

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		
<b>(5701 Deer Park Road)</b>	*	OFFICE OF
4 <sup>th</sup> Election District		
4 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
Jay M. Simonds, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	<b>Case No. 2016-0289-SPHX</b>
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Jay M. Simonds, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to expand the scope of the Order in Case No. 07-411-SPHXA to apply to the entirety of Lot 2 of Simonds Property Subdivision, 5701 Deer Park Road, comprising approximately 11 acres. A Petition for Special Exception was filed pursuant to B.C.Z.R. §1A03.3.B.11 to use the described property for a landscape service operation.

Appearing at the public hearing in support of the requests was Jay M. Simonds and professional engineer John Motsco. Edward J. Gilliss, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not object to the requests, and the one concern identified by DOP will be included as a condition in the Order below.

### **Special Hearing**

In 2007, former Deputy Zoning Commissioner (DZC) Murphy granted a petition for special exception in Case No. 07-411-SPHXA, permitting in the RC4 zone a landscape service operation on a parcel containing 2.475 acres of land. This parcel, or “special exception area,” was only a portion of Lot 2 of the Simonds Property Subdivision. As DZC Murphy noted in his Order, the Petitioner’s home is located on Lot 1 of that minor subdivision. Exhibit 3, at pp. 3-4. The current request is to expand the special exception area to encompass all of lot 2, which has a total area of approximately 11 acres.

The Petitioner’s business has operated at this site for many years without complaint, and the landscaping business is screened from view of passing motorists by a large row of mature evergreen trees. I do not believe granting the special hearing relief would be injurious in any way to the community, and there has been no opposition from County review agencies or neighbors. As such the request will be granted.

### **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. Mr. Motsco testified (via proffer) the Petitioner satisfied the requirements of B.C.Z.R. §502.1 and I concur. There is no evidence in the record to suggest the landscape operation would be detrimental to the health, safety or welfare of the community. As such, this request will also be granted.

THEREFORE, IT IS ORDERED this 15<sup>th</sup> day of July, 2016, by this Administrative Law Judge, that the Petition for Special Hearing to expand the scope of the Order in Case No. 2007-411-SPHXA to apply to the entirety of Lot 2 of Simonds Property Subdivision, 5701 Deer Park Road, comprising approximately 11 acres, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception pursuant to B.C.Z.R. §1A03.3.B.11 to use the subject property herein described (i.e., the entirety of Lot 2) for a landscape service operation, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 comply with ZAC comment of the DOP, a copy of which is attached hereto and made a part hereof.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln