

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	*	OFFICE OF
<b>(Pulaski Hwy.)</b>	*	ADMINISTRATIVE HEARINGS
15 <sup>th</sup> Election District	*	FOR BALTIMORE COUNTY
6 <sup>th</sup> Council District	*	<b>Case No. 2016-0252-SPHXA</b>
Sligh & Howarth Assoc., Inc.	*	
<i>Legal Owner</i>	*	
Petitioner	*	

\* \* \* \* \*

**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 Sligh & Howarth Assoc., Inc., legal owner (“Petitioner”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve the relocation of a lot line situated between two separate parcels of property under common ownership. In addition, an amended Petition for Variance seeks to allow a mobile home to be placed within 75 ft. to a boundary line for Unit Nos. 1, 2, 3, 4 & 8. Finally, a Petition for Special Exception was filed pursuant to B.C.Z.R. §253.2.A.4 to allow a mobile home park addition in an ML-IM zone contiguous to a lawfully existing mobile home park, as shown on the site plan.

Appearing at the public hearing in support of the requests was Margaret Teal, Doris Sligh, Ernest Sligh and professional engineer John Gate. Timothy M. Kotroco, Esq., represented the Petitioner. Richard Pitz, on behalf of the Essex Middle River Civic Council, attended the hearing to express concern about certain aspects of the case. 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) and the Department

of Planning (DOP).

The subject property is approximately 4.84 acres in size and is split-zoned MH-IM, ML-AS and ML-IM. The property is unimproved and is adjacent to a much larger parcel also owned by Petitioner, on which is operated the Sleepy Hollow mobile home park. Petitioner proposes to use the subject property for an expansion of the existing park, and the original site plan (Pet. No. 1) proposed 10 new mobile homes and also reflected Petitioner would need certain environmental variances to remove two specimen trees and reduce principal building setbacks from a forest buffer. Following review by County agencies, an amended plan was filed (Pet. No. 2) proposing 8 new mobile homes and eliminating the requests for the environmental variances that were filed with the Department of Environmental Protection and Sustainability (DEPS). This is somewhat of an unusual case, in that after reviewing the plans and other exhibits it appears only a fraction of the relief requested originally is required, as explained below.

### **Variances**

The variances were sought under B.C.Z.R. §414, which regulates mobile home parks. That section requires (among other things) each mobile home to be located at least 75' from a boundary line. In this case, that "boundary" was created by Petitioner's acquisition of the subject property. In other words, except with regard to Unit No. 8 the variances are sought from an internal lot line. Petitioner owns the property on both sides of the boundary and mobile homes would be located on both parcels. Moreover, the site plan indicates several of the new mobile homes would actually straddle the "boundary" line in question, and Petitioner's goal and intent is to integrate the subject property and the 8 new units into the longstanding Sleepy Hollow mobile home park.

In these circumstances, I believe the lots would merge for zoning purposes such that (except for Unit No. 8) there would be no "boundary" line from which a 75' setback would be

required. Maryland's highest court has noted that when a landowner integrates or uses contiguous lots in service of a single structure or project, the plotted lines remain for title purposes but a single parcel is created for zoning purposes. Friends of the Ridge v. BGE, 352 Md. 645 (1999). As such, the only variance needed pertains to Unit No. 8, which would be situated 57' from the boundary line of the property owned by William & Sandra Gephardt. This is a modest request which is unlikely to have any discernable impact upon the community.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioner has met this test. The subject property has irregular dimensions and is bisected by Reames Road, a public street. As such it is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to locate Unit No. 8 as proposed. Finally, I find that the variance 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.

### **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 Schultz standard was revisited in People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

In this case Mr. Gate testified (via proffer) Petitioner satisfied the requirements of B.C.Z.R. §502.1 governing special exceptions, and it was noted the County Council enacted legislation in 2015 permitting by special exception a “mobile home park addition” in the ML-IM zone when “contiguous to a lawfully existing mobile home park.” Bill No. 27-2015, codified at B.C.Z.R. §253.2.A.4. While Mr. Pitz on behalf of the community noted his organization is opposed to variances being granted as a routine matter, none of his testimony was directed towards the special exception factors or standards. As such, the petition will be granted.

### **Special Hearing**

A petition for special hearing was filed to approve a lot line adjustment between “two separate parcels of property under common ownership.” It appears Petitioner seeks this relief to avoid the scenario where Unit Nos. 1-4 would straddle the existing property line. As discussed at the hearing, I do not believe such relief is required in this case since as noted above the parcels will merge by operation of law. In any event, I do not believe the ALJ has authority to approve a lot line adjustment, which is a development matter to be handled by the Department of Permits, Approvals and Inspections or the Development Review Committee, per B.C.C. § 32-4-106.

### **ZAC Comments**

The DOP had no objection to the plan, but requested landscaping be provided to screen the non-residential buildings located to the west of the site. Such a condition is included in the order below. The Bureau of DPR expressed two concerns, both of which have been addressed herein. The first related to the lot line adjustment. As noted above I believe that relief is unnecessary, and in any event cannot be obtained through a special hearing. That agency was also concerned with the potential loss of open space shown on the plat for Sleepy Hollow. In response to that concern, Petitioner reduced from ten to eight the number of units proposed,

which in turn allowed it to create two open space parcels on site totaling 0.27 acres. This additional space will exceed the amount of open space “taken” from the existing mobile home park (i.e., 0.18 acres), as shown on Pet. Ex. No. 3.

THEREFORE, IT IS ORDERED this 7<sup>th</sup> day of **June, 2016**, 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 approve the relocation of a lot line situated between two separate parcels of property under common ownership, be and is hereby DISMISSED without prejudice as unnecessary.

IT IS FURTHER ORDERED that the Petition for Special Exception filed pursuant to B.C.Z.R. §253.2.A.4 to allow a mobile home park addition in an ML-IM zone contiguous to a lawfully existing mobile home park, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance from B.C.Z.R. §414.4 to allow a mobile home (Unit No. 8) to be situated 57 ft. from a boundary line in lieu of the required 75 ft., be and is hereby GRANTED. The remainder of the variance requests shall be DISMISSED without prejudice as unnecessary.

The relief granted herein shall be subject to the following:

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

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