

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 17-1665

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Route 50, Easton, Maryland, beginning at 7:00 p.m., April 10, 2017, to consider the application of **TWO HUNDRED NINETEEN, LLC** (Applicant). The Applicant is requesting special exception approval to renovate a historic fishing facility and waterman docking area by adding new bulkhead, finger piers, and piers to be used for the following: (1) Fisheries Activities Facilities – loading and off-loading for commercial watermen; (2) Marine Contracting – loading and unloading facility and material marshalling area; (3) Marinas – slip rental and boat docking; (4) Aquaculture (Wholesale) – shell stockpiling and spat tank, loading staging area. The property is located on 25815 Avonia Lane, Village of Bellevue, Royal Oak, Maryland in the Village Center/Critical Area (VC/CA) zone. The property owner is Bellevue Holdings, LLC. The request is made in accordance with Chapter 190 Zoning, Article III, §190-16, §190-26, and §190-68, Article VI, §190-147, and Article IX, §190-180 of the Talbot County Code (Code).

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Margaret Young, and Louis Dorsey. David R. Thompson, Esquire, 111 East Dover Street, Easton, Maryland 21601 represented the Applicant. Elisa Deflaux, Environmental Planner, appeared on behalf of the Talbot County Office of Planning and Zoning. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for special exception with Attachment A.

2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of special exception requirements from the zoning ordinance with the Applicant's response to each applicable requirement attached.
7. Staff Report.
8. Planning Commission recommendation.
9. Sign maintenance agreement.
10. Site Plan by Lane Engineering.
11. Aerial photographs of site.
12. Critical Area Commission comments dated March 31, 2017.
13. Maryland Board of Public Works Wetlands License No 16-0079.
14. U.S. Army Corps of Engineers permit.
15. Authorization letter from property owner, dated March 8, 2017.
16. Independent Procedure Disclosure and Acknowledgement Form.
17. Aerial photograph.
18. Photographs from March 3, 2017 site visit.
19. Photographs of site in 2016, submitted by Applicant.
20. Portion of a periodical article about the village of Bellevue with a photograph of the interior of the Turner Seafood Company building that previously occupied the site.
21. Email from Sean Callahan, dated March 15, 2017.

22. Letter from David R. Thompson, Esquire, dated March 28, 2017.

In his opening statement Mr. Thompson said that Bellevue Holdings, LLC is the current owner of the subject property and that Susan Hill is the contract purchaser. He said the title owner will be Two Nineteen Federal, LLC. Mrs. Hill is a member of Two Nineteen Federal, LLC. (The special exception application identifies the LLC as "Two Hundred Nineteen, LLC". Mr. Thompson said is the same entity with a change of name. This opinion will refer to the LLC as the Applicant.)

Mrs. Hill plans to lease the property to Bailey Marine Construction (BMC), a family owned company based in Tunis Mills, Maryland owned by her father, J. Lee Bailey. BMC has been in business and operated out of Tunis Mills continuously since 1885. The company constructs and maintains docks and piers throughout Talbot County. It is also engages in shoreline protection design and construction for waterfront properties.

Mr. Thompson said that the property is rare waterfront property that it is currently zoned to permit light industrial activities, those that were traditionally carried out in the various villages in Talbot County.

Mr. Thompson said that BMC will continue to be headquartered and operated out of the village of Tunis Mills, also in Talbot County. The Bellevue site will primarily be used as a marshalling yard when BMC is operating in areas of the Tred Avon River. When so used marine construction material such as timber, wood pilings, and rocks will be delivered to the Bellevue site by truck for loading onto the company's barge. The site is not intended as a permanent storage area for such products but merely as a staging area when necessary. The company's main material storage area will continue to be in Tunis Mills.

The Turner Seafood Company previously occupied the property. It was a family owned seafood processing company. There were docks and bulkheads where working boats moored and offloaded their catch. The seafood company closed some years ago and the docks and bulkheads are now in disrepair. The Army Corps of Engineers and the State of Maryland have issued the Applicant permits to restore the bulkheads and piers and to dredge the nearby channel for continuous access.

There is a leased oyster bed in the nearby waters of Tar Creek. The Applicant proposes to offer a portion of the site to the leaseholder to cultivate young oysters to be introduced into his leased oyster bed. The leaseholder will, from time to time, store cleaned oyster shells on the property. The shells provide a base for the young oysters and are introduced into the leased bed along with them. The Applicant intends that this oyster seeding operation be for that leaseholder only.

The property will also provide a protected place to moor BMC's barge when it is in use in and around the Tred Avon River.

Mr. Thompson emphasized that the Applicant will not create any new impervious surface on the property. The property is currently 97% covered by impervious surface. Some of the impervious surfaces are the remaining concrete foundations of buildings used by the former seafood processing plant. Most of the remaining surface is covered with packed oyster shells left over from its previous use as a site for seafood processing.

In response to questions from the Board Mr. Thompson said that the Applicant is proposing only five boat slips that will create, at most, five daily trips to the property, weather permitting. He also confirmed that BMC has a site at Easton Point at the head of the Tred Avon River. He said that development pressures at that location may eventually cause that site to be developed into something other than light industrial use.

The first witness was Mark Hill, 9810 Mill Point Road, Easton, Maryland 21601. Mr. Hill is an employee of BMC. He said the company's only business is the construction and maintenance of piers, bulkheads and living shorelines, mainly in Talbot County, Maryland.

Mr. Hill said that the proposed five slips will be offered free for the use of five "hand-picked" watermen. He said that their daily presence on the property would provide security and would help maintain the channel. He also said that BMC has no intention of getting into the aquaculture business. The oyster bed leaseholder is a personal friend and the site would provide a convenient location for staging his business of introducing young oysters onto his leased oyster bed. The operation will not create any obnoxious smells. It will result in minimal daytime noise associated with loading and unloading oyster shells.

BMC will only use the Bellevue property periodically. They prefer to conduct their shoreline construction activities from their customers' properties. It is easier and usually less expensive to deliver materials and equipment by land. However, when conditions do not permit, they deliver material and equipment by and work from a barge. Wet weather is a typical condition that creates soft soil limiting their ability to work from the shore. In other cases the property itself may be configured in a way that prohibits access to the shoreline. In these circumstances they must work from a barge and will use the Bellevue property as a staging area when working in that part of the County.

He said that material will be delivered to the Bellevue property by truck on an as needed basis. The company's main material storage site will continue to be in Tunis Mills. He said that the existing access road to the property is adequate for delivery trucks.

There will be a dumpster on the site for the disposal of scrap cut up piers and bulkhead material. Also, the company proposed to construct a small structure to house the well expansion tank. There is an

existing well on the property and it is served by a county sewer line. There is a small area of wetlands currently on the property. The company will mitigate any disturbance by creating a larger wetland area on the property.

Mr. Thompson then introduced an undated letter from Steve McHale, McHale Landscape Design, Inc., 29459 Pintail Drive, Easton, Maryland 21601. Mr. Thompson said that Mr. McHale had visited the site to survey the soil conditions of the property. His findings confirmed the impervious conditions stated earlier. The letter was admitted as Applicant's Exhibit No. 1. He also introduced a letter from Bruce C. Bagley, 420 Cosden Road, Barclay, Maryland 21607. Mr. Bagley is a soil scientist and he visited the site on April 10, 2017. He said that Mr. Bagley's findings confirmed soil conditions and the impervious nature of the property's surface. His findings were that the entire site is covered by 16 to 20 inches of compacted oyster shells over compacted soil and the entire property is impervious. His letter was admitted as Applicant's Exhibit No. 2.

The next witness was Edzel Turner, 5706 Poplar Lane, Royal Oak, Maryland 21662, a nearby property owner. He said he is a Bellevue native and the Turner Seafood Company was operated by his family. He found no problem with the application.

Michael E. Turner, Sr., 5690 Poplar Lane, Royal Oak, Maryland 21662 also said that he had no objection to the application.

William A. DeShields, 5664 Poplar Avenue, Royal Oak, Maryland 21662, was opposed to the application. He was concerned with the noise that might be created by the proposed use of the property. He was also concerned that the roads to the property were inadequate and that piles of oyster shells might be unsightly and create offensive odors. He was also concerned that the traditionally Black population of Bellevue was being displaced by development such as the proposal.

Bobby Leonard, 10221 Copperville Road, Easton, Maryland 21601, testified that he is the oyster bed leaseholder mentioned earlier in the hearing. He said that he leases oyster beds from the State of Maryland and sows and harvests oysters from those beds. He explained that new born oysters, known as spat, are introduced into a spat tank filled with clean oyster shells and water. The spat attach themselves to the shells in a matter of days. Shortly thereafter the shells are removed from the tank and placed on a leased oyster bed. The newly seeded spat can only survive a few hours of transportation from the spat tank to the bed. His current spat tanks are near Edge Creek and transportation from that site to his leased bed in the Tred Avon takes three to four hours. He expects that the spat survival rate from the Bellevue site to his leased bed in the Tred Avon River will be much higher. He confirmed that the seeding shells have to be washed and clean and those he will use at the Bellevue site will be washed and cleaned before they are delivered.

Mr. Leonard said that he has known the subject property for many years and it was always used for commercial seafood processing until the business closed.

The plats provided by the Applicant show one spat tank near the shoreline and one area for storage of oyster shells.

Sean Callahan, Lane Engineering, 117 Bay Street, Easton, Maryland 21601, testified in support of the application. He said that Lane Engineering had been working on the proposal since 2015 and had obtained all of the required marine construction permits from the Federal and State government agencies. He confirmed that the property had a 12-foot right-of-way as access from Poplar Lane, the closest public road. He also said that the width of Poplar Lane is sufficient to allow material trucks to safely make turns to and from the access road to the property. He also confirmed that most, if not all, of the existing surface of the property is impervious.

Mr. Callahan also made a Power Point presentation to the Board. The presentation contained various plats and pictures of the property and surrounding areas. During the presentation he related the proposal to the Talbot County Comprehensive Plan and the draft Bellevue Master Plan. He provided the Board with a printed copy of the Power Point presentation. It was included in the record as Applicant's Exhibit No. 3.

Mark Pellerin, 26197 Royal Oak Road, P.O. Box 14, Royal Oak, Maryland 21662, testified in support of the application. He is a certified real estate appraiser. He said that the proposal will not adversely affect property values in the area.

Eric Chandler, 5710 Poplar Lane, Royal Oak, Maryland 21662 testified that he is pleased with the proposal for the property. He said that the property has historically been commercial and should remain commercial.

Mary DeShields, 5664 Poplar Lane, was opposed to the proposal. She said that the proposed use of the property is not noiseless and it will adversely impact the quietness and serenity of the neighborhood.

There being no further evidence, the Board considered the application. Upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. The proposed use is consistent with the purposes and intent of the Talbot County Comprehensive Plan and complies with the standards of the land use district in which it is located. The property has historically been used for commercial maritime activities, mainly as a seafood processing and packing plant. That use was abandoned and the buildings serving that activity were removed in 2007. The Applicant proposes to resume

the commercial maritime use of the property. One of the proposed uses is as a mooring dock for five small commercial fishing boats of the type that are typical in many villages throughout the County. The other uses, staging areas for dock building and oyster seeding are also typical commercial maritime activities that exist throughout the County, especially in village settings. The proposed uses are compatible with villages in the County as described in the Comprehensive Plan.

3. The proposed use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance. The proposed uses are permitted by the Code as special exception uses.
4. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property. The proposed use is compatible with the nearby residential, commercial, maritime, and agricultural properties. The property is of sufficient size to accommodate the proposed uses.
5. The use will not constitute a nuisance to other properties and will not have significant adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. The Applicant will not create any offensive noise or odor. Activities on the property will be during the work day and only periodically. The Applicant's site improvements will improve stormwater drainage. Restoration of the abandoned piers and bulkheads will visually improve the property.

6. The use will not have significant adverse impacts on public facilities or services including roads, schools, water and sewer facilities, police and fire protection, or other public facilities or services. The property is served by a public sewer system. Any traffic associated with the use will be minimal and can be accommodated by the existing public roads and driveway. Existing police and fire protection are sufficient for any foreseeable emergency needs created by the use.
7. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic. Work boats have historically used the property as a site for mooring and off-loading. The proposed use will be similar. The restored bulkheads and docking facilities will likely result in less runoff and silting in the adjacent waters.
8. The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. Traffic associated with the proposed use will be light and periodic.
9. Any vehicle access to proposed off-street parking areas and drive-in facilities are designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. The proposal will not result in a significant increase in commercial and truck traffic using residential streets and will not create a hazard to developed residential areas. Commercial truck traffic associated with the proposed use will not conflict with nearby residential uses and will not create a hazard.

10. The proposed use will not adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. The site is covered with compacted oyster shells and in a village area. To the extent there is any wildlife on the property it will not be impacted by the proposed use.
11. The proposed use will not adversely affect any adjacent existing agricultural uses. There are no nearby agricultural activities. The proposed use should have no such impact.

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

RESOLVED, that the Applicant, **TWO HUNDRED NINETEEN, LLC** (Appeal No. 16-1665) is **GRANTED** the requested special exception, consistent with the evidence submitted to the Board of Appeals and subject to the following conditions. (The conditions set forth herein apply to the Applicant and to any of its successors or assigns.)

1. The Applicant shall obtain and keep current all Federal, State, and local permits for the applicable uses.
2. The Applicant shall apply for and comply with the requirements of a Minor Site Plan approval from the Talbot County Planning Office and the Planning Commission, if the Planning Officer chooses to bring the matter before the Commission.
3. The Applicant shall provide landscaping and screening consistent with the Comprehensive Plan and the Zoning Ordinance.

Planning Office staff, in the Staff Memo (Board's Exhibit No. 7), recommended the Board of Appeals condition approval of the special exception with a requirement that the Applicant apply for a

variance for encroachment into the shoreline development buffer with any new lot coverage as a result of its development activities on the property. The evidence presented at the hearing, particularly the testimony of Sean Callahan and Applicant's Exhibits No. 1 and No.2, indicated that at least 97% of the surface area of the property is currently impervious consisting of former building foundations or compacted oyster shells and the proposal will not result in any new lot coverage. Thus, the Board of Appeals did not adopt that recommendation.

The vote of the Board of Appeals was five to zero to grant the special exception subject to the aforementioned conditions.

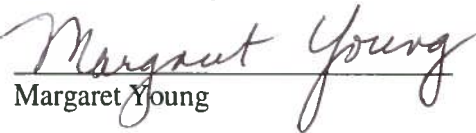
GIVEN OVER OUR HANDS, this 11th day of May, 2017.

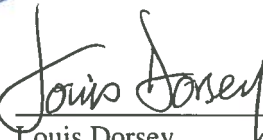
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Board of Appeals.TwoHundredNineteen,LLC.SpecialException