uses -- the warehouse/public storage use.

Further testimony and evidence revealed that Petitioner intends to locate the proposed special exception uses within a four-story building now under construction on the property. This is more clearly illustrated by way of an aerial photograph that was marked and accepted into evidence as Petitioner’s Exhibit 4. The building that is the area of special exception is labeled on

this photograph as “Special Exception Building,” and the undersigned will refer to the building by this same name. This structure is located at the northern end of the property and connected to the site’s structured parking facility with direct access to the property’s northernmost vehicular access point onto Washington Boulevard. As the instant Petition for Special Exception provides, Petitioner’s warehouse use would be served by a living quarters within this commercial use to manage and supervise operation of the warehouse.

Recently, the County Council, by Bill No. 06-09, amended the B.L. Zone use regulations for the purpose of adding the warehouse use category to the list of uses permitted by special exception in the B.L. Zone. According to the bill, warehouse uses are permitted on the B.L. Zoned property by special exception, if the property satisfies the following requirements: (a) the site is a planned shopping center; (b) the property contains as least thirty (30) acres of land; and (c) the building that contains the warehouse use does not occupy more than 15% of the planned shopping center’s acreage. As indicated by Mr. Karceski, the subject property has been designated as a planned shopping center by the Office of Planning, and the site plan confirms that this planned shopping center contains approximately 61 acres of land, and that the building within which the warehouse use will be located occupies only two percent (2%) of the planned shopping center’s total acreage. Hence, Petitioner’s proposed warehouse use qualifies for a special exception pursuant to Section 230.3 of the B.C.Z.R. Section 230.3 of the B.C.Z.R. also permits living quarters in a commercial building through a special exception request. The living quarters use is only permitted as part of a commercial building, and in this case, it will be contained within the proposed warehouse.

In addition to the warehouse use, Petitioner intends to locate a health club in the same four-story building. The instant Petition also requests this use pursuant to Section 230.3 of the

B.C.Z.R., which includes a B.L. Zone use category for “[c]ommunity building, swimming pool, or other structural or land use devoted to civic, social, recreational and educational activities.” In particular, it is the Zoning Commissioner’s Policy Manual (“Z.C.P.M.”) which confirms that a health club is one use permitted as a recreational use in the B.L. Zone by this same section of the Zoning Regulations. A copy of the applicable section of the Z.C.P.M. was marked and accepted into evidence as Petitioner’s Exhibit 7. In addition, Mr. Warfield, Petitioner’s professional engineer, confirmed that, in his experience, health clubs are indeed permitted in the B.L. Zone by special exception as described above.

As depicted on the redlined site plan, the warehouse use will occupy a portion of the first floor of the special exception building as well as the second and third floors of the building. By testimony of Howard S. Brown on behalf of Petitioner, it was made clear that the warehouse use will be operated as a public, self-storage facility. The total number of individual storage units available to the general public and the exact size of the individual units have not yet been determined; however, Petitioner did explain that the maximum number of units would be 650 units. The living quarters within this commercial use is shown on the second floor of the building for illustrative purposes. To effectively manage the warehouse, Petitioner believes living quarters should be provided on-site to allow for the constant presence of a “caretaker” who will monitor the building and its daily use. While Petitioner anticipates that the living quarters will be located on the building’s second floor, when plans are finalized it is possible that it may be located elsewhere within the warehouse special exception area.

As explained by Petitioner during the hearing, a small portion of the special exception building area for the warehouse may not be needed for its operation. The redlined site plan identifies the specific location and size of this portion of the building, which is on the building’s

first floor and would allow for a second customer entry into the warehouse. Petitioner indicated that it may choose to eliminate this small portion of the special exception area from the warehouse and utilize it for another use permitted by right in the B.L. Zone. This is certainly permissible. The area is cross hatched on Petitioner's Exhibit 1B, and a redlined note has been placed on this exhibit confirming that this area may be used for an otherwise permitted use.

As indicated previously, the proposed health club will be located on the fourth floor of the special exception building, above the warehouse use and its commercial living quarters. A floor plan for the health club that was marked and accepted into evidence as Petitioner's Exhibit 5 indicates some of the facilities and amenities that this health club use may provide. This floor plan was marked for illustrative purposes and, while not reflecting the final layout of the health club, shows facilities and member services commonly associated with health clubs, including a reception area, large workout area, labeled "functional training," basketball court, swimming pool, and locker room facilities. The redlined site plan indicates that the proposed health club use will be approximately 46,713 square feet in size and occupy all of the fourth floor of the special exception building.

For illustrative purposes, Petitioner's Exhibit 1B delineates two areas of parking spaces in red, one in connection with the warehouse use and a second area in connection with the health club use. The health club parking area is shown as some of the spaces in the structured parking facility, and the warehouse parking area is shown to the rear of the special exception building at the location of the main access to the warehouse. Petitioner explained that the Zoning Review Office requires these special exception parking areas to be shown for illustrative purposes only, and not to designate them specifically for sole use by any individual special exception uses. These areas, as well as the parking calculations provided on Petitioner's redlined site plan, confirm that

there is adequate parking to serve all of the center's existing tenants and the proposed special exception uses.

Following the proffer by Mr. Karceski and additional testimony provided by Petitioner's witnesses regarding the nature and operation of the special exception uses, Petitioner addressed the burden of proof contained in Section 502.1 of the B.C.Z.R. All of the testimony and evidence presented by Petitioner supported its position that the three proposed special exception uses -- a warehouse for public storage purposes, a living quarters within the warehouse use for a caretaker, and a health club -- will not be detrimental to the health, safety, and general welfare of the surrounding locality, as required by B.C.Z.R. Section 502.1.A. This same testimony and evidence also confirmed that all three special exception uses satisfy all of the other elements for approval of a special exception use contained in Sections 502.1.B through 502.1.I of the B.C.Z.R. It is also important to note that no adverse Zoning Advisory Committee comments were received as part of the record of this case and the ZAC comments that were submitted indicate no opposition to the requested special exception uses. Additionally, no interested citizens or individuals in opposition to Petitioner's requested zoning relief attended the public hearing in this case.

Based on the testimony and evidence presented by Petitioner, I am persuaded to grant the requested relief for the three special exception uses. Each of the proposed uses is a permitted special exception use according to the B.L. Zone use regulations and each special exception use, as proposed by Petitioner and shown on Petitioner's redlined site plan, meets the criteria set forth in Section 502.1 of the Zoning Regulations.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering all of the testimony and evidence offered by Petitioner, I find that Petitioner's three special exception requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 3rd day of April, 2009, that the Petition for Special Exception for a health club (community building) in a B.L. Zone pursuant to Section 230.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) be and is hereby GRANTED in accordance with Petitioner’s Exhibits 1A and 1B; and

IT IS FURTHER ORDERED that the Petition for Special Exception for a warehouse use (public storage) and living quarters in a commercial building for the warehouse use in a B.L. Zone pursuant to Section 230.3 of the B.C.Z.R. be and is hereby GRANTED in accordance with Petitioner’s Exhibits 1A and 1B, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

____SIGNED____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz