

<b>IN RE: PETITIONS FOR SPECIAL</b>	*	BEFORE THE
<b>EXCEPTION AND VARIANCE</b>	*	OFFICE OF
<b>(4428 North Point Blvd.)</b>	*	ADMINISTRATIVE HEARINGS
15 <sup>th</sup> Election District	*	FOR BALTIMORE COUNTY
7 <sup>th</sup> Council District	*	
NPR, LLC	*	
<i>Legal Owner</i>	*	
Petitioner	*	<b>Case No. 2019-0364-XA</b>
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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 4428 North Point Blvd. The Petitions were filed on behalf of NPR, LLC, legal owner of the subject property (“Petitioner”). The Special Exception petition seeks approval to allow a contractor’s equipment storage yard, pursuant to § 236.2 of the Baltimore County Zoning Regulations (“BCZR”). The Petition for Variance seeks a side yard setback of 4 ft. in lieu of the required 30 ft., pursuant to § 238.2. A site plan was marked as Petitioner’s Exhibit 1.

Appearing in support of the petitions were Rick Richardson of Richardson Engineering and Brian Dietz, a registered surveyor. David Cole, Esq. represented the Petitioner. Protestants Thomas and Dorothy Hayes were represented by Leslie Pittler, Esq. also attended. 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”). That agency did not oppose the request.

Pete Forakis, a principal of Petitioner NPR, LLC appeared and testified that the property was purchased in January of 2019. At that time an abandoned building which has since been demolished was on the site. He stated that this site, zoned BR-AS and ML-IM is in an area

including a boat repair company, an auto repair company, manufacturing warehouses the A1 Abatement company, with a contractor yard and storage facilities, as well as other like businesses.

The witness noted that the LLC's intention is to improve the property with a structure and to rent it, including the ability to have it utilized as a contractor yard. He observed that they already have two verbal rental commitments from prospective tenants. He further stated that he has reached out to neighboring owners who have no objection (other than the Protestants at the hearing) to his petition, and produced a letter from the next door neighbor in support of his petition (Petitioner's Exhibit 4).

Patrick Richardson, principal of Richardson Engineering was offered and after voir dire by Mr. Pittler was accepted as an expert in land development and zoning in Baltimore County. He stated that he prepared the plat to accompany this petition and confirmed the site, which is approximately 28,183 square feet, split zoned BR-AS and ML-IM. He opined that the Petitioner's plans for the site do meet the definition of a contractors yard and noted the nature of the businesses in the area, a number of which have already qualified in the past four (4) special exception relief (Petitioners Exhibit 6 & 7). He identified a paved road with a 25 ft. right-of-way on the north side of the site. He was questioned as an expert familiar with the site, the surrounding area uses and the proposed use by the Petitioner as to the requirements for a special exception set out in BCZR §502.1 and cases arising therefrom. He responded to each that no adverse or negative impacts would occur, and in his opinion the requirements for special exception to be granted were met by the Petitioner.

As to the requested variance relief, he stated that the subject site was deep but not wide, and if the existing setbacks were left in force, there would be very little buildable land on the site.

Furthermore, he stated that without the variance relief there would not be sufficient access to the right-of-way, nor would there be sufficient space for vehicle and equipment turnaround.

The Protestants presented no witnesses or evidence.

### 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*, 451 Md. 272 (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.

Mr. Richardson, an expert familiar with the project and its envisions testified unequivocally that the Petitioner met the requirements of the law and §502.1. I find that is more than sufficient to meet the burden for that relief.

### 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).

I believe that the site configuration limiting the space for construction of a building along with the needed access to the right-of-way renders the site unique. If the BCZR were strictly

interpreted Petitioner would suffer a practical difficulty because it would be unable to utilize the site for the intended purpose, including vehicle turnaround and construction of a building on the site. 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 County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 8<sup>th</sup> day of **October, 2019**, that the Petition for Special Exception to allow a contractor's equipment storage yard, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to seek a side yard setback of 4 ft. in lieu of the required 30 ft., 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. Prior to issuance of permits Petitioner must comply with the ZAC comment submitted by the DOP, a copy of which is attached hereto and made a part hereof.

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

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Signed \_\_\_\_\_  
LAWRENCE M. STAHL  
Administrative Law Judge  
for Baltimore County

LMS/sln