

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N side of Chestnut Road; 2,500' NE		
of the c/l of Bowleys Quarters Road	*	OFFICE OF ADMINISTRATIVE
15 th Election District		
6 th Council District	*	HEARINGS FOR
(3920, 3922 and 4000 Chestnut Road)	*	BALTIMORE COUNTY
William M. Lagna	*	CASE NO. 2012-0239-SPH
<i>Petitioner</i>	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Special Hearing filed by the legal owner of the property, William M. Lagna. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to establish the legal non-conforming status of an existing private boat club with piers and 3 existing single family detached dwellings. The Petitioner also seeks an adjustment of lot lines such that each of the single family dwellings would be situated on a separate lot. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing held for this case were Petitioner William M. Lagna, James S. Patton with Patton Consultants, Ltd., the consultant who prepared the site plan, and Michael R. McCann, Esquire attorney for the Petitioner. Appearing as either interested citizens and/or in opposition to the Petitioner’s request were many residents of the surrounding communities. These individuals are too numerous to specifically identify herein. However, all have signed in on the Citizen and Protestant Sign-In Sheets. A review of the file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Department of Planning dated May 1, 2012, which state:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The petitioner requests a special hearing to approve the legal non-conforming status of an existing private boat club with piers and 3 existing single family detached dwellings as well as various scenarios of lot line adjustments and/or subdivision.

The Department of Planning recommends the petitioner's special hearing request be **denied**. After visiting the subject site, it was observed that many boats and trailers are being stored on the property along with several structures that are in a state of disrepair. The storage of said boats has the appearance of a commercial boatyard and is not compatible with the rural waterfront character of the surrounding residential community. The petitioner should comply with BCZR 415A.3 with regard to the residential use.

The petition should address the issue of the non-conforming use only. The proposal to change lot status through lot line adjustments and/or subdivision is not appropriate and is counter to establishing a non-conforming use which by its nature cannot be changed in use, location or intensity. Adjusting lot lines as shown could facilitate off-conveyances that may then lead to a reduction of the area in support of the non-conforming use if so established.

The petition and plan are unclear as to the location, intensity and extent of the non-conforming boat club. None of the buildings are labeled and the descriptions are conflicting as to whether there are 3 or 4 existing residences. Where is the community building that houses the private boat club? Parking and other ancillary uses are not shown.

It appears from the aerial photos taken in 2002, 2005 and 2008 as well as the site visit that boat storage has intensified significantly from 2002 to present. While the Department of Planning does not support the request, should the ALJ find the use of the subject property is as a legal non-conforming community building (private boat club) said building and ancillary parking and other structures including docks, piers, pilings and launch ramps must be identified on the plan. The total number of onshore boats associated with the boat club at any given time should be fixed at nine boats as shown on the petitioner's plan.

Comments were also received from the Department of Environmental Protection and Sustainability (DEPS) dated May 4, 2012, which state that the Petitioner must comply with certain critical areas regulations, as set forth at B.C.Z.R. § 500.14.

Testimony and evidence revealed that the subject property is under an acre in size, and is comprised of four separate lots. The homes on the property (which are in disrepair) were built in the 1930's, and are constructed such that the dwellings "straddle" the lot lines. Petitioner was found to be in violation of the B.C.Z.R. at a code enforcement hearing on February 1, 2012 (*See*, Civil Citation No. 103205), and the Petition was filed to legitimize the current conditions on the property.

Lot Line Adjustments

As noted at the outset, the property owned by the Petitioner, which in total is less than one acre in size, is actually comprised of four individual lots, known as Lots 124, 125, 126, and 127. Mr. Lagna testified that the bungalow-style frame houses known as 3920 and 3922 Chestnut Road were constructed in or about 1934, and straddle the lot line separating Lots 124 and 125. In addition, Mr. Lagna testified that the "big house" known as 4000 Chestnut Road, also straddles the lot lines separating Lot 125 from Lot 126. Finally, a structure the witness referred to as a "clubhouse" identified as 4002 Chestnut Road, was constructed in such a fashion that it straddles the lot line separating Lot 126 and 127.

In these circumstances, the Petitioner has requested special hearing relief under B.C.Z.R. § 500.7, to adjust the lot lines in such a fashion that each of the principal dwellings in this case would then be situated on its own lot of record. As I explained to Petitioner's counsel at the outset of the hearing, I do not believe that lot line adjustments are the proper subject of a zoning hearing in the OAH. Rather, such relief is handled by the County's Department of Permits, Approvals, and Inspections (PAI) as a development matter, and it is the Development Review Committee (DRC) which is entitled to grant such relief under the Baltimore County Code (B.C.C.) § 32-4-106. As such, I will deny this aspect of the special hearing relief sought in the Petition.

While on the topic, it would seem to me that if anything, the four lots owned by Mr. Lagna have merged under the doctrine of zoning merger, so as to create (for zoning purposes at least) one lot where there had been four. Under Maryland law, a zoning merger occurs where two or more lots held in common ownership are used in service of the other common lots. *Friends of the Ridge v. Baltimore Gas & Electric Company*, 352 Md. 645 (1999). While under Maryland law zoning merger is dependent upon the common owner's intent, such evidence can be inferred by an owner's conduct, and the Court of Appeals has noted that "little evidence of that intent is required." *Remes v. Montgomery County*, 387 Md. 52, 66 (2005). In this case, Petitioner's engineer, James Patton, testified that the dwellings on the site were oriented towards the waterfront, and that the builder simply "ignored the lot lines."

Given that the lot lines (which after all are an artificial construct) were disregarded entirely when these properties were developed, it would appear as if a single parcel exists for zoning purposes. Mr. Lagna acquired all four of the separate lots when he purchased the property in 1993, and both he and David Wright (a neighbor who testified at the hearing), who was at the real estate settlement with the Petitioner, indicated that his intention at that time was to raze the dilapidated structures on site and build a new home on the premises. This fact also tends to indicate that the owner's intent was to treat the property as a single lot.

Nonconforming Use

The primary relief sought in the Petition for Special Hearing is a determination that Mr. Lagna's property enjoys nonconforming use status as a "boat club," a term which Petitioner's counsel conceded was not contained within the B.C.Z.R. The evidence in the case overwhelmingly established, and the Protestants' even conceded, that at one time a men's club or boat club of some sort was conducted on these premises. While the historical testimony in this

regard was interesting, it is largely irrelevant to the case at hand.

What I mean is this: one can assume, for sake of argument only, that a men's club or social boat club of some sort was conducted on the premises from the 1930's until 1993, when Petitioner purchased the property. In fact, evidence exists in the record establishing that such a boat club was "disbanded" in or about 1993, when Mr. Lagna took ownership. *See*, Petitioner's Exhibit 12. Thus, the salient question becomes whether the Petitioner has established that since 1993 he has consistently operated a "boat club" on the premises, without any cessation or abandonment of activities for one year or longer, which under the B.C.Z.R. would extinguish the nonconforming use. B.C.Z.R. § 104. In his post-hearing memorandum, Petitioner contends he provided "abundant evidence" on this point. I disagree, and in reviewing the witness testimony and exhibits, I do not believe that the Petitioner has satisfied his burden of proof in establishing a nonconforming use.

The burden of establishing a nonconforming use is on the claimant of such use, and one effective way of meeting this burden is to show that the existence of the use in question was well known throughout the neighborhood at the critical time. *Calhoun v. County Board of Appeals*, 262 Md. 265 (1971). While the mere change in ownership would not destroy a nonconforming use, a Petitioner must establish that the nature and character of the use in question – a boat club – remained unchanged and that substantially the same facilities were used throughout the years in question. *Kastendike v. Baltimore Association for Retarded Children*, 267 Md. 389 (1974). As recognized by the Court of Appeals, nonconforming uses are disfavored in the law, and "pose a formidable threat to the success of zoning". *Prince George's County v. E.L. Gardner*, 293 Md. 259, 267 (1982).

While Mr. Lagna testified that he grew up in the area and recalls the property being used as

a boat club with parties and events during his childhood, there was an absolute paucity of evidence concerning whether the property has been used as a boat club since the Petitioner's purchase of the property in 1993. The Petitioner testified that there were 17 boats on the property when he purchased it in 1993, and that today his club has 25 or 30 families as members. But not one of those members testified in support of Petitioner, nor did Petitioner adduce any evidence from the community to the effect that a boat club operation was known to exist on these premises between the years of 1993-2012.

The Petitioner testified that he files a Schedule C for the club, and submitted federal tax schedules for tax years 2008, 2009, and 2010 to this effect. But no such tax forms were submitted for tax years 1993-2007. Mr. Lagna testified that he charges between \$200 and \$300 a year for membership, and that since 1993 he has used the property as a seasonal boat club. He also testified that the property at 4000 Chestnut Road is listed on the BG&E bill as "non-residential", and the Petitioner also submitted letters from former boat club members, some of which are 70 or 80 years old at present. While several of these letters (Petitioner's Exhibit 12) refer to the fact that the boat club existed for 30, 40, or 50 years, none affirmatively state that such a club has existed continuously since 1993.

Simply put, this is insufficient evidence to establish that the Petitioner has, for the last 19 years, conducted a commercial, private boat club operation on the premises in question. This conclusion is buttressed by the convincing and credible testimony of the numerous neighbors and interested citizens who attended the hearing. Ms. Sandy Walter testified that her father owned all of the property in question, and sold the land to Mr. Lagna in 1993. Ms. Walter stated that she grew up in the area, and recalls this not being a boat club, but a men's club of some sort. Ms. Walter testified that through the years Mr. Lagna has built up a collection of derelict boats, and

she stated that although she has been at or near the premises every weekend since childhood, she cannot remember anyone in recent years coming to the so-called club and/or putting a boat in the water from its docks.

The next witness to testify was David Hash, and he also submitted a written statement which is contained within the case file. Mr. Hash has lived in the vicinity for many years, and stated unequivocally that he has “never ever” seen people on the property using the premises in such a manner which would indicate that an active boat club or some similar use was being conducted.

The next witness to testify was Kimberly Johnson, a licensed real estate agent. Ms. Johnson indicated that she has listed many homes through the years near the Petitioner’s property, and in each instance had trouble selling the home due to the numerous calls she has received concerning the “shacks” and junk littered about the subject premises.

The next witness to testify was Charles Baynes, who has lived next door to the subject property for 63 years. Mr. Baynes testified that his grandfather originally owned all of this land, and he recalls his father referring to the premises containing a “men’s club”, and he also recalls collecting rent from the tenants in the small bungalows on the property. Mr. Baynes stated that his impression is that boats appear, but never leave, and he added that he has never seen anyone on the property using the land in such a manner that would indicate that it was an operational boat club.

Several other community witnesses testified to like effect, and after observing these witnesses’ demeanor and testimony, I find them to be credible and compelling. This is certainly the case when one considers that the Petitioner has submitted absolutely no documentation of any sort that would verify the bona fides of a boat club operation on the premise. While a membership roster was submitted from 1990 (Exhibit 6), such a roster was not submitted for any period post

1993 after he acquired the property and the Petitioner explained that he did not supply such materials because this was a private club and the identity of his members was confidential. But Petitioner must remember that it is his burden to establish the alleged nonconforming use, and on this record he has simply failed to do so. As such, the requested special hearing relief will be denied.

The final aspect of special hearing relief concerned a determination of the number of boats Petitioner may keep on the premises. As noted earlier, I believe the four lots have merged (for zoning purposes only) into one. As such, the Petitioner would be entitled to store in the water six boats, per B.C.Z.R. § 415A.2. From November 1 through March 31, the Petitioner would be entitled to store three boats out-of-water, per B.C.Z.R. § 415A.3. Petitioner's post-hearing memorandum referenced §415A.1, but I do not believe that regulation is applicable in this case. The lot here is waterfront, and as such is governed by 415A.2 and .3 rather than 415A.1, in keeping with the maxim of statutory construction that the specific controls over the general. *Massey v. Department of Public Safety*, 389 Md. 496 (2005).

Pursuant to the advertisement, posting of the property and public hearing on this Petition and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED, this 22nd day of June, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief under Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to establish the legal non-conforming status of an existing private boat club with piers and 3 existing single family detached dwellings, be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw