

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
W/side of Berryman's Lane, 1,560' SE of	*	OFFICE OF
c/line of Chromine Road		
4 th Election District	*	ADMINISTRATIVE HEARINGS
4 th Councilmanic District		
(742 Berrymans Lane)	*	FOR BALTIMORE COUNTY
Scott A. Margroum	*	CASE NO. 2012-0039-SPHXA
Petitioner		

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings for Baltimore County pursuant to Petitions for Special Hearing, Special Exception and Variance for the property located at 742 Berrymans Lane. The Petitions were filed by Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC. Special Hearing relief is requested from the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit the following:

1. The existing compacted crushed bituminous concrete surface in lieu of a durable and dustless surface as provided by B.C.Z.R. Section 409.8.A.2; and
2. A modified parking plan pursuant to B.C.Z.R. Section 409.12, and
3. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Petitioner is also requesting Special Exception relief to permit a landscape service operation in accordance with B.C.Z.R. Sections 1A03.3.B.11, 4041.1 and 404.2; and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County. In addition, Petitioner is requesting Variance relief in accordance with B.C.Z.R. for the following:

1. From Section 400.1 to permit accessory buildings to be located other than in the rear yard;

2. From Section 400.3 to permit an accessory building with a height of 20 feet in lieu of the maximum height of 15 feet;
3. Sections 1A03.3.B.11 and 404.1 to permit the existing internal roadway with a setback of 0 feet from any property line in lieu of the required 25 feet;
4. Sections 1A03.3.B.11, 404.1.B and 404.1.C to permit the existing structure with a setback of 48 feet from the property line in lieu of the required 50 feet; and
5. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Appearing at the hearing on behalf of the Applicant were Kenneth J. Wells, a professional property line surveyor with kj Wells, Inc., who prepared the site plans of the property, and Lawrence E. Schmidt, Esquire, representing the Applicant. Mr. Margroum, owner of the property also appeared. There were no Protestants in attendance.

Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review, dated August 26, 2011, and recommends the following:

“The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

Per Zoning Regulation 409.4a, driveways shall be at least 20 feet wide. We feel strongly that, since this driveway is used in common with the home at 744 Berrymans Lane, the driveway should be widened to 20 feet from Berrymans Lane to the point where use-in-common ends.

In most cases, compacted, crushed bituminous concrete (millings) can be considered durable and dustless, and we would recommend granting the requested variance. However, “gravel” is noted on plan. Any gravel areas must be paved with durable dustless surfaces consisting of bituminous concrete, concrete, or millings.”

Testimony and evidence offered at the hearing demonstrated that the property which is the subject of this request consists of 12.872 acres, more or less, zoned R.C.4. The subject property is located on the west side of Berrymans Lane in the Reisterstown area of Baltimore County. The

improvements of the property are more particularly shown on Petitioner's Exhibit 1, the site plan of the property which was prepared by Mr. Kenneth Wells.

A review of the site plan indicates that the property is irregularly shaped and has an access strip from the main portion of the property out to Berrymans Lane. This fee simple access strip is approximately 30 feet in width and is improved with an existing 10 foot wide gravel driveway. The driveway is shared by the adjacent property owner, Mr. and Mrs. Hynson.

Testimony offered by Mr. Scott Margroum indicated that he purchased the subject property in April, 2011. As the site plan indicates, the property is improved with a two-story residential frame dwelling wherein Mr. Margroum lives with his wife and children. In addition to the dwelling, the property is also improved with a small one-story accessory structure located in the front yard of the dwelling as well as a 1-½ story metal building which is approximately 3,200 square feet. Mr. Margroum testified that this property was used by the prior owner in a commercial fashion. The prior owner, for many years, operated a street sweeping business from the subject site. The street sweeping equipment was kept and maintained in the 1-½ story metal building while the prior owner resided in the subject dwelling. Mr. Margroum, whose business was previously located in Anne Arundel County, has purchased the property and hopes to operate his landscape service operation business from the subject site just as the previous owner operated his street sweeping business from the property.

Mr. Margroum further testified that he operates Rock Hill Landscaping and has relocated his business to this property and has been operating from this site for the past many months. He testified that he has not had any problems with his neighbors and submitted into evidence as Petitioner's Exhibit 4 a petition of support signed by many residents of the surrounding

community, including Mr. and Mrs. Hynson, who are his adjacent property owners and also share his common driveway.

While the property is quite large comprising approximately 12.872 acres, it is but a small portion which will shall be utilized pursuant to the special exception request as a landscape service operation, pursuant to Sections 1A03.3.B.11, 404.1 and 404.2 of the B.C.Z.R. The area identified on Petitioner's Exhibit 1, which constitutes the special exception request, comprises approximately 1.8 acres, and is outlined and highlighted in green magic marker. This highlighted green area is the only area upon which Mr. Margroum is requesting to operate his landscaping business. The remaining 11 acres of the land shall be continued to be utilized pursuant to the R.C.4 regulations.

In essence, Mr. Margroum is requesting to substitute his landscape service operation business for the street sweeping business which previously operated on the property for many years. Perhaps the commercial use of this property in the past explains why there is no opposition to this request today. The Petitioner's business, Rock Hill Lawn and Landscape, employs eight employees at this time, one of whom is Mr. Margroum's mother. The business operates five days a week, Monday through Friday, 6:00 AM to 5:00 PM. Further testimony revealed that seven or eight employees arrive at the business each morning for the purpose of picking up equipment for the day's work. At the present time, the Petitioner keeps and maintains the following equipment on the property in connection with his landscaping business. He owns three pick-up trucks, one dump truck, one bucket truck, one stake body truck, two knuckle boom trucks, four landscape trailers, two enclosed trailers, one chipper, one older tractor and various smaller pieces of equipment that are kept and stored within the 3,200 square feet metal building. The Petitioner

proposes to keep his company at this size and does not intend any large-scale expansions in the future.

After considering the testimony and evidence offered at the hearing and the lack of opposition thereto and the petition of support from the surrounding neighbors, and given the small nature of this landscape service operation, I find that granting the special exception is appropriate.

The Petitioner had the burden of adducing testimony and evidence which shows that the use meets the prescribed standards and requirements set forth in Section 502.1 of the Baltimore County Zoning Regulations. The Petitioner has shown that the use is conducted without real detriment to the neighborhood and does not adversely affect the public interest. The facts and circumstances do not show that the use at this particular location described by Petitioner's Exhibit 1 has any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. *Schultz v. Pritts*, 432 A.2d 1319 (1981).

The use is not detrimental to the health, safety, or general welfare of the locality, nor tends to create congestion in roads, streets, or alleys therein, nor is it inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the B.C.Z.R.

In addition to the special exception relief, the Petitioner is also requesting special hearing relief to allow the existing driveway to exist in its current condition. That is, the driveway has always been a gravel and stoned type driveway and has always been 10 feet in width. It has functioned well in the past as a shared driveway with the Hynson family even though the prior owner of this property, Mr. Frank Altvater, owned and operated a street sweeping business from the site. There is no need to change that driveway configuration at this time as I'm sure it will continue to function appropriately with the landscaping business, which has been on the site for

several months. Given the narrowness of the driveway, the Petitioner did agree to provide a pull-off area along the driveway in case two cars were to meet along the driveway and one had to pull to the side. Therefore as a condition of approval, the Petitioner shall be required to provide a small bypass lane along the driveway to allow two cars to pass. In addition to the request to allow the driveway to be compacted crushed bituminous concrete surface in lieu of durable and dustless surface, the Petitioner has also requested a modified parking plan for his landscape service operation. It should be noted that the property in question will not be storing any items for sale nor will any members of the public have reason to come to this property. The parking design and layout is for the current employees of the site and functions well. Accordingly, the special hearing shall be granted to allow the driveway to exist as it is with the addition of the pull-off area and the parking design and layout should be approved. Accordingly, the special hearing shall be granted.

Finally, the Petitioner is requesting variance relief to allow the one-story accessory structure and the 1-½ story metal building to be situated in the front yard of the property. As stated previously, the Petitioner has purchased the subject property in an as-is condition. All of the structures have existed on the property since prior to the time that Mr. Margroum purchased the site. The metal building and small storage shed have always been situated in the front yard of this property and the variance to allow them to remain that way shall be granted. In addition, the larger metal building stands 20 feet in height as it was built that way many years ago. Again, the variance to allow that building to be 20 feet in height shall be granted. Additional variance relief is needed in that the driveway at certain portions along the fee simple access strip to Berrymans Lane comes within 0 feet from the property line in lieu of the required 25 feet. As this is an existing condition, which has existed for many years, the variance to allow that driveway to remain in that fashion shall be approved. Lastly, the 1-½ story metal building was constructed on

the site 48 feet from the adjacent property line in lieu of the required 50 feet. Again as an existing condition, the variance to approve it shall be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this matter held, and after considering the testimony and evidence offered,

IT IS ORDERED this 29th day of September, 2011, by this Administrative Law Judge, that the Petition for Special Hearing to permit the following:

1. The existing compacted crushed bituminous concrete surface in lieu of a durable and dustless surface as provided by B.C.Z.R. Section 409.8.A.2; and
2. A modified parking plan pursuant to B.C.Z.R. Section 409.12,

be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a landscape service operation in accordance with B.C.Z.R. Sections 1A03.3.B.11, 4041.1 and 404.2, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief for the following:

1. From Section 400.1 to permit accessory buildings to be located other than in the rear yard;
2. From Section 400.3 to permit an accessory building with a height of 20 feet in lieu of the maximum height of 15 feet;
3. Sections 1A03.3.B.11 and 404.1 to permit the existing internal roadway with a setback of 0 feet from any property line in lieu of the required 25 feet; and
4. Sections 1A03.3.B.11, 404.1.B and 404.1.C to permit the existing structure with a setback of 48 feet from the property line in lieu of the required 50 feet,

be and is hereby GRANTED;

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner shall be required to provide a pull-off area along the gravel driveway between Berrymans Lane and the entrance to the Hynson residence.
3. The special hearing and special exception granted herein is for a Landscape Service Operations the size and scale as presented at the hearing before me. Any expansion of this business or adding any additional driveable pieces of equipment over and above what was identified in the body of this Order shall require that a “spirit and intent” letter be requested of the Zoning Review Office for approval by this Office or, if appropriate, by way of a future public hearing.

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

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK:dlw