

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

WHITEHALL PARTNERS, INC.
Appellant

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Appeal No. AP2009-041

OPINION

This action is a request for a special exception to construct a boat ramp access and turn-around with 35 boat docks to accommodate a new subdivision (Potomac Estates). The subject property is located at Whitings Neck on the West Virginia side of the Potomac River, is owned by the Appellant, and is zoned Preservation.

A public hearing was held before the Board on August 19, 2009. Opposition was presented to this appeal.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellant proposes creation of a 35-lot subdivision having a common area fronting the river.
2. Appellant seeks approval for 35 dock slips and a boat ramp; the slips and ramp would be for the private use of the subdivision residents and would not provide for public access.
3. The requested number of slips is the maximum that would be built; actual constructed numbers will depend on homeowner demand as the subdivision is built.
4. The slips will be 10'x20' and will be "temporary" in that they can be removed at the end of the boating season or in the event of a flood.
5. Opponents to this appeal were generally from neighboring subdivisions. They complained about the number of docks proposed, the noise and congestion generated by additional boats using the river, and the general effects occasioned by the residential development of property in a scenic area.

6. The proposal, in kind but not necessarily in scope at this time, is compatible with the existing neighborhood and not in conflict with the Comprehensive Plan.

7. The subdivision will be built out in phases, with 14 or so lots developed in the first phase.

RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Section 28.62. The grant of a special exception is appropriate where the proposed use will have no greater “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981).

In this matter, Appellant proposes a reasonable use of the property that seeks to make appropriate use of the surrounding natural resources. The boat ramp occasions no objections and is an entirely appropriate use of property bordering a river. The boat slips are also an appropriate and unremarkable use of property bordering a waterway. Surrounding properties are improved with slips and ramps allowing for river access, and the proposed uses are not incompatible with the neighborhood. Therefore, both uses meet the test for the grant of a special exception.

We are concerned, however, by the adverse effects—namely noise, congestion, and excessive density—that are occasioned by the scope of the boat slip requests. Granting the full number of slips requested would essentially allow creation of a structure with the density of a “mini-marina” along the property. Furthermore, as demand for the slips is unknown at this time, and as noise and congestion are appropriate concerns raised by opponents to the project, we believe that it is imminently reasonable and responsible to limit the number of permitted boat docks to those expected to be necessary for the opening phase of the project. The Appellant has the right to seek approval for additional boat slips as the project progresses.

Weighing all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this

appeal is hereby GRANTED.

Condition

1. Approval is granted for the construction of 14 boat docks/slips.
2. The Appellant is permitted to request approval for additional docks/slips in the future.

BOARD OF APPEALS
By: Bert Iseminger, Chair

Date Issued: September 18, 2009