Judge William H. Shaw, III
Retired Judge, Ninth Judicial Circuit
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Williamsburg, VA 23185

October 31, 2016

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Re: *Shirley Rettig, et al., v. City Council of Alexandria,*
Circuit Court of the City of Alexandria
Civil Case No. CL14004535

Dear Counsel:

This case comes before the Court upon Plaintiffs' Complaint challenging a decision of the City Council of Alexandria, Virginia, rendered October 18, 2014, to grant a three-part zoning application. The issues in the case are whether the City Council of Alexandria's approval of the application was arbitrary and capricious, *ultra vires* and void *ab initio* and whether the rezoning of the property constituted illegal spot zoning. Count I of the Complaint alleges that the approval was unreasonable, arbitrary, capricious, and therefore void. Count II alleges that the City Council illegally spot zoned the Property. Defendant's demurrers to Counts III and IV were sustained. Count III alleged that Council denied Plaintiffs due process of law in contravention of Va. Const. art. I, § 11, and U.S. Const. Amend. XIV. Count IV alleged that Council denied Plaintiffs equal protection of laws, in violation of U.S. Const. Amend. XIV. The Court held a three-day bench trial on Counts I and II. The parties submitted post-trial briefs in lieu of closing arguments and I took the matter under advisement.

Facts

On July 29, 2014, Janow LLC filed three interrelated land use applications (collectively, the "Application") concerning a property located at 329 North Washington Street ("Property") in the City of Alexandria. The Applicant, Janow LLC, is the contract purchaser of the Property, which is currently owned by Leah Sedwick. The Application consisted of the following:

(1) A Master Plan Amendment to amend the Old Town Small Area Plan,
(2) An application to rezone the Property from the RM/townhouse district to the CD/commercial downtown zoning district, and

(3) An application for a Special Use Permit ("SUP") to allow the operation of a restaurant and five room inn/hotel on the property with a request for a parking reduction.

The purpose of the Application was to relocate La Bergerie, a French restaurant that has operated for over fifteen years at a property in Old Town about five blocks away from the proposed new location. The proposed Property contains a historic three-and-a-half story building that was constructed in the 1820's and a two-story carriage house built in 2006. Janow LLC's plan is to convert the residence into a five-bedroom inn and restaurant. Several of the surrounding properties are zoned for commercial use.

The Alexandria Planning Commission conducted a public hearing on the Application on October 7, 2014, which unanimously approved the application. Following the Planning Commission's hearing, the City Council of Alexandria held a public hearing, during which numerous people spoke in favor of and in opposition to the Application. The City Council unanimously approved the Application on October 18, 2014, but imposed certain conditions in addition to those already recommended by City Staff and the Planning Commission. On November 15, 2014, the City Council adopted ordinances implementing the rezoning and Master Plan Amendment, and on December 15, 2014, the City issued the SUP. On November 17, 2014, Plaintiffs, all owners of real estate in close proximity to the property, filed a Complaint against the City Council of Alexandria.

Plaintiffs are twenty-three residents of Old Town, Alexandria. The plaintiffs allege that the approval of the Application was illegal spot zoning and *ultra vires*, and that Applicant received special treatment because the mother of one of its owners was once the mayor of Alexandria and comes from a politically well-connected family in Alexandria. Plaintiffs' primary concerns about the conversion of the historic residence into a restaurant and inn are increased noise on a residential block, strain on parking and loading, increased garbage, run off, and odors, plaintiffs' diminished property values, damage to the cobblestone on Princess Street, and the precedent this decision will set for future applications.

For the reasons articulated below, I conclude that the decision of the City Council of Alexandria is reasonable and not arbitrary and capricious, and its decision is affirmed.

II. Alleged "Renkey Violations"

In Count I, Plaintiffs allege that the City Council of Alexandria committed nine violations under *Renkey v. County Board of Arlington County*, 272 Va. 369 (2006). This court will address each of the nine alleged "*Renkey* violations" in turn.

In *Renkey*, the Virginia Supreme Court stated the well-established standard of review to challenge a legislative zoning decision as follows:

> Legislative action is presumed to be reasonable; however, if the presumptive reasonableness of the action is challenged by probative evidence of unreasonableness, that challenge must be met by evidence of reasonableness, and the legislative action will be upheld if such evidence is sufficient to make the issue fairly debatable.

Renkey, 272 Va. at 375-376; *see also Newberry Station Homeowners Ass'n, Inc. v. Bd. of Supervisors of Fairfax Cty.*, 285 Va. 604, 621 (2013). Thus there is a rebuttable presumption that legislative actions are reasonable. *Town of Leesburg v. Giordano*, 280 Va. 597, 606 (Va. 2010). Zoning is considered such a legislative action. *Boggs v. Board of Supervisors*, 211 Va. 488, 491 (1971). This includes the approval of a special use permit. *See Newberry Station Homeowners Ass'n, Inc. v. Bd. of Supervisors of Fairfax Cty.*, 285 Va. 604, 620 (2013) ("Approval of a special exception is a legislative act."). Once the presumption is challenged by probative evidence of unreasonableness, the respondent must present evidence of reasonableness sufficient to make the question "fairly debatable" in order to sustain the legislative action. *Newberry*, 285 Va. at 621; *Renkey*, 272 Va. at 375-376; *Giordano, 280 Va. at 606.*

In *Renkey*, the Court held that the County Board acted in direct violation of an Arlington zoning ordinance when the Board re-zoned a portion of property from "R-5" to "C-R" without complying with the eligibility requirement set out in its own ordinance. The ordinance allowed the board of supervisors to rezone land into a "C-R" class designation in specific circumstances. The zoning ordinance stated that, in order "to be eligible" for "C-R" classification, the "site shall be located within an area . . . zoned 'C-3." *Id.* at 372. The Court found the Board's action was invalid because the non-"C-3" portion of the parcel was ineligible to be rezoned into the "C-R" class designation under the ordinance. *Id.* at 376. The Court determined that the Board's action

was "arbitrary and capricious, and not fairly debatable, thereby rendering the re-zoning void and of no effect." *Id.* at 376. *Renkey*, however, does not stand for the proposition that any procedural error renders a local governing body's decision unreasonable and thus void. Rather, in *Newberry Station Homeowners Ass'n, Inc. v. Bd. of Supervisors of Fairfax Cty.*, the Court clarified that alleged violations do not implicate *Renkey* if "the cited provisions do not restrict the authority of the Board to act." 285 Va. 604, 621-22 (2013).

a. Timing of the Vote on the Special Use Permit

At the time of the application, the property was zoned "RM/Townhouse Zone."[1] Properties zoned RM are not permitted to use the properties as restaurants. The Application requested a change in the zoning to "CD/Commercial Downtown." Sections 4-503(O) and (W) of the City of Alexandria Zoning Ordinance ("Zoning Ordinance") allow hotels and restaurants respectively in the CD zone with a special use permit. Thus operation under the purposed rezoning would require a special use permit.

The City Council approved the SUP on October 18, 2014. The property was rezoned roughly one month later on November 15, 2014. Plaintiffs argue that the City Council improperly issued the SUP to operate the hotel and restaurant by issuing it prior to the rezoning of the property from residential to commercial, thereby contravening the decision in *Renkey*. They cite Zoning Ordinance §§ 3-1102-1104. Zoning Ordinance § 3-1102 lists uses permitted in a RM Zone. Zoning Ordinance § 3-1103 lists special uses that may be allowed in a RM zone pursuant to a special use permit. Zoning Ordinance § 3-1104 states, "Any *use* which is not a permitted, special or accessory use pursuant to this section 3-1100 is prohibited." (Emphasis supplied.)

Renkey, however, does not apply to these circumstances. In *Renkey*, the Arlington ordinance prohibited the local governing body from rezoning R-5 property to C-R. *See Renkey*, 272 Va. at 372. Here, the provision is a restriction on *use*, rather than a restriction on the City Council's authority to act. The plaintiffs do not allege that the property has been used in any way to violate Zoning Ordinance §§ 3-1102-1104. Furthermore, in *Newberry Station Homeowners Ass'n v. Bd. of Supers.*, 285 Va. 604 (2013), the Court rejected the expansive reading of *Renkey*. In that case, a homeowners association challenged the approval of a special

[1] It was previously rezoned from RC/Residence Zone as part of the City-wide 1992 rezoning.

exception to build a transit authority bus maintenance facility. Among other things, the association alleged that the governing body's approval of the special exception violated various sections of the Fairfax County Zoning Ordinance and was therefore unreasonable under *Renkey*. The Court rejected this argument and in doing so clarified its holding in *Renkey*, stating, "unlike the ordinance at issue in *Renkey*, the cited provisions do not restrict the authority of the Board to act." *Id.* at 621. Much like the situation in *Newberry*, the cited provisions do not limit the City Council's general authority to issue special use permits under Zoning Ordinance § 11-500.

Moreover, unlike the circumstances in *Renkey* and *Newberry*, here, applications to amend the Master Plan and to rezone the property were approved contemporaneously. Local governing bodies in Virginia routinely grant special use permits *prior to* implementing the corresponding ordinance that rezones the property. *See Northampton Cty. Bd. of Zoning Appeals v. E. Shore Dev. Corp.*, 277 Va. 198, 200 (2009) (approval of rezoning application from "Agricultural 1" to "Community Development – Single-Family Residential" while simultaneously granting approval of a special use permit for condominium development on the site)*; see also Friends of Clark Mountain Found., Inc. v. Orange Cty. Bd of Supervisors,* 242 Va. 19, 20 (1991) (Board of Supervisors of Orange County granted an application for the rezoning of a 25-acre tract of land from agricultural to industrial use, and granted a special use permit). As stated in the Application for the special use permit, the use in this case was conditioned on the approval of all three applications.[2] The Staff Report, as adopted by the City Council, also expressly conditions SUP approval on "compliance with all applicable codes and ordinances." Finally, the City issued the Special Use Permit on December 15, 2014, so the property could not have been used as a hotel or restaurant until *after* the implementing ordinances had already been adopted. Thus the City Council acted within its authority when it voted on and approved the SUP.

b. Amount and Timing of the Filing Fee

Plaintiffs claim that the requisite application fee should have been $6,900 and that the Applicant paid $75 less than that amount. Evidence at trial showed that the Applicant paid the entire amount charged by the Department of Planning and Zoning: $6,825. It also showed that the City Staff did not immediately obtain the fee from the Applicant because it needed time to

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[2] "[I]n order to relocate La Bergerie and to establish the Inn, approval of a Master Plan Amendment, Rezoning, and Special Use Permit approval will be required." LaBergerie 000029.

review the application, apply the fee schedule, and calculate the proper amount. Testimony at trial showed that the amount charged, was in fact, the correct amount. See Tr. 76:22-477:12; *see also* PTX-017; PTX-018. Applicant paid the full amount within two days of receiving the final calculation from the City Staff. *See* PTX-018.

Section 9.12(A) of the City Charter authorizes the City Council to establish filing fees. The City Council has delegated that authority to the City Staff. *See* Zoning Ordinance § 11-104. *Renkey* does not apply to these grants of administrative power because the fee schedule does not carry the force of law and does not restrict the City Council's rezoning authority. *See Newberry*, 285 Va. at 621-622. Furthermore, the Virginia Supreme Court has not considered the act of collecting fees for a zoning application a legislative act. Therefore, *Renkey* does not apply.

c. Timing of Approval of Loading Zone

In the Special Use Permit application, Janow LLC's proposed loading zone would remove two on street spaces on North Washington Street for short term "loading/unloading and drop off/pick up during hours when parking is not restricted for rush hour." Plaintiffs claim that the City council failed to present the Applicant's loading zone request to the Traffic and Parking Board prior to the hearing on October 18, 2014 in violation of Alexandria City Code § 5-8-2 and § 5-8-92.

The Alexandria City Code § 5-8-2 provides that the Traffic and Parking Board "shall meet at least once each month and all matters concerning traffic, parking and taxicabs, shall be presented to the board for its consideration prior to . . . presentation to the city council." In addition, § 5-8-92 requires that "any proposal to locate new or remove existing meters shall be submitted by the manager or designee to the traffic and parking board for its review and recommendation." City Code § 5-8-92(d).

These provisions of the City Code do not place limits on the City Council's zoning power, therefore, they fall outside of *Renkey*. Moreover, City Code § 5-8-2 places a restriction on a non-legislative and advisory body to consider matters prior to presenting their recommendations to the City Council. The statute is silent as to whether the Traffic and Parking Board's presentation to the City Council must occur prior to or after a hearing, or whether such a presentation must occur at all. Furthermore there can be no violation of City Code § 5-8-2 because the issue was presented to the Traffic and Parking Board on October 28, 2014, as an informational item. The

Division Chief of the Transportation Division Robert Garbacz testified that he personally presented that information at the meeting. *See* Tr. 590:8-18; *see also* PTX -074. Further, the October 28 meeting occurred before the City Council voted to approve the Zoning Ordinances on November 15, 2014. *See* Janow Exs. 4, 5.

d. Timing of Proffer of Conditions; Approval of Application; and Docketing the Application; Timing of the Vote

Plaintiffs claim that the Applicant provided an untimely proffer of conditions in its Application in violation of Zoning Ordinance §§ 11-803 and 11-804. They conceded that the Applicant provided a written proffer prior to the City Council's October 18, 2014 hearing. First, these provisions do not place limitations on the City Council's zoning authority to trigger *Renkey*. Second, nothing in the provisions cited by Plaintiffs indicates that *all* items in the application must be submitted on the same day.

Zoning Ordinance § 11-503 vests the City Staff with clear discretion to determine if an application is complete. It states in part, "The director shall review the application to determine if the application's contents are complete and adequate for appropriate review and shall send the application to other relevant departments for their review and recommendation." Zoning Ordinance § 11-503(B). Additionally, Zoning Ordinance § 11-503(C) requires the director to docket an application at the time it "determine[s]" that the "contents are complete and adequate for appropriate review and recommendation." Zoning Ordinance § 11-503(C). Mr. Randall testified that the application was sufficiently complete to be docketed. *See* Tr. 525:6-7.

Plaintiffs also argue that the Application did not comply with Section 11-504(A) of the Zoning Ordinance because the Applicant submitted the filing fee, the supplemental restaurant application, and the proffer after July 29, 2014. To reach this conclusion, they rely exclusively on the City Application Filing Deadline and Hearing Schedule, which provides that complete applications must be submitted by the final filing deadline. Plaintiffs' interpretation of the administrative schedule, which is not binding law, is without merit and does not implicate

Renkey. Further, other ordinances suggest that supplementation of applications is to be expected. *See e.g.*, Zoning Ordinance §§ 11-102[3] and 11-503(B).

e. Authorization of the Loading Zone

The final *Renkey* claim is that the City Council violated federal law by authorizing a loading zone, and thus delivery trucks, onto Washington Street, which is a part of the George Washington Memorial Parkway. Janow LLC's proposal contemplates five deliveries per day. Under federal rules promulgated by the National Park Service, "[n]o trucks are allowed on George Washington Memorial Parkway roads" without a permit. *See* NATIONAL PARK SERVICE, TITLE 36: CODE OF FEDERAL REGULATIONS COMPENDIUM: GEORGE WASHINGTON MEMORIAL PARKWAY, Part 4.11 ("Permits may be granted by the Superintendent for trucks to use GWMP roads."). Trucks are defined as a vehicle weighing over 10,000 pounds. Thus under the federal rules certain trucks do permissibly travel the GWMP, and there is nothing in the record to suggest that the delivery trucks which use Applicant's loading zone will not have such permits. For this reason, the City Council did not act outside the scope of its legislative authority by authorizing the loading zone.

III. Spot Zoning Claim

In *Wilhelm v. Morgan*, the Virginia Supreme Court adopted the following test to determine whether a zoning ordinance constituted illegal spot zoning:

> If the purpose of a zoning ordinance is *solely* to serve the private interests of one or more landowners, the ordinance represents an arbitrary and capricious exercise of legislative power, constituting illegal spot zoning; but if the legislative purpose is to further the welfare of the entire county or city as a part of an overall zoning plan, the ordinance does not constitute illegal spot zoning even though private interests are simultaneously benefited. *Kozesnik v. Township of Montgomery,* 24 N.J. 154, 173, 131 A.2d 1, 11 (1957).

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[3] Zoning Ordinance § 11-102 provides that "the director's duties shall include, without limitation: (B) Reviewing applications to determine if they contain all information required and necessary for a determination of their merit; [and] (C) Reviewing applications to determine their compliance with the provisions and intent of this ordinance and their merit."

208 Va. 398, 403-404 (1967) (emphasis supplied). The Court in *Wilhelm* noted, "As indicated by the language of the test, illegal spot zoning is arbitrary and capricious action of a special kind." *Id.* at 404. It is undisputed that the proposed use of the property will further Janow LLC's interests as it will likely allow the restaurant's business to grow. The City Council presented evidence at trial that the proposed use of the property would simultaneously benefit the entire City in numerous ways. For example, the proposed use will make a historic property accessible to the general public; it will promote the expansion of locally-owned small business; protect a building of historic and architectural value; encourage tourism; and will retain the existing retail pattern. *See* R. 000012-14.

IV. Arbitrary, Capricious, and Unreasonable Claim

In addition to the alleged *Renkey* violations, Plaintiffs suggest that the approval was based on the identity of the beneficiaries, rather than the public hearing, and that the application's approval will negatively affect Plaintiffs' use and enjoyment of their properties and neighborhood. Plaintiffs assert that these facts amount to probative evidence of unreasonableness.

This Court is not charged with weighing the costs and benefits of the City Council's zoning decision. *See Bd. of Supervisors of Fairfax Cty. v. Miller & Smith*, Inc., 242 Va. 382, 384 (1991) ("The weighing of the relevant factors is a legislative function reserved to the zoning authority"); *Newberry*, 285 Va. at 622 ("[T]he judicial inquiry is limited to the question of whether the "officials, agencies, and boards exercising delegated legislative powers . . . ha[ve] acted in accordance with the policies and standards specified in the legislative delegation of power")(citing *Ames v. Painter*, 239 Va. 343, 349 (1991). Where the Court finds that no *Renkey* violation has occurred, "we apply a presumption of validity when we review whether the local governing body adequately considered the standards set forth in the zoning ordinance when it approved or denied a special exception application." *Id.* at 623.

Because the City Council did not contravene *Renkey*, the presumption of validity remains intact and must be met with evidence of unreasonableness.

a. **Undue Influence**

Plaintiffs allege that Janow LLC received preferential treatment because it is owned by Laurent Janowsky and Margaret Ticer Janowsky, the daughter and son-in-law of Patricia Ticer, a former Virginia state senator and former mayor of Alexandria.

The Supreme Court of Virginia has never recognized undue influence as a ground for reversing a zoning decision. Rather, "[t]he principles of separation of powers generally 'preclude[] judicial inquiry into the motives of legislative bodies elected by the people.'" *Bd. of Supervisors v. Davenport & Co. LLC*, 285 Va 580, 587 (quoting *Ames 239 Va.* at 349).

Plaintiffs presented evidence of several instances which they claim amount to undue influence rendering the approval of the Application arbitrary, capricious, and unreasonable. First, at the Planning Commission hearing, the chairman expressed his appreciation for Ms. Ticer who was in the audience. He invited those attending to honor her with a round of applause. In addition, Plaintiffs point to ex parte meetings with the owners of Janow LLC prior to the City Council hearing.

However, 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. Furthermore, evidence showed that Plaintiffs also met with City Staff and Council Members. Ms. Ticer had donated $1,000 two years prior to the City council's hearing to then Vice-Mayor and now Mayor Allison Silberberg. Plaintiffs suggest that Ms. Ticer's endorsement of Ms. Silberberg shows undue influence, but disregard that such endorsement was against then Mayor William Euille. Plaintiffs also point to personal and political relationships between Ms. Ticer and members of the City Council that included donations and campaign contributions. Many of these are *de minimis* contributions dating back to 2006, and notably, Ms. Ticer was not the Applicant and has no ownership in Janow LLC.

Finally, Plaintiffs argue that community members received only three minutes each to speak at the hearing, while Janow LLC was not subject to such limitations. However, the City Council heard arguments from a total of 40 public speakers on this Application compared to one representative for Janow LLC. So collectively, community members were allotted far more time than the applicant.

The Court finds that even if undue influence were a cognizable claim, here the actions did not constitute undue influence.

b. Consideration of Zoning Ordinance Standards

Plaintiffs claim that the increase in noise and odors will harm the neighborhood, traffic and parking will worsen, and there will be garbage runoff, and that these factors will permanently change the character of the neighborhood and diminish property values. However, the evidence showed that City Council clearly considered the Plaintiffs' concerns. In response to each of these misgivings, the City Council imposed special conditions on the Applicant.

Assuming, without deciding, that the plaintiffs have shown a case for unreasonableness, the City has met its burden of showing reasonableness to render the issue fairly debatable. "An issue is fairly debatable when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions." *Bd. of Supers. v. Robertson*, 266 Va. 525, 532 (2003). "The evidence must meet both quantitative and qualitative tests." *Id.* In Robertson, the Court further clarified that "[t]he relevant inquiry is 'whether there was *any* evidence in the record sufficiently probative to make a fairly debatable issue . . ." *Id.* (emphasis in original) (internal citations omitted). The Court in *Board of Supervisors v. Williams* explained, "The emphasis here is upon the word 'fairly.' Given the human tendency to debate any question, an issue may be said to be fairly debatable when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions." 216 Va. 49, 58 (1975).

Zoning Ordinance § 11-504 provides that the relevant considerations that the City Council must consider,[4] all of which were considered, as well as those that it "may take into consideration,"[5] many of which were taken into consideration. The City Council extensively

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[4] The city council may approve the application, provided all regulations and provisions of law have been complied with, if it finds that the use for which the permit is sought:

> (1) Will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use;
> (2) Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
> (3) Will substantially conform to the master plan of the city.

Zoning Ordinance § 11-504(A).

[5] There are sixteen factors listed under Zoning Ordinance § 11-504(B). Several of the relevant factors that the City Council may take into consideration are listed below:

> 3.) Whether the street size and pavement width in the vicinity is or will be adequate for traffic reasonably expected to be generated by the proposed use.

considered whether the proposed commercial use was compatible with the surrounding area. It also considered an independent analysis that showed property values of neighborhoods in close proximity to restaurants and commercial activity increased in value. In addition, the City Council addressed concerns regarding historic preservation, potential noises, odors, traffic control signage, and trash, and imposed numerous conditions to mitigate any negative impacts to the surrounding community.

In response to the parking and traffic concerns, the City Council provided offsite parking spaces and will be subsidizing public transit for employees among other measures. It imposed more onerous requirements than would be required under the Zoning Ordinance with regard to parking. Under the Zoning Ordinance, the Applicant would be required to provide 24 off-street parking spaces to operate the hotel and restaurant at the desired capacity. The City Council, however, required the Applicant to provide 47 spaces during peak demand. To further mitigate traffic issues, the City Council required the Applicant to load and unload from N. Washington Street.

Regarding odors, the City council provided: "In the event odors, smoke and any other air pollution from operations . . . are determined to be a nuisance to the neighboring properties, the applicant shall install additional odor control equipment . . ." R. 000795. To prevent runoff and debris, the City council required that trash and garbage be stored in sealed containers and that the applicant must pick up litter around the restaurant at least twice per day, among other conditions. To address the noise concerns, the City Council prohibited outdoor seating after 10:00pm, and prohibited all loudspeakers from the exterior of the property.

Other than the Plaintiffs' own opinions,, no evidence was introduced to prove that their property values will decrease because of the use of the property.

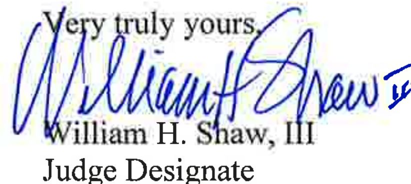
5.) Whether adequate access roads or entrance or exit drives will be provided and will be designed so as to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
8.) Notwithstanding any other provisions of the city code, whether the proposed use will have noise characteristics that exceed the sound levels that are typical of permitted uses in the zone.
10.) Whether the proposed use will have any substantial or undue adverse effect upon, or will lack amenity or will be incompatible with, the use or enjoyment of adjacent and surrounding property, the character of the neighborhood, traffic conditions, parking, utility facilities, and other matters affecting the public health, safety and general welfare.
12.) Whether the proposed use will destroy, damage, detrimentally change or interfere with the enjoyment and function of any significant topographic or physical features of the site.
13) Whether the proposed use will result in the destruction, loss or damage of any natural, scenic or historic feature of significance.
Zoning Ordinance § 11-504(B).

Consideration of these factors would certainly lead to objective and reasonable persons to conclude that the City Council acted reasonably. The factors showed that the City Council understood both the mixed commercial/residential character of N. Washington Street and the concerns of some nearby neighbors, and found that the benefits to the community outweighed the concerns, particularly when such concerns were met with strict conditions placed on the Applicant.

For the foregoing reasons, without deciding whether plaintiffs have shown a case of unreasonableness, the court finds that the City Council's decision was well-beyond fairly debatable. The City Council's actions were reasonable and not arbitrary and capricious and did not constitute spot zoning. Accordingly, judgment is awarded to the defendants.

Counsel for the City shall prepare and circulate for endorsement an order with these rulings, to which counsel may note objections, and submit it to the Court for entry within 14 days hereof.

Very truly yours,



William H. Shaw, III
Judge Designate

cc:
The Honorable Edward Semonian, Jr., Clerk