

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
15 <sup>th</sup> Election District *	OFFICE OF
6 <sup>th</sup> Councilmanic District *	ADMINISTRATIVE HEARINGS
<b>(9301 Philadelphia Road)</b> *	
Jacoboni Realty, LLC, Thomas J. Jacoboni *	FOR BALTIMORE COUNTY
Petitioner *	<b>Case No. 2013-0127-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 by Lawrence E. Schmidt, Esquire, on behalf of Jacoboni Realty, LLC, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), seeking the following relief: (1) Jacoboni Site Specialist's request for confirmation that the existing operation on site is a contractor's equipment storage yard; (2) Jacoboni Site Specialist's request for confirmation that the proposed on site operation is a Recycling Facility (a combination of Concrete Products Manufacturing and Wood Products Manufacturing), a use permitted in the ML and MH zones, as a principal or accessory use, or in the alternative, that the Recycling Facility constitutes "any other industrial or manufacturing use except those listed in Section 256.2", a use permitted in the MH zone; (3) The continuing use of the trailers; and (4) Business or industrial parking in a residential zone.

The petition for variance seeks the following relief: (1) To permit the Recycling Facility (manufacturing use) to be located at least 575 ft. from any residential zone in lieu of the minimum required 1,000 ft. (if, and only if, the Recycling Facility constitutes "any other industrial or manufacturing use, except those listed in Section 256.2"); (2) To permit (for an existing 1 story metal storage building shown on the plan) a side yard setback of 0 ft. in lieu of

the minimum 30 ft. requirement; and (3) Such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

The subject property and requested relief is more fully depicted on the redlined site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the public hearing in support of the requests were Richard E. Matz from Colbert Matz Rosenfelt, Inc. and Edward S. Schaffer. Lawrence E. Schmidt, Esquire and Jason T. Vettori, Esquire appeared as counsel and represented the Petitioner.

The file reveals that the Petition was properly posted and advertised as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Substantive comments were received from Department of Planning (DOP) and Bureau of Development Plans Review (DPR), both of which will be discussed below.

The subject property is approximately 21 acres and is zoned predominately ML-IM and MH-IM, with small portions DR 5.5 and BL. The Petitioner has since 1988 used the site as the base of its operations for a site clearing and construction company.

The Petition for Special Hearing seeks a variety of relief, the first aspect of which is confirmation that the current operations at the site constitute a "contractor's equipment storage yard" as defined under B.C.Z.R. §101.1. That regulation provides that such a use involves the "storage or keeping of ...machinery, including building materials storage..." B.C.Z.R. §101.1. Photographs were submitted showing overhead views of the site, on which is stored various construction materials and machinery (i.e., backhoes and bulldozers). See Exhibits 2A, 2Z, 2AA and 2BB. Based on this evidence, and the proffered testimony of Edward Schaeffer (a manager

employed by Petitioner), it is clear that the Petitioner currently uses the site as a “contractor’s equipment storage yard.”

The Petitioner indicated it would like to begin on-site recycling of dirt, concrete and wood, which are the materials most often extracted from demolition sites by Jacoboni. As shown on the plan, the Petitioner would recycle these materials with machinery in its yard (See Exhibit 1), and would re-use the materials on subsequent sites and projects. While wood & concrete processing is permitted as of right in the ML and MH zones (§§256.1.A.1 & 253.1.A.10 &54), the processing of dirt or soil is not specifically addressed by the B.C.Z.R. There is however a “catch-all” in the regulations, permitting in the MH zones “any other industrial or manufacturing use...when located at least 1000 feet from any residential zone.” B.C.Z.R. §256.1.A.3. Employing this catch all provision necessitates variance relief (discussed below), given that there is a residentially zoned property approximately 575 feet from the proposed recycling use area. Thus, the concrete, wood and soil products manufacturing & recycling proposed by Petitioner are permissible as “industrial” uses under B.C.Z.R. §256.1.A.3.

The next category of relief under §500.7 concerns two portable trailers used on site by Petitioner as administrative office space. These trailers (shown in photos 2X & 2y) are temporary construction style trailers one frequently sees on building sites. They are permitted under §§ 253.1.F.3 and 415.6 as accessory structures.

The final aspect of Special Hearing relief involves business and industrial parking in a residential zone. The parking at issue is for Petitioner’s employees, and is shown on the plan at the northwest corner of the site, adjoining Philadelphia Road. The parking lot is of modest size, and there is no indication that this use will have a negative impact upon the surrounding neighborhood. As such, the request will be approved.

Based on the evidence presented, I also find that the variances can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

As shown on the site plan, the large property is of irregular dimensions (counsel referred to it as being shaped like a soup ladle). In addition, a large portion of the site contains protected wetlands (which are shown and delineated on the plan), which impose constraints on where Petitioner can conduct its operations. Thus the property is clearly “unique.” And it is equally clear Petitioner would experience a practical difficulty if relief were denied, given it would be unable to recycle the building materials on site as proposed.

#### AGENCY COMMENTS

As noted at the outset, both the DOP and the DPR submitted substantive comments in this case. Per the DOP’s comments, I will require Petitioner to provide landscaping along Philadelphia Road, and to remove or replace the dilapidated wood fencing on site. The more significant issue, according to both DOP and DPR, involves the right-of-way for Yellow Brick Road, which is apparently shown on a record plat, although Mr. Matz noted its precise location has not been fixed. In any event, as requested by the agencies, the right-of-way has been shown on the redlined plan, and the relief granted herein shall contain the caveat suggested by the County’s Director of Real Estate compliance. As for the ultimate right-of-way line for Philadelphia Road, I will not require the Petitioner to relocate the proposed employee parking lot. As noted in Mr. Kennedy’s January 28, 2013 e-mail (Exhibit 3) “it would be wise (but not required)” for Petitioner to relocate the parking lot in case the State (Philadelphia Road is a state highway) eventually required highway widening at this location. But that is a matter best left to

the Petitioner and the State Highway Administration, especially since the SHA noted in its December 13, 2012 ZAC comment that it had “no objection to approval” of the zoning petitions.

Pursuant to the posting of the property, public hearing, and after considering the testimony and evidence offered, I find that Petitioner’s Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 12th day of February, 2013 by the Administrative Law Judge, that the Petition for Special Hearing seeking the following relief under § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”); (1) Iacoboni Site Specialist's request for confirmation that the existing operation on site is a contractor's equipment storage yard; (2) Iacoboni Site Specialist's request for confirmation that the Recycling Facility constitutes "any other industrial or manufacturing use except those listed in Section 256.2", a use permitted in the MH zone; (3) The continuing use of the trailers; and (4) Business or industrial parking in a residential zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking the following relief: (1) To permit the Recycling Facility (manufacturing use) to be located at least 575 ft. from any residential zone in lieu of the minimum required 1,000 ft.; and (2) To permit a side yard setback of 0 ft. in lieu of the minimum 30 ft. requirement, be and is hereby GRANTED.

The relief granted herein shall be subject to and expressly conditioned upon the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2. Petitioner must provide landscaping (as determined by the County's landscape architect) along Philadelphia Road, and remove all dilapidated wood fencing on site.
3. The Petitioner shall not store construction equipment, machinery or materials of any sort along or between Philadelphia Road and the proposed employee parking area.
4. Some of the recycling activities permitted herein, as shown on the redlined plan, are within the Yellow Brick Road right-of-way, established in 2000. Any uses approved that are inconsistent with the offer of dedication for the bed of Yellow Brick Road are temporary in nature and undertaken at the property owner's own risk. The County shall not be liable for any cost to or alleged damages suffered by the property owner in connection with the uses in the right of way when Yellow Brick Road is conveyed and built.

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