

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1600 Frederick Road)		
1 st Election District	*	OFFICE OF ADMINISTRATIVE
1 st Councilmanic District		
1600 Frederick Road, LLC	*	HEARINGS FOR
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0071-SPH

* * * * *

ORDER ON PETITIONER’S MOTION FOR RECONSIDERATION

Now pending is the Petitioner’s Motion for Reconsideration filed in the above captioned matter on or about January 4, 2013. The Protestants have filed an opposition to that Motion on or about January 25, 2013, within the time allotted for doing so. After reviewing the submissions, I will grant the Petitioner’s Motion, and I will briefly explain the reasons for that decision.

The Petitioner contends that the 1960 Order in case no.: 5114-SPH approved a 10% extension of the existing non-conforming use, which allegedly entitles Petitioner “to seek authorization for an additional 15% extension of the ground floor area which existed prior to the grant of approval for a 10% addition.” Motion, ¶ 3. I have reviewed the site plan from the 1960 zoning case, which was attached as Exhibit 1 to Petitioner’s Motion, and agree that the “extension” referred to by the deputy zoning commissioner concerned the additional area added to the restaurant at that time, not the enclosure of the large porch. According to the Petitioner, the enclosure of the porch “constituted an intensification of an existing lawful use...rather than an extension.” Petitioner’s Motion, ¶ 6. I agree, and have found a Maryland case which speaks to the issue.

In Helfrich v. Mongelli, 248 Md. 498 (1968), the court of appeals considered a zoning case for property located at Frederick and Overhill roads, immediately adjacent to the subject property.

(See Google Map, attached hereto). In that case, the owner of the property at Frederick and Overhill Roads was seeking a zoning reclassification, based upon (among other things) a “change” in the neighborhood. In undertaking the “arduous task” of describing the “neighborhood,” the court noted that the Ridgeway Inn (which is the subject property, now known as “Matthew’s 1600”), Candlelight Lodge, and Five Oaks swimming pool were all existing non-conforming uses in 1960. Id. at 500. The trial court found that there was in fact a change in the character of the neighborhood, and granted a change in the zoning, based in part on certain “changes in the already nonconforming Ridgeway Inn.” Id. at 503. The court of appeals reversed that finding, and held as follows:

“The changes in Ridgeway Inn, an already non-conforming use, consisted primarily of enclosing the porch. This amounts to no more than a permissible intensification of an existing non-conforming use.” Id. at 504.

Under B.C.Z.R. § 104.3, Petitioner is entitled to enlarge (“extend”) the restaurant by 25% of the ground floor area (GFA) of the building as it existed prior to the 1960 zoning case. According to Mr. Wells, the GFA of the building at that time was 6,228 square feet. As such, the building can be expanded by 1,557 square feet. Mr. Wells calculated that 308 square feet of improvements were made to the building at or about the time of the 1960 case. As such, the Petitioner is still entitled to expand the building by 1,249 square feet. But that is not the end of the matter.

The plan submitted in this case shows a proposed addition measuring 26.7’ x 66’, which is over 1,700 square feet. In light of the above, that plan cannot be approved. In addition, I believe that the permissible extension under BCZR section 104.3 considers all interior space of the

proposed addition, not just the GFA. Thus, Petitioner is entitled to enlarge/extend the restaurant by 1,249 square feet, determined by adding the square footage of both the first and second floors of the proposed addition, in accordance with the county regulations.

The Petitioner also sought approval of a modified parking plan, which I did not entertain at the initial hearing given that the special hearing relief was denied regarding the nonconforming use issue. While the testimony established that there are times when the demand for parking on site exceeds capacity (i.e., on Mother's Day and similar Holidays), those instances are the rare exception, not the rule. As such, I do not believe the modified parking plan would be detrimental to the safety, health and welfare of the community. The calculations on the site plan showed that 214 spaces were required, while 132 were provided. That was based upon the size of the addition depicted in the plan, which as noted earlier cannot be approved. As such, the relief needed will be more modest, given that the restaurant can only be enlarged by 1,249 square feet total, not the approximately 1,700 square feet (of the first floor footprint) originally proposed.

In light of the above, the Petitioner's Motion for Reconsideration shall be granted.

THEREFORE, IT IS ORDERED, this 30th day of January, 2013 by the Administrative Law Judge for Baltimore County, that the Petitioner's Motion for Reconsideration, be and is hereby GRANTED, subject to the restrictions noted above.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln