

| | | |
|-------------------------------------------------|---|-------------------------------|
| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE |
| SW/side of Putty Hill Avenue, 170' SE of | | |
| c/line of Old Harford Road | * | OFFICE OF |
| (2531 Putty Hill Avenue) | | |
| 9 th Election District | * | ADMINISTRATIVE HEARINGS |
| 6 th Councilmanic District | | |
| | * | FOR BALTIMORE COUNTY |
| Putty Hill Investments, LLC, <i>Legal Owner</i> | | |
| McAvoy Enterprises, LLC, <i>Lessee</i> | | |
| <i>Petitioners</i> | * | CASE NO. 2012-0007-SPH |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Special Hearing filed by Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC, on behalf of the legal property owner, Putty Hill Investments, LLC, and McAvoy Enterprises, LLC, the Lessee. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

1. A modified parking plan per Section 409.12 of the B.C.Z.R., and
2. For such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the Special Hearing request were Adam Bloom and Diane Schmittinger from McAvoy Enterprises and Bernadette Moskunus with Site Rite Surveying, Inc. Jason T. Vettori, Esquire represented the Petitioners. Also attending on behalf of the Petitioner were Louis Denrich, owner of the restaurant building. Appearing in opposition to the request was Carl Briscoe, speaking on behalf of the ownership of the Tall Cedars

Club and the ownership group of the parking lot. Mr. Brisco was represented by J. Carroll Holzer, Esquire.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Testimony and evidence indicated that the property which is the subject of this special hearing request consists of 4.69 acres, more or less, and is split zoned BL-AS, DR 5.5 and DR 16. The subject property is the site of the Putty Hill Shopping Center and is improved with several retail, restaurant and catering hall businesses. The property is located on the south side of Putty Hill Avenue near its intersection with Old Harford Road. The property does have access to both Putty Hill Avenue as well as Old Harford Road. The property is unusual in that the parking lot area and the Tall Cedars Lodge building are owned by one entity and the small strip of retail businesses attached to the Tall Cedars Lodge is owned by another entity.

The special hearing request in this case involves McAvoy's Tavern which is a restaurant and bar facility located on the eastern end of the strip shopping center. At this time McAvoy's is interested in creating an outdoor seating area for their customers. The area immediately to the front of the space that they lease is already improved with a covered awning. McAvoy's is interested in placing some tables and chairs out onto the sidewalk area and will provide a small fence around that seating area to give it more of a patio look and feel. They do propose to provide gated openings at either end of the patio to allow pedestrians and customers of other businesses of the shopping center to pass freely through the area and not cause those customers to have to walk into the travel lanes of the parking lot. By providing the outdoor seating area, which totals 644 square feet of additional floor space, the Petitioners would be required to provide additional parking spaces. However, when reviewing the site plan and surrounding property, there are no

areas that additional parking can be provided at the center. In fact, the testimony and evidence offered demonstrated that the shopping center is deficient in parking due to the fact that the tenant structure for the center has changed over time. For example, the Tall Cedars Lodge which at this time is a catering facility at one time was a grocery store. The parking demands for a grocery store are much less than that for a catering hall. At the time the shopping center was constructed parking requirements were met. However, as a result of the change of tenant occupancy from retail to restaurant use, the parking requirements went up while the amount of parking provided on site remained the same. Therefore, it is appropriate for the Petitioners to request a special hearing for a modified parking plan as opposed to a variance request.

Section 409.12 of the B.C.Z.R. provides this Office the authority to approve a modified parking plan after a Petition is filed and a public hearing held thereon. I find based on the testimony and evidence presented at the hearing, that the requirements to provide parking for this shopping center would create an undue hardship upon the Applicants if they had to comply with current standards applicable to this center. As stated previously, the shopping center was built many decades ago, and at that time met all the parking requirements imposed by the B.C.Z.R. Therefore, it is appropriate to approve a modified plan to allow the center to continue to operate. I find that the additional 644 square feet outdoor seating area which is a seasonal use would not impact or adversely affect that parking arrangement.

As stated previously, the owners of the Tall Cedars Lodge did appear at the hearing. They were represented by J. Carroll Holzer, Esquire. They are the owners of the parking lot which serves the many retail and restaurant uses that occupy the small strip center adjacent to the Tall Cedars Lodge. Mr. Carl Briscoe appeared on behalf of that ownership entity and indicated that the owners of the parking lot are opposed to any reservation or blocking of parking spaces by the Applicants. The parking spaces in the center are for all to use and no one is to cordon off or mark

any spaces for any particular tenant. As a condition of approval of this special hearing request, I shall impose a restriction that no parking spaces are to be reserved or blocked off by McAvoy's Tavern.

The testimony offered demonstrated that the design and layout of the parking is appropriate and accordingly I shall approve this modified parking plan in accordance with Section 409.12 of the B.C.Z.R. To do otherwise would create an undue hardship upon the Applicants and approval is hereby granted.

THEREFORE, IT IS ORDERED this 31st day of August, 2011, by this Administrative Law Judge, that Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a modified parking plan per Section 409.12 of the B.C.Z.R., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

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 their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. No parking spaces in the subject parking lot are to be reserved or blocked off by McAvoy's Tavern.

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

Signed _____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz

