

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(10246 Reisterstown Road)		
3 rd Election District	*	OFFICE OF
4 th Council District		
Lion Brothers Co., Inc.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2019-0202-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Hearing filed on behalf of Lion Brothers Co., Inc., legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) seeking a declaration that a structure fronting on a private roadway/street as defined in the BCZR is required to comply with BCZR Section 235.1-front yard. A site plan was marked and admitted as Petitioner’s Exhibit 2.

Professional engineer James Patton appeared in support of the petition. J. Carroll Holzer, Esq. represented Petitioner. Dino C. La Fiandra, Esq., represented the Respondent Mid-Atlantic Lubes, LLC, which owns the adjacent property at 10244 Reisterstown Road. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”).

For many years Petitioner operated a business at the subject property where it manufactured uniform patches and insignia. That business has ceased operation and the on-site improvements were razed. The owner is now exploring redevelopment opportunities for the property. Lion Brothers filed the petition for special hearing to determine whether there is a front yard setback requirement for structures constructed adjacent to a 30 ft. wide “access road” shown on the site

plan.

The access road or right-of-way was discussed extensively at the hearing, and it appears undisputed the road was created in older deeds (which were not submitted as exhibits) to provide access to both the Lion Brothers property as well as to what until recently was the Toys R Us shopping center located to the southwest of the subject property. The right-of-way is apparently 30 ft. wide although only a 22 ft. wide portion is paved. The right-of-way intersects Reisterstown Road (Md. Route 140) and there is a traffic signal at that location permitting vehicles to make left or right turns onto Maryland Route 140 or continue straight onto what becomes Rosewood Lane.

The sole issue in this case is whether the right-of-way is a “street” as that term is defined in the BCZR; if that inquiry is answered in the affirmative a setback would likely be required. The petition for special hearing was filed pursuant to BCZR Section 500.7, a regulation which permits the Administrative Law Judge to interpret the “zoning regulations.” A petition for special hearing is in essence a proceeding for a declaratory judgment, as noted by the court in *Antwerpen v. Baltimore County*, 163 Md. App. 194 (2005).

The BCZR defines “street” in pertinent part as a “motorway which is not a freeway or expressway.” BCZR §101.1. This definition is entirely unhelpful, since neither “freeway” nor “expressway” are defined in the BCZR. “Motorway” is also not defined, although the Webster’s Third New International Dictionary indicates it is a British term meaning “a motor highway; especially a superhighway.” This is also an unhelpful definition; “motorway” is simply a contraction of “motor highway.” The reference to “superhighway” completely muddies the waters, since the BCZR specifies a motorway does not include a freeway or expressway, both of which in common parlance are high speed roads which could arguably be categorized as superhighways, though that too is an antiquated and anachronistic term.

The parties agree Baltimore County does not own or have an interest in the right-of-way and there are no utilities located beneath the paved portion. Thus, if it is a street it must be a private street, and as the Department of Planning (“DOP”) noted in its Zoning Advisory Committee (“ZAC”) comment the BCZR does not define or differentiate between a public or private street.

The property is zoned B.M., and the regulations specify a front yard in that zone must be not less than 15 ft. from the property line and 40 ft. from the center line of the street. BCZR § 235.1. Josh Sharon, a professional engineer accepted as an expert, testified the front of the proposed Valvoline building will be oriented towards Maryland Route 140. Mr. Sharon submitted a plan for the project to the Development Review Committee (“DRC”) which shows these front yard setbacks are satisfied. *See* Prot. Ex. 2. But Petitioner contends the Valvoline site is a dual-frontage corner lot, such that the side of the proposed building facing the private road is also considered a front yard. The B.M. regulations (which incorporate the B.L. zone side yard setbacks) specify a side yard setback for a “corner lot . . . on the street side shall be not less than ten feet in width.” BCZR §§ 235.2 and 232.2. A commercial building on an interior lot in the B.M. zone has no side yard setback requirement. *Id.* So again, this regulation (as well as the definition of “corner lot” in BCZR §101.1) begs the question of whether the right-of-way is a “street.”

In analogous circumstances (*i.e.*, trying to interpret ambiguous zoning regulations) courts have looked to the common law definition of “street.” In *Nash v. Campbell County*, 345 S.W. 3rd 811 (Ky. 2011) the court held the “common law has injected the concept of a public use—that the vehicular way be open to the public—to be considered a street.” *Id.* at 818. The court reasoned that if the owner(s) could put a gate or barrier “across a vehicular entrance to his property, the vehicular way is not open to the public in the sense that the owner of the fee can regulate the public use.” *Id.* at 818-19.

Petitioner submitted a site plan from a 1958 zoning case (No. 1958-4390-A) involving the adjacent property known as the Post Office site. The petitioner in that case was seeking a variance (which was denied) to permit a 10 ft. side yard setback in lieu of the 30 ft. setback imposed by Section 238.2 of the 1955 zoning regulations. The site plan shows the proposed 10 ft. setback from the “private lane” shown thereon. *See* Pet. Ex. 4. The property was at that time zoned B.R., which clearly and explicitly required a 30 ft. side yard setback and the 1955 zoning regulations contained a definition of “street” which is quite different than the current definition in the BCZR. As such I do not believe that plan is relevant in the present case.

Baltimore County does not own the private road and has not formally accepted a dedication of the property, as required by Section 18-3-307 of the BCC. The owner(s) would be entitled to prevent public access by placing a gate across the road which, in accordance with the common law rule noted above, indicates this is not a “street” as courts have defined that term. Finally, since I believe the definition of “street” in the BCZR is ambiguous, it is also appropriate to consider the long-standing interpretation of the term by the Office of Zoning Review to include “public roads only.” As Maryland’s highest court has held, the “interpretation of a statute by the agency charged with its administration is entitled to great deference, especially when the interpretation has been applied consistently and for a long period of time.” *BGE v. Public Service Comm’n.*, 305 Md. 145, 161 (1986).

THEREFORE, IT IS ORDERED this 19th day of **April, 2019** by this Administrative Law Judge, that the Petition for Special Hearing seeking a declaration that a structure fronting on a private roadway/street as defined in the BCZR (as more particularly shown on the site plan marked and admitted as Petitioner’s Ex. 2) is required to comply with BCZR Section 235.1-front yard, be and is hereby DENIED.

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

____ Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln