

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
SW/side of Reisterstown Road, 1,810' SW	*	OFFICE OF ADMINISTRATIVE
from c/line of Painter's Mill Road		
(9900 Reisterstown Road)	*	HEARINGS FOR
3 rd Election District		
3 rd Council District	*	BALTIMORE COUNTY
Herbert Bank, St. Thomas	*	
Joint Venture, <i>Legal Owner</i>		
Glenn Norris, Yoga Studio, LLC,	*	CASE NO. 2012-0051-SPHX
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings for Baltimore County pursuant to Petitions for Special Hearing and Special Exception for the property located at 9900 Reisterstown Road in Reisterstown. The Petitions were filed by Herbert Bank on behalf of St. Thomas Joint Venture, LLC, legal owner of the property. Special Hearing relief is requested to amend Special Exception Plan Parcel "A" (Exhibit 1) for the St. Thomas Shopping Center in Case No. 93-123-X, which was granted on December 2, 1992. Special Exception relief is requested for Building #19 (20' x 1,000' = 2,000 square feet) "Yoga Studio" – Parcel "B" to permit a fitness center, including an athletic club, health spa and health club on the subject property and any permitted recreation facilities uses in a "BL" zone. The subject property and requested relief are more particularly shown on the Plat to Accompany the Petition for Zoning Hearings, marked and accepted into evidence as Petitioners' Exhibit No. 1.

Appearing at the requisite public hearing in support of the special hearing and special exception requests was Herbert Bank, General Partner of St. Thomas Joint Venture, LLC, the owner of the property. The Petitioner was represented by Jason T. Vettori, Esquire, of Smith,

Gildea & Schmidt, LLC. Also present was Paul Lee, a licensed engineer who prepared the site plan. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants present. Diana Itter, the area planner for the 3rd Councilmanic District with the Department of Planning, appeared at the hearing.

Testimony and evidence presented revealed that the subject property known as 9900 Reisterstown Road is approximately 11.3396 acres in area and zoned BL. The property is located in Reisterstown and is improved with a shopping center, known as the St. Thomas Shopping Center. The shopping center is anchored by a Giant Food and Drug Store which is 39,187 square feet in area. There are several retail uses which are connected to the Giant, all of which front on a shared parking lot. In addition, there are two stand alone banks located on site.

The Petitioners propose to establish a fitness center in Building #19 of the shopping center. Building #19 is located immediately adjacent to an existing fitness center, Lynne Brick, which received special exception approval for the identical use being proposed herein. Health clubs, gyms and fitness centers are permitted by special exception in the BL zone. The existing use of Building #19 is a yoga studio. However, the facility is interested in adding, among other things, aerobic equipment (treadmills, stationary bikes, etc.) and weights. These uses can be characterized under the regulations as a building or use dedicated to recreational activities. As previously indicated, a prior zoning case (Case No. 93-123-X) granted special exception relief for the same use immediately adjacent to the instant building approximately nineteen (19) years ago.

Turning first to the Special Hearing request, I am persuaded by the testimony and evidence presented that the requested relief should be granted. As previously indicated, special

exception relief for a fitness center was granted in Case No. 93-123-X. There were no Protestants or other interested persons at the hearing in that case. The Petitioner in that case has been operating a fitness center for nearly nineteen (19) years immediately adjacent to the building which is the subject of this request for zoning relief. There has been no evidence presented that the surrounding locale has been negatively affected in any way by that use. In short, the relief requested in this case mirrors the relief requested and granted in 1992, and I am convinced that the relief requested for the instant matter is appropriate under the facts and circumstances herein and should be granted.

Turning now to the petition for special exception relief, it is clear that the Baltimore County Zoning Regulations (“BCZR”) permit a fitness center in a BL zone by special exception. It is equally clear that the proposed use would not pose any danger to the surrounding locale or the other tenants in this shopping center. The adjoining building is already being used as a fitness center, and I am persuaded that granting special exception relief for a fitness center immediately adjacent to the area where one has existed without issue for nearly nineteen (19) years will not have any negative effect on the surrounding locale. The property already contains impervious surface for adequate parking, and the property is not located in a traffic deficient area. There is no evidence that the proposed use will create adverse impacts greater than or above and beyond those inherent with such a use regardless of its location in the BL zone. Moreover, Mr. Lee, accepted as an expert witness in variances and special exceptions, addressed the requirements in § 502.1 as to congestion, community hazards, overcrowding and adverse effects on schools, light and air and the existence of impervious surfaces. I am convinced therefore that the request meets all of the customary special exception criteria contained in BCZR § 502.1. I therefore find that the Petitioners’ special exception request can be granted in

strict harmony with the spirit and intent of the regulations and in such manner as to grant relief without injury to the public health, safety or general welfare of the locality.

The lone substantive Zoning Advisory Committee (“ZAC”) comment did not object to the relief being requested herein. The Baltimore County Department of Planning requested that the Plan to Accompany the Petition for Zoning Hearings reflect a recent Development Plan refinement request, which was granted by the Director of Permits, Approvals and Inspections (“PAI”) upon a recommendation from the Development Review Committee (“DRC”), for renovations before proposed to one of the banks, Wells Fargo. While the Wells Fargo Development Plan refinement has merely received DRC approval for the plan to be reviewed as a limited exemption from the full development review and approval process, final, non-appealable approval to construct the improvements has not yet been received. Ms. Itter testified that she did not object to the special exception or special hearing relief, but felt the aforementioned Development Plan which was being reviewed should be referenced on the Plan to Accompany the Zoning Petitions. I believe that the Department of Planning’s comment can be satisfied if the Petitioners provide a list of current tenants and how much square footage they are leasing at this time.

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 Petitioners’ request for Special Hearing and Special Exception relief should be granted with conditions.

THEREFORE, IT IS ORDERED by the Administrative Law Judge of Baltimore County, this 17th day of October, 2011, that the Petition for Special Hearing relief to amend the prior special exception approval for a fitness center use to include Building #19, be and is hereby

GRANTED, as more particularly shown on Petitioners' Exhibit No. 1, the Plan to Accompany the Petition for Zoning Hearings.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a fitness center use in Building #19, be and is hereby GRANTED, as more particularly shown on Petitioners' Exhibit No. 1, the Plan to Accompany the Petition for Zoning Hearings subject to the following conditions:

1. Petitioners may apply for its building permit and be granted same upon receipt of this Order; however, Petitioners are 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. The Petitioners shall submit a list of current tenants and how much square footage they are leasing to the Department of Planning.

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

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County

LMS:dlw