

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
SW Corner of Wise Avenue and *	ZONING COMMISSIONER
Waterview Road	
(601 Wise Avenue) *	OF
15 th Election District *	BALTIMORE COUNTY
7 th Council District	
Bear Creek Properties, LLC, <i>Legal Owner</i>	
3 B's, Inc., <i>Lessee</i> *	Case No. 2010-0158-SPHA
Petitioner	

* * * * *

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 Petitioner, 3 B's, Inc., through its President, Robert O'Connor, Jr., and its attorney, Arnold E. Jablon, Esquire with Venable, LLP. The Petition was also signed by Steven R. Goff on behalf of the property owner, Bear Creek Properties, LLC. As filed, Petitioner, in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), requests a special hearing for a determination as to whether the present use of the B.L. zoned property at 601 Wise Avenue is that of a *restaurant/tavern* and not a *nightclub* as defined in B.C.Z.R. Sections 101, 102.1 and 230.¹ In addition, Petitioner requests variance relief to permit 53 parking spaces in lieu of the 178 spaces required pursuant to B.C.Z.R. Section 409.6. However, during the course of the hearing held for this case the Petition for Special Hearing was withdrawn and the number of requisite parking spaces modified. Specifically, the Petitioner and managing members of Bear Creek Properties gave assurances that no entertainment by live band or disc jockey would be performed on the premises and no recorded

¹ Allegations of a nightclub enterprise were made by neighbors. An investigation as authorized by the Department of Permits and Development Management (DPDM) was conducted and correction notices issued. See Division of Code Inspections and Enforcement Violation Case No. FA0105438/CO-0034625 (07-7793).

music would be generated above-normal sound levels. As amended, the subject property and requested relief are more particularly described on the redlined site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 2. The hearing proceeded on the remaining revised variance request to allow 53 parking spaces instead of 93 spaces.²

Numerous individuals appeared at the requisite public hearing either in support, as interested citizens or in opposition to the request. Due to limitations of time and space, a complete listing of all those individuals cannot be set out here; however, the sign-in sheets circulated at the hearing reflect their names and are contained in the case file as part of the record along with letters, e-mails and petitions received from many of the residents affected by the business operations. It needs to be noted that Arnold Jablon, Esquire appeared on behalf of 3B's, Inc.³, and its officers Robert and Bobbi O'Connor, and produced as witnesses: David Billingsley with Central Drafting and Design, Inc., the consultant who prepared the site plan(s); Steven Goff, Bob O'Connor, Rodney Barrett, Steve Barr, Martin Meyer (charter boat captain), Frank Taggart, Joe Fisher, Jim Poynter and Beech House employees – Kelly Emala, Eva Poliszczik and Chad Silvinsky. Testifying in strong opposition were several residents in the area namely: William Lambdin, William Pribyl, Bonnie Simons and Willard McJilton.

An appreciation of the waterfront restaurant-bar's past history and use is relevant and is briefly outlined. According to the Maryland Department of Assessments and Taxation – Real Property Data records, the principal structure was built in 1950 and had an enclosed area of

² The redlined plan (Exhibit 2) was to provide a "General Notes" section designating in pertinent part that the property would operate as a restaurant, provide no live entertainment, no outside speakers and that the seasonal outside beach area adjacent to Bear Creek (5,280 square feet) would no longer be used for serving food and alcoholic beverages, lounge chairs, dancing, etc.

³ Subsequent to the hearing's conclusion on Friday, February 19, 2010 but prior to issuing this Order, the Zoning Commissioner was informed and therefore believes that the Petitioner, 3B's, Inc., has terminated its lease of the subject property and "closed its doors for the last time". Public interest, however, dictates that the issues before this Commission should be decided since they may recur. *See, In Carroll County Ethics Commission v. Lennon*, 199 Md. App. 49, @ 61 (1998).

3,398 square feet. The location operated at first as a family run tavern known as Dishrams. In the mid 1960's, a class "D" liquor license was issued by Baltimore County and the tavern name was changed to the Bear Creek Inn. During this time the land area was expanded by the installation of bulkheads and hauling backfill materials in order to create a larger parking lot area. Aerial photographs from 1953 through 1992 support this conclusion. Following in order, and as evidenced by liquor license transfers (Petitioner's Exhibits 11 and 12), the business was renamed Bahama Mamas in the mid 1980's. The building footprint was expanded in the late 80's or early 90's and the enclosed area was increased to 3,940 square feet by erecting a two-story addition that presently operates as the main floor dining area with the lower level referred to as the "tiki bar". The present owners, Steven Goff and Randy Holofcener, formed a corporation – the Bear Creek Inn, Inc. – and purchased the property in the late 1990's. They operated the business, under the name of The Mariner's Landing. At that time, a floating pier was extended into the Bear Creek off of the existing pier and bulkhead at the southwest corner of the property and the parking area on the west side of the building was removed and replaced with beach sand to create an outside beach dining area of 5,280 square feet. The liquor license changed from a Class "D" to Class "B" (49% bar – 51% restaurant). Wood decking (1400 square feet) with canopy cover was erected at the buildings west and south sides in 2006. In late 2006 - early 2007, the property and improvements were leased to Wise Services, Inc. who changed the name to Dick's Dock Bar. A review of the records maintained by the Department of Assessments and Taxation disclose Wise Services filed Articles of Dissolution in October, 2008. The name was then again changed to the "Beach House" following 3 B's, Inc. rental of the property from Bear Creek Properties. Further improvements were made in April by enclosing the wood deck area discussed above with a metal canopy and installing a heating system. During the heavy February 2010 snow storms, this metal canopy area collapsed.

Testimony was offered describing the subject property and the nature of operations conducted at the Beach House by Bob O'Connor and David Billingsley. An examination of the amended site plan shows that the property is a combination of two (2) parcels identified as Lots 1 and 2 on the Plat of Perry Point surrounded on two (2) sides (south and west) by the Bear Creek. Wise Avenue and Waterview Road intersect at and form the property's northern boundary. The site contains an area of 0.83 acres (36,360 square feet), is zoned B.L. and provides on-site parking for 38 vehicles. Off-site parking is provided on the opposite side of Wise Avenue for 15 vehicles, nine (9) at 692 Wise Avenue and an additional six (6) spaces at 700 Wise Avenue for a total of 53 spaces⁴. Mr. Billingsley testified to the site's uniqueness. It is bounded by water on two (2) sides. Residential uses exist to the east. The bulkhead, pier and new floating pier provide boat slips for 25 boats that travel to and from the restaurant mitigating, in Mr. O'Connor's opinion, the requirement for the substantial number of on-site parking spaces. Mr. Billingsley states that the restaurant and bar have operated since 1950 with 38 parking spaces. Mr. O'Connor began operations of the bar/restaurant in April 2008. He states he was unable at first to reverse many of the seasonal activities that had been put in place by the prior lessee, Dick's Dock Bar. He and his wife, Bobbi, leased the property with the intent of converting it back to a restaurant that featured views of Bear Creek as opposed to the bar and nightclub activities – with their negative impacts on neighboring families. He spent a great deal of money making upgrades to the main structure, pier and bulkheads to promote boat traffic that is described as substantial between April and October. By eliminating 200 seats from the beach area, as shown on the amended plan and reducing the number of tables on the wrap-around deck to 18, Mr. O'Connor believes congestion on the site will be reduced but would still require a

⁴ B.C.Z.R. Section 409.7B.1 allows off-site parking spaces if located within 500 feet walking distance of a building entrance.

variance to operate a viable business. He stated that he has already made \$80,000 in improvements and anticipates an additional \$60,000 will be spent updating the restaurant's seating and restaurant areas with a new Bose system, etc.

Testifying in strong opposition to the considerable parking variance were Messrs. Lambdin, Pribyl, McJilton and Ms. Simons. These witnesses each provided their own individual testimony and offered extensive exhibits, but the clear tenor and theme of their remarks relate to parking and traffic impacts affecting Waterview Road, safety concerns and the likelihood of accidents (pedestrians crossing Wise Avenue) and continued crime and disturbances caused by bar patrons. *See* Protestants Exhibit 2 for accident statistics and documented calls for police service. They noted that two (2) County departments recommended disapproval. The County's Traffic Engineering Division Chief, Stephen E. Weber, at the request of People's Counsel for Baltimore County, provided a lengthy (over ten year) historical evaluation of parking impacts generated in the adjacent community which Weber states should not be occurring. Likewise, the Office of Planning recommended a denial on the basis that the restaurant-bar "has grown in customer use areas over the years ... to a point at which it is now far larger than the site's capacity to contain it". Indeed, I find this to be the most troubling aspect of this proposal as it generated the significant parking and traffic complaints voiced by the residents of Waterview Road.

The property's past history and expanding use has been outlined above. It is the position of this Commission that a property owner is bound by the actions of his or its predecessor in title. *See, Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547 (1965) which states at Page 554:

"The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves

caused or created by *the property owner or his predecessor in title*, the essential basis of a variance, i.e., that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief”.

Indeed, I find the building’s square footage has increased during the past decade from 3,398 square feet in 1950 to its present day size of 5,340 square feet without benefit of building permits or site plans that would have addressed the need for parking variances.

As stated at the conclusion of the hearing, this is a difficult case. From a practical standpoint, I am appreciative of the owners desire to continue the expanded restaurant/tavern use. Mr. Goff’s pronounced willingness to accept the imposition of restrictions and conditions and his assurances that the bands and live music that created the past problems would be eliminated are convincing. On the other hand, the residents of this isolated Perry Point waterfront enclave have invested significant sums for their property and have long endured loud and unruly behavior from patrons leaving this bar/restaurant. I am also cognizant that the manner of enforcement of imposed restrictions/conditions, if approval is granted and these conditions are attached, ultimately ends up with the burden being placed on the community to enforce the limitations imposed. As a result of these concerns and pledges made at the hearing that deficiencies would be corrected, the record of this case was held open for several weeks to allow negotiations to be commenced between the owner of the property and the relevant community members. As a result of these negotiations, a further modified site plan was prepared that has been agreed to in spirit by Bear Creek Properties, LLC – the owner – and a number of residents on Waterview Road. Submitted now as Petitioner’s Exhibit 16 is the new site plan bearing a revision date of March 8, 2010 reflecting these initiatives. Essentially, Bear Creek Properties now comes with a new approach to resolve its needs to accommodate customers at its establishment and also address parking issues. The salient points are summarized as follows:

- Bear Creek Properties will take over business operations and return the “Beach House” to the “Mariner’s Landing” restaurant. The building will be restructured inside reducing the bar area from 1,850 square feet to 450 square feet and increasing the restaurant area to 3,490 square feet.
- There will be no bands or loud music on the premises thereby eliminating objectionable music outside the building.
- Valet parking, by an attendant, in accordance with B.C.Z.R. Section 409.4.B.1, will be implemented. This will allow approval of up to 50% of all parking spaces that do not adjoin and have direct access to a drive aisle. The redlined plan shows 16 spaces which do not have access to an aisle which is less than 50% of the 60 spaces provided. Valet parking, therefore, allows for a stacked parking method and 13 additional on-site spaces.
- The nine (9) off-site parking spaces furnished at 692 Wise Avenue will be available principally for employee parking with some overflow.
- These changes coupled with no further use of the beach area, limited use of the outside deck area and the utilization of the 25 boat slips for summertime business patrons will reduce parking demands.

Messrs. Lambdin, McJilton and Pribyl, who spoke in opposition to a parking variance at the hearing and attended the subsequent meetings with the owner’s managing members (Steven Goff and Randy Holofcener), are skeptical and fear history will repeat itself. They prefer a long-term solution and want Goff to tear down an apartment building he owns at 696 Wise Avenue and convert that as an accessory parking lot as opposed to a variance and valet parking. They appreciate, however, the action of terminating the activities associated with the Beach House,

promises to return the business to a family style restaurant, not to use the beach area for gatherings, not to play live music, or have a DJ booth, etc. Five (5) weeks have now passed since the public hearing and no one has informed the undersigned that a “final” agreement has been reached. While appreciative of the parties’ time and efforts in attempting to achieve an amicable resolution, a decision is now overdue and will be stated as follows.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if relief for existing and proposed parking were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to special conditions unique to this particular parcel.⁵ The difficulty, as delineated, is how to grant a variance that will not lead to detrimental impacts to the public health, safety, and general welfare of the area. Perhaps the signature phrase of Ronald Reagan – “doveryai, no proveryai” – *Trust, but verify* – is appropriate here.

Rather than applying a “singleness of use” calculation method in determining the site’s parking needs, Central Drafting and Design, Inc. has shown the required number of parking spaces on its amended site plan, Petitioner’s Exhibit 16, to reflect: the Bar area (450 sq. ft. @ 20 sp./1,000 sq. ft. = 9), Restaurant Area (3,490 sq. ft. @ 16 sp./1,000 sq. ft. = 55.8), and the Deck area (1,400 sq. ft. @ 16 sp./1,000 sq. ft. = 22.4) in arriving at the required parking total of 88 spaces. Bear Creek Properties cannot meet the regulations under any circumstances. The amended plan as illustrated provides for 51 spaces on-site and 9 spaces off-site (692 Wise Avenue) for a total of 60 parking spaces. The Petitioner is requesting approval of 60 spaces in lieu of the required 88 spaces in order to continue the tavern/restaurant business that has existed

⁵ By way of example, the required number of parking spaces for a “tavern” – the subject property’s primary use from 1950 through 1980 – would require 20 spaces per 1,000 feet of gross floor area. *See* B.C.Z.R. 409.6. The building’s enclosed area over those three (3) decades was 3,398 square feet requiring 68 spaces. The tavern use does not meet nor has it ever met the applicable criteria set forth in the B.C.Z.R.

at this location for over 60 years. In my judgment, the Petitioner has established that the property is unique and that the modified variance relief is justified to mitigate the practical difficulty which strict adherence to the regulations would inevitably create. I am satisfied that the Petitioner has complied with the standards set forth in Section 307 of the B.C.Z.R. By imposing conditions that must be adhered to, relief can be granted in such a way that the spirit of the B.C.Z.R. will be observed and public safety and welfare secured.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the revised parking relief requested shall be Granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of March 2010 that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), requesting a determination as to whether the present use of the B.L. zoned property at 601 Wise Avenue is a *restaurant/tavern* and not a *nightclub* as defined in B.C.Z.R. Sections 101, 102.1 and 230, being withdrawn prior to the start of the hearing is rendered MOOT; and

IT IS FURTHER ORDERED that the Petition for Variance, to permit 60 parking spaces in lieu of the 88 spaces required for the bar and restaurant use pursuant to B.C.Z.R. Section 409.6, in accordance with Petitioner's Exhibit 16, be and is hereby GRANTED; subject to the following conditions, which are restrictions precedent to the approval granted herein:

1. Petitioner/owner may apply for any required building permits and be granted same upon receipt of this Order; however, Bear Creek Properties, LLC 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
2. All outdoor lighting shall be directed towards the interior of the subject site and away from adjacent properties. The outside beach area as designated on the site plan shall not be used for tables, lounge chairs, serving of food or alcoholic beverages.

3. There shall be no bands, dancing or other live entertainment permitted. All recorded music in the deck area of the restaurant shall terminate at 11:00 PM Monday through Friday, and at 12:00 AM Saturdays and Sundays.
4. Petitioner shall employ an attendant to park customer vehicles and attend to the valet parking areas as required by B.C.Z.R. Section 409.4.B.1.
5. Petitioner shall post no parking signs at the entrance to the residential community and encourage patrons, employees and subcontractors not to park on Waterview Road.
6. The variance relief granted herein is personal to Bear Creek Properties, LLC and its current managing members, Steven R. Goff and Randy R. Holofcener. In the event of the sale, lease or transfer of the business, the new owner/operator shall petition for special hearing relief to amend this restriction and the parking approval granted.
7. The legal owner, its successors and assigns shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management reasonable access to the property and restaurant/tavern to insure compliance with this Order.

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