

RE: PETITION FOR SPECIAL HEARING
SW/side of Putty Hill Avenue, 170' SE of
c/line of Old Harford Road
(2531 Putty Hill Avenue)
9th Election District
6th Councilmanic District

McAvoy Enterprises, LLC, *Lessee*
Petitioner

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
*
Case No. 2012-0007-SPH
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OPINION

This matter comes before the Board of Appeals for Baltimore County as an appeal of the Petitioner, McAvoy Enterprises, LLC's, request for special hearing relief that was granted on August 31, 2011 by Administrative Law Judge Timothy M. Kotroco. The Petition for special hearing relief was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a modified parking plan pursuant to Section 409.12 of the B.C.Z.R.

Appearing before the Board in support of this Petition were Adam Bloom and Diane Schmittinger from McAvoy Enterprises, LLC, a Lessee of retail space in the Putty Hill Shopping Center, that operates as McAvoy's (a bar/restaurant) and Bernadette Moskunas with Site Rite Surveying, Inc. Jason T. Vettori, Esquire represented the Petitioners. Also attending in support of the Petitioner was Louis Denrich, the authorized representative of Putty Hill Investments, LLC, the owner of the shopping center in which the restaurant is located. Appearing as an interested party regarding the request was Ray Vogel, on behalf of Baltimore #45 Association, Inc., the ownership group which owns both the Tall Cedars Lodge and the parking lot. Mr. Vogel was represented by J. Carroll Holzer, Esquire.

The subject property is the site of the Putty Hill Shopping Center and is improved with several retail, restaurant and catering hall businesses. The property is located on the south side of

Putty Hill Avenue near its intersection with Old Harford Road. The property is unusual in that the parking lot area and the Tall Cedars Lodge building are owned by one entity and the small strip of retail businesses attached to the Tall Cedars Lodge is owned by another entity.

The Special Hearing request in this case involves McAvoy's Tavern, which is a restaurant and bar facility located on the eastern end of a strip shopping center, Putty Hill Shopping Center. At this time, McAvoy's is interested in creating an outdoor seating area for their customers. Testimony and evidence indicated that their customers had repeatedly implored them to provide an outdoor seating area like other similarly situated businesses in the area. By providing the outdoor seating area, which totals approximately 644 square feet of additional floor space, the Petitioners would be required to provide additional parking spaces. The testimony and evidence demonstrated that the shopping center is currently deficient in parking provided due to the fact that the tenant structure for the center has changed over time. Therefore, it is appropriate for the Petitioners to request a special hearing for a modified parking plan as opposed to a variance request.

The area immediately to the front of the space that they lease is already improved with a covered awning. McAvoy's is interested in placing some tables and chairs on the sidewalk area and will provide a small fence around that seating area to give it more of a patio look and feel. They do propose to provide openings which are approximated 48" in width in the area closest to the parking lot at both ends of the patio. The openings will have no gates and there will be no tables between them to allow pedestrians and customers of other businesses of the shopping center to pass freely through the area and not cause those customers to have to walk into the travel lanes of the parking lot. The layout of the patio is illustrated more fully in a sketch plan that was marked and accepted into evidence as Petitioner's Exhibit No. 1.

Section 409.12 of the B.C.Z.R. provides the Board of Appeals the authority to approve a modified parking plan. The Board of Appeals finds, based on the testimony and evidence presented at the hearing, that the requirements to provide parking for this shopping center would create an undue hardship upon the Applicants if they had to comply with the current standards applicable to this center. As stated previously, the shopping center was built many decades ago and at that time met all the parking requirements imposed by the B.Z.C.R. Therefore, it is appropriate to approve a modified parking plan to allow the center to continue to operate. We find that the additional 644 square feet outdoor seating area which is a seasonal use would not impact or adversely affect the existing parking arrangement.

Mr. Ray Vogel indicated that the owners of the parking lot take umbrage with McAvoy's prior practice of reserving spaces for its patrons by placing cones in the spaces in front of their establishment and request that McAvoy's discontinuing this practice be a condition for approval. The representatives of McAvoy Enterprises, LLC agreed that they would be amenable to a condition whereby they would no longer reserve or block off parking spaces for the exclusive use of their patrons. The Protestants requested that the Board impose as a condition of approval that no parking spaces are to be reserved or blocked off by McAvoy's Tavern for the exclusive use of its patrons. The Protestants further requested that the Board impose as a second condition of approval that the design of the outdoor seating shall be as proposed on Petitioner's Exhibit No. 1.

In conclusion, the Board finds the Petitioners request for special hearing is GRANTED.

ORDER

THEREFORE, IT IS THIS 12th day of March, 2012 by the Board of Appeals for Baltimore County

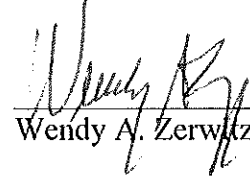
ORDERED, that the Petition for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a modified parking plan per Section 409.12 of the B.C.Z.R., be and is hereby **GRANTED**, subject to the following condition:

1. No parking spaces in the subject parking lot are to be reserved or blocked off by McAvoy’s Tavern for the exclusive use of its customers.
2. The design of the outdoor seating shall be as proposed in Petitioner’s Exhibit No. 1 and as agreed to by the Protestants.

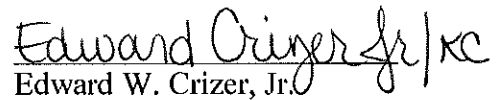
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Panel Chair



Wendy A. Zerwitz



Edward W. Crizer, Jr.