

DECISION  
TALBOT COUNTY BOARD OF APPEALS  
Appeal No 16-1655

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Easton, Maryland, beginning at 7:00 p.m., January 30, 2017 on the Application of **COMPOSITE YACHTS, LLC**, (Applicant). The Applicant is seeking a special use exception for the expansion of a yacht construction and boat service business classified as a Marine and Boat Sales and Assembly with Outdoor Commercial Storage and Sales to include the following: Construction of (1) a twenty three thousand five hundred sixty (23,560) square foot one story five bay boat storage/construction/repair /office/sales building; (2) a two hundred (200) square foot paint storage shed; and (3) permanent approval of a one thousand nine hundred thirty two (1,932) square foot poly steel structure. In addition the Applicant is requesting a variance to allow a ten (10) foot parapet architectural feature on the new building, resulting in a fifty (50) foot building height, thus exceeding the permitted forty (40) foot height limitation for structures. The requests are made in accordance with Chapter 190, Zoning, Article III, §190-16; Article V, §190-113; and Article IX, §§190-180 and 190-182 of the *Talbot County Code*, (the *Code*).

The property is located at 1650 Marina Drive, Trappe, Maryland 21673 in the Limited Commercial (LC) zone. The property owner is Last Chance Partnership and the Applicant is Composite Yachts, LLC. The property is shown on Tax Map 62, Grid 19, Parcel 21 (deed parcel 1).

Present at the hearing for the Board of Appeals were: Paul Shortall, Jr., Chairman; Phillip Jones, Vice-Chairman, members John Sewell, Margaret Young and Louis Dorsey, Jr., Anne C. Ogletree served as attorney for the Board of Appeals. Mary Kay Verdery, Planning Director, and Elisa Deflaux were in attendance.

Mr. Shortall opened the meeting, asking if all Board members had visited the site. After receiving affirmative responses, he requested that those persons who would be testifying stand and be sworn. After the witnesses were sworn the following exhibits were admitted into evidence:

- Exhibit 1 Application for Non Critical Area Variance and Special Exception with Attachment A.
- Exhibit 2 Tax Map of subject Property
- Exhibit 3 Notice of Public Hearing for Star Democrat advertising;
- Exhibit 4 Newspaper confirmation;
- Exhibit 5 Notice of Public Hearing and adjacent property owner list;
- Exhibit 6 Non Critical Variance standards;
- Exhibit 7 Special Exception standards;
- Exhibit 8 Staff Memo prepared by Elisa Deflaux dated 12/27/16;
- Exhibit 9 Planning Commission comments;
- Exhibit 10 Sign maintenance agreement;
- Exhibit 11 Site Plan (17 pages);
- Exhibit 12 Aerial by Lane Engineering;
- Exhibit 13 Elevation photo, (perspective);
- Exhibit 14 Floor Plan;
- Exhibit 15 Critical Area Commission comments, email of 01/25/17;
- Exhibit 16 State Highway comments, email of 01/30/17;
- Exhibit 17 Independent Procedures Disclosure and Acknowledgment Form;
- Exhibit 18 Aerial photo;
- Exhibit 19 Decision No. 648;
- Exhibit 20 Decision No. 1199;
- Exhibit 21 Sean Callahan email of 01/26/17 with 2 photos;
  - a. Mechanicals;
  - b. Elevation;
- Exhibit 22 Seam Callahan email of 01/27/17 with roof unit sketches and color illustrations without the parapet wall.

Mr. Thompson introduced himself as the attorney for the Applicant noting that Last Chance Partnership, a real estate holding entity, actually owns the property, but that Composite Yachts LLC, (Composite), the operating company, occupies the property and conducts the business on the property. Both entities are owned and operated by the same family.

He explained that Composite both builds and repairs boats on the site and that it has a reputation for producing very good boats -- a circumstance that is good both for the company and for Talbot County. Mr. Hardy's two sons work with him in the business, and the family has worked hard to earn Composite's reputation. Composite would very much like to stay in Talbot County, but to do so, it must be able to expand so that it can remain competitive with other boat builders.

For some period of time it looked as if the business would not be able to expand on its current site, as the land is low with substantial septic limitations, but, with the assistance of Sean Callahan and Lane Engineering and the cooperation of the State Highway Administration, (the SHA) the Applicant has obtained permission to run a force main to a second unimproved landlocked parcel that it owns. That parcel is located to the north of (but not contiguous to) the improved parcel. This permission will allow the business to expand over the sewage reserve area on the existing site, as it will no longer be necessary. It is anticipated that the expanded business will employ approximately fifteen (15) workers year round, and possibly as many as thirty (30) during the busy seasons. The expansion will be good for the county as well as the business. The proposed building, designed to be visually attractive, will allow for more work to be done inside, in climate controlled space, as well as allowing more inside storage.

Mr. Thompson noted that most of Talbot County's boat building and repair facilities are located in the incorporated towns, and this one is unique, as it is in the county, and does not actually front on water. He then introduced Sean Callahan who would be testifying on behalf of the Applicant.

Sean Callahan, a principal of Lane Engineering, Inc., 117 Bay Street, Easton, MD 21601 began his presentation by explaining that the project has been "in the works" for some time. Prior to the Board's hearing it has been to the Technical Advisory Committee (TAC) twice, and before the Planning Commission (the Commission) once. If the special exceptions and variance are approved, the project will have to go back to the Commission for final site plan approval.

He oriented the Board to the site by using the aerial photograph, Exhibit 12. He pointed out the existing white poly steel building, (temporarily permitted), currently used as a paint shop, and an existing masonry building which was converted to its current use approximately twenty (20) years ago. The site plan is arranged to allow the Applicant to keep both, and to build the new larger building.

Mr. Callahan then explained that the Applicant's property consists of two parcels separated by the existing motel. The northerly parcel is unimproved. The Applicant has obtained SHA approval for an easement for a force main in the SHA right-of-way that will allow the sewage to be handled on the landlocked unimproved northerly lot. The

Applicant has been before the Commission to seek its approval of the concept for the project, but will have to return to the Commission to finalize the site plan details, provided the Board approves the requested variances and special exceptions. The proposal is shown on Exhibit 11, Site Plan, p. 3. The existing property features that are to be removed are shown on Exhibit 11 p.4. Exhibit 11 p. 5 and 6 illustrate the proposed parking and storage plans. Mr. Callahan added that the depictions on Exhibit 11 were proposed, and that the Applicant, if approved by the Board, would have to return to the Commission for final site plan approval. He explained that even with the new structure there will be some outside storage of boats, but it will be more organized than the current arrangement and will result in better traffic flow. The witness acknowledged that the issues on the first trip to the Commission was the design of the entire site, recognizing that there will be some outside boat storage.

Mr. Callahan noted that there will be a swale surrounding the new structure, and that water would be directed to the storm water management pond that will be rebuilt and upgraded to meet the current regulations, in the IDA Critical Area District, adding impervious surface will require that the Applicant demonstrate that the proposed plan will result in an improvement in water quality in order to receive approval for the project.

Mr. Dorsey inquired about the bio-retention pond design. The witness responded that the initial submission, Exhibit 11, the plan before the Board, was just the concept plan. The stormwater pond must be rebuilt, but the final design will be one of the issues before the Commission on the Applicant's return visit, assuming that the Board grants the requested approvals.

He stated that the benefit of the proposed construction is that Applicant will be installing state of the art systems on a business property. He added that some of the bio-retention proposals call for installing as many as three hundred (300) plants in the stormwater management pond to improve water quality.

Mr. Callahan next explained the need for the height variance. The proposed building will be forty (40) feet tall to the ridge. State and Federal regulations require that a ventilation system be installed in the paint shed which will be housed in the center bay of the new five (5) bay structure. As one can see from the photographs introduced as Exhibits 21 and 22, the ventilation equipment creates a rather unsightly condition if not

shielded from view. The parapet architectural component is designed to shield the public from the view of the mechanical equipment on the rooftop. That parapet adds an additional ten feet to the height of the building, and has been designed to compliment the structure. There is no other way to vent the paint shop as required by federal and state environmental requirements, and, as noted the land is low, so that traveling by on Route 50, one will only see the commercial building, not the mechanicals.

Ms. Young commented that the architectural detail, the parapet, will actually provide adequate screening for the exhaust stacks and improve the look of the building.

Mr. Hardy commented that he really wanted to make the building attractive, as well as functional, and the parapet would block any view of the mechanical equipment. He added that the new building was pretty far back on the lot, and, although it was difficult to see from any of the photographs, the lot was about ten (10) feet lower than the adjoining motel, so that, from curbside, it would appear that the building was not exceeding the height limitation.

Mr. Callahan presented stills of a powerpoint presentation (Applicant's Exhibit 1) showing similar buildings at other boatyards up and down the east coast. The proposed structure is designed to be less "industrial" in aspect than most of those shown. He also presented photographs of buildings along Route 50 in Talbot and Dorchester counties such as the Hampton Inn<sup>1</sup>, in Easton, demonstrating that the proposal was similar in overall scale to commercial buildings along the Route 50 corridor.

The witness opined that the project is in complete conformity with the *Talbot County Comprehensive Plan* (the *Plan*). He pointed to Chapter 7 p. 7-5 that recognizes that employees of micro businesses (up to nine (9) employees) and small businesses (ten to twenty-four (10-24) employees) make up forty three percent (43%) of the county's work force, and are an important part of the county's economy. He emphasized that the proposed design comports with the countywide design policies expressed in Chapter 9 of the *Plan*<sup>2</sup> as it is intended to compliment the scale and design of other commercial structures along Route 50.

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<sup>1</sup> The height of that building is forty eight (48) feet, ten (10) inches.

<sup>2</sup> See, Design Policies p. 9-2, 9-7, sec. 2a-2e.

Ms. Young inquired about the landscaping planned for the property. The witness responded that currently the thought was that there will be trees and some bushes. The final landscape plan will be another matter to be decided by the Commission on the Applicant's return trip to that body. Mr. Thompson agreed, noting that the actual landscaping design was more a Commission question than one the Board needed to wrestle with.

Mr. Sewell asked if the need for the variance was caused by the existence of the mechanical equipment. Mr. Thompson stated it was. Mr. Hardy interjected that there might or might not be a chimney as well.

Mr. Jones stated that the zoning code and ordinances were not keeping pace with technology -- he suggested that there needed to be a text amendment to address equipment required by statute.

Mr. Thompson responded that an amendment didn't seem to be a political priority, as the county has no significant manufacturing interests to lobby for a change and make it easier for companies to comply. He reminded the Board that prior codes had made exceptions for church steeples and belfries, but those features are now dealt with by variances.

Mr. Sewell commented that he thought the Applicant's proposal to design a structure that was visually attractive was admirable.

Mr. Thompson pointed out that the situation was unique -- the property is one of a very small number of properties zoned LC and permitting commercial construction outside the incorporated towns. The *Code* allows the use and permits the Board to vary the height requirement. Federal regulations require the equipment, and it is impossible to put the ventilation equipment anywhere else in order for it to function properly and be approved by regulators.

Mr. Jones observed that the grade of the property also helped the Applicant.

Mr. Thompson agreed, suggesting that if one assumes that one of the purposes of the height restriction was to keep the horizon clear, then the grade of the property helped the Applicant meet that requirement.

Mr. Martin Hardy, principal of Composite Yachts, LLC was next to testify. He outlined his experience in the boat business. He came to Talbot County about twenty (20)

years ago and began his career with Swain who was building boats at Ferry Point. He later moved to Oxford and began his business at Bachelor's Point, eventually moving to the current location which was then a strip mall that the business renovated and has now outgrown.

Composite is a small business, with long time employees and enjoys a good reputation in the industry. He noted that the business is successful and is currently taking deposits for boats to be built eighteen (18) months out. The proposed improvements will keep Composite competitive with other manufacturers.

Mr. Hardy testified that he considered the Route 50 corridor to be the "Neighborhood" and that the new building was consistent in scale with others along the corridor, both in Talbot and Dorchester counties. He had the new structure designed to be attractive. The architect, Jay Corwin, has a reputation for designing attractive buildings.

In response to a series of questions from Mr. Thompson, Mr. Hardy stated that he had only had one complaint from a neighbor, Alan Gorsuch, for an incident concerning loud music on a weekend when he was not present. Once informed of the complaint, he addressed the matter immediately, and there have been no further complaints. The business does not cause trash, dust, odor, or other nuisances that could possibly affect neighbors. One of the reasons for the new building is that the emission regulations have changed, and the painting formerly conducted in the poly steel building will no longer be permitted. While that building may remain on site, it will be used for boat storage, or work out of the weather. The new improvements will not have an appreciable effect on traffic, as the business is not that of a working marina. There may be two to three (2-3) customers on site at one time. He believed that the construction of the new building is not likely to add the need for additional public services. The on site traffic will benefit from the proposal, as the interior traffic flow projected will provide a more orderly traffic pattern. (*See*, exhibit 11).

Mr. Thompson then requested that the Applicant address the non-critical area variance standards, asking a series of questions to elicit the Applicant's responses.

The Applicant testified that he felt the situation was unique because the business is required to have state of the art emission controls, and the only place that can be mounted is on the roof. The inside dimension of the building will be thirty-eight (38) feet in order to be able to service and construct larger boats, and the mechanicals, once installed, will exceed the height limitation. The Applicant is requesting the ten (10) foot variance to add the architectural detail to the front of the building to screen the mechanicals from sight. He added that the building height was the minimum necessary for the expansion -- most similar buildings are sixty to eighty (60-80) feet in height to accommodate modern boats.

Mr. Hardy addressed a comment in the staff report that had stated the business had not complied with prior landscaping plans. He explained that the business had, in fact, done the required plantings and constructed a fence, but that the trees had died out and been removed over time. The fence was damaged by on site traffic and was also removed. The Applicant will comply with any landscaping requirements shown on the final site plan, as it wants to have the most attractive facility it can create -- something it can be proud of.

Mr. Thompson called Mark Pellorin, a certified general appraiser who has worked evaluating boatyards and marinas. Mr. Thompson inquired if the proposed development would adversely affect neighboring properties.

Mr. Pellorin stated that he had looked at the property and the surrounding land. The neighboring properties on the west side of the highway were a marina, a motel and vacant land. He did not see any detriment to the surrounding properties, and, in fact, felt that the proposed expansion might be beneficial to the motel.

Mr. Thompson commented that the Applicant had no additional testimony.

The Chairman then asked if there were other members of the public who wished to comment on the Application.

Mr. Alan Gorsuch, 29841 Bolingbroke Point Drive, Trappe, MD 21673 was sworn. Mr. Gorsuch stated that he lives across Route 50 from the site, and that he attended the meeting to find out more information about the proposal. He felt that Composite was a great neighbor, and he was pleased with what has been done and will be done on the property. He was not, however, enamored of the poly steel building. He

explained that the building seemed to amplify sound and was not attractive. He had no objection to temporary use, but felt it should not be permanently approved. He also requested that any lighting be directed downwards or inwards so that it did not affect his property.

Mr. Woody Labat testified in support of the application. He found the principals of Composite to be capable and honest. The company provided employment, an important thing for the southern end of the county. The improvements were going to improve the visual impact of the business, and he believed it would encourage additional quality development.

There being no additional comments, Mr. Shortall asked if the members were ready for discussion on the application.

Mr. Jones stated that the difficult thing with variances is the uniqueness issue, because it's what makes the property special. In this case it is not one thing, but a combination of the following that he felt made the property unique: First, the necessary height of the building to accommodate larger boats; Second, the topography of this piece of property that is roughly ten feet below the surface of the adjoining land; third, the unique zoning and critical area designation of this property -- LC and IDA -- one of only two or three pieces of land in the county so designated and allowing the proposed use; fourth, the statutory or regulatory requirement for an emission control system that must be placed on the roof of the structure; and fifth, the requirement that the mechanicals be screened from view. All of these factors combined make this property very different. Given the testimony, he believes that the Applicant has met both sets of standards.

Ms. Young commented that she had heard nothing about the reason the poly steel building should be approved, nor has she heard anything about the two hundred (200) square foot paint storage building.

Mr. Callahan stated he had overlooked the paint storage building. It was needed because the regulations do not permit the storage of flammable materials in the same building as the paint shop. The existing storage shed will be removed as a part of the improvement plan. The proposal is to replace it with the two hundred (200) square foot structure as shown on Exhibit 11.

Ms. Young accepted that explanation, but asked why the poly steel building should continue, especially over the objections of neighbors. Mr. Dorsey added that he would like to know if it would continue to be used, as the new building will be larger, with more room to work.

Mr. Hardy responded that the building will be used for other projects that need to be done out of the weather such as varnish work. He pointed out that similar buildings were used in Annapolis boatyards, and that the building would have to be brought up to code. In response to an inquiry about the size and white color, the Applicant stated that the building was engineered to withstand certain wind loads and that it had to be white to allow light.

Ms. Young and Mr. Dorsey reiterated that they did not believe that the Board had been given enough information to approve the structure.

Mr. Thompson agreed and suggested that the Board continue the temporary approval for the poly steel building until such time as the new structure was complete, at which time the Applicant would be required to come back before the Board. The matter would be subject to further consideration of the Board at that time.

Mr. Jones indicated he had no objection to continuing the request as asked.

Ms. Young stated she could not vote for permanent approval of the poly steel building. Other than that, she felt the project was consistent with the *Plan* and, as noted in the staff comments, would be an enhancement to the area. She agreed that uniqueness is hard to prove, but the property is in an LC zone, one of few in that zone, and also in the IDA. That combination is unique.

Mr. Sewell also emphasized that it is rare to have county property in an IDA zone. Most of the IDA property in Talbot County is found in the incorporated towns. That adds to the uniqueness of the property.

Mr. Jones asked about the lighting plan for the site. Mr. Callahan responded that there were six (6) poles planned for the site, and all lighting would be directed downward or inward.

Ms. Young felt the lighting plan was a site plan approval issue.

There being no further discussion, the Board made the following findings of fact and conclusions of law with respect to the special exception standards:

1. The construction of a twenty three thousand five hundred sixty (23,560) square foot one story five bay boat storage/construction/repair/office/sales building and a two hundred (200) square foot paint storage shed are consistent with the purposes of the *Plan* in that they will allow an existing small business to continue to provide economic benefits to the county and the design of the new large building is in conformity with county design standards;
2. The proposed use is permitted in the LC zoning district, and the height limitation will be addressed by the grant of the variance discussed below;
3. The scale and general appearance of the new building is similar to that of other commercial buildings found along the Route 50 corridor;
4. There is no evidence before this Board that the proposed use will adversely affect adjoining or nearby properties. There was one isolated noise complaint that was immediately and appropriately handled by the Applicant, and the action complained of has not been repeated;
5. The expansion will have no adverse effect on public services;
6. The redesigned site will not generate marine, pedestrian or vehicular traffic that might interfere with existing traffic patterns;
7. The use may generate several additional vehicles per day, and that increase will not overburden the access roads;
8. Vehicular traffic in and around the site will be improved by the proposed redesign;
9. There is no evidence wildlife will be adversely affected. The site is currently developed, and the redevelopment will not affect habitat;
10. The use is existing, and has not affected agricultural uses in the area. The redevelopment of the site will not cause any adverse effect on adjoining or neighboring agricultural uses.

The Board made the following findings of fact and conclusions of law with respect to the variance standards:

1. In this case a combination of factors make the property unique: (1) the topography of the property -- it is roughly ten (10) feet lower than below the adjoining land; (2) the unique zoning and critical area designation of this property as both LC and

IDA -- the land is one of only two or three properties the county so designated; (3) the federal regulatory and statutory requirement for an emission control system; and (4) the requirement that the mechanicals be screened from view. All of those factors combined make this property unique.

2. The variance is required because federal statutory and regulatory requirements mandate an emission control system. The system is mounted on the roof and the variance will permit it to be screened from view;

3. The need for the variance is caused by the desire to present an attractive building to the public, not for either greater profitability or lack of knowledge of the requirements of the ordinance;

4. The variance will not be a detriment to adjoining properties and will not adversely affect the public interest. If anything, it will enhance the look of the proposed structure and cover unsightly but necessary mechanical installations on the roof of the building..

5. The variance is the minimum necessary to cover the mechanical equipment.

Mr. Shortall asked if any of the members had a motion on the Applicant's requests. Mr. Sewell moved that the Board approve the height variance requested by the Applicant for the reasons stated in its findings of fact. Mr. Dorsey seconded the motion which passed, with a unanimous vote, 5-0.

Mr. Jones moved that the Board approve the special exception for the twenty three thousand five hundred sixty (23,560) square foot one story five bay boat storage/construction/repair/office/sales building and the two hundred (200) square foot paint storage shed as requested.

Ms. Young asked that Mr. Jones amend the motion to also permit the continued temporary use of the poly steel building, until the completion of construction on the new buildings. At that time the Applicant could return to the Board for further consideration of the request to make the structure permanent. Mr. Dorsey recommended that the staff recommendations be added as conditions of approval.

Mr. Jones amended his motion as requested. Ms. Young seconded the motion. There was no additional discussion on the motion. It passed, 5-0 with all members voting to grant the two special exceptions (the one story five bay boat storage/construction

/repair/office/sales building and the two hundred (200) square foot paint storage shed) and continued temporary use of the poly steel building.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

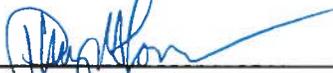
RESOLVED, that the Applicant, **COMPOSITE YACHTS, LLC** is hereby **GRANTED** the special exceptions for the one story five bay boat storage/construction /repair/office/sales building and the two hundred (200) square foot paint storage shed. Additionally, the Applicant is **GRANTED** the continued temporary use of the poly steel building until construction on the two new buildings is completed. At such time the Applicant must return to this Board for further determinations with regard to the future of the poly steel building. The Applicant is also **GRANTED** a variance to permit the addition of a parapet architectural detail resulting in a total building height not to exceed fifty (50) feet. The approvals are subject, however, to the following:

1. The Applicant shall obtain final site plan approval;
2. The Applicant shall make application to and follow all applicable rules, procedures, and construction timelines as outlined by the Office of Permits and Inspections for new construction;
3. The Applicant shall commence construction on the proposed improvements within eighteen (18) months of the date of the Board of Appeals approval or the Notice to Proceed for the Site Plan approval, which ever shall last occur.

GIVEN OVER OUR HANDS, this 21 day of March, 2017.

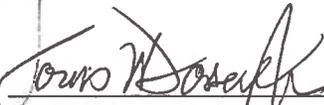
**TALBOT COUNTY BOARD OF APPEALS**

  
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Paul Shortall, Jr., Chairman

  
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Philip Jones, Vice-Chairman

  
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John Sewell, Member

  
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Margaret Young, Member

  
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Louis Dorsey, Jr., Member