

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(105 & 109 Back River Neck Road)	*	OFFICE OF
15 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
Frederick W. & Helen L. Schmitt, <i>et. al.</i>	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>	*	
Petitioners	*	Case No. 2015-0106-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Frederick W. and Helen L. Schmitt, and Lorie Durkee, legal owners. As originally filed, the zoning petition pertained only to 109 Back River Neck Road, which as discussed below is a small unimproved parcel. After discussions with the community and the Office of People’s Counsel, the Petition was amended to include 105 Back River Neck Road, on which the Petitioners have operated a service garage since 1946. An amended site plan was submitted at the hearing (Ex. No. 2) which includes both properties and the zoning relief requested for each.

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit business parking in a residential zone. A Petition for Special Exception was filed pursuant to B.C.Z.R. §230.13 to allow business parking for a service garage in the BL-AS portion of the property. Finally, a Petition for Variance was filed pursuant to B.C.Z.R. as follows: (1) to allow a parking area with an RTA buffer and setback of 0 ft. in lieu of the required 50 ft. buffer and 75 ft. setback, respectively, pursuant to §1B01.1.B.1.e (2) & (5); (2) to allow the existing 6 ft. high screen fence to remain in lieu of the required 8 ft. high screen fence pursuant to §405A.1; (3) to allow gravel parking and drive aisles in lieu of the required

durable and dustless surface on the rear portion of the parking lot; (4) to allow a front yard setback of 4 feet in lieu of the required 25 feet; and (5) to allow a rear yard setback of 9 feet in lieu of the required 30 feet for a service garage building that has existed on the property since 1946.

Appearing at the public hearing in support of the requests was Frederick and Helen Schmitt and Donald E. Hicks, P.E., from Hicks Engineering Associates, Inc, the firm that prepared the site plan. Timothy Kotroco, Esq., represented the Petitioners. Peter Zimmerman, People’s Counsel and Kevin McDonough also attended the hearing. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were submitted by the Bureau of Development Plans Review (DPR), which noted that a landscape plan is required for the site.

The unimproved parcel (109 Back River Neck Road) is approximately 0.311± acres in size and is zoned BR-AS, BL-AS, BL and D.R. 5.5. The service garage property (105 Back River Neck Road) is 0.187+/- acres and is zoned BR-AS. Petitioners recently acquired the unimproved lot, which they propose to use for parking in connection with the adjacent service garage business.

SPECIAL HEARING

Business parking in a residential zone is permitted under B.C.Z.R. §409.8, provided the conditions therein are observed. Mr. Hicks testified Petitioners satisfied the requirements in the regulations and that the use (which would involve employee parking for approximately 10 vehicles) would not be detrimental to the community. I concur, and the site plan enumerates several conditions designed to reduce or eliminate any negative impacts upon surrounding properties.

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 court in Schultz described the applicable test in this fashion:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 22-23.

No evidence was presented which would rebut this presumption, and the petition will be granted. The “special exception area” encompassing only the BL-AS zoned portion of the property is in fact extremely small; i.e., only 1 or 2 vehicles can be parked in the area. As such, there would be little or no discernable impact upon the community from this *de minimis* special exception use.

VARIANCES

Based upon the testimony and evidence presented, I will grant the request for variance relief.

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People’s Counsel, 407 Md. 53, 80 (2008).

The property is narrow and deep, and also contains four different zoning classifications. As such it is unique. If the B.C.Z.R. were strictly interpreted, Petitioners would experience a practical difficulty, given they would be unable to use the proposed property for parking in connection with the service garage. In addition, the front and rear yard setback variances pertain to the service garage building at 105 Back River Neck Road, which has existed on the site for nearly 70 years. Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health,

safety, and general welfare. This is demonstrated by the lack of County and/or community opposition.

THEREFORE, IT IS ORDERED this 28th day of July, 2015 by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit business parking in a residential zone, be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Special Exception pursuant to B.C.Z.R. §230.13 to allow business parking for a service garage in the BL-AS portion of the property, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to allow a parking area with an RTA buffer and setback of 0 ft. in lieu of the required 50 ft. buffer and 75 ft. setback, respectively, pursuant to §1B01.1.B.1.e (2) & (5); (2) to allow the existing 6 ft. high screen fence to remain in lieu of the required 8 ft. high screen fence pursuant to §405A.1; (3) to allow gravel parking and drive aisles in lieu of the required durable and dustless surface on the rear portion of the parking lot; (4) to allow a front yard setback of 4 feet in lieu of the required 25 feet; and (5) to allow a rear yard setback of 9 feet in lieu of the required 30 feet for a service garage building that has existed on the property since 1946, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

3. The dumpster on the service garage property must be placed within an enclosure to screen it from view of the roadway.
4. Damaged or disabled motor vehicles may not be stored anywhere on the property for a period in excess of 30 days.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln