

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(601 Wise Avenue)		
15th Election District	*	OFFICE OF
7th Council District		
Bear Creek Properties, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Juan Carlos Nunez	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser/Lessee</i>		
	*	Case No. 2021-0283-SPH
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by Bear Creek Properties, LLC (legal owner) and Juan Carlos Nunez (contract purchaser/lessee) (collectively, the “Petitioners”) for property located at 601 Wise Ave., Dundalk (the “Property”). Petitioners request confirmation under Baltimore County Zoning Regulations (“BCZR”), §500.7 regarding the transfer of the parking variance from Bear Creek Properties, LLC to Juan Carlos Nunez and to modify the prior Order to permit bands, dancing and live entertainment pursuant to Bill 18-21.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Steven Goff, the managing member of Bear Creek Properties, LLC, and Juan Nunez, both appeared in support of the Petition along with David Billingsley of Central Drafting & Design, which company prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). Arnold Jablon, Esquire, Katlynn Peach, Esquire and Venable, LLP represented the Petitioners. Protestants, William Lambdin, 33 Waterview Rd. and Willard McJilton, 23 Waterview Rd. appeared and testified in opposition. Protestant Cindy Woodward, 35 Waterview Rd. did not appear but provided a written statement in opposition.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), Department of Environmental Protection & Sustainability (“DEPS”) and Development Plans Review (“DPR”) which agencies did not oppose the requested relief.

The Property is 0.83 acres +/- (36,360 sf) and is zoned BL. The Property is surrounded on two (2) sides by Bear Creek. It is improved with a restaurant known as the “Seasoned Mariner” and its associated parking lot. A history of the Property and its uses is set forth in Opinion of the Board of Appeals dated February 9, 2011 which is incorporated herein in its entirety (the “2011 Opinion”). (Pet. Ex. 4). The reason for the requested relief here is to approve the transfer of the Parking Variance which was granted by the Board of Appeals as Condition 6 in the 2011 Opinion. Mr. Nunez testified that he is purchasing the Property and he intends to continue to operate a restaurant and bar.

An aerial view photograph and street view photographs of the existing Seasoned Mariner restaurant were provided. (Pet. Exs. 6, 9). Mr. Nunez plans to improve the front façade of the building. The proposed days/hours of operation will be as follows: Mon – closed; Tues-Thurs. – closed at 10:00 pm; Fri/Sat – closed at 11:00 pm; and Sun – closed at 10:00 pm. Mr. Billingsley, who was accepted as an expert in the BCZR, testified that no variance relief is being requested in this case. He confirmed that the same number of parking spaces which was granted in the 2011 Opinion also apply here. Mr. Nunez will enter into a lease agreement for the nine (9) off-site parking spaces located at 692 Wise Ave. which is owned by Steven Goff and was approved in the 2011 Opinion as part of the total parking spaces. (Pet. Ex. 1). There will not be any increase to the restaurant, bar area or deck square footage totals.

Mr. Lambdin and Mr. Willard testified in opposition and advocated that any new Order in this case must retain Condition No. 3 which prohibits all bands, dancing and other live

entertainment and also limits music on the outside deck. Both Mr. Lambdin and Mr. Willard provided extensive documents which repeated the parking and noise problems experienced by this neighborhood for years when the Property and businesses were permitted to have live and/or recorded music. (Prot. Lambdin Exs. 1-10). (Prot. McJilton Exs. 1-7). The documents provided were previously provided to the Board of Appeals prior to the 2011 Opinion.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016). In the instant case, I find, based on Mr. Nunez' credible testimony and extensive curriculum vitae (Pet. Ex. 7), that the parking variance granted in the 2011 Opinion, should be transferred to Juan Carlos Nunez and/or to a future company/entity formed by him to own and/or operate the restaurant/bar business at the Property pursuant to Condition 6. I find that this particular request for relief can be granted within the spirit and intent of the BCZR as it permits the restaurant to

continue, under experienced ownership. At the hearing, Petitioner also verbally requested that Condition 6 be eliminated from all future hearings, such that any subsequent sale, lease or transfer of the business to a successive owner/operator would not require approval through Special Hearing relief in order to transfer the parking variance. Given the noise and parking problems which have plagued this neighborhood in the past, I find that this Condition is necessary to ensure that any future owner(s) appears and confirms that the parking spaces provided and approved in the 2011 Opinion will remain the same.

In regard to the Petitioner's request to modify the 2011 Opinion to permit bands, dancing and live entertainment based on Bill 18-21 (which is now codified in BCZR, §449 *et seq.*) specifies where and how live and recorded music is permitted. As a result, the Order issued herein will remove Condition 3 and the Petitioner will need to apply for a use permit as directed in BCZR, §449. Notwithstanding the Protestants' request to leave Condition 3 in the Order, I do not have the authority to issue an Order which is contrary to the current law. In addition, contrary to DOP's comment that the Special Hearing relief herein should be conditioned upon the limitation on hours for live or recorded music as detailed in 2011 Opinion, Condition 3, BCZR, §449.2.D removes all authority of the undersigned to impose such conditions, and transfers the same to the Director of Permits, Approvals and Inspections ("PAI").

THEREFORE, IT IS ORDERED this 28th day of **December, 2021** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief under the BCZR§ 500.7 to confirm the transfer of the parking variance from Bear Creek Properties, LLC to Juan Carlos Nunez and/or to a future company/entity formed by him to own and/or operate the restaurant/bar business at the Property pursuant to Condition 6, be, and the same is hereby **GRANTED**; and

IT IS FURTHER ORDERED, that the requested relief to modify Condition 3 to permit bands, dancing and live entertainment as now permitted by the BCZR pursuant to Bill 18-21 is hereby **MOOT**.

The relief granted herein shall be subject to the following conditions:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
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. Petitioner shall employ an attendant to park customer vehicles and attend to the valet parking areas as required by BCZR, §409.4.B.1.
4. Petitioners shall post no parking signs at the entrance to the residential community and encourage patrons, employees and subcontractors not to park on Waterview Rd.
5. The variance relief granted herein is personal to Juan Carlos Nunez and a company/entity owned by him for the ownership and/or operation of the Property and/or business at the Property. 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.
6. The legal owner, its successors and assigns shall permit a representative of the Code Enforcement Division of PAI reasonable access to the Property and the restaurant/bar to ensure compliance with this Order.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County