

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
E side of York Road; 500 feet S of the	*	DEPUTY ZONING
c/l of Galloway Avenue		
8 th Election District	*	COMMISSIONER
3 rd Councilmanic District		
(9811 York Road)	*	FOR BALTIMORE COUNTY
Carbroc, LLC	*	CASE NO. 2011-0033-SPHX
<i>Legal Owner</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by Grant Pivec, Managing Member, on behalf of the legal property owner, Carbroc, LLC. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to amend the approval and Order granted in Case No. 07-158-SPH to allow an arcade in conjunction with an existing restaurant, and for such other and further relief as may be required by the Zoning Commissioner. The Special Exception is to permit the use of the existing premises as an arcade in conjunction with an existing restaurant pursuant to Sections 230.3 and 423.B of the B.C.Z.R., and for such other and further relief as may be required by the Zoning Commissioner. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the Special Hearing and Special Exception requests was Grant Pivec, Managing Member, on behalf of Petitioner Carbroc, LLC, and Lawrence E. Schmidt, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was James Grammer with McKee & Associates, Inc., the land use consultants that prepared the site plan. Appearing as an interested citizen was Stephen Weber on behalf of

the County Home Park Community Association.¹ There were no Protestants or other interested citizens in attendance.

Testimony and evidence offered revealed that the subject property is irregular shaped and consists of approximately 1.104 acres of land, more or less, split-zoned B.L.-C.C.C. and D.R.3.5. The property is located on the east side of York Road, just north of Padonia Road and south of Galloway Avenue, in the Cockeysville area of northern Baltimore County. The property is improved with a one-story commercial structure, currently operated as a restaurant known as “Piv’s Pub.” The property/building has historically been used as a restaurant, including as a pizza shop, Greek restaurant and similar uses. The York Road frontage, which includes the restaurant and a portion of the parking area, is in a business zone, B.L.-C.C.C. The rear area is zoned residential, D.R.3.5, and extends to Monroe Street to the east. The property is also situated in a commercial corridor of Cockeysville, with a number of varying retail, restaurant, auto service, office, and other business services uses lining York Road

There is a significant zoning history to this property. There were zoning cases relating to the restaurant use of the subject property and parking thereon in 1973 (Case No. 74-5-SPH) and 1985 (Case No. 86-176-A). More recently, there was a protracted case (Case No. 07-158-SPH), which ultimately concluded via an opinion and Order issued by the County Board of Appeals for Baltimore County (hereinafter “the Board”) on May 11, 2010. To the extent applicable, the findings and conclusions stated therein are incorporated herein by reference.

As noted in the Board’s written decision, which was marked and accepted into evidence as Petitioner’s Exhibit 2, Petitioner Carbroc, LLC requested special hearing relief in that case to approve the parking layout and generally “clean up” and obtain approval of changes to the

¹ Mr. Weber is also employed with Baltimore County Government in the Traffic Engineering Division of the Department of Public Works.

building and operation which had been made by prior owners, but without the benefit or formality of County approval. According to Mr. Schmidt, Petitioner's efforts at transparency brought about the interest of the residential neighbors to the rear of the site and there were extensive negotiations between Petitioner and the members of the community association known as County Home Park. These negotiations resulted in an agreement between the parties by which a site plan jointly prepared and approved by the parties was submitted to the Board. The Board's Order adopted and approved that plan. That site plan granted and formalized a parking configuration on the subject property to promote safe traffic flow and better serve the restaurant use. Additionally, it allowed a one-story deck area to be constructed on the front portion of the building facing York Road. Finally, it provided for the disposition of two residential lots that abut Petitioner's property to the rear. As shown on the site plan, these adjacent lots (9812 and 9814 Monroe Street) are improved with detached dwellings and are owned by individual persons associated/affiliated with Petitioner. As shown on the site plan, which other than additional notes applicable to the instant matter, is identical to the plan approved by the Board in the prior case, the building at 9812 Monroe Street would be razed and that lot would be eliminated as a separate parcel and merged into the adjacent commercial and residential lots. As a result, this merger will increase the area of the lot known as 9814 Monroe Street and make it a more viable residential lot. The other portion of the 9812 property will be merged into the commercial lot and provide an increased parking area for the restaurant.

Further testimony and evidence proffered by the Mr. Schmidt emphasized that the owner does not desire to alter or amend in any way the site plan or agreement of the parties in the prior case before the Board. Presently, as the result of the agreement and approvals in the prior case, the restaurant operation at Piv's Pub is undergoing renovation. There have been improvements to

the interior of the building in terms of upgrading and rearranging the food service areas. One additional change contemplates the creation of a “game room,” which would be approximately 1,000 to 1,200 square feet in area. Mr. Pivec testified that the game room would contain a variety of child-oriented video games and other amusement devices. It is the intent of Petitioner to provide this area for children when adult patrons visit the restaurant facility. The restaurant currently has a bar area, dining area and party room (for larger groups). The intent is that children who attend functions at the facility (be they anniversary parties and the like in the “party room” or large groups who are dining together in the seating area) can use this room for entertainment purposes. The game room would be accessory to the primary use of the site as a restaurant and would make the business more “family friendly.” Mr. Schmidt concluded by proffering the testimony of Mr. Grammer that the requested special exception use would not be detrimental to the health, safety, or general welfare of the locale or community, nor would it be detrimental or have any negative impacts on the other enumerated special exception criteria set forth in Section 502.1 of the B.C.Z.R.

On behalf of the residential community, Mr. Weber raised several questions, but generally did not oppose the instant requests for relief. He did express concern about the impact of this matter on the Board’s Order in the prior case, specifically the schedule contained therein for certain improvements required to the Piv’s Pub property. As noted in the Board’s Order, these improvements are to be completed by July 15, 2011.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. The comments indicate no opposition or other recommendations concerning the requested relief.

An “arcade” is defined in Section 101.1 of the B.C.Z.R. as “a building or part of a building in which five or more pinball machines, video games or other similar player-operated amusement devices are maintained.” “Amusement devices” are defined as “pin-ball machines (with or with-out flippers), video games, electronic games and other similar player-operated amusement games, machines and devices, but excluding coin-operated pool tables, music boxes, children’s rides and shuffle boards.” Although the primary use of the business will continue to be as a restaurant, Section 230.3 of the B.C.Z.R. states that arcades are permitted in the B.L. Zone only by special exception. Further, Section 423.1 of the B.C.Z.R. provides that arcades are permitted as a use in combination with a restaurant (*see also*, Section 422 of the B.C.Z.R.). Thus, special exception approval is required for the arcade, notwithstanding that the primary use of the operation will continue to be as a restaurant. The special hearing is required to formally “update” the prior approvals.

Based upon the uncontroverted testimony and evidenced offered, I am persuaded to grant the requested Special Hearing and Special Exception relief. The evidence clearly establishes that the proposed arcade operation as part of this restaurant use would not be detrimental to the health, safety or general welfare of the locale. Insofar as impacts on the locale created by the arcade, they will be *de minimus*, if they exist at all. From a public perception, this will continue to be a neighborhood restaurant. The nature of the activity on the site will not change. The special exception criteria contained in Section 502.1 are clearly satisfied. Thus, I am persuaded that relief should be granted within the special exception area delineated on the site plan.

As noted above, the special hearing was filed only to formally amend the Board’s prior Order and incorporate the new site plan; to in effect update the “paper trail” in this matter. The new site plan is identical to that approved by the Board except for notations delineating the

addition of the arcade use. It is worth observing that the overall parking required under the B.C.Z.R. will be less under this proposal. Specifically, Section 409 of the B.C.Z.R. requires 16 parking spaces per 1,000 square feet of a restaurant use; whereas, only 4 spaces per 1,000 square feet are required for an arcade use. Although the Board's Order previously approved a modified parking plan and that approval will not be altered, the anticipated volume of traffic may well be decreased because of the arcade operation and the anticipated "family friendly" nature of the business.

As to Mr. Weber's concern regarding the schedule for certain improvements required to the Piv's Pub property from the prior case and Order approved by the Board, I will not alter that requirement nor change it in any manner. Petitioner will continue to be required to comply with the requirements of the Board's Order. However, that does not impact the timing or scheduling of any improvements related to the construction of the game room/arcade. In my judgment, the Board's Order satisfactorily protects the community and preserves the agreement between the parties. The arcade is an internal renovation that is not impacted by that agreement and I do not wish to confuse matters by making one case somehow dependent on the other.

Questions were also raised about the number of arcade games proposed for the game room, as well as contained in the restaurant overall. Mr. Weber expressed the community's concern that the property not become "primarily" an arcade and Petitioner indicated the restaurant use would continue to be the predominant business activity. Discussion was had about limiting the square footage of the arcade; however, given that trivia machines or "adult" games could be in the bar area, such a restriction seems unworkable. Mr. Pivec also expressed a concern about how machines are counted, and whether a single machine that can accommodate two players is considered one machine or two. This issue seems more appropriate as a permits

and code enforcement issue, and one that should be determined as necessary on a case-by-case basis. Nonetheless, consistent with the testimony proffered at the hearing and as recounted herein, in my judgment, a restriction limiting the number of machines to thirty-five (35) is appropriate. This number allows flexibility in the restaurant operation, while also ensuring that the business will not become a predominant arcade and gaming facility.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's requests for special hearing and special exception should be granted.

THEREFORE, IT IS ORDERED this 27th day of September, 2010 by the Deputy Zoning Commissioner, that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to amend the approval and Order granted in Case No. 07-158-SPH to allow an arcade in conjunction with an existing restaurant be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Special Exception request to permit the use of the existing premises as an arcade in conjunction with an existing restaurant be and is hereby GRANTED in accordance with the special exception area shown on the approved site plan; and

IT IS FURTHER ORDERED that the maximum number of amusement devices permitted in the special exception area shall be set at thirty-five (35).

The relief granted is subject to the following condition:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, 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 made within thirty (30) days of the date of this Order.

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz