

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W/S Woodrow Avenue and		
Creek Road	*	ZONING COMMISSIONER
(801 Woodrow Avenue)		
	*	OF
15 th Election District		
7 th Council District	*	BALTIMORE COUNTY
Michael Brewer	*	Case No. 2010-0174-A
Petitioner		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Michael Brewer, through his attorney, J. Neil Lanzi, P.A. The Petitioner seeks relief from Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the approval of a parking variance to allow 105 parking spaces in lieu of the required 183 parking spaces per B.C.Z.R. Section 409.6A(2). The subject property and requested relief are more particularly described on the site plan which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Michael Brewer, property owner, and J. Scott Dallas, of J.S. Dallas, Inc., the property line surveyor and consultant who prepared the site plan for the proposed improvements at this property. The Petitioner was represented by J. Neil Lanzi, Esquire of J. Neil Lanzi, P.A. There were no Protestants or other interested persons present.

The subject waterfront property consists of five (5) lots identified on Maryland Department of Assessments and Taxation Map 97 as Lots 19 through 23 of the Deep Creek Avenue Park subdivision in Essex. The tract forms an irregular shaped parcel at the end of Woodrow Avenue, adjacent to Creek Road surrounded by the Duck Creek and Deep Creek on

two sides and a residentially used property on the third side. The property contains an area of 67,084 square feet or 1.5 acres split-zoned B.L. and D.R.5.5. The premises and improvements have an extensive history and appreciation of the past use is relevant and briefly outlined. Mr. Brewer stated that the existing restaurant/tavern business has been owned and operated continuously by the Brewer family since 1974 and is known throughout the area as the Brewer's Landing Bar and Grill. His parents both operated the business until his father passed away in 1994. Mr. Brewer (the Petitioner) then operated the restaurant/tavern business with his mother subsequent to his father's passing. Petitioner's mother, Ella Mae Brewer, passed away in 2007. Since that time, Michael J. Brewer has owned and continuously operated the business. The primary structure on the property has existed since 1924 and Mr. Brewer testified that his wife's family, specifically George and Cruse Wacker, owned the subject property and operated the business during the 1960's, then the Shaws (Wheeler L. Shaw), until his parents purchased the property in 1974. Thus, the property and the restaurant/tavern business has been operated continuously since the 1960's with a family connection through today's date and operated as a tavern before the 1960's by non-family members.

The Petitioner has continued with the family theme testifying that he and his wife Rebecca own the first residence immediately east of the property known as 807 Woodrow Avenue. Petitioner's wife's family, the Wackers, own the first home immediately north of the subject property on Creek Road and Petitioner's father-in-law owns the second property to the north of the property on Creek Road. Petitioner stated that from 1974 to the present, various improvements have been made to the property, including the razing of four (4) residences to provide for additional restaurant parking.

Scott Dallas next reviewed the zoning history shown on the site plan (Petitioner's Exhibit 1). As noted on this exhibit, the property was rezoned to commercial in 1946 and a number of Zoning Orders have been issued since 1983 with the most recent a Spirit and Intent approval letter, dated June 6, 2007, also included on the site plan. The Spirit and Intent approval letter approves Petitioner's proposed addition, as illustrated on the plan, which addition has not yet been constructed. It was Petitioner's intent to construct the addition and the canopy proposed in this case at the same time. In further testimony regarding the property's zoning history, Scott Dallas noted the property was the subject of a *reclassification* request in the 2008 Comprehensive Zoning Map Process (CZMP) whereby .8 acres of D.R. zoned property was rezoned to B.L. as shown on Petitioner's Exhibit 1. The purpose of the zoning change to commercial was to include the existing parking lot previously on the residential zoned portion of the property.

In contrast to many tavern/restaurant matters that are presented to this Commission, Mr. Brewer testified that he was not aware of any complaints from those families residing in the neighborhood regarding the operation of his business from the 1990's to the present. He made it clear to the undersigned that he runs the day-to-day operations, lives immediately next to the business and is keenly sensitive to any customers that may be disruptive to his business and the community. This testimony is corroborated by the Office of Planning who supports the requested variance and improvements and states in the Zoning Advisory Committee (ZAC) comment that "the subject property is a well-maintained restaurant and bar . . .".

With regard to the business itself, Petitioner included in his history the evolution of the restaurant use of the structure and the fact that a new kitchen was installed in 2007. Petitioner noted the nature of the business has changed from a sole tavern use to approximately one third

restaurant and two thirds tavern use. Hence, Petitioner emphasized the need for additional table space as will be provided by the proposed addition and proposed canopy area. Petitioner emphasized that the recently enacted smoking ban in Maryland also necessitated the need for the canopy area and outdoor table space for his customers.

In discussing the parking variance, Mr. Dallas noted the parking regulations require parking spaces even for the open canopy area despite the absence of a permanent structure in the roughly 3,300 square feet of proposed outside canopy area. The proposed addition is 1,760 square feet. In this regard, Mr. Brewer offered a red-lined amended site plan accepted as Exhibit 2 that shows the original proposed canopy area with a significantly smaller area highlighted in red within the originally proposed canopy area. The area highlighted in red is that portion of the property which is outside the Buffer Management Area (BMA) as required by the Department of Environmental Protection and Resource Management (DEPRM). In an effort to comply with DEPRM's ZAC comments, Petitioner has agreed that instead of the originally proposed canopy area on three sides of the building as originally shown on Exhibit 1, a substantially reduced canopy will be provided in the area highlighted by red-line on Petitioner's Exhibit 2. A combination of retractable awnings and tables with umbrellas will be provided within the remainder of the originally highlighted canopy area. Since the same proposed use of outside tables will be continued despite the new canopy, awning and table configuration, Petitioner did not request any modification to the variance request for parking.

Scott Dallas summarized discussions held with DEPRM for both the proposed addition and the proposed canopy and noted that Petitioner was required to eliminate 34 of the previously provided parking spaces to meet DEPRM's impervious surface coverage requirements. The paving to be removed and converted to grass is 1,825 square feet. Petitioner has agreed to

provide the parking reduction as required by DEPRM and to install the landscaping required by the Office of Planning in their ZAC comment, dated January 15, 2010.

In support of the variance request, Petitioner's land use consultant testified as to the irregular shape of the property, the existing structure dating back to 1924, the fact that the property is split-zoned and that the property was surrounded on two sides by the Duck and Deep Creeks that split at the properties frontage. Mr. Dallas further opined that in his opinion the parking variance would not alter the essential character of the neighborhood and the proposed addition and canopy project with the parking variance would actually improve the existing neighborhood.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. In my judgment, Petitioner has complied with the requirements of Section 307 of the B.C.Z.R. and the case law by establishing that the subject property contains unique characteristics that result in the regulations impacting disproportionately on this property. I find that strict compliance with the parking requirements would result in a practical difficulty or unreasonable hardship. I further find that the granting of the zoning relief will be in strict harmony with the spirit and intent of the B.C.Z.R. and will not cause substantial injury to the public, health, safety and general welfare.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 16th day of February 2010, that the Petition for Variance seeking relief from Sections 307 and 409.6A(2) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 105 parking spaces

in lieu of the required 183 parking spaces, in accordance with Petitioner's Exhibits 1 and 2, be and is hereby granted subject to the following conditions:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is made aware that that proceeding at this time is at his 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. Compliance with the Zoning Advisory Committee (ZAC) comments submitted by the Department of Environmental Protection and Resource Management (DEPRM), the Development Plans Review (DPR) and the Office of Planning relative to the Chesapeake Bay Critical Area (CBCA) regulations and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains. Copies of those comments, dated February 2, 2010, January 5, 2010 and January 15, 2010 respectively, have been attached hereto and are made a part hereof.

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

WJW:dlw

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