

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(7404 Windsor Mill Road)	*	OFFICE OF
2 nd Election District		
4 th Council District	*	ADMINISTRATIVE HEARINGS
Rasha Realty, LLC		
<i>Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2017-0231-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Rasha Realty, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to allow business parking (customer & employees) in a residential zone. In addition, a Petition for Variance seeks: (1) to allow an 8 ft. residential transition area (RTA) buffer width in lieu of the required 50 ft.; (2) to allow an 8 ft. setback in lieu of the RTA required setback of 75 ft.; and (3) to allow a gravel parking surface in lieu of the required durable and dustless surface. A redline site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Craig Rodger and Paul Douglas Farace. Timothy M. Kotroco, Esq. represented Petitioner. There were no protestants or interested citizens in attendance, although the Office of People’s Counsel submitted a letter dated April 10, 2017 concerning an issue in the case. That correspondence is contained in the case file and will be discussed below. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Neither agency opposed the requests. DPR requested Petitioner show on the plan a County

sewer easement and proposed right-of-way for Pine Avenue, and those changes were made to the site plan.

The subject property is approximately one acre in size and is split-zoned DR 5.5 and BM. In the BM zoned portion of the property Petitioner conducts a towing operation, which has been in business at this location for over 35 years. Petitioner owns three flat-bed roll-off tow trucks, and is a county-approved accident tower. Petitioner explained many of the vehicles towed to his lot are never claimed, and the vehicles must remain at the subject property until the police department processes the requisite paperwork to have the cars deemed abandoned. At that point the vehicles are sold to scrap dealers.

The stockpile of unclaimed vehicles (all of which are stored on the BM zoned portion of the site) has grown, and those vehicles now occupy parking spaces Petitioner would otherwise use for customers and/or employees. As such, Petitioner seeks to relocate customer and employee parking onto the D.R. zoned portion of the site. This tract of land is unimproved and is not at present being used in connection with the towing business. No other construction or improvements are proposed.

SPECIAL HEARING

Numerous photographs were submitted which show the subject property is surrounded by several other vehicle towing businesses, as well as a school bus depot. See Ex. Nos. 6-8. While there are single-family dwellings on either side of the site, the owners have indicated they do not oppose the zoning requests. See Ex. No. 5. After reviewing the photographs and site plan I do not believe parking passenger vehicles on this portion of the property would have a detrimental impact upon the community. I also find Petitioner has satisfied the requirements set forth at B.C.Z.R. §409.8.B., which authorizes business or industrial parking in a residential zone.

VARIANCE

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 property has irregular dimensions and is split-zoned. As such it is unique. Petitioner would experience practical difficulty if the regulations were strictly interpreted because it would be unable to expand the parking required for the business. Finally, as demonstrated by the lack of County and/or community opposition, I do not believe granting the request would have a detrimental impact upon the community.

As noted above, the Office of People's Counsel submitted a letter to the undersigned contending this case should be dismissed based on *res judicata*. Mr. Zimmerman notes that a variance request was denied by the Deputy Zoning Commissioner in a previous case involving this property. See Case No. 2004-0491-A. In that case Petitioner proposed to construct a large (50' x 96') commercial building on the property and sought variances to do so. Mr. Zimmerman points out the plan in this case also shows a 50' x 96' building on the property, and that since the circumstances are the same or substantially similar to those in the 2004 case *res judicata* is applicable.

If Petitioner proposed to construct such a building at this time, I would agree the case should be dismissed based on *res judicata*. But Petitioner indicated that the building was mistakenly shown on the original plan filed with the petition, and it was removed on the plan submitted at the hearing (See Ex. No.1). Petitioner does not propose to construct such a building and the relief granted herein shall not entitle it to do so. Since the commercial building has been

removed from the plan, I believe there has been a significant change in circumstances compared to the 2004 case. As such I do not believe *res judicata* is applicable in these circumstances. *See, e.g., Alvey v. Hedin*, 243 Md. 334, 340 (1966) (*res judicata* will not apply when there is a significant change in circumstances between the earlier and subsequent action).

THEREFORE, IT IS ORDERED this 26th day of **April, 2017**, 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 allow business parking (customer & employees) in a residential zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow an 8 ft. residential transition area (RTA) buffer width in lieu of the required 50 ft.; (2) to allow an 8 ft. setback in lieu of the RTA required setback of 75 ft.; and (3) to allow a gravel parking surface in lieu of the required durable and dustless surface, 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. No damaged, disabled and/or inoperative vehicles shall be parked or stored on the D.R. zoned portion of the property.
3. Petitioner shall be permitted to park no more than three (3) tow trucks on the D.R. zoned portion of the property.
4. Petitioner shall provide landscaping at the site as determined in the sole discretion of the Baltimore County landscape architect.

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

JEB/sln

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County