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July 14 2021

VIA HAND DELIVERY

City of Bayonne, Division of Planning & Zoning
Municipal Building
630 Avenue C
Bayonne, New Jersey 07002
Attn: Tracey Tuohy, Zoning Officer

**RE: FlyJetSki LLC (the "Appellant")
Appeal of Zoning Officer's Determination (the "Appeal") & Interpretation of
Zoning Ordinance (the "Interpretation")
50 Marina Drive, Bayonne, NJ 07002 (the "Property")
Block 47, Lot 8**

Dear Ms. Tuohy:

As you may be aware, this office represents the Appellant in connection with the above-referenced Appeal and Interpretation. The Appellant is proposing to utilize a portion of the existing marina on the Property, which is located within the R-3 zone (the "Zone"), for a jet ski rental business (the "Proposed Use"). The Appellant received a letter of denial with respect to the Proposed Use, dated June 24, 2021, which is annexed hereto for your reference as **Exhibit A: Zoning Denial** (the "Denial"). It is our position that the Denial erroneously identified a use variance for the Proposed Use, and the Appellant is seeking a reversal of the Denial by the Board of Adjustment (the "Board") in accordance with § 33-4.1(c) of the City of Bayonne Code (the "Code") on the basis that the Proposed Use is permitted on the Property. Specifically, § 33-4.1(c) states:

Appeals to the Board of Adjustment pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-70a.), may be taken by any interested party affected by any decision of the Zoning Officer based on or made in the enforcement of this chapter or other land use ordinance. Such appeal shall be taken within 20 days of the letter of denial by filing a notice of appeal with the Zoning Officer stating the grounds of such appeal.

See Code at § 33-4.1(c).

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In accordance with N.J.S.A. 40:55D-70(a) and N.J.S.A. 40:55D-72 and the above-referenced section of the Code, please immediately transmit to the Board all of the documents submitted to your office in connection with the Proposed Use.

Moreover, to the extent that the Denial is an interpretation rather than a formal determination, the Appellant seeks the instant Interpretation from the Board, pursuant to N.J.S.A. 40:55D-70(b) that the Proposed Use is permitted.

As to the substance of the Appeal, it is our position that the Denial erroneously requires a use variance pursuant to N.J.S.A. 40:55D-70(d)(1) be issued in order to operate a jet ski rental business within the existing marina facility. Specifically, the Denial explains in relevant part:

According to Section 33-2.2 of the City of Bayonne Planning and Development Regulations, a marina by definition, shall mean a facility for storing, servicing, fueling, berthing and securing of pleasure boats and which may include eating, sleeping and retail facilities for owners, crews and guests.... It is, therefore, my interpretation that a Jet Ski rental business is not a permitted use at this location and your client will need to put forth an application to the Zoning Board of Adjustment for major site plan review and approval as well as a use variance.

See Denial (emphasis added).

However, this determination is flawed for a number of reasons. First, the Denial itself (referencing the Code) states clearly that retail facilities for owners, crews and guests are acknowledged – and expressly permitted – features of a marina. Not only is there no prohibition on a retail component; on the contrary, a retail component is understood, accepted and even expected as part of the marina use.

Furthermore, even assuming, *arguendo*, that the Code’s definition of “marina” does not expressly permit a jet ski rental business to operate as part of a marina use, nevertheless, “recreation facilities associated with multifamily developments” – which are defined as “a place where sports, leisure time activities and customary and usual recreational activities are carried out” – are expressly permitted accessory uses within the Zone. See Code at Section 35-5.4(c)(6) and Section 33-2.2. Based on a strict reading of this language as well, the Proposed Use would fit the definition of a “recreation facility” and therefore nevertheless be permitted.

The Code is clear that in the subject Zone, the Proposed Use would be permitted both as an inherent part of the marina, as well as a recreation facility associated with a multifamily development. Accordingly, the Appellant contends that the Denial is flawed and the Proposed Use should be permitted to operate within the existing facilities.

Tracey Tuohy
July 14 2021
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In connection with this Appeal & Interpretation, please find enclosed a Notice of Appeal and a copy of the letter of denial, dated June 24, 2021. Kindly confirm receipt of this submission and advise when the Appeal may be scheduled for a hearing before the Zoning Board of Adjustment. Thank you very much for your assistance and please feel free to contact me with any questions.

Sincerely,

/s/ Jason R. Tuvel
Jason R. Tuvel, Esq.

JRT:btfw
Enclosures

cc: Alicia Losonczy, Board of Adjustment Secretary, *via email*