

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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Case No. CBA-1775-B

PETITION OF LA FERME, INC.

OPINION OF THE BOARD

(Public Hearing Date: July 10, 2002)
(Effective date of Opinion: September 12, 2002)

Case No. CBA-1775-B is a petition for special exception modification pursuant to Section 59-G-2.57 (Teahouse and Restaurants in Residential Zone) of the Montgomery County Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended), to permit the remodeling of the kitchen of the restaurant as follows: (1) enclosure of the underside of the existing deck on the north side of the building; (2) relocation of the existing kitchen to the proposed underside enclosure of the deck; (3) installation of an entrance from the parking lot to the food preparation area at the rear of the kitchen; and (4) installation of a chimney on the north side of the building.

Decision of the Board: Special Exception Modification **GRANTED**,
subject to conditions enumerated below.

A public hearing was held on Wednesday, July 10, 2002, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of La Ferme, Inc. ("Petitioner") were Jody S. Kline, Esquire; Alain Roussel, President of La Ferme, Inc.; and Thomas Manion, Manion & Cartolla Architects.

Martin Klauber, Esquire, the People's Counsel for Montgomery County, Maryland, also participated in the proceedings in support of the requested modifications to the special exception.

EVIDENCE PRESENTED TO THE BOARD:

1. The subject property is Parcel 652, Tax Plate Map No. HN562 in Section 5 of the Village of Chevy Chase, located at 7101 Brookville Road, Chevy Chase, Maryland, in the R-60 Zone.

2. The surrounding neighborhood is almost exclusively single-family detached residential in character, with a small amount of commercial zoning and use along Brookville Road to the south.

3. A teahouse or restaurant, and buildings accessory thereto, in existence and operating as such on or before March 3, 1967 are allowed by special exception in the R-60 Zone under Section 59-G-2.57 of the Zoning Ordinance. The special exception use of the subject property has existed since 1965, when CBA-1775 was approved by the Board of Appeals. The Petitioner has held Special Exception No. CBA-1775 since 1985.

4. Petitioner proposes to relocate its kitchen from space in the basement of the restaurant building to newly enclosed space, also on the lowest level, under the existing deck on the north side of the building. The exterior wall of the relocated kitchen will be shifted northward to the limits of the deck above and will be faced with stucco and with glass block to provide light into the cooking and food preparation areas. The materials to be used on the exterior of the addition will be consistent with the design of the existing structure. The exterior appearance will be muted by the installation of lattice screens over the areas of new construction so that the underside of the existing deck will be in keeping with the current appearance of the building.

5. In order to provide for Code-required ventilation for the remodeled kitchen, Petitioner plans to install a stucco chimney over the stove hood vent. The chimney will rise up on the north side of the building and will be incorporated into the design so that it will appear to be a fireplace chimney associated with a farmhouse. It will be similar to the existing chimney on the opposite side of the building (Exhibit No. 3 - Statement of Operations, Exhibit No. 6(g) - Front and Rear Elevations, and Exhibit No. 6(i) - Right Side Elevations).

6. Petitioner proposes to install a new entrance from the parking lot to the food preparation area to allow the kitchen and wait staff to have direct access to the food preparation, storage and employee areas. A new door will be located to the rear of the kitchen and will be accessed by steps or a small ramp leading down from the grade of the parking lot. This entrance will also be used for deliveries and, because of its proximity to the kitchen and storage areas, will reduce the amount of time that is presently needed to complete delivery of foodstuffs, laundry, etc. All other entrances will be unaffected by this change

thus ensuring a second means of egress from the building (Exhibit No. 3 - Statement of Operations).

7. In all other regards, the operation of La Ferme Restaurant will be conducted in accordance with the terms and conditions of the previously granted special exceptions. Petitioner intends to operate in the same manner as it does today once its kitchen is relocated. The former kitchen space will be used as a storage and support area. No new parking is required to support the modified use under Petitioner's proposal (Exhibit No. 3 - Statement of Operations).

8. Alain Roussel described why the improvements are necessary and discussed the operational issues associated with the facility. He explained that the restaurant's operations in the existing kitchen are constrained because the ceiling is very low and the cooking space is very limited, making it difficult and uncomfortable for employees. Mr. Roussel testified that the goal of the proposed improvements is to enhance efficiency and at the same time blend the restaurant into the surrounding neighborhood in terms of its design and décor. In addition, he testified that the modifications would not result in any change in the hours of operation or in the number of persons employed by the restaurant.

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9. In response to a question from Board Member Allison Fultz, Mr. Roussel stated that he had several meetings with the neighbors in surrounding neighborhoods to explain the scope of the proposed improvements and that they are in support of the proposal.

10. Mr. Roussel further testified that the proposed use will be in harmony with the general character of the neighborhood, that the proposed use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, that the proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity, and that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

11. Thomas Manion, testifying on behalf of the Petitioner as an expert in architecture, described the design and appearance of the proposed improvements, and how they will be compatible with the design of the existing restaurant. He explained that the proposed modifications meet the general and special conditions for the granting of this special exception modification, and testified that all standards of the zoning ordinance for this special exception use will be satisfied and compatible with the requirements of the Bethesda-Chevy Chase Master Plan. He testified that the proposed use will not affect the area adversely or alter its predominantly residential nature and that the proposed use will be adequately served by public services and facilities.

12. In response to a question from the People's Counsel regarding odors that are caused by the restaurant and the steps that will be taken to prevent those odors from disturbing abutting residences, Mr. Manion explained that the proposed new chimney will provide a significant improvement in ventilation of fumes. At present, fumes are blown out of the stove hood vent at grade level and out toward the neighborhood to the south. The relocation of the stove hood vent and installation of a new chimney over the hood on the north side of the building will ventilate fumes above the roof level of the building structure, at approximately twenty feet above grade.

13. In response to a question from Board Member Donna Barron regarding whether the proposed modifications would result in any change in the building structure's height, Mr. Manion stated that there would be no change in the height of the structure.

14. Mr. Manion further testified that the proposed modifications would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, but would in fact significantly improve the health, safety and environment for employees, residents and visitors.

15. The Board sought clarification regarding statements in the Technical Staff Report and in Petitioner's submittals that the proposed modifications would not result in a change in the "footprint" of the building structure. Although it was agreed that the proposed changes would in fact technically alter the building's "footprint", the Board determined that it did not pose a significant issue because the relocation of the kitchen to the underside of an existing deck would not result in a change in the appearance of the building nor in an increase in the intensity of the restaurant's use (i.e, would not expand the dining area and would not require the construction of additional parking), and therefore the proposed use remained in harmony with the character of the surrounding residential neighborhood.

16. The Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) determined that the subject property is exempt from having to prepare a Preliminary Forest Conservation Plan. In addition, the site plan showing existing and proposed site improvements, and the location of existing and proposed trees and other vegetation was accepted as a simplified Natural Resources Inventory/Forest Stand Delineation (Exhibit No. 7 - Forest Conservation Recommendations).

17. The M-NCPPC Staff Report states that the special exception is in compliance with the 1990 Master Plan. The proposed special exception maintains the building's existing character since no structural modification or expansion will be made to the restaurant. There is no traffic impact and no environmental impact for this proposal. The Staff Report further states that the proposed restaurant modifications are appropriate for this location, and meet the

standards as established in the Zoning Ordinance, and recommends approval of this special exception application with conditions.

18. Mr. Klauber stated that the La Ferme Restaurant is an asset to the Chevy Chase neighborhood, that the proposed improvements would make both the restaurant and the surrounding environment better, and recommended approval of Petitioner's proposed modifications.

FINDINGS OF THE BOARD:

Based on the Petitioner's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested special exception modification can be GRANTED, with the conditions set forth below:

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Section 59-G-1.21 General Conditions.

(a) *A special exception may be granted when the Board... finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

The Board finds that a modification to a restaurant is an allowable special exception in the R-60 Zone, in accordance with Section 59-G-2.57 of the Zoning Ordinance.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The Board finds that the proposed use complies with these standards and requirements, in accordance with Section 59-G-1.21(a)(2) of the Zoning Ordinance.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use*

objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board finds that the 1990 Bethesda-Chevy Chase Master Plan does not provide specific guidance for the subject property, however the proposed use is consistent with the general goals of the Plan, as it will maintain the residential character of the area, in accordance with Section 59-G-1.21(a)(3) of the Zoning Ordinance.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The Board finds that the proposed use will be in harmony with the general character of the surrounding residential neighborhood. The proposed restaurant modification does not expand the building structure thus maintaining the general character of the neighborhood. The proposal will not require the construction of additional parking as the proposed modifications will not expand the dining area nor increase the use; therefore, it will continue to remain in harmony with the general character of the neighborhood, in accordance with Section 59-G-1.21(a)(4) of the Zoning Ordinance.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that as an existing restaurant, the proposed modifications will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21(a)(5) of the Zoning Ordinance. La Ferme Restaurant is an asset to the Chevy Chase neighborhood. The restaurant's operation is conducted at a scale that is in keeping with surrounding residential uses.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed modified special exception will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance. Petitioner's proposal to install a new chimney will in fact provide a significant improvement in

the ventilation of fumes from the restaurant. In addition, there will be no change in the lighting of the subject site.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board finds that the proposed special exception will not increase the number, intensity or scope of approved special exception uses in the existing neighborhood, in accordance with Section 59-G-1.21(a)(7) of the Zoning Ordinance.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8) of the Zoning Ordinance.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The Board finds that the dwelling is served by public utilities and other necessary facilities such as schools, police and fire protection, water, sanitary sewer, public roads and storm drainage, in accordance with Section 59-G-1.21(a)(9) of the Zoning Ordinance.

Section 59-G-2.57 Teahouses and Restaurants in Residential Zones.

Prior to March 2, 1967, in any R-A, R-R, R-90 or R-60 zone, a teahouse or restaurant and buildings accessory thereto may be allowed. Any teahouse or restaurant in the above zones lawfully existing on March 3, 1967, shall not be regarded as a nonconforming use and may be continued, structurally altered, reconstructed or repaired so long as it remains an otherwise lawful use as previously permitted. Nothing herein shall be construed to permit the granting of a special exception for a teahouse or restaurant in any of the above specified zones unless such teahouse or restaurant was in existence and operating as such on March 3, 1967.

The Board finds the original petition to operate a restaurant was filed in May 1965 and approved by the Board of Appeals on June 3, 1965. The restaurant is a conforming use and may be continued, structurally altered, reconstructed or repaired, in accordance with Section 59-G-2.57 of the Zoning Ordinance. The proposed minimal modifications are regarded as minor structural changes in nature.

Therefore, based on the foregoing, the Board **GRANTS** the requested special exception modification for a restaurant in a residential zone, subject to the following conditions:

1. The Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in the Board's opinion granting the special exception.

2. The Petitioner shall provide planting and landscaping, of substantially the same height, size and caliper and in accordance with the submitted Site and Landscape Plans (Exhibit No. 5), along the north side of the building to screen the new entrance to kitchen and stucco enclosure under the deck.

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3. All terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.

On a motion by Donna L. Barron, seconded by Allison Ishihara Fultz, with Donald H. Spence, Jr., Chairman, Louise M. Mayer and Angelo M. Caputo, in agreement:

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BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of September, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.