

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(2617 N. Rolling Road)	*	OFFICE OF
2 nd Election District		
4 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
TCJ Company, LLC, <i>Legal Owners</i>		
GCN Real Estate LLC,	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	Case No. 2014-0004-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by David H. Karceski, Esquire from Venable, LLP, on behalf of TCJ Company, LLC, the legal owners, and GCN Real Estate, LLC, Lessee, (“Petitioners”). The Petition for Special Hearing was filed pursuant to §§409.8.A.2 and A.6 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow an off-street parking facility with a non-durable and dustless surface and unstriped parking spaces in lieu of the requirements for a durable and dustless surface and striped parking spaces.

A Petition for Special Exception was filed pursuant to B.C.Z.R. § 253.2.B.3 for a service garage (as a tow truck operation) in the ML-IM zone.

Finally, a Petition for Variance was filed pursuant to the B.C.Z.R. § 409.4.A to allow a driveway for two-way movements to be a minimum of 12 feet in width in lieu of the required 20 feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Timothy Jacobs, Gregory C. Norman, and Kenneth J. Wells, with kj Wells Inc., the consultant who prepared the site plan.

David H. Karceski, Esquire and Justin Williams, Esquire, both with Venable, LLP, appeared as counsel and represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted 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. The Department of Environmental Protection and Sustainability (DEPS) indicated its Groundwater Management section would need to review the plans prior to permit issuance, given the site is served by well and septic. The Bureau of Development Plans Review (DPR) did not object to the Petition, but requested that certain conditions be imposed on any relief granted.

The subject property is approximately one acre in size and is zoned ML-IM. The Petitioner, who operates Premier Towing, proposes to relocate its business operations from Gwynn Oak Avenue to the subject property. The Petitioner plans to construct a one-story building on the site, which is situated within an industrial park in Woodlawn. Zoning relief is required before the Petitioner can commence operations at the site.

SPECIAL HEARING

The Petition for Special Hearing seeks approval for a gravel parking area to the rear of the site. As noted by Mr. Kennedy in his ZAC comment, this site is situated within an industrial area, and it is unlikely that the gravel surface would negatively impact any of the surrounding uses.

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. No such evidence was presented here, and thus the Petition will be granted. B.C.Z.R. § 253.2.B contains an additional requirement for the enumerated special exception uses in an ML zone; that they be located in an IM District and that they serve primarily the activities in the surrounding industrial area. That requirement is also satisfied in this case. The Petitioner anticipates providing towing services to many of the businesses located in the industrial park and the areas adjacent thereto.

VARIANCES

Based upon the testimony and evidence presented, I will also grant the request for variance relief. 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).

The Petitioners have met this test. The property is of irregular dimensions and is burdened by existing site conditions, including the private driveway which provides the sole means of access. Thus, the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, since they would be unable to operate the new business at this location. 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 support of the County and community. See Letters of Support, Exhibits 5 – 7.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the special hearing, special exception and variance relief requested shall be granted.

THEREFORE, IT IS ORDERED this 4th day of September, 2013, by this Administrative Law Judge, that Petitioner’s request for Special Hearing filed pursuant to §§ 409.8.A.2 and A.6 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow an off-street parking facility with a non-durable and dustless surface and unstriped parking spaces in lieu of the requirements for a durable and dustless surface and striped parking spaces, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners’ request for Special Exception filed pursuant to the B.C.Z.R., for a service garage (as a tow truck operation) in the ML-IM zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners’ request for Variance relief to allow a driveway for two-way movements to be a minimum of 12 feet in width in lieu of the required 20 feet, 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. Petitioners must comply with the ZAC comments of DEPS and DPR, which are made a part hereof and attached hereto.

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:dlw