

IN RE: **PETITIONS FOR SPECIAL HEARING** *
AND VARIANCE – SE/S Pulaski Highway,
220' NE of c/l of Middle River Road *
(9611 - 9615 Pulaski Highway)
15th Election District *
6th Council District *

9611-9615 Pulaski Highway, LLC *
Petitioner *

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

Case No. 2009-0284-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Michael D. Rosier, and his wife, Linda Rosier, managing members of 9611-9615 Pulaski Highway, LLC, the owner of the subject property, appearing through its attorney, P. Christian Dorsey, Esquire. The Petitioner requests a special hearing to allow the continued use of operating a bar and restaurant on premises as has been done continuously since prior to July 1965. In addition, the Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R), Section 243.1, to permit an existing building with a front setback of 28 feet in lieu of the required 75 feet, and from Section 301.1, to permit an open porch projection of 16 feet in lieu of the maximum allowed 56.25 feet. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Michael Rosier, d/b/a Rosier, Inc., property owner, and P. Christian Dorsey, Esquire, with Gentile, Dorsey, Carroll, LLP, the Petitioner’s attorney. There were no Protestants or other interested persons present, however, it is to be noted that a letter/petition was received from approximately 15 to 20 supporters of the request and is marked as Petitioner’s Exhibit 2.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel located on the northeast side of Pulaski Highway (U.S. Route 40), just east of Middle River Road in a commercial/industrial area of White Marsh. Immediately to the west, the site abuts the Silver Moon Diner. To the east, the property abuts a motel. Across the street on the northwest side of Pulaski Highway, there is another tavern/restaurant (9610 Pulaski Highway) which recently was granted its right to also exist as a legal, nonconforming use and stay in operation. *See* Case No. 04-579-SPHA. The property is zoned M.L.-A.S and the lot abutting the property to the west is zoned B.R.-A.S.

The site is presently improved with a building that has existed on the property as a restaurant/tavern since prior to 1940. As shown on the site plan, the structure is 1,938 square feet. Apparently, the structure had fallen into a state of disrepair and is currently being remodeled, improved and modernized to be continued as a restaurant known as Blondie's Restaurant¹. The proposed improvements are more particularly described on the site plan submitted and the new floor plan is depicted on the drawings marked as Exhibit 1. It is obvious that the proposed improvements will revitalize the site and represent an upgrade to the appearance and use of the property. As part of the improvements, the Petitioner proposes the construction of a small covered porch (12' x 36.5') along the front of the building. The Petitioner requests special hearing and variance relief as set forth in order to proceed.

As noted above, special hearing relief is requested to legitimize the restaurant/tavern as a continuing nonconforming use. The restaurant/tavern use is not a use permitted by right or by special exception in the M.L.-A.S. zone. In this regard, Mr. Rosier testified that he is a carpenter/electrician and motel owner/manager by profession and that members of his family

¹ The structure was built in 1939 and the surrounding motels were known as "Kellys Cottages"; the tavern later was called "Bottoms Up Inn", and from 1980 to present renamed "Blondies".

have owned the subject structure for four (4) generations. He testified that although there have been many different owners of this building, there has always been a restaurant/tavern business located therein.

Nonconforming uses are defined in Section 101 of the B.C.Z.R. and regulated by Section 104 thereof. Often nonconforming use designations are sought to grandfather an otherwise illegal use. That is, if the Petitioner can establish that the use began prior to the effective date of the zoning regulations which prohibited such use, and the use has continued without interruption since that time, that use may continue as nonconforming.

The testimony and evidence presented in this case was persuasive to a finding that the restaurant use is nonconforming. The testimony of Mr. Rosier was particularly persuasive in that a member of his family has owned the property since the building was constructed sometime prior to 1940. His undisputed testimony was that the restaurant/tavern use has been a continuous operation since that time. Thus, I find that the use is nonconforming and will approve the special hearing relief requested.

Turning next to the variance to legitimize the 65-year-old existing structure with a front setback of 28 feet in lieu of the required 75 feet and to approve an open porch projection in the front of the building of 16 feet for the convenience of restaurant customers, I shall also grant these requests. In my judgment, the variance is warranted, given the unique configuration of the property, the location of the existing structure and the existence of the required amount of parking spaces situated off the road behind the structure. I find that the Petitioners have met the requirements of Section 307.1 of the B.C.Z.R. for relief to be granted and that there will be no detrimental impact to adjacent properties. This 438 square foot porch addition conforms to the

limitating exception (not to expand more than 25%) for nonconforming structures. *See* B.C.Z.R. Section 104.3.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 11th day of July 2009 that the Petition for Special Hearing to approve the continued non-conforming use of operating a bar and restaurant on premises as has been done continuously since prior to July 1965, be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 243.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to permit an existing building with a front setback of 28 feet in lieu of the required 75 feet, and from Section 301.1, to permit an open porch projection of 16 feet in lieu of the maximum allowed 56.25 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; subject to the following restriction:

- 1) The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, the 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.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County