

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1228 Kahler Avenue)		
15 th Election District	*	OFFICE OF
7 th Councilmanic District		
Jeanette Siverd (Diegel), Diana (Passapae)	*	ADMINISTRATIVE HEARINGS
Wagner & Linda Hammond		
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0203-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by Jeanette Siverd (Diegel), Diana (Passapae) Wagner and Linda Hammond (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a modification of the existing non-conforming use to remove part of the property from the area to separate the house from the non-conforming portion of the property and to install a sloped roof for the garage to a height of 32 ft.

Appearing at the public hearing in support of the requests was Jeanette Siverd, Linda Hammond, Diana Passapae and professional engineer Rick Richardson, from Richardson Engineering, LLC, whose firm prepared the site plan. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance at the hearing. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) dated May 5, 2014 and Bureau of Development Plans Review dated April 17, 2014.

The subject property is 0.805± acres, and is zoned DR 5.5. Petitioners’ father in the 1930s began a blacktop paving business on the site, which also contained a single family

dwelling (in which Petitioners were born and raised). The Petitioners are the surviving children, and they are trying to manage their father's estate, including the subject property.

This is a unique case, because the nonconforming use issue has been settled for many years. In 1977, the Deputy Zoning Commissioner determined that the Petitioners enjoyed a "legal nonconforming use as a contractor's equipment and storage yard." Exhibit 2. At present, the Petitioners have sought from the Development Review Committee (DRC) a lot line adjustment (Exhibit 4) which would divide the subject property into two lots: a 6,000 sf. lot improved with the single family dwelling known as 1228 Kahler Avenue, and a 17,705 sf. lot to the rear of the dwelling, for continued use as a contractor's equipment storage yard. The storage yard lot is improved with a large 1 story building (2,145 sf.) used in connection with the business. As Mr. Richardson noted, this in reality would be reducing by nearly 50% the current size of the nonconforming property, since the 6,000 sf. lot with the single family dwelling would no longer be nonconforming, since it would satisfy the DR 5.5 zone bulk and area standards.

In light of the above, the zoning aspects of this scenario are subsidiary to the DRC process (now pending), wherein the lot line reconfiguration will be accomplished. In my opinion, the Regulations do not prohibit the requested relief, and there is no indication that granting the Petition would be injurious to the community. The Petitioners are not expanding the nonconforming use or associated building. Following the death of their father, their brother Donald continued operating the family business on site. Donald Schiavo is recently deceased, and the Petitioners indicated they will continue operating the storage yard business, and hope to sell the single family dwelling (which if the DRC relief is granted would be on its own lot) to raise funds for improvements to the business. Thus, there has been no discontinuation (for one

year or more) of the nonconforming use. In these circumstances, I believe B.C.Z.R. §104 has been satisfied, and the Petition will be granted.

With regard to the ZAC comments, a DRC application has been filed, and thus Mr. Kennedy's concerns have been addressed. The DOP submitted a lengthy list of concerns regarding the site, and I believe that some, but not all, should be imposed as conditions in the Order which follows. The plan should be amended to show the location of the chain link fence, and to label the "shed" which adjoins the large commercial building referenced earlier. The DOP states that the shed is falling down, and the Petitioners conceded that it is in poor shape. As for whether that building needs to be razed, I will leave that determination to the County's Buildings Engineer and/or building inspectors, both of whom will be copied on this Order. The commercial building will remain 1 story, which of course means there will be no storage on a "potential upper floor." Finally, the Petitioners stated that the construction equipment referenced in comment #5 has been moved to a different location on site, but they also advised that such equipment was at no time stored in the "public right-of-way" as stated in the DOP's ZAC comment.

THEREFORE, IT IS ORDERED this 5th day of June 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to approve a modification of the existing non-conforming use to remove part of the property from the area to separate the house from the non-conforming portion of the property and to install a sloped roof for the garage to a height of 32 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to 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. Within 15 days of the date of this Order, Petitioners shall submit an amended site plan showing the location of the chain link fence and the “shed” which adjoins the large commercial building.

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