

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(7400 Dogwood Road)	*	OFFICE OF
2 <sup>nd</sup> Election District		
4 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
APEC Ground Properties	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case No. 2017-0297-SPHA</b>

\* \* \* \* \*

**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 APEC Ground Properties, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to amend the previously approved plan in Case No. 2013-0267-SPHXA. In addition, a Petition for Variance seeks: (1) to permit 16% (33,504 sq. ft.) of the lot area in a RC-6 zone to be covered by impervious surfaces in lieu of the permitted 10% (21,597 sq. ft.); and (2) to permit loading and unloading within a fully enclosed structure of a landscape service operation within 20 ft. of a property line in lieu of the permitted 50 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Allen E. Terrill and Thomas J. Hoff appeared in support of the requests. Anthony J. DiPaula, Esq. represented the Petitioner. Several members of the community opposed the requests. 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), the Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS).

The subject property is approximately 5 acres in size and zoned RC-6. Petitioner currently operates a landscape service business at the site, as permitted in Case No. 2013-0267-SPHXA. Petitioner proposes to construct a storage building on the property and rearrange to some extent the layout of the site. To do so zoning relief is required.

### SPECIAL HEARING

The Petition for Special Hearing is in essence a housekeeping measure. That is, when an owner proposes to revise a plan approved at a prior zoning hearing Baltimore County needs for its records (and for regulatory and enforcement purposes) an updated version of the site plan reflecting current conditions. As such, the petition will be granted.

### 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).

As noted in an earlier order involving this property (Case No. 2013-0267-SPHXA) the site is irregularly shaped and is burdened by environmental features. Indeed, as Mr. Hoff noted, Petitioner is only able due to environmental restrictions to develop 25% of the land it owns. As such, I believe the property is “unique” as that term is used in Maryland case law. To the extent there is any doubt on this point, I believe the uniqueness finding made in the 2013 case (which was not appealed) would be applicable herein under the res judicata doctrine. Seminary Galleria, LLC v. Dulaney Valley Improv. Ass’n., 192 Md. App. 719 (2010).

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 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 opposition from Baltimore County reviewing agencies. Indeed, the DOP noted in its ZAC comment that it found “the plan is consistent with the spirit and intent” of the RC-6 regulations.

THEREFORE, IT IS ORDERED this 3<sup>rd</sup> day of **July, 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 amend the previously approved plan in Case No. 2013-0267-SPHXA, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit 16% (33,504 sq. ft.) of the lot area in a RC-6 zone to be covered by impervious surfaces in lieu of the permitted 10% (21,597 sq. ft.); and (2) to permit loading and unloading within a fully enclosed structure of a landscape service operation within 20 ft. of a property line in lieu of the permitted 50 ft., 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 comply with ZAC comments of the DOP, DPR and DEPS which are attached hereto and expressly incorporated herein.

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:dlw