

**IN RE: PETITIONS FOR SPECIAL HEARING \*  
AND SPECIAL EXCEPTION**

(1901 Monkton Road) \*  
10<sup>th</sup> Election District \*  
3<sup>rd</sup> Council District \*  
1901 Monkton, LLC \*  
*Legal Owner* \*

BEFORE THE  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
FOR BALTIMORE COUNTY  
**Case No. 2019-0053-SPHX**

Petitioner \*

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of 1901 Monkton, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm the continued use of a non-conforming commercial structure dating back to the late 1800’s on a property with non-conforming setbacks, parking and landscaping. A Petition for Special Exception seeks to permit living quarters in a commercial building in a BL zone.

Scott Vogel and surveyor Bruce Doak attended the public hearing in support of the requests. Dino La Fiandra, Esq. represented Petitioner. One neighbor attended the hearing to obtain additional information regarding the requests. The Petition was advertised as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”).

The subject property is approximately 7,710 square feet in size (*See* Pet. Ex. 3C) and is zoned BL-CR. The property is improved with a stone & brick dwelling which according to an inventory form for the National Register of Historic Places was constructed in the “third quarter,

19<sup>th</sup> Century.” Pet. Ex. 5. Petitioner acquired the property several years ago at which time it was in poor condition. Petitioner has completely renovated the structure and photos were submitted showing the extensive improvements which were made. Pet. Ex. 8.

### SPECIAL HEARING

The special hearing request seeks a determination the property qualifies as a lawful nonconforming structure. Petitioner does not need to establish the use is nonconforming, since the property is zoned BL-CR, which permits a variety of commercial, office and residential uses. BCZR §230.1. The structure is nonconforming since the required setbacks, parking and landscaping are deficient under current zoning regulations. Since the structure was lawfully constructed over 150 years ago it qualifies as a lawful nonconforming structure under BCZR Section 104 and Maryland common law.

### SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. Based on the evidence and testimony at the hearing, and in the absence of any evidence to the contrary, I find Petitioners have satisfied the requirements of BCZR Section 502.1 and the Maryland case law interpreting that provision.

THEREFORE, IT IS ORDERED this 5<sup>th</sup> day of **November, 2018**, by this Administrative

Law Judge, that the Petition for Special Hearing to confirm the continued lawful use of a non-conforming commercial structure dating back to the late 1800's on a property with non-conforming setbacks, parking and landscaping, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit living quarters in a commercial building in a BL zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must comply with the ZAC comment submitted by DEPS, a copy of which is attached.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln