

IN RE: PETITION FOR SPECIAL HEARING *

NE side of Painters Mill Road, 1,000' SW

Of Lakeside Boulevard *

(Painters Mill Road) *

2nd Election District *

4th Council District *

Howard Hospitality, Inc.

Petitioner *

BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

CASE NO. 2012-0142-SPH

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by the legal owner of the property, Howard Hospitality, Inc. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), for an extension of the period for utilization of the Special Exception granted in Case No. 08-234-SPHXA to five (5) years from the date of the final Order. See B.C.Z.R. § 502.3. 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 Robert Capalongo with CNA, the consultant who prepared the site plan for the Petitioner, and Christopher Mudd, Esquire with Venable, LLP, counsel for 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 other interested persons in attendance, and the file does not contain any letters of opposition or protest.

The ZAC comments were received and made a part of the file. A comment was received from the Department of Environmental Protection and Sustainability (DEPS) dated January 13, 2012 indicating that development of the property must comply with the Forest Conservation Law (Sections 33-6-101 through 33-6-122) of the Baltimore County Code (B.C.C.). Petitioner

indicated DEPS may accept a fee-in-lieu, though that issue is for another day. There were no other adverse ZAC comments received from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 3.66 acres and is zoned OR-2. In a thorough 12-page Opinion dated February 15, 2008, Zoning Commissioner Wiseman granted special exception relief to Petitioner, for the construction and operation of a Marriott Hotel. Mr. Wiseman's opinion addressed all facets of the special exception case and the requirements under B.C.Z.R. § 502. There were at the time several neighbors that opposed the relief, and counsel indicated they noted an appeal of the Zoning Commissioner's Order to the County Board of Appeals. Case No. 08-234-SPHXA, Petitioner's Exhibit 3. However, the neighbors withdrew their appeal as concerned the special exception relief, and that aspect of the Zoning Commissioner's Order was therefore affirmed.

Petitioner explained that shortly after the appeal was dismissed, its engineer determined the hotel site was not located within the Metropolitan District, where water and sewer service is provided. See Exhibit 4. That necessitated a lengthy and tedious approval process, which culminated in a City of Baltimore Ordinance (10-387, Petitioner's Exhibit 5) extending the Metropolitan District to include the 3.66 acre subject parcel. This Ordinance took effect on November 22, 2010, and under the B.C.Z.R. the time for utilization of the special exception is extended "to a date 18 months after such (water and sewer) facilities become adequate and available." B.C.Z.R. § 502.3. That would extend the special exception utilization period to May 21, 2012, and thus the special exception granted in Case No. 08-234-SPHXA has not yet expired.

Under the B.C.Z.R., Petitioner is entitled to request an extension of the utilization period, provided it does so before the expiration of the period. Petitioner has done so here, and it would appear as if a "reasonableness" standard would apply to such a request, especially since that term is used in § 502.3. Here, much has transpired since the special exception was granted. The Petitioner spent nearly two (2) years obtaining approval for the extension of the water and sewer

facilities. At or about that time, the United States economy and credit markets were cratering, and commercial/residential construction activity ground to a halt. In these circumstances, an extension seems justified, and a five year period seems reasonable for a project of this magnitude, which will rely so heavily (according to Petitioner's experts) on the success of the adjoining corporations and business parks in the Owings Mills area.

The "final order" granting the special exception here was the Board of Appeals Order dated December 14, 2008, which counsel indicated was not appealed to the Circuit Court. The B.C.Z.R. provides that "the maximum time for utilization of the special exception" cannot be extended for a "period of more than five years from the date of the final order granting same." B.C.Z.R. § 502.3. That date is December 3, 2013, and the special exception utilization period shall be extended to that date.

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 granted.

THEREFORE, IT IS ORDERED, this 19 day of January, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for an extension of the period for utilization of the special exception granted in Case No. 08-234-SPHXA to five (5) years from the date of the final Order granting same (i.e., December 3, 2013), be and is hereby GRANTED.

The relief granted herein shall be conditioned upon the following:

1. The Petitioner may apply for its building permit and may be granted same upon receipt of this Order, however the Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

2. The Petitioner must comply with the ZAC comment received from the Department of Environmental Protection and Sustainability (DEPS) dated January 13, 2012, indicating that development of the property must comply with the Forest Conservation Law (Sections 33-6-101 through 33-6-122) of the Baltimore County Code (B.C.C.).

JEB:dlw



JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County