

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1919 Wills Road)		
12 th Election District	*	OFFICE OF ADMINISTRATIVE
7 th Councilmanic District		
Koluch Properties, LLC, <i>Legal Owner</i>	*	HEARINGS FOR
Jacob W. Britt, <i>Contract Purchaser</i>	*	BALTIMORE COUNTY
Petitioners	*	
	*	CASE NO. 2013-0078-SPH

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Hearing filed by Michael T. Wyatt, Esquire, on behalf of the legal owner, Koluch Properties, LLC, and the contract purchaser, Jacob W. Britt, (“Petitioners”). The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

1. To confirm that the existing two-family dwelling in combination with the existing warehouse and commercial boatyard uses constitutes a lawful non-conforming use of the property,
2. To confirm that the 23’ side yard for the existing two-family dwelling conforms to the requirements of Section 255.1 (see Sections 238.2 and 302), and
3. To approve a Modified Parking Plan per Section 409.12.B.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing held for this case was Richard C. Koluch, David Fitzhugh, Ruby M. Koluch, Jacob W. Britt, and James E. Matis, Professional Engineer with Matis Warfield, Inc., the consulting firm that prepared the site plan. Michael T. Wyatt, Esquire appeared and represented the Petitioners. The file reveals that the Petition was properly advertised and the site

was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. ZAC comments were received from the Department of Environmental Protection and Sustainability (DEPS) on November 14, 2012, indicating that Petitioners were obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. § 500.14.

Testimony and evidence revealed that the subject property is 29,066 square feet (0.67 acres) and is zoned ML-IM. The property is improved with a warehouse building, a two-family dwelling and an eight slip pier. *See* Exhibit 1. As the caption of this case makes clear, there is a pending contract of sale for the premises, and that contract is contingent upon the grant of the requested zoning relief.

Under the B.C.Z.R., a nonconforming use is defined as:

A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use. **[Bill No. 18-1976]**

B.C.Z.R. § 101.1.

In this case, the property is zoned ML-IM, and it has had that same zoning classification since 1955. In the 1955 regulations, both warehouses and two-family dwellings were permitted as of right. B.C.Z.R. (1955) § 253.1 and 2.

The Petitioners presented several witnesses and exhibits that established the dwelling was constructed on this site in approximately early 1950s. James Matis (who was accepted as an expert witness) presented aerial photos from 1952 (Exhibit 5) which show (albeit somewhat out of focus) the roofline of the dwelling on this site. In addition, Petitioners presented sewer drawings and plans prepared by Baltimore County, and dated 1956 and 1961 (Exhibits 6 and 7) which

clearly depict a dwelling constructed on the site. As such, it seems clear that the dwelling was constructed prior to 1955, at which time it was a legal use in the ML zone. Mr. Matis testified that residential uses were prohibited in ML zones in 1970 (Bill 100-70), at which time the structure and use became lawfully nonconforming.

Concerning the continuity of the residential use of that dwelling, the Petitioners presented former owners of the property and residents who stored boats in the area, all of whom testified that the house has been used since the 1950s as a two-family dwelling. There was no evidence that such rental apartment use was ever discontinued or abandoned; in fact, Ruby Koluch and her son Rick, who have owned the property since 1989, said that the house has continuously been leased to two families, in upstairs and downstairs apartments in the dwelling.

MODIFIED PARKING PLAN

The site plan reflects that the Petitioners have a sufficient number of parking spaces for the uses on site. Exhibit 1, "Parking Tabulation". However, the drive aisle for the parking is 14', while the B.C.Z.R. requires 23' wide aisles. Even so, Petitioners testified that parking has never presented any problems at the site, and the required spaces are situated in a linear, parallel fashion, as shown on the plan. In these circumstances, the 14' wide aisle is more than sufficient, especially considering that there are no parking spaces located on the "other side" of the aisle.

SIDE YARD

The final request for relief concerns a 23' side yard between the dwelling and the southern property boundary. Again, this is an existing condition and the Petitioners are not proposing any alterations or modifications to the site. Pursuant to B.C.Z.R. § 302.1 (to which one is referred by §§ 255.1 and 238.2), the applicable yard requirements are those found in the DR 5.5 zone, since there is not in this case a residential zone immediately adjoining the subject site. In the DR 5.5

zone, the setback required from side building face to the tract boundary is 15', which the Petitioners satisfy.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing request should be granted.

THEREFORE, IT IS ORDERED, this 20th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

1. To confirm that the existing two-family dwelling in combination with the existing warehouse and commercial boatyard uses constitutes a lawful non-conforming use of the property,
2. To confirm that the 23' side yard for the existing two-family dwelling conforms to the requirements of Section 255.1 (see Sections 238.2 and 302), and
3. To approve a Modified Parking Plan per Section 409.12.B,

be and is hereby GRANTED.

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