

Tax Map/Block/Parcel
No. 21-24-81,503
Case 5985

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Somsak and Pavana Chanyasulkit
C/O Matthew Luzuriaga, Esq.
189 E. Main Street
Westminster, MD 21157

ATTORNEY: Matthew Luzuriaga, Esq. and
Charles D. Hollman, Esq.
189 E. Main Street
Westminster, MD 21157

REQUEST: A request for confirmation of an existing non-conforming use.

LOCATION: The site is located at 2820 Littlestown Pike, Westminster, Maryland on property zoned "A" Agricultural District, in Election District 3.

BASIS: Basis: Code of Public Local Laws and Ordinances, Section 158.033.

HEARING HELD: December 1, 2016

FINDINGS AND CONCLUSION

On December 1, 2016, the Board of Zoning Appeals (the Board) convened to hear the request for confirmation of an existing non-conforming use. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

The issue for the hearing and the reason for the case is found in zoning code section 158.033(E). Section 158.033(E) states as follows:

No building, structure, or premises where a nonconforming use has ceased for 12 months or more, unless otherwise extended as herein provided, shall thereafter be used except in conformance with this chapter. Prior to the expiration of such 12-month period after the nonconforming use ceases, the owner of the property may make application to the Zoning Administrator for an extension of time for such use. The Zoning Administrator may extend such period for a reasonable time, up to 12 months, upon a finding that the property is either under active restoration, being offered for sale, involved with obtaining governmental approvals or other good cause as demonstrated by the owner.

At one time in 1993 the property was owned by Gary B Riley and his wife Adela M. Riley as noted in the deed in Exhibit 1. There was a time that he owned and operated an

establishment known as Gary and Dell's. Mr. Riley represented the Gary in Gary and Dell's and his wife represented the Dell's. Over the years the establishment had always been a commercial facility. Gary and Dell's was a crab house business that also included dining and a carryout portion of the facility.

Before Mr. Riley owned the property, there was a Board decision to enlarge an existing tavern and to add additional parking spaces. The 1985 decision granted the enlargement to Frank and Mary's Mount Pleasant Inn. This Board decision was represented by Exhibit 2.

On December 12, 2000 the property was purchased by Somsak and Pavana Chanyasulkit as noted by the deed in Exhibit 7. Mr. Riley has worked for the present owners of the property since he sold the business. Customers stopped being served regularly sometime in 2013. The business did not reopen in February, 2014 as it had in past years in the month of February. There was an issue with the liquor license.

Since 2012 the owners, Somsak and Pavana Chanyasulkit, attempted to sell the property. There was an attempt to sell the property by Long and Foster Realty and Utz Realty among others. During the time the property was for sale, individuals had an interest in purchasing it. Perspective buyers visited and inspected the property. Since 2013 the heat and air conditioning units to the property have been operational. The property has also been available for guests. The drinking water was tested a month ago and in July, 2016 as noted in Exhibit 4. The freezer units remained operational at the facility. The upkeep of the facility was noted in Exhibits 3A to 3D. A petition was signed by neighbors in support of the operation of Gary & Dell's as reflected in Exhibit 6.

As proof of the electrical service being available to the establishment, Exhibit 8 was entered into evidence. Exhibit 8 is a summary of electrical bills paid by Gary & Dell's from December, 2013 to October 7, 2016.

Pavana Chanyasulkit testified as a witness in the case. He stated that in 2000 Mr. Riley sold him the restaurant. He was not aware that he could get an extension of the nonconforming use while the property was for sale until recently. He recounted that the property was listed for sale for years through 2016.

Randy Bachtel testified as an expert witness for the applicant. The Board accepted him as an expert in land use, land development, and land planning. He provided the plat for Gary & Dells. He stated that there were a number of nonconforming uses in the County. He had assisted other clients with getting an extension of a nonconforming use. He noted that the County was cooperative in granting extensions of a nonconforming use when the ordinance provided for it. He did not recall the County denying such a request. He was present for all of the testimony at the hearing.

Jay Voight, Zoning Administrator, testified at the hearing. He was present for all of the testimony at the hearing. He stated that in 2013 the facility ceased to serve guests. He stated that, if requested, he would have granted an extension for the nonconforming use in 2014 and 2015 based on the fact that the property was offered for sale.

Clare Stewart, Planning Technician with the Bureau of Comprehensive Planning wrote in a November 15, 2016 memorandum that the "staff finding is that this request is not inconsistent with the 2014 Carroll County Master Plan and would not have an adverse effect on the current use of the property or its environs."

The Board found that the applicant showed good cause for not properly obtaining the extensions of the nonconforming use from the Zoning Administrator. The evidence showed that the property was for sale since it ceased operations. The Zoning Administrator would have

granted an extension had one been requested from the applicant based on the testimony at the hearing. The Board found that the property had been on the market for sale during the long period of time it was not in active and regular use.

The Board granted the confirmation of an existing nonconforming use of properties for tavern, restaurant, lounge, carryout, along with sign, parking facilities and related improvements.

Dec 2, 2016

Date



Melvin E. Baile, Jr., Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Land Use Article, Section 4-401 of the Annotated Code of Maryland.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.