

IN RE: PETITION FOR SPECIAL HEARING

N/Side of Kelso Drive, 804 feet SW of
c/l of Golden Ring Road
15th Election District
7th Councilmanic District
(8502 Kelso Drive)

Paradox Properties, LLC, *Legal Owner*
GRS Fitness, LLC, *Contract Purchaser*
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
*
CASE NO. 2011-0264-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County pursuant to a Petition for Special Hearing for the property located at 8502 Kelso Drive in the Essex/Rossville community of eastern Baltimore County. The Petition was filed by Paradox Properties, LLC (Property Owner) and GRS Fitness, LLC (Petitioner/Lessee). Special Hearing relief is requested to amend the Plan to Accompany Zoning Petitions approved in Case No.: 01-284-SPHXA, so as to reflect the proposed signage, and if necessary, to approve modified parking plan pursuant to Baltimore County Zoning Regulations (“BCZR”) § 409.12. Further, relief is requested to approve a permitted wall-mounted sign with an accessory changeable copy component pursuant to BCZR §450 (table sign regulation), or, in the alternative, to approve a proposed changeable copy sign as accessory to an approved commercial recreational facility/fitness center and for such other and further relief as may be required by the Administrative Law Judge. The subject property and requested relief are more particularly shown on Petitioner’s Exhibit No. 1, the Plan to Accompany the Petition for Special Hearing.

Appearing at the requisite public hearing held for this case was Bernie Kaplan, representative of Petitioner/Lessee. Also present was Brent Haberkam of Gable Signs and Graphics, Inc. (“Gable Signs”), and Kenneth J. Wells, licensed surveyor who prepared the site

plan. The Petitioner was represented by Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt, LLC. There were no Protestants or other interested persons present.

Testimony and evidence established the following: The subject property under consideration is an irregularly shaped parcel, approximately 2.67 acres in gross area. The property is split zoned. The front portion of the site is zoned ML-IM and is 1.35 acres in area. The rear portion of the site is 1.01 acres in area and is zoned MLR-IM. A small portion of the property encompassing the side/rear yard is zoned DR5.5 (.31 acres). The property has frontage on Kelso Drive and is adjacent to the right-of-way to the Baltimore Beltway (I-695). Generally, as shown in an aerial photo submitted at the hearing (Petitioner's Exhibit No. 4), the neighborhood is industrial/business in character. The Golden Ring Mall is located nearby, and there are large warehouse/business park facilities in the immediate vicinity. The property is improved with an 18,000 square foot building which contains a fitness center trading as "Spunk Fitness." The building is located entirely in the ML-IM and MLR-IM zones. Additionally, there is an associated parking lot containing 148 spaces.

The subject property has a significant zoning history. On April 13, 2001, the proposed development of the subject property with a fitness center building was approved by the Baltimore County Development Review Committee ("DRC") as a limited exemption under then BCZR § 26-171(b)(9) (Petitioner's Exhibit No. 3). Later, the contemplated use was considered in Case No.: 01-284-SPHXA. Petitions for Special Hearing, Special Exception, and Variance were filed by the then-owners of the property. The Special Exception was for approval of a commercial recreational facility/fitness center in the ML-IM and MLR-IM zones pursuant to BCZR §§ 253.2.D.4 and 248.4.A. The Petitioner also requested Special Hearing relief to approve a commercial parking in the residential zone (DR5.5). Lastly, a series of variances were requested

to permit certain setbacks which were less than the minimum required for the proposed building and parking area. A variance was also requested to approve fewer parking spaces than required and residential transition area setback variances were sought. Following a public hearing, all of the relief that was requested was approved by Opinion and Order of the Zoning Commissioner of Baltimore County on March 13, 2001 (Petitioner's Exhibit No. 2). That decision was not appealed.

Following the DRC and zoning approvals, the building was constructed and the fitness center has been in operation for nearly ten (10) years. The instant case relates primarily to proposed signage on the building. Specifically, the Petitioner has constructed a permitted wall-mounted enterprise sign on the front side of the building. A series of photographs (Petitioner's Exhibit No. 4) as well as a drawing of the enterprise sign (Petitioner's Exhibit No. 5) was submitted at the hearing. The enterprise sign includes the lettering for "Spunk Fitness" and the company logo. The area of this wall-mounted enterprise sign is approximately 21 feet by 2 inches by 7 feet, or 148 square feet. As a component of the wall-mounted enterprise sign, the Petitioner proposes a small changeable copy-type sign, 3 feet 1 inch by 15 feet 2 inches. This changeable copy sign component is approximately one-third (47 sq. ft.) of the wall-mounted enterprise sign in area. The changeable copy sign will advertise special events at the club, dues specials and the like.

The Petitioners engaged the services of Gable Signs and Graphics to manufacture and install the signage and obtain the necessary permits therefore. In this regard, Mr. Haberkam of Gable Signs indicated that his office had obtained a sign use permit for the wall mounted sign (including the changeable copy part) from Baltimore County. A copy of this sign use permit was introduced into evidence (Petitioner's Exhibit No. 6). Immediately upon obtaining of the permit,

the Petitioner paid a deposit for the sign's construction and Gable Signs began manufacturing the sign.

Several weeks thereafter and before actual installation, the Petitioner was advised by Baltimore County Department of Permits and Development Management that the sign use permit was being revoked and that the instant zoning relief would be required.

This case presents a unique set of factual circumstances and requires an application of the sign regulations to the facts of this case in view of the history as briefly outlined above. The Petitioner offers two alternate theories under which it avers that the changeable copy sign is permitted. First, a wall-mounted enterprise sign is expressly permitted by the BCZR on the subject property. An enterprise sign is defined under BCZR §450 as follows: "meaning an accessory sign which displays the identity and which may otherwise advertise the products or services associated with the individual organization." A wall-mounted enterprise sign is permitted in the ML zone and the proposed signage meets the area requirements applicable thereto. The Petitioner argues that the changeable copy sign is an accessory component to the wall-mounted enterprise sign and is thus permitted on that basis. The Petitioner notes that the changeable copy component is only one-third of the total area of the wall-mounted enterprise sign and should therefore be permitted. As the Petitioner correctly notes, certain accessory uses are permitted under the BCZR which would not be allowed as principle uses. It is argued that the changeable copy component is accessory to the overall wall-mounted sign and should thus be allowed.

A second approach under which the sign in the instant case may be permitted stems from a review of the table of sign regulations located in BCZR §450. Therein, a changeable copy sign is defined as follows: "meaning an on-premises site displaying a message which may be changed periodically, manually, by electric or electronic controls or by any other means." Interestingly,

under the table of sign regulations, changeable copy signs are not restricted to certain zones as is the provided for other signs described in the regulations. Rather, the changeable copy signs are tied to specific land uses; namely, they are permitted as accessory to *business* establishments. Although located in a manufacturing zone, it is clear that Spunk Fitness is a business establishment and not a manufacturing facility. The table of sign regulations expressly states that changeable copy signs are permitted as accessory to “community buildings.” Further, the table indicates that the changeable copy signs are permitted as accessory uses to theaters, stadiums, “or similar public entertainment.”

An examination of the BCZR discloses that “fitness centers” or “gymnasiums” are not specifically defined terms within the BCZR. Historically, fitness centers have been permitted in the business zones as a “community building, swimming pool or other structural or land use devoted to civic, social, recreational, and educational activities, including use of the building as a catering hall.” (See e.g. BCZR § 230.3). In the manufacturing zones, fitness centers/gymnasiums have been permitted as commercial recreational facilities. On this ML/MLR zoned property, the fitness center was permitted pursuant to the approved Special Exception for a commercial recreational facility in Case No.: 01-284-SPHXA.

Upon consideration of the testimony and evidence, I am persuaded that the proposed changeable copy sign should be permitted. In my judgment, the request is consistent with the permitted uses under the table of sign regulations contained within BCZR §450. Specifically, the changeable copy sign proposed in this instance is clearly accessory to the existing fitness center which qualifies as a “similar use” to a community building and other such similar uses. I am persuaded that the Department of Permits and Development Management was correct in their

initial interpretation of the regulation as applied to this case, and that the signage should be permitted. Thus, the Petition for Special Hearing should be granted.

Although the signage issue was the primary matter raised in this case, the Petitioners also request relief to permit a modified parking plan. In this regard, a Zoning Advisory Committee comment was received from Development Plans Review. As is noted in that comment, the Petitioner previously received a 29 space parking Variance in Case No.: 01-284-SPHXA. Interestingly, in that case, the parking which was required was determined based on the predominate square footage of the building's use as a commercial recreational facility and a small portion attributable to a retail sales area of athletic gear and clothing. The site plan shows that there were 148 spaces available on the site, and the photographs and testimony offered was that this is easily sufficient for the building's purposes. The lot is never overcrowded and there is never an issue with parking spilling into the neighborhood. As is further shown on the site plan, 180 spaces are required if parking is tabulated based on the use of the entire building (18,000 square feet) as a recreational use. Thus, from a purely numeric standpoint, the site is 32 spaces deficient in what is required, which is three more spaces than previously authorized under the Petition for Special Hearing. A review of the layout of the parking scheme is persuasive that relief should be granted to allow the current arrangement to continue. Thus, this request for hearing approval shall also be granted for a modified parking plan in accordance with the submitted site plan.

Pursuant to the advertisement, posting of the property, and public hearing on this matter held, and after considering the testimony and evidence offered, I find that Petition for Special Hearing shall be GRANTED.

THEREFORE, IT IS ORDERED by the undersigned Administrative Law Judge of Baltimore County, this 6 day of May, 2011, that the Petition for Special Hearing to allow the wall-mounted enterprise sign and accompanying changeable copy sign, and the modified parking plan, be and is hereby GRANTED.

The relief granted is subject to the following condition:

1. Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the thirty (30) day Appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the 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 _____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz