

<b>IN RE: PETITIONS FOR SPECIAL EXCEPTION</b>	*	BEFORE THE
<b>AND SPECIAL HEARING</b>		
NW side of Baltimore National Pike; 80 feet W	*	DEPUTY ZONING
of the c/l of Ingleside Avenue		
1 <sup>st</sup> Election District	*	COMMISSIONER
1 <sup>st</sup> Councilmanic District		
(5912 Baltimore National Pike)	*	FOR BALTIMORE COUNTY
<b>Westview Center Assoc., LLC/</b>	*	
<b>Wharton Realty Group</b>		
<i>Legal Owner</i>	*	
<b>CEC Entertainment, Inc.</b>	*	<b>CASE NO. 2010-0323-SPHX</b>
<i>Lessee</i>		
	*	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the legal property owner, Westview Center Assoc., LLC/Wharton Realty Group, and the lessee, CEC Entertainment, Inc. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the amendment of Zoning Case No. 91-426-XA and all other granted zoning relief of the property, confirmation that the overall existing parking is sufficient, and an unlimited amount of amusement devices and 50 coin operated children’s rides for the new square footage. The Special Exception is for the proposed 4,400 square foot expansion of Chuck E. Cheese’s Pizza Restaurant/Family Entertainment Center with coin operated amusement devices and children’s rides as provided in Section 423.1.B of the B.C.Z.R. Petitioner is currently operating under Special Exception Case No. 91-426-XA, granted 1991, and Case No. 2008-0567-SPH, granted October 2008, entitling Chuck E. Cheese’s to an unlimited number of amusement devices, no less than 65, with an additional 50 coin operated children's rides. The

subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the Special Hearing and Special Exception requests was Deborah Shannon on behalf of Petitioner CEC Entertainment, Inc., and Raymond Daniel Burke, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was Petitioner's land use and zoning consultant, Mitch Kellman, with Daft, McCune Walker, Inc., the firm that prepared the site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property containing approximately 41.983 acres, more or less, zoned B.M.-C.T. (Business, Major with a Commercial, Town-Center district overlay). The property is utilized as a retail shopping center known as the Westview Mall and is situated on the north side of Baltimore National Pike (U.S. Route 40) just east of the Baltimore Beltway (Interstate 695) and west of Ingleside Avenue in the Catonsville area of Baltimore County. There are a number of large retail stores at the location including Value City Department Store, Ross Clothing Store, Sam's Club, Lowe's Home Improvement Warehouse, as well as a bank and fuel service station. A movie theater that existed on the site for many years has been removed. In addition to the aforementioned improvements, Petitioner operates a "Chuck E. Cheese's" restaurant on the subject property at the southern end of the property, near the entrance from Baltimore National Pike. The restaurant operation is part of a nationwide chain that caters to families with young children, and the operation includes an area of child-oriented play, an arcade area, and a "kiddie" area, in addition to the restaurant operation.

Further evidence was adduced by way of a proffer from Petitioner's attorney, Mr. Burke, and "Petitioner's Statement" that was filed with the original Petition and which is contained within the case file. This evidence revealed that in the 1991 case, then-Zoning Commissioner J. Robert Haines issued an Order on July 17, 1991 which granted a Special Exception for Petitioner's operation at the subject property. Pursuant to that Order, Petitioner was granted "an arcade as provided in Section 423.1.B of the Baltimore County Zoning Regulations," and "a variance from Section 233.2.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a maximum of 50 coin operated children's rides in lieu of the permitted maximum of six coin operated children's rides." In the subsequent case filed in 2008 and heard before the undersigned, Petitioner sought special hearing relief to determine that under the Order issued in the 1991 case, Petitioner's restaurant operation as an arcade is entitled to an unlimited number of amusement devices. In an Order issued October 22, 2008, the undersigned granted the relief, reasoning that Petitioner was granted an arcade under Section 423.1.B of the B.C.Z.R. in the 1991 case, and that Section 423.1.B places no specific limitation on the number of machines permitted in an arcade. The undersigned also confirmed that Petitioner is permitted up to 50 coin operated childrens' rides.

At this juncture, as shown on the site plan, in order to better accommodate the growing needs of their guests, Petitioner CEC Entertainment, Inc. is proposing an approximate 4,400 square foot expansion of their existing restaurant building. The addition would increase both the seating and games area. In particular, the restaurant currently has 49 skill/video games and six kiddie rides and this number is expected to increase following the proposed expansion. Because of the expansion of the original special exception site, Petitioner is now requesting a special exception to include this newly proposed 4,400 square foot addition. Petitioner is also requesting

special hearing relief to amend the prior zoning cases, as well as confirmation that the overall existing parking is sufficient, and to once again confirm that an unlimited number of amusement devices and up to 50 coin operated childrens' rides are permitted for the new square footage. Mr. Burke proffered that the newly expanded area will have 94 amusement devices, with seven kiddie rides.

In support of the requested relief, Petitioner's land use and zoning consultant, Mr. Kellman, testified that the expansion of the existing building and the attendant increase in amusement devices and kiddie rides would be beneficial to the community and in particular the patrons of the Chuck E. Cheese's restaurant. He offered his expert opinion that the proposal would not be detrimental to the health, safety, or general welfare of the locale, and would not be detrimental or have any negative impacts on the other enumerated special exception criteria set forth in Section 502.1 of the B.C.Z.R.

As to the special hearing request to confirm that the overall existing parking is sufficient at the site, Mr. Kellman stated that the loss of parking as a result of the addition will be relatively minor and will be more than addressed by the remaining existing parking that surrounds the restaurant. He also indicated that, as to the Westview Mall site on the whole, the existing parking will be more than sufficient. He pointed to the removal of the movie theater, which will be replaced with a "Big Lots" retail store. The removal of the theater opens up space on the site for additional parking, even with the addition of a new retail store, and the parking required for the retail store is substantially less than that required for the theater. Hence there will be a net gain of parking and Mr. Kellman opined that the proposed parking will be sufficient for the overall site, and will also be within the spirit and intent of the Order issued in prior Case No. 00-

287-SPHA, which granted a parking variance from Section 409.6 of the B.C.Z.R. for 2,381 parking spaces in lieu of the 3587 spaces required.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated June 11, 2010 which indicates the existing macadam paving that will be unnecessary as a result of the building addition should be removed and landscaping installed. A plan showing the proposed landscaping should be submitted to Avery Harden, Baltimore County Landscape Architect, for review and approval. The addition should be architecturally consistent with the existing building.

Turning first to the Special Exception request, I am persuaded to grant the relief. I agree with the uncontroverted testimony of Petitioner's expert, Mr. Kellman, that the addition to the existing Chuck E. Cheese's building and the increase in child and family oriented amusement devices and kiddie rides will not be detrimental to the health, safety, or general welfare of the community and will not have any adverse impacts on the additional enumerated criteria set forth in Section 502.1 of the B.C.Z.R. It appears the addition will provide increased space for customers and will enhance the overall "family" experience at the restaurant.

As to the request for Special Hearing relief, this too shall be granted. After reviewing the site plan and, again, based on the testimony of Petitioner's expert, I find that the proposed parking for the Chuck E. Cheese's and the overall site will be sufficient. Parking will still be available near the restaurant, even after the construction of the addition, and significant parking will be available for the site as a whole as a result of the removal of the movie theater. I have also confirmed previously that as an arcade, Petitioner is entitled to an unlimited number of children and family oriented amusement devices, and up to 50 kiddie rides, which is expressly included in the new square footage of the proposed addition.

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

THEREFORE, IT IS ORDERED this 19<sup>th</sup> day of August, 2010 by the Deputy Zoning Commissioner, that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for the amendment of Zoning Case No. 91-426-XA and all other granted zoning relief on the property, confirmation that the overall existing parking is sufficient, and an unlimited number of coin operated children and family oriented amusement devices, and up to 50 coin operated children's rides for the new square footage, be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Special Exception request pursuant to Section 423.1.B of the B.C.Z.R. to include the proposed 4,400 square foot expansion of Chuck E. Cheese's Pizza Restaurant/Family Entertainment Center with an arcade permitting an unlimited number of coin operated children and family oriented amusement devices and up to 50 coin operated children's rides, within the special exception area delineated on the site plan accepted into evidence as Petitioner's Exhibit 1, be and is hereby **GRANTED**.

The relief granted is subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for its building permit 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 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. A plan showing the proposed landscaping shall be submitted to Avery Harden, Baltimore County Landscape Architect, for review and approval prior to the issuance of any building permit.

3. The addition shall be architecturally consistent with the existing building.

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