

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND SPECIAL EXCEPTION	
E/Side of Aylesbury Road, 142.86' *	ZONING COMMISSIONER
c/line of Foxtail Road	
(10-14 West Aylesbury Road) *	OF
8 th Election District *	BALTIMORE COUNTY
3 rd Council District	
Foxtail Limited Partnership, <i>Legal Owner</i>	
Kiddie Crusoe, LLC, <i>Lessee</i> *	Case No. 2010-0216-SPHX
<i>Petitioner(s)</i>	

* * * * *

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by Elizabeth N. Snyder, Managing Member, Kiddie Crusoe, LLC, the contract lessee, through their attorney, Jeffrey H. Scherr, Esquire with Kramon & Graham, P.A. The Petition was also signed by Charles J. Frank, President of CJF Realty, Inc., General Partner, on behalf of Foxtail Limited Partnership, the owner. Petitioners request special hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** to approve a Commercial Recreational Facility and that it can be used with an accessory Arcade pursuant to B.C.Z.R. Section 423.1.C, and **(2)** to determine that the existing parking as varianced under Case No. 99-156-A is adequate to support the existing and proposed uses. In addition, Kiddie Crusoe requests a special exception to permit: **(1)** a Commercial Recreational Facility on the subject property to contain indoor recreation, playground, and exercise attractions for children up to age 13, including, but not limited to, inflatable equipment, tunnel slide, bouncer maze, playhouse, a café and a boutique and related facilities for birthday parties associated with such uses pursuant to Section 253.2.D.3 of the B.C.Z.R., and **(2)** in combination therewith, an accessory arcade, to contain Nintendo Wii

stations, air hockey tables and basketball nets that contain electronic equipment, pursuant to B.C.Z.R. Sections 253.2.E and 423.1.C. The subject property and requested relief are more fully described on the site plan, which was marked and accepted into evidence as Petitioner's Exhibit 2.¹

Appearing at the requisite public hearing in support of the requested relief were Elizabeth N. Snyder on behalf of Kiddie Crusoe, LLC, and Jeffrey H. Scherr, Esquire, with Kramon & Graham, P.A, counsel for Ms. Snyder. Also appearing in support were William P. Monk with Morris & Ritchie Associates, Inc., the consultant who prepared the site plan, Charles J. Frank and John Higgins, on behalf of the property owner, and Frederick W. Hearn, Senior Vice President of MacKenzie Commercial Real Estate Services, LLC. Eric Rockel appeared in his capacity as the President of the Greater Timonium Community Council and participated at the hearing. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is positioned on the east side of Aylesbury Road just south of Fox Tail Road in Lutherville. The property is improved with an existing 138,734 net square foot warehouse, office and showroom on both West Aylesbury and Fox Tail Roads and parking lots fronting both West Aylesbury and Fox Tail. The parking lot fronting Fox Tail Road is contiguous to and serves the proposed use. Spaces in this lot will be leased by Kiddie Crusoe, LLC as well as the building area described on the site plan as Lease Area 8 consisting of 12,000 square feet, more or less. This space was previously occupied by the LAX World retail operation.

In order to give context and some important background information to these requests, it is necessary to briefly review the prior zoning history of the property. In Case No. 99-156-A, the

¹ Kiddie Crusoe, LLC will be located in approximately 15% of the total enclosed building's leasable area. It will feature an exclusive ingress and egress area known as 7 Foxtail Road.

owner of 10-14 West Aylesbury Road, Foxtail Limited Partnership, requested a variance for the relief set forth in Mr. Kotroco's opinion in that case, which opinion and order required the Owner to make certain improvements, namely (i) construct a sidewalk within the public right-of-way of Fox Tail Road between the curb cut serving the parking lot and running easterly approximately 60 feet to the end of the property and tying in to the existing sidewalk; (ii) pave a driveway that connects the parking area off of Fox Tail Road with the driveway and parking area on the west side of the Property (fronting W. Aylesbury Road); (iii) re-stripe the parking spaces adjacent to the driveway; (iv) painting stripes and "no parking" in the area in front of Schumacher & Seiler loading docks as so noted on the plan which is Petitioner's Exhibit 2; and (v) submitting to Baltimore County a landscape plan for the property (the "99-156-A Improvements"). A copy of the Order in Case No. 99-156-A and the site plan relating to it was marked and accepted into evidence as Petitioner's Exhibit 1.

In support of the current zoning relief requests, Petitioner's attorney, Mr. Scherr, also introduced, as Petitioner's Exhibit 9, a copy of an email memorandum from Stephen E. Weber, Chief of Traffic Engineering, Department of Public Works, dated March 23, 2010, which is accompanied by two (2) photos. Mr. Weber's memorandum concludes that he has no issue with the relief requested by Kiddie Crusoe, but is concerned that the improvements set forth in Case No. 99-156-A were not made and also requested two (2) additional improvements, (i) extending the sidewalk on Fox Tail Road from the curb cut west to the intersection with West Aylesbury Road; and (ii) placement of a raised curb along the West Aylesbury Road property line in the Schumacher & Seiler service court area, which is a County right-of-way in order to prohibit cars and trucks from utilizing this area for parking and turning maneuvers (additional improvements).

Mr. Monk prepared the site plan for Case No. 99-156-A and testified in that case. In this case, Mr. Monk testified that the additional improvements suggested by Mr. Weber along West Aylesbury has no impact on Petitioner's request and that placing the curb, as described herein, would impede truck turning radius for deliveries to Schumacher & Seiler and the loading docks that service this tenant in Lease Area 1. Mr. Monk also testified that painting stripes and a "no parking" sign in the affected area should be done as was stipulated by the Deputy Zoning Commissioner in his opinion and Order in 99-156-A.

Mr. Monk also testified that the sidewalk suggested as an additional improvement was considered by and specifically rejected by Mr. Kotroco in his opinion in 99-156-A and nothing has changed to require a different result. In fact, Mr. Monk testified that the prior tenant in Lease Area 8, the space to be leased to Petitioner, was occupied by LAX World, which was a retail use which produced more intense parking use of Lease Area 8 than the use proposed by Petitioner.

The owner's representative, Mr. Frank, testified that the 99-156-A improvements were not made because the person responsible for the management of the property left the owner's employ and the owner was not left with a list of the 99-156-A improvements to be made.

Mr. Frank testified that he will make the 99-156-A improvements within ninety (90) days after the date of this Order.

This Zoning Commissioner is persuaded by Mr. Monk's testimony and will require the owner to make the 99-156-A improvements within ninety (90) days from the date of this Order, but will not require the additional improvements.

Testimony by Ms. Snyder and her business plan, Petitioner's Exhibit 5, reveals that she executed a five (5) year lease with a five (5) year renewal for Lease Area 8 to be used in the

manner described above. Ms. Snyder testified that she borrowed money from M&T Bank and invested equity in the proposed operation for inventory and equipment. Petitioner's Exhibit 6 demonstrates that she started making loan payments. Petitioner's Exhibit 7 shows the layout for the equipment to be utilized in the business operations.

With respect to the arcade, Ms. Snyder described eight (8) potential Nintendo Wii stations, two (2) potential air hockey games and four (4) potential basketball nets with an electronic component for keeping score. All will be used on the same lot, in the same building and will be subordinate to the physical recreation provided within the proposed commercial recreation facility, as required by B.C.Z.R. Section 423.1.C.

With respect to parking, Ms. Snyder testified that she did a market study to determine usage of the proposed facility. Based on that study, she testified that the maximum number of cars in any of the three (3) daily sessions at the proposed family facility will be 32 on Saturday, when the neighboring space on Fox Tail Road currently leased to Tri State Electric, is not used, thereby creating 38 on-site spaces, without taking into account parking spaces available on Fox Tail and Aylesbury Roads.

Mr. Monk testified that based on his knowledge of this property and the variances acquired in Case No. 99-156-A, to accommodate the more intense use, the LAX World retail store, the former tenant in Lease Area 8, the existing parking, as varianced in 99-156-A, is adequate to support the existing and proposed uses. He also testified that the proposed use by the Petitioner meets the criteria set forth in B.C.Z.R. Section 502.1.

Mr. Rockel questioned Ms. Snyder and Mr. Monk, but did not challenge the substance of their testimony and exhibits.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Upon due consideration of the testimony and evidence presented, including, but not limited to, the 13 Exhibits introduced into evidence, I find that the requests for special hearing and special exception should be granted. As to the special exception use requested, I find that the proposed use at 10-14 West Aylesbury Road, Lease Area 8 is consistent with the definition of a commercial recreational facility and is permissible under Section 253.2.D.3 of the B.C.Z.R. in the M.L.-I.M. zone. I also find that the proposed use satisfies the criteria set forth in Section 502.1 of the B.C.Z.R., and generally will not be detrimental to the health, safety, or welfare of the locality involved. I also find that the proposed use of an arcade is an accessory use that will be in combination with the primary use as a commercial recreational facility, and further find that the use satisfies the requirements of Section 423.1.C of the B.C.Z.R. and will specify the devices as requested by the Petitioner, eight (8) Nintendo Wii stations, two (2) air hockey tables and four (4) basketball nets with electronic devices.

As to the request for special hearing, I am persuaded to grant this relief as well. In so doing, I find that the parking, as varianced under Case No. 99-156-A, is adequate to support the existing and proposed uses. I also find that the owner, Foxtail Limited Partnership, did not make the 99-156-A improvements, and I accept the property owner's offer to and will require it to make the 99-156-A improvements within ninety (90) days from the date hereof and to provide this Office with a letter within that period advising that such 99-156-A improvements have been completed.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 9th day of April, 2010, that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit a Commercial Recreational Facility on the described property with an accessory Arcade pursuant to Section 423.1.C, and (2) to approve that the existing parking, as varianced under Case No. 99-156-A, is adequate to support the existing uses and proposed uses, in accordance with Petitioner's Exhibit 2, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception to permit the use of the described property as a Commercial Recreational Facility, pursuant to Section 253.2.D.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), with an accessory arcade in accordance with Section 423.1 of the B.C.Z.R., that will contain indoor recreation, playground, and exercise entertainment equipment for children up to age 13, including, but not limited to, inflatable equipment, tunnel slide, bouncer maze, playhouse, a café and a boutique and related facilities for birthday parties associated with such uses pursuant to Section 253.2.D.3 of the B.C.Z.R. with eight (8) Nintendo Wii stations, two (2) air hockey tables and four (4) basketball nets that contain electronic equipment, in accordance with Petitioner's Exhibit 2, be and is hereby GRANTED; subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioners may apply for a building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. The Property Owner, Foxtail Limited Partnership, shall make the 99-156-A improvements within ninety (90) days from the date hereof and within said period, notify this Zoning Commissioner that the same has been completed.

3. Petitioners shall be limited to the amusement games set forth hereinabove, which will remain accessory and incidental to the principal special exception use as a commercial recreational facility. Any subsequent proposal for machines in excess of that number will necessitate a separate petition for special exception and public hearing.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code and filed within thirty (30) days of the date of this Order.

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County