

Judge rules in city's favor in La Bergerie lawsuit



FILE PHOTO

A specially appointed circuit court judge found in the city's favor in the lawsuit to prevent the relocation of La Bergerie to North Washington Street. The original approval took place in 2014, but was challenged in court by 23 neighbors of the new location.

Restaurant's relocation to North Washington Street can now proceed

BY CHRIS TEALE

A specially appointed circuit court judge approved the relocation of La Bergerie to 329 N. Washington St. last week, ending a lengthy lawsuit brought by neighbors against the move.

In a written decision by Judge William H. Shaw III dated October 31, city council's decision in 2014 to approve the French restaurant's move from its current location on North Lee Street was found to be reasonable and did not violate due process.

"...City council understood both the mixed commercial/residential character of North Washington Street and the concerns of some nearby neighbors, and found that the benefits to the com-

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- Judge William H. Shaw III

munity outweighed the concerns, particularly when such concerns were met with strict conditions placed on the applicant,” Shaw wrote.

Twenty-three nearby residents brought the lawsuit challenging city council's 2014 approval of La Bergerie's move from 218 N. Lee St. after what they felt was an unreasonable decision made in part due to alleged undue influence from the applicant Janowsky family. Restaurant co-owner Margaret Ticer Janowsky is the daughter of former Mayor and state Sen. Patsy Ticer.

Plaintiffs also accused council of not vetting the plan for potential adverse effects on the neighborhood.

As part of the move, council agreed to rezone the property from residential to commercial,

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“I’m very ecstatic about the result. I think it is a good result for Alexandria, for our clients, and hopefully it sends a message to other folks that want to challenge such decisions by city council that technical little ‘gotchas’ are not the conduit through which that can occur.”

- Andrew Burcher, Attorney, Walsh, Colucci, Lubeley & Walsh, P.C.

LA BERGERIE FROM | 7

amend the Old and Historic portion of the city master plan and approve a new special use permit. The new location will include 100 indoor and 50 outdoor seats, a bar, live music and a five-bedroom inn.

The case was heard in circuit court last summer, and several neighbors testified against the decision. Attorneys representing city council submitted sworn testimony by councilors in depositions as evidence, along with the 958-page legislative record, which included all documents and presentations given to council by the day of their decision as well as a record of their deliberations.

After three days of courtroom testimony, the legal teams submitted a series of closing legal briefs to lay out their closing arguments before Shaw made his decision.

In his ruling, Shaw said the accusations of illegal spot zoning and of failing to mitigate neighborhood impacts were unfounded, and that council was well within its authority to grant the SUP.

“The city council presented evidence at trial that the proposed use of the property would simultaneously benefit the entire city in numerous ways,” Shaw wrote. “For example, the proposed use will make a historic property accessible to the general public; it will promote the expansion of [a] locally owned business; protect a building of historic and architectural value; encourage tourism; and will retain the existing

retail pattern.”

He wrote that “no evidence was introduced” at trial to prove that plaintiffs’ property values would decrease because of the opening of the new restaurant and inn, and that there was no evidence of undue influence.

Plaintiffs argued that city councilors and planning commissioners had been swayed in part by Ticer’s relationship to the Janowskys, and that the meetings between the applicants and city officials had influenced the process unfairly.

“Plaintiffs failed to present any authority to suggest that one-on-one meetings with city staff or members of the planning commission are improper or unusual,” Shaw wrote. “Furthermore, evidence showed that plaintiffs also met with city staff and council members. ... The court finds that even if undue influence were a cognizable claim, here the actions did not constitute undue influence.”

The case came at great cost to the city coffers, as it hired outside counsel to defend city council in court. City spokesman Craig Fifer said that to date, the city has spent more than \$970,000 on outside counsel on the case, a figure that does not include time spent on the application and legal case by city staff.

Amy Miller, one of the lawyers who represented the city in court for D.C. and Tysons Corner-based firm McGuireWoods LLP but is now a litigator at Buchanan, Ingersoll & Rooney, said she was “pleased” with the ruling, and that it “affirms that

the city council members made the right decision.”

Andrew Burcher of the Walsh, Colucci, Lubeley & Walsh, P.C. firm that represented the applicants, said it was a significant victory.

“I’m very ecstatic about the result,” he said. “I think it is a good result for Alexandria, for our clients, and hopefully it sends a message to other folks that want to challenge such decisions by city council that technical little ‘gotchas’ are not the conduit through which that can occur.”

In the aftermath of the decision, the Janowskys announced that La Bergerie’s last day in its current location will be Christmas Eve. The pair said in a statement that on that last day, a three-course prix fixe menu will be offered while a strolling violinist serenades customers with traditional, seasonal music. Laurent Janowsky did not respond to requests for further comment.

Bryan Wilson, a partner at the Williams and Connolly LLP law firm that represented the plaintiffs, said Monday they were still reviewing the decision, and therefore could not comment on a possible appeal.

DINGLE

FROM | 8

their high school as much as here. It doesn’t matter whether you graduated last year or 25 or 30 years ago, people love T.C.

“Until you’re here and see that and feel that, you never understand just how deep that is.”

In an accompanying letter to parents and guardians, Schools Superintendent Alvin Crawley said the search for a new principal will begin next month, and officials will solicit community input on desired qualities in Dingle’s replacement.

Alexandria City Public Schools spokeswoman Helen Lloyd said following that input stage, there will be a nationwide search for candidates, while internal applicants also will be considered.

Lennon said one challenge will be to close the achievement gap between various demographic groups that make up the T.C. student population, and work with the Alexandria City School Board to ensure the community’s needs are being well met.

“It’s easy to say, it’s very hard to do, but I think if we have a principal in place who is focused

on that kind of thing, then I think we can address the partial accreditation in math, we can address the fact that 25 percent of last year’s graduating class was accepted by four-year colleges and how we make the biggest high school in Virginia not just bigger — which it’s going to be — but better,” Lennon said.

From Dingle’s point of view, his successor must be willing to be heavily involved, and be a visible presence on campus.

“Come in and embrace this community, embrace this school, embrace these students, embrace these teachers,” he said. “There’s no telling where this school can go.”

Dingle said despite his impending departure from T.C. Williams, he has plenty to offer the education community and intends to keep contributing in North Carolina, as well as at T.C.

“I’m not finished. I get up and run five miles every morning with my dog and my wife, and I still have a lot to give to children and to teachers,” he said. “I don’t think my final chapter has been written. There is still a lot of work to be done between now and June.”

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