

<b>IN RE: PETITIONS FOR SPECIAL HEARING, *</b>	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	OFFICE OF
<b>(2700 North Point Road) *</b>	ADMINISTRATIVE HEARINGS
15 <sup>th</sup> Election District	
7 <sup>th</sup> Council District *	FOR BALTIMORE COUNTY
2700 North Point, LLC	
<i>Legal Owner</i> *	<b>Case No. 2018-0134-SPHXA</b>
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 2700 North Point, LLC, legal owner (“Petitioner”).

The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) for confirmation that the property is being used as an electrical contractor's shop (a permitted use by right) and that the existing improvements, uses, structures and parking provided (office and warehouse parking requirements) as shown on the site plan are in conformance with the B.C.Z.R.; and (2) to confirm that existing storage containers on the property are permitted as a Class II Trucking Facility and/or as accessory to the principal use on the property.

A Petition for Variance seeks the following:

- (a) 74 ft. +/- front yard setback in lieu of the required 75 ft. setback;
- (b) 48 ft. +/- & 35 ft. +/- side yard setbacks in lieu of the required 50 ft. setback; and
- (c) To allow a trucking facility less than 100 ft. from the freeway or expressway.

Finally, a Petition for Special Exception was filed to permit a trucking facility as a use in combination with an electrical contractor’s shop.

Appearing at the public hearing in support of the requests was Brandon Weaver and professional engineer William Bafitis. Lawrence E. Schmidt, Esq. represented the legal owner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). The DOP objected to the request seeking confirmation that a trucking facility is operated on the property.

Mr. Weaver is a principal in the Dvorak company, which specializes in large and complex lighting projects. He noted that at present the company (which has approximately 80 employees) is replacing all of the lights in the Harbor Tunnel and has in the past replaced lighting on the Bay Bridge, both of which were multi-year projects. Mr. Weaver explained that many times Dvorak will be awarded a contract for work and will thereafter obtain supplies and materials for the project, which are most often shipped to and stored at the job site.

But if the start date is delayed and Dvorak has already obtained the materials for the project, it needs somewhere to safely store the items. He noted that at present he has a large project for Baltimore City which has been delayed, which required him to store a large amount of copper wire in several of the shipping containers at the site. He said that if the materials are stored outside they would be stolen from the site by scrap metal thieves.

### **Special Exception**

The petition for special exception seeks approval for a trucking facility on the property. As discussed below, I believe the principal use of the site is for an electrical contractor's shop, and the shipping containers are permitted accessory storage structures. I concur with the DOP that the property is not used primarily for "the transfer of goods or chattels from trucks" to other

trucks, which is how a “trucking facility” is defined in B.C.Z.R. §101.1. As such the petition for special exception will be denied

### **Special Hearing**

As noted above, based on the evidence and testimony presented I believe an electrical contractor’s shop is the principal use on the property, which is permitted by right in the ML zone. I also believe the storage containers are accessory to the electrical shop, and the petition for special hearing will be granted to confirm these findings.

I am mindful of the concerns expressed by the DOP regarding the proliferation of these shipping containers, which I concede are somewhat unsightly. But, this property is located in a manufacturing zone and many of the uses and structures in such a zone are inherently noisy and/or unsightly. Counsel noted the B.C.Z.R. does not contain a prohibition on such containers, and I too was unable to locate any guidance in the Regulations. A taxidermist is located next to the subject property and the neighborhood is an entirely industrial area with a junkyard or scrap yard also near this site. Mr. Bafitis estimated the nearest dwelling was 500-1,000 feet away from the site. Thus, I do not believe the shipping containers will have a detrimental impact upon the community.

Of course, if Petitioner did not use the shipping containers it would nonetheless be entitled to store the wire and other electrical supplies on site. I believe storing such industrial materials in a structure is preferable (from an aesthetic standpoint) to storing them outside. Stated otherwise, I do not believe the containers are any more unsightly than large spools of wire, conduit and other construction materials which could be stored at this location.

### **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 an irregular shape and is therefore unique. In addition, the deficient setbacks have existed since 1982 when the commercial building was constructed. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be required to raze or relocate the building. Finally, I find that the variances can be granted in harmony with the spirit and intent of the BCZR, 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. More to the point, the building has been in place for over 35 years and has not in that time negatively impacted the community.

THEREFORE, IT IS ORDERED this 1<sup>st</sup> day of **February, 2018**, 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.”): (1) for confirmation that the property is being used as an electrical contractor's shop (a permitted use by right) and that the existing improvements, structures and parking provided (office and warehouse parking requirements) as shown on the site plan are in conformance with the B.C.Z.R.; and (2) subject to Condition No. 2 below, to confirm that existing storage containers on the property are permitted as accessory to the principal use on the property, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a trucking facility as a use in combination with an electrical contractor’s shop, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance to allow:

(a) 74 ft. +/- front yard setback in lieu of the required 75 ft. setback; and

(b) 48 ft. +/- & 35 ft. +/- side yard setbacks in lieu of the required 50 ft. setback, be and is hereby

GRANTED.

The relief granted herein shall be subject to the following:

1. Within 60 days of the date hereof Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.
2. Petitioner shall be entitled to keep on the site only those six (6) shipping containers which are bolted together and covered with metal roofing, as shown in the photograph marked and admitted as Exhibit 3H. All other shipping containers must be removed from the site within 60 days of the date hereof.

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