

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1100 E. Riverside Avenue)		
15 th Election District	*	OFFICE OF ADMINISTRATIVE
6 th Councilmanic District		
Marina Holdings, LLC	*	HEARINGS FOR
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0131-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 Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC, on behalf of Marina Holdings, LLC, legal owner. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Administrative Law Judge should approve:

- (1) The continued office and residential use of an existing building utilized as part of a marina and a proposed second-story addition thereto as a use permitted by right as a principal (combination of uses) or accessory use, or in an alternative, that the proposed use is a legally permitted non-conforming use, all as more particularly described on the plat to accompany the Special Hearing attached hereto;
- (2) To amend the Special Hearing relief for the "West Shore Yacht Center" approved in Case No. 07-421-SPHA as indicated above and on the attached plan; and
- (3) For such and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

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 was Richard Earl Matz, from Colbert, Matz, Rosenfelt, Inc. the firm that prepared the site plan, and Joseph M. and Lisa C. Taylor,

representatives of the legal owner. Lawrence Schmidt, Esquire and Jason T. Vettori, 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 interested citizens 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. The Department of Environmental Protection and Sustainability noted that the Petitioner was obliged to comply with certain critical area regulations, as set forth at B.C.Z.R. §500.14. The Department of Planning also submitted a comment, requesting that architectural elevations be provided for review prior to permit issuance.

Testimony and evidence revealed that the subject property is approximately 3 acres and is zoned BMB and DR 3.5. This property has been the subject of prior zoning and development hearings, which approved the construction of 12 single-family semi-detached fee simple units (on approximately 2 acres), and the continued use of a portion of the property as a marina (approximately $\frac{3}{4}$ acre) with a one-story office building and 85 boat slips. See prior Orders, Exhibits 2 & 3. The Petitioner recently received permits from the County and began reconstructing the marina office building, as shown in the photos admitted as Exhibit 5. The Petitioner proposes to use the first floor of the structure for office and administrative functions associated with the marina, and will use the second floor as their personal residence. The County required the Petitioner to file a petition for Special Hearing to determine the propriety of this proposed use of the marina building.

The Marina building is situated in a BMB zone, which permits the operation of boatyards and marinas as of right. B.C.Z.R. §§221.C.1 & 2. That zone also permits “accessory uses or

structures which are normally and customarily incidental to any principal use,” and “combinations” of permitted uses. B.C.Z.R. §§216.1.C.8 & 10. The residence on the second floor of the marina, which will be occupied by Mr. and Mrs. Taylor (who own and operate the West Shore Yacht Center), qualifies as an accessory use to the marina (the principal use), as discussed below.

Though there is not an abundance of Maryland Law on the point, the Court of Special Appeals in Carroll County v. Zent, 86 Md. App. 745 (1991), reviewed cases from other states and held that a use would be permitted as an “accessory use” when it “pertains to the principal or main use,” and is truly incidental and subordinate to that use. A similar definition is provided in §101.1 of the B.C.Z.R. The Petitioner’s residence proposed for the second story of the marina building meets this definition.

Mr. Taylor testified that in his experience, many marina owners reside on site, and he listed several Baltimore County marinas where that was the case. The court in Pilot’s Point Marina v. Town of Westbrook, 988 A.2d. 897 (Conn. 2010) noted that “it was common for a marina operator to live at the site.” In Payne v. City of Miami, 53 So.3d 258, 294 (Fla. 2010) the court held that “residential development should be permitted as an accessory use to a marina.”

Thus, I believe there is ample support for the proposition that marina operators “customarily” live on site, and that such a residence and use “contributes to the comfort, convenience or necessity” of the marina patrons that will make frequent use of the first floor of the building and the swimming pool adjacent thereto. The second floor “apartment” will also be subordinate in extent and purpose to the principal marina use. As such, the second floor living quarters shall be deemed a lawful “accessory use” under B.C.Z.R. §216.1.C.8, and it and the marina are permitted as a “combination of uses” in the BMB zone. B.C.Z.R. §216.1.C.10.

Counsel for Petitioner indicated that County zoning staff raised a question concerning whether the Development Plan approval had lapsed in this case. The plan was approved by Order dated October, 15, 2008. While at first blush it would appear as if the approval expired 4 years later in October 2012, per B.C.C. §32-4-261(a), counsel argued that Bill 58-09 liberalized the rules somewhat in light of the housing crisis which occurred at that time. Having reviewed that Bill, I agree with the Petitioner.

Section 6 of the Bill provides that an unexpired residential development plan approved prior to the Bill's effective date, August 17, 2009, (as this plan was) may acquire vested (i.e., protected) status within 4 years of the Bill's effective date, or by August 17, 2013. As such, the Petitioner must vest its Development Plan on or before that date, in accordance with B.C.C. §32-4-264.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing request should be **GRANTED**

THEREFORE, IT IS ORDERED, this 21st day of February, 2013 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.), to approve the continued office and residential use of an existing building utilized as part of a marina and a proposed second-story addition thereto as a lawful accessory use, and to amend the Special Hearing relief for the "West Shore Yacht Center" approved in Case No. 07-421-SPHA, in accordance with the terms and conditions of this Order, be and is hereby **GRANTED** subject to the following conditions:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner must provide for review and approval by the Department of Planning (prior to issuance of permits) architectural elevations of the proposed 2 story marina office.

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:sln