

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND SPECIAL EXCEPTION	
(221 S. North Point Road) *	OFFICE OF
15 th Election District	
7 th Council District *	ADMINISTRATIVE HEARINGS
Scott Shinsky	
Petitioner *	FOR BALTIMORE COUNTY
	Case No. 2013-0320-SPHX

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed by Jason T. Vettori, Esquire, on behalf of Scott Shinsky, the legal owner. The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to: (1) approve request for confirmation that the 2nd floor apartment is a legal nonconforming use; and (2) to approve a modified parking plan. In addition, a Petition for Special Exception was filed to approve living quarters in a commercial building.

Appearing at the public hearing in support of the requests was Scott Shinsky, Petitioner, and Kenneth J. Wells, with kj Wells, Inc., the consultant who prepared the site plan. Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC, appeared and represented the Petitioner. 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 or interested citizens in attendance and the file does not contain any letters of opposition.

There were no substantive Zoning Advisory Committee (ZAC) comments received.

Testimony and evidence offered at the hearing revealed that the subject property is 18,450 square feet and is zoned BL. The property is improved with a tavern/bar and carry-out

operation. The property was the subject of a thorough opinion issued by former Deputy Zoning Commissioner Murphy in 2006. See Exhibit 5. Mr. Murphy at that time granted approval for a modified parking plan and special exception relief for operation of an arcade as an accessory use to the tavern. Since that time, the Petitioner has added an outdoor dining area on site (which required the submission of a revised parking plan) and was also instructed by County authorities to obtain zoning relief for an apartment the Petitioner operates on the site above the tavern.

Special Hearing

The Petition for Special Hearing seeks (1) approve request for confirmation that the 2nd floor apartment is a legal nonconforming use; and (2) to approve a modified parking plan. I believe the living quarters is an issue more appropriately considered as a special exception, since the B.C.Z.R. makes express provision therefor. That leaves only the modified parking plan for consideration. As noted by Deputy Zoning Commissioner Murphy in his prior Order, this property is located in an older area of the County, where insufficient parking – – at least as concerns the modern regulations – – is frequently encountered. But the Petitioner testified he has never had a shortage of parking at this property, and he noted that many of the tavern customers live in the area and walk to the bar. As such, I believe that the modified parking plan as shown on the plan (Exhibit 1) would not have a detrimental impact upon surrounding properties, and would otherwise comply with B.C.Z.R. § 409.12.

Special Exception Standards

Special exception uses are presumptively valid and consistent with the comprehensive zoning plan, People’s Counsel v. Loyola College, 406 Md. 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption. The Petitioner testified he has had a tenant in the apartment for nearly 20 years since he has owned the property, and he believes his predecessor in

title also maintained similar living quarters in the building. Mr. Wells testified that the proposal satisfies B.C.Z.R. § 502.1, and the Petition will therefore be granted.

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 and Special Exception requests should be granted.

THEREFORE, IT IS ORDERED this 5th day of September, 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing relief to approve a modified parking plan as shown on Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Special Exception request pursuant to B.C.Z.R. § 230.3, to approve living quarters in a commercial building, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner shall be permitted to operate only one (1) apartment unit above the tavern, and the premises may not be subdivided, partitioned or leased at any one time to more than one (1) tenant/lessee and his/her family.

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