

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
SE/S of Pulaski Highway, 150' SW of the		
C/line of Rossville Boulevard	*	ZONING COMMISSIONER
(8733 Pulaski Highway)		
15 th Election District	*	OF
7 th Council District		
	*	BALTIMORE COUNTY
TD Bank, NA, <i>Legal Owners</i>		
Entourage Ventures, LLC,	*	
<i>Contract Purchasers</i>		
	*	
Petitioners		Case No. 2011-0149-X
	*	

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Petitioner/Contract Purchaser, Entourage Ventures, LLC, through its attorney, Gildea and Schmidt, LLC. The Petition was also executed by the property owner, TD Bank, NA. Petitioner requested a special exception to approve a drive-in restaurant, pursuant to Section 236.2 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more fully described on the site plan and colorized plan, which were marked and accepted into evidence as Petitioners' Exhibits 1 and 2.

Appearing at the requisite public hearing in support of the request was Thom Behrle, authorized representative for Entourage Ventures, LLC. The Petitioner was represented by Jason T. Vettori, Esquire, with Gildea & Schmidt, LLC. Also present at the hearing was Joseph J. Ucciferro, P.E., with Bohler Engineering, Inc., the civil engineers/land development consultants who prepared the plan. David K. Gildea, Esquire and Sara Behrle were also present. The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Melissa R. Sadowski, Business Development Representative, from the Baltimore County

Department of Economic Development, also appeared and participated in support of the project. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the 1.017 acre (44,300.52 square feet) property is split-zoned B.R.-A.S. and B.M.-I.M. and located in the Rosedale area of eastern Baltimore County, on the south side of Pulaski Highway, west of Rossville Boulevard, and known as 8733 Pulaski Highway. The surrounding area is made up of predominantly industrial and commercial uses. Petitioners' Exhibit 4 is an aerial zoning map which identifies the subject property and surrounding zoning classifications.

The prior use of the property was a motel, known as the "Christlen Motel." This use, which dates back to the 1950's, was previously identified as dilapidated and in need of replacement by a higher and better use along this employment corridor. Commerce Bank proposed the construction of a bank on the subject property. However, zoning relief was required. A Petition for Special Hearing, Case No. 08-321-SPH, was filed. The undersigned granted a waiver of floodplain regulations in order to construct the bank, conditioned upon the Department of Public Works' comments as outlined in the Order, dated March 4, 2008. *See* Petitioners' Exhibit 10. While the property was razed for construction of the bank, it was never built. As such, the parcel is currently vacant.

Petitioner now seeks to improve the property and make an investment in the Rosedale area. Entourage Ventures, LLC proposes to improve the site with a Sonic drive-in restaurant. The petition before me is for an approximate 1,728 square foot enclosed retail space. As the development is classified as a "drive-in restaurant," it requires a special exception. It should be noted that this special exception would not be necessary if the Sonic was predominantly a "drive-through" restaurant (per B.C.Z.R. Sections 230.1.A.4 and 236.1.A).

B.C.Z.R. Section 101.1 defines “drive-in restaurant” as “[a] retail outlet where food or beverages are sold to a substantial extent for consumption by customers in parked motor vehicles.” The codification of the definition of “drive-in restaurant” and the inclusion of this use is one necessitating special exception approval first and occurred in Bill No. 40-1967 – Petitioners’ Exhibit 5. The drive-in restaurant use again appeared in Bill No. 85-1967 – Petitioners’ Exhibit 6.

The drive-in restaurant is not a common use. It conjures up images from an era long gone (i.e., the famed movie “Grease”). Sonic was formed in the Midwest. It currently has approximately 3,544 facilities in the United States. The instant development marks an investment of approximately \$2.5 million and the creation of approximately 110 jobs upon completion. Sonic is classified as a drive-in restaurant because food and beverages are sold to a substantial extent for consumption by customers in parked motor vehicles. As demonstrated by Petitioners’ Exhibits 2 and 3, a rendered site plan and elevations, respectively, food is ordered from canopy covered parking spaces and delivered to parked cars by individuals. The individuals who deliver the food and beverages have the option of wearing roller skates. The proposed operation is substantially the same as other fast-food operations in Baltimore County and Rosedale. Again, fast-food restaurants are permitted by right in the underlying zone. Furthermore, the proposed use meets all bulk regulations including setbacks and drive aisles. The Director of the Department of Economic Development submitted a letter of support for the proposed use. *See* Petitioners’ Exhibit 9. This capital investment and improvement to an aged commercial corridor is the type of revitalization desired by Baltimore County.

The Office of Planning and the Department of Public Works provided ZAC comments with substantive issues which bear addressing. *See* Petitioners’ Exhibits 8 & 11, respectively.

Planning noted and Mr. Ucciferro confirmed that the proposed use meets the criteria listed in Section 502.1 of the B.C.Z.R. as interpreted by the Court of Appeals in *People's Counsel for Baltimore County vs. Loyola College* 406 Md. 54. However, Planning recommended three (3) conditions for approval. First, Planning requested that the Petitioners provide an additional means of ingress/egress. Second, Planning requested that a landscape plan be submitted. Third, Planning requested that the Petitioners provide sidewalks and a pedestrian connection to the main entrance of the building if no sidewalk exists on Pulaski Highway. The Petitioners agreed to satisfy conditions 2 & 3. However, the Petitioner indicated that it was not feasible to provide a second means of access. There does not appear to be a development regulation whereby two (2) means of ingress/egress are required. Additionally, there is a retaining wall which runs along much of the southwestern property boundary, the location Planning suggested for the second means of access. The property also lies in a 100-year floodplain as more fully discussed below. Even if Petitioners were able to overcome the practical difficulty in providing a second means of access, the Petitioners outlined the efforts which were made to obtain a second means of access to the site, and I am satisfied that it is not feasible. It is also instructive that Planning did not request that Commerce Bank provide a second means of access in the most recent zoning case for the subject site, Case No. 08-321-SPH. Based upon the foregoing, it does not appear feasible to impose a condition requiring a second means of ingress/egress, so condition 1 of Planning's ZAC comment will not be imposed.

Interoffice correspondence, dated November 9, 2010, from Edward C. Adams, Jr., Director, Department of Public Works (DPW) to Timothy Kotroco, Director, Department of Permits & Development Management (DPDM), provides that the waiver of floodplain regulations which was granted by the Zoning Commissioner in Case No. 08-321-SPH "is

applicable to the present development with respect to floodplain issues.” See Petitioners’ Exhibit 10. As indicated in Mr. Adams’ interoffice correspondence, this project must not create any negative impact offsite to the floodplain water surface elevation. Mr. Adams further indicated that condition 3 had been satisfied. Therefore, I find that, provided the development meets the applicable conditions listed by the Director of DPW, the prior floodplain waiver is applicable to the instant use.

Pursuant to the advertisement, posting of the property and public hearing on the Petition held, and for the reasons set forth above, the relief requested shall be granted. I find the use is consistent with the property’s zoning classifications and within the spirit and intent of the B.C.Z.R.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 15th day of December, 2010, that the Petition for Special Exception to permit the use of the described property for a drive-in restaurant, pursuant to Section 236.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioners’ Exhibit 1, be and is hereby GRANTED; subject to the following restrictions:

1. The Petitioners shall prepare and submit a landscape plan for review and approval by Avery Harden, Baltimore County Landscape Architect, with particular emphasis on the Pulaski Highway and Rossville Boulevard landscape buffer areas.
2. The Petitioners shall provide sidewalks and a pedestrian connection to the main entrance of the building, if no sidewalk exists on Pulaski Highway.
3. The Petitioners should provide a certification on the plan by a licensed Professional Engineer that the grading and other development requested for this site and for this project does not create any negative impact offsite to the floodplain water surface elevation. The intention of this is to prevent any liability against the County due to losses incurred by other properties in the vicinity during a 100-year flood event.

4. The Petitioners engineer shall provide full documentation supporting condition 1. The Petitioners are responsible to apply to the Federal Emergency Management Agency to amend the FIRM map to remove the floodplain designation from the site based on this documentation.
5. The Petitioners may apply for its permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this decision must be taken within thirty (30) days in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

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