

IN THE MATTER OF : BEFORE THE  
SU AND KIM, INC., : HOWARD COUNTY  
T/A WINGS SPORTS BAR & CAFE : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
 : BA Case No. 11-013N

.....

**DECISION AND ORDER**

On July 30, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Su and Kim, Inc., t/a Wings Sport Bar & Café, to expand a Nonconforming Use for a restaurant and beverage establishment in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District, filed pursuant to Section 129.E of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to complying with the notice, posting and advertising requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

San Oh, Esquire, represented the Petitioner. Richard Vogel testified in favor of the petition. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property, known as 8406 Washington Boulevard (U.S. Route 1), is located in the 6<sup>th</sup> Election District on the west side of Washington Boulevard about 200 feet north of Patuxent Range Road in Jessup (the "Property"). The Property is identified as Tax Map 43, Grid 19, Parcel 500.

2. Property Description. The 2.176-acre, rectangular-shaped Property has about 125 frontage feet on Washington Boulevard. It is about 782 feet deep and widens slightly to about 129 feet at the rear lot line. The Property is developed only in the front half with a two-story building. In Board of Appeals Case No. 06-022N, the Hearing Examiner confirmed a 3,900-sq.ft. nonconforming restaurant and beverage establishment and approved a two building, 910-sq.ft. two-building addition, which was not constructed. In this confirmation decision and order, the building was described as being located about 18 feet from Washington Boulevard and 2.5-feet from the south lot line. There is a fence behind the building, paving in front of and to the east of the building and no curb or defined entranceway. Beyond this paving is a large, gravel-surface area. The rear portion is wooded.

3. Vicinal Properties. To the north, the M-1 MXD-3 (Manufacturing: Light, Mixed Use) Parcel 526, which is improved with a stone quarry and stone-products processing facility. The quarry and facility are some distance from the Property. Other adjoining properties are zoned CE-CL1. To the northeast and rear of the Property is Parcel 629, used as an outdoor storage yard. Parcel 526 to the northeast of the front portion of the Property is improved with an industrial building sited close to the common lot line. To the southwest, Parcel 501 is improved with a two-story contractor's office building, outdoor storage yard, and commercial

communications monopole. Across US 1 to the southeast, Parcel 502 is a former storage yard improved with a one-story building used as a motor vehicle repair business.

4. Roads. US 1 in front of the Property has two northbound travel lanes and two southbound travel lanes with a southbound left turn lane for Patuxent Range Road, within a 150-foot right-of-way (ROW). The posted speed limit is 50 MPH. The estimated sight distance from the general entrance area is about 350 feet to the northeast and more than 1,000 feet to the southwest.

5. Water and Sewer Service. The Property is served by public water and private sewer.

6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Area/Redevelopment Corridor." The General Plan Transportation Map depicts US 1 as an Intermediate Arterial/Transit/HOV Corridor.

7. Proposed Expansion. As depicted on the Exhibit accompanying the petition, Petitioner proposes to enlarge the use, which comprises a 3,990-sq.ft. portion of the building in use as a bar, restaurant, package goods and storage area. The enlargements proposed include an existing 245-square foot wood deck and a proposed 800-square foot concrete patio for outdoor seating totaling 1,045-sq. ft., or a 26.1 percent increase in square footage. The restaurant and beverage establishment use will continue.

Petitioner also proposes to remove paving along the building's front and rear, on the easterly side, and along the west and rear sides of the existing parking area. About 1.02 acres of impervious surface will be removed. Fifty-eight parking spaces are depicted on the Exhibit. A

24-footwide curbed access drive will be constructed on the Property's northeast side. An enclosed dumpster pad will be located at the rear of the parking lot.

8. Robert Vogel testified to the Property's zoning history. He also described the Property and the proposed expansion.

### CONCLUSIONS OF LAW

#### **Extension, Enlargement, or Alteration of Nonconforming Uses (Section 129.E)**

The Hearing Authority may authorize the extension or enlargement of a nonconforming use or the alteration of a structure containing a nonconforming use, with or without conditions, provided the Petitioner demonstrates compliance with five standards.

**a. That any changes or additions to the activities taking place in connection with the nonconforming use will not change the use in any substantial way;**

The proposed enlargement includes a wood deck and concrete patio for outdoor seating at the rear of the existing building. The Property will continue use as a restaurant and beverage establishment and associated parking. These additions will not change the use in any substantial way, in accordance with Section 129.E.1.a.

**b. That an enlargement may not exceed 100 percent of the gross floor area of structures or 100 percent of the gross acreage in the case of nonconforming land, above that which legally existed at the time the use first became nonconforming;**

The Petitioner is proposing to enlarge the use by adding about 1,045-sq. ft., or a 26.1 percent increase in square footage, which is less than the 100 percent maximum enlargement permitted by Section 129.E.1.b.

**c. That the outdoor land area occupied by a nonconforming use may be enlarged only to provide additional parking area;**

This section is inapplicable as no outdoor use is proposed, according to the Technical Staff Report. The petition complies with Section 129.E.1.c.

**d. That an enlargement would not cause a violation of the bulk regulations for the zoning district in which the property is located;**

The proposed additions and parking will comply with CE District bulk regulations for properties developed prior to the creation of the CE district. The petition complies with Section 129.E.1.d.

**e. That the extension, enlargement or structural alteration would not cause an adverse effect on vicinal properties.**

The proposed additions will be located adjacent to the rear of the existing building. The enlargement will not cause an adverse effect on vicinal properties, in accordance with Section 129.E.1.e.

**ORDER**

Based upon the foregoing, it is this 8<sup>th</sup> Day of August 2012, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Su and Kim, INC., t/a Wings Sport Bar & Café, for expansion of a Nonconforming Use for a restaurant and beverage establishment in a CE-CLI (Corridor Employment – Continuing Light Industrial) Zoning District, is **GRANTED**;

**Provided**, however, that:

The enlargement of the Nonconforming Use shall apply only to the 1,045 square-foot addition, as described in the petition and as depicted on the plan entitled "Exhibit to Accompany Confirmation and Enlargement of a Non-conforming Use Permit, Wings Sports Bar" submitted on June 5, 2012, and not to any new uses or structures in the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

MECHEL GOSWAMI

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.