

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(10220 Liberty Road)	*	OFFICE OF
2 nd Election District		
4 th Council District	*	ADMINISTRATIVE HEARINGS
Little Roundtop Development LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
 Petitioner	 *	 Case No. 2017-0274-SPHXA
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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 Little Roundtop Development LLC, legal owner (“Petitioner”).

The Petition for Special Hearing was filed pursuant to §409.12 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve a parking plan modifying the following requirements set forth in B.C.Z.R. 409: (a) To permit a 15 ft. wide driveway for two-way movement in lieu of the required 20 ft. and to permit access to parking spaces as shown on the site plan; (b) To determine the appropriate number of parking spaces required to accommodate the proposed contractor's equipment storage yard use, and to approve the proposed parking lot to accommodate 20 parking spaces; (c) To permit a 2 ft. side yard landscape buffer strip in lieu of the 10 ft. strip required; (d) To permit a millings parking lot in lieu of the requirement that parking facilities must be durable and dustless; and (e) To permit a parking lot without individual striped spaces.

In addition, a Petition for Variance seeks: (1) To permit a 10 ft. side yard setback from the proposed contractor's equipment storage yard building in lieu of the 30 ft. required; and (2) To permit a 10 ft. rear yard setback from the proposed contractor's equipment storage yard building in lieu of the 30 ft. required. Finally, a Petition for Special Exception seeks approval to use the subject property as a

contractor's equipment storage yard.

Appearing at the public hearing in support of the requests was Jason Ludwig and Tony Cortea, whose firm prepared the site plan. Chris Corey, Esq., represented the Petitioner. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Bureau of Development Plans Review (DPR), the Department of Planning (DOP) and the State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 1.86 acres in size and is split-zoned BR & RC 5. All existing and proposed improvements are in the BR-zoned portion of the site. The property is improved with a small single-family dwelling which is currently leased to a tenant. This home will continue to be used (for the foreseeable future) as a residence.

Petitioner operates a landscaping company started in 1977 known as JEL Landscaping. Petitioner proposes to construct at the rear of the property a 10,000 sq. ft. pole barn or similar building for storage of vehicles, equipment and materials used in the landscaping business. The office of zoning considers this a "contractor's equipment storage yard," a use permitted by special exception in the BR zone. In response to the DOP's ZAC comment, a redline site plan (Ex. 1) was submitted at the hearing which reflects Petitioner no longer proposes to construct vinyl and aluminum fencing around the property.

Special Hearing

Each of the special hearing requests relate to the off-street parking regulations found in Section 409 of the B.C.Z.R. Petitioner stressed the contractor's equipment storage yard and building used in connection therewith would not be a retail commercial enterprise. Instead, the

proposed building and rear of the site will be used for storage of the equipment and materials used in the landscaping business.

This portion of the site will be accessed primarily by Petitioner's employees (the business has eight employees) and the vehicles and trucks used in the business will be stored here as well. As such, Petitioner stressed there would not be a high volume of traffic throughout the day. The site plan shows the existing parking lot, which Petitioner proposes to enlarge. The lot will be constructed of paving millings, which DPR noted "can be considered durable and dustless." In any event, I believe the lot can easily accommodate twenty (20) vehicles, which is more than sufficient for the proposed use.

Variances

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).

The property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to construct the proposed improvements. 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. This is demonstrated by the lack of Baltimore County and community opposition. In addition, both variances pertain to the proposed storage building which will be constructed at the rear of the lot, far removed from the road and other

structures. I do not believe the reduced side and rear yard setbacks will have any discernible impact upon the community. As such the variances 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 *Attar v. DMS Tollgate, LLC*, ___ Md. ___, 152 A.3d 765 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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, no evidence was presented to suggest the proposed use would be detrimental to the community. The site is nearly two (2) acres in size and several commercial enterprises (*e.g.*, commercial nursery, auto service garage) are located in the immediate vicinity of the site. The existing dwelling is attractive and in good condition, and the machinery and equipment used in Petitioner's business will be stored inside a newly-constructed building at the rear of the site. In these circumstances I believe the proposed use would not negatively impact the community and the petition for special exception will be granted.

Petitioner indicated it was willing to comply with the DOP's ZAC comment, with two exceptions. Petitioner explained that although it would not be a frequent practice, on occasion used lawn equipment would be offered for sale at the property. Counsel noted B.C.Z.R. §238.4 permits in the BR zone the "storage and display" of vehicles and equipment in the front yard of the site, provided certain setbacks are observed. After reviewing that regulation I concur, and that condition will therefore not be included in the final order.

The other issue concerned the DOP's request for a 6 ft. planting bed along the eastern property boundary. The site plan reflects there is a small portion of unimproved RC-5 land along the eastern boundary, and just beyond that an auto service garage is located at 10206 Liberty Road. To comply with this request Petitioner would need to relocate the existing driveway, which would then be within several feet of the single-family dwelling. I do not believe Petitioner should be required to undertake such extensive and expensive measures, especially when there is not a dwelling or other use along the eastern boundary which would need to be screened to such an extent. Petitioner will provide along the eastern boundary a 2 ft. landscape buffer, which will be approved as an aspect of special hearing relief.

THEREFORE, IT IS ORDERED this 14th day of **June, 2017**, by this Administrative Law Judge, that the Petition for Special Hearing to approve a parking plan modifying the following requirements set forth in B.C.Z.R. 409: (a) To permit a 15 ft. wide driveway for two-way movement in lieu of the required 20 ft. and to permit access to parking spaces as shown on the site plan; (b) To approve the proposed parking lot to accommodate 20 parking spaces, which shall be deemed sufficient for the contractor's equipment storage yard use; (c) To permit a 2 ft. side yard landscape buffer strip (along the eastern property boundary only) in lieu of the 10 ft. strip required; (d) To permit a millings parking lot in lieu of the requirement that parking facilities must be durable and dustless; and (e) To permit a parking lot without individual striped spaces, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception, to use the subject property as a contractor's equipment storage yard, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) To permit a 10 ft. side yard setback from the proposed contractor's equipment storage yard building in lieu of the 30 ft. required; and

(2) To permit a 10 ft. rear yard setback from the proposed contractor's equipment storage yard building in lieu of the 30 ft. required, be and is hereby GRANTED.

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 obtain from the SHA the necessary permits and/or approvals to access Liberty Road (Md. Route 26).
3. No long term storage of equipment or materials shall be permitted in the front yard.
4. No temporary signage shall be permitted along the Liberty Road frontage.
5. Prior to issuance of permit(s) Petitioner shall install vegetative screening within a planting bed of at least 6 feet along the front, rear and western tract boundaries.

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