

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(6126 Ebenezer Road)
15th Election District
6th Councilmanic District
Perry & Lauren Wright
Petitioners**

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
*
* **Case No. 2013-0272-XA**

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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 6126-6130 Ebenezer Road. The Petitions were filed by J. Neil Lanzi, Esq., on behalf of Perry and Lauren Wright, the legal owners of the subject property. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) to allow a landscape service operation. The Petition for Variance seeks relief under B.C.Z.R. Sections 404.1B and 404.1C: (1) to allow accessory structures 44 ft., 3 ft., 38 ft. and 10 ft. from the property line in lieu of the required 50 ft.; and (2) to allow the loading and unloading of vehicles for the purpose of shipping and receiving goods 10 ft. from the property line adjacent to a residentially zoned or used property in lieu of the required 100 ft. The subject property and requested relief are more fully described on the site plans which were marked and accepted into evidence as Petitioners' Exhibits 4 & 5 .

Appearing at the hearing in support of the Petitions were Perry and Lauren Wright and Mitchell Kellman, whose firm prepared the plans. J. Neil Lanzi, Esq. represented the Petitioners. There were no Protestants or interested citizens in attendance and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive ZAC comments were received from Department of Environmental Protection and Sustainability (DEPS) dated July 3, 2013 indicating the Petitioners must comply with the Forest Conservation Regulations. The Department of Planning (DOP) and Bureau of Development Plans Review (DPR) noted that a landscape plan shall be approved prior to the issuance of permits.

Testimony and evidence offered at the hearing revealed that the subject property is 1.370 acres and is zoned RC 2. As shown on the plan, the subject property is improved with three single family dwellings, and to the rear of the dwellings the Petitioners store equipment and machinery (in a building) for a landscaping business. The business has been in operation for many years, and after his father's death the Petitioner took over the operation. Recently, the Petitioner received a code enforcement correction notice, stating he needed zoning approval for the landscape business, and thus this case was filed. All of the neighbors in the area signed a petition (Exhibit 2) expressing support for the zoning requests.

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 People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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. In this case, there was no evidence submitted that would tend to rebut this presumption. In fact, Mr. Kellman testified the proposal satisfied the B.C.Z.R. §502.1 standards, and that the landscape

business would not have a detrimental impact upon the neighborhood.

VARIANCE

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. As noted by Mr. Kellman, the subject property is comprised of three (3) individual lots, each of which is long and narrow. Thus, the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, in that they would need to raze certain accessory buildings that have been in place, without complaint, for years. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., 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 opposition and the strong support of the neighborhood.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 17th day of July, 2013, that Petitioners' request for Special Exception relief under the B.C.Z.R., to allow a landscape service operation, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance relief from B.C.Z.R. Sections 404.1B and 404.1C: (1) to allow accessory structures 44 ft., 3 ft., 38 ft. and 10 ft. from the property line in lieu of the required 50 ft.; and (2) to allow the loading and unloading of

vehicles for the purpose of shipping and receiving goods 10 ft. from the property line adjacent to a residentially zoned or used property in lieu of the required 100 ft., be and is hereby GRANTED.

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

1. Petitioners may apply for appropriate permits and/or licenses 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. No commercial use (or parking of commercial vehicles) of the premises in the area between the single family dwellings and Ebenezer Road.
3. Submission to and approval by the County of a landscape plan.
4. No additional impervious surfaces may be created on the property.
5. It is understood and agreed that the area of the Special Exception granted herein shall include all those parcels shown on the site plan (known as parcels 272, 273 and 467). This area designation is made to allow Petitioners to access the landscape operation on site, and other than such access there shall be no commercial use or activity of any sort between the single family dwellings and Ebenezer Road.

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