

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

ERR-228

DECISION

Application:	Validation of Sign Permits 9325-2001-01 and 28174-2001-00
Applicant:	Bojangles' Restaurants, Inc.,
Opposition:	None
Hearing Date:	December 11, 2013
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval

NATURE OF PROCEEDINGS

- (1) ERR-228 is a request for validation of Prince George's County's Sign Permits 9325-2001-01 and 28174-2001-01, both issued in error on November 15, 2001, for a sign located on approximately 1.761 acres of land, in the C-S-C (Commercial Shopping Center) Zone, also identified as 7571 Robert Crain Highway, Upper Marlboro, Maryland. (Exhibit 5)
- (2) At the conclusion of the evidentiary hearing the record was kept open for the receipt of one document and, upon its receipt, the record was closed on December 12, 2013.

FINDINGS OF FACT

- (1) The subject property is improved with the Osborne Shopping Center. The instant fast food restaurant use was initially established in 1986 as a Roy Rogers Restaurant and was subsequently occupied by Bojangles' in 2000. As part of the lease assignment from Roy Rogers to Bojangles', the owner of Osborne Shopping Center granted permission to Bojangles' to install a freestanding sign on the subject property, subject to obtaining all necessary approvals and permits.
- (2) Sign Permits 9325-2001-01 and 28174-2001-00 were issued on November 15, 2001 for Bojangles' on the subject property and the sign was subsequently constructed in accordance with these permits. (Exhibit 3)
- (3) Osborne Shopping Center was purchased by Property Development Centers (PDC) in 2012. PDC subsequently determined that there were two approved freestanding signs for the shopping center in violation of § 27-614 of the Zoning Ordinance which permits only one freestanding sign on the subject property.

- (4) Upon review, the Maryland National Capitol Park & Planning Commission admitted that during the permit review process for Sign Permit 9325-2001-01 and 28174-2001-000, the Commission inadvertently overlooked a freestanding sign which was, and continues to be, in existence on the subject property. (Exhibit 7)
- (5) The Applicant testified, in concert with the admission provided by the MNCPPC, that no fraud or misrepresentation was practiced in obtaining these permits. (Exhibit 7) § 27-258(g)(1)(A)
- (6) The Applicant testified that no appeal or controversy regarding the issuance of these permits is pending before any legal body. § 27-258(g)(1)(B)
- (7) The Applicant has acted in good faith expending funds in reliance on these permits. (Exhibits 6(a)-(c)) § 27-258(g)(1)(C)
- (8) The validation of this sign, which has existed for 12 years, will not be against the public interest. § 27-258(g)(1)(D)

LAW APPLICABLE

- (1) A Sign Permit may be validated as issued in error in accordance with § 27-258 of the Zoning Ordinance which states in pertinent part:

(a) **Authorization.**

- (1) A building, use and occupancy, or absent a use and occupancy permit, a valid apartment license, or sign permit issued in error may be validated by the District Council in accordance with this Section.

* * * * *

(g) **Criteria for approval.**

- (1) The District Council shall only approve the application if:
- (A) No fraud or misrepresentation had been practiced in obtaining the permit;
- (B) If, at the time of the permit's issuance, no appeal or controversy regarding its issuance was pending before any body;
- (C) The applicant has acted in good faith, expending funds or incurring obligations in reliance on the permit; and
- (D) The validation will not be against the public interest.

(h) **Status as a nonconforming use.**

- (1) Any building, structure, or use for which a permit issued in error has been validated by the Council shall be deemed a nonconforming building or structure, or a certified nonconforming use, unless otherwise specified by the Council

when it validates the permit. The nonconforming building or structure, or certified nonconforming use, shall be subject to all of the provisions of Division 6 of this Part.

CONCLUSIONS OF LAW

(1) The instant Application is filed in accordance with § 27-258 of the Zoning Ordinance. The subject property has been occupied by a fast food restaurant since 1986. Upon the change of occupancy from Roy Rogers to Bojangles', Sign Permits 9325-2001-01 and 28174-2001-00 were applied for and issued, and signs were constructed in accordance with the issued permits. There is no evidence of fraud or misrepresentation and there is no evidence of an appeal or controversy arising at the time these permits were issued. The permits were erroneously issued by the governing body due to an oversight committed by its employee. The validation will not be against public interest as the Application merely validates a sign that has existed without controversy for approximately 12 years. The Applicant paid \$13,105 to purchase the sign in reliance on the issued permits. (Exhibits 6(a) – (c)) § 27-258

RECOMMENDATION

It is recommended that the District Council validate Sign Permits 9325-2001-01 and 28174-2001-00 in accordance with Exhibits 6(b) and (c) and 12. The existing pylon and reader board sign shall be declared to be a Certified Non-Conforming Use.