

**IN RE: PETITIONS FOR SPECIAL  
EXCEPTION AND VARIANCE  
(601 Back River Neck Road)  
15<sup>th</sup> Election District  
7<sup>th</sup> Council District  
Barry K. Treas, *Legal Owner*  
Petitioner**

\* BEFORE THE  
\* OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* FOR BALTIMORE COUNTY  
\*  
\* **Case No. 2015-0120-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 601 Back River Neck Road. The Petitions were filed on behalf of Barry K. Treas, the legal owner of the subject property. The Petitioner seeks special exception relief per Baltimore County Zoning Regulations (B.C.Z.R.) §230.3 to operate a service garage on the property. The petition for variance seeks relief under B.C.Z.R. §409.6.A.2 to permit 19 parking spaces for the retail use in lieu of the required 27 spaces; and §232.2 for a side yard setback of 3 ft. in lieu of the required 10 ft. for an existing garage to a new lot line. The subject property and requested relief are more fully described on the site plan which was marked as Petitioner’s Exhibit 1.

Appearing at the hearing in support of the Petitions was Barry K. Treas and Rick Richardson, a licensed professional engineer whose firm prepared the site plan. Alfred L. Brennan, Jr., Esq. represented the Petitioner. There were no Protestants or interested citizens in attendance, although People’s Counsel, Peter Zimmerman, attended the hearing to express certain concerns, and the Rockaway Beach Improvement Association submitted a letter citing the need for a landscape plan. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans

Review (DPR) and the Department of Planning (DOP). These comments will be discussed in greater detail below.

The subject property is approximately 1.45 acres and is zoned BL. The Petitioner acquired the property in 1988, and a service garage and hardware store are operated on the site. Mr. Richardson discovered in the course of obtaining a lot line adjustment for the property that the service garage use requires a special exception in the BL zone, which was never obtained. In addition, there are less than the required number of parking spaces on site for the retail (hardware store) use. The zoning petition was filed to “legitimize” these site deficiencies.

#### 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 in this case. In fact, the service garage has been in operation for over 25 years, and there is no indication that it has caused a detrimental impact to the community.

#### VARIANCE

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).

Petitioner has met this test. The site is irregular shaped, and the Petitioner must contend with long-existing site conditions. As such the property is unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty, in that he would be unable to continue operating the hardware store and service garage. 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.

#### ZAC COMMENTS

The DOP did not oppose the requests, but its ZAC comment set forth several proposed conditions, which have been included in the Order which follows. The Bureau of DPR also did not oppose the requests, and its ZAC comment contained several “deficiencies” that agency believed should be corrected or waived by the ALJ. Two of the deficiencies (i.e., landscaping and storage of vehicles on County property) are addressed in the Order below. Mr. Richardson explained that the drive aisle and back up area for the service garage use are sufficient, and have not presented any difficulties. As such, I will not include those items as conditions upon the relief. With regard to the “durable and dustless” issue, Mr. Richardson testified that all off-street parking spaces are paved, and thus I believe that requirement (found in B.C.Z.R. §409.8.A.2) is satisfied.

#### STORMWATER MANAGEMENT

The final issue, raised by Mr. Zimmerman, concerns the lack of stormwater management (SWM) on the site. As noted above, the hardware store (1974) and service garage (1990) have been in use for many years. SWM was not required in 1974; as noted by Mr. Zimmerman, the first such SWM legislation was approved by the County in 1984. Thus, it is only the service garage that would potentially be impacted by the SWM regulations. It is true, as Mr. Zimmerman notes, that Petitioner failed to obtain in 1990 a special exception for the service garage, and it is possible the

County may have imposed SWM requirements had such a petition been filed. Petitioner testified he obtained a building permit for the service garage, although a copy was not submitted at the hearing, and the County apparently does not retain such records.

Given that it did not submit a ZAC comment, DEPS was contacted following the hearing to inquire about this scenario. That agency indicated that in these circumstances it would not retroactively apply the then-applicable SWM regulations to the 1990 service garage construction. If the service garage was constructed without necessary permits—a matter that would be adjudicated by the ALJ in a code enforcement proceeding—then it would seem appropriate to require SWM for the site. In the absence of such a finding, I will not impose any obligation in this regard, given that, as Mr. Richardson testified, the Petitioner is not “disturb[ing] more than 5,000 square feet of land area.” BCC §33-4-104(b)(3).

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 4th day of February, 2015, that the Petition for Special Exception under B.C.Z.R. §230.3 for a service garage, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from B.C.Z.R. as follows: §409.6.A.2 to permit 19 parking spaces for the retail use (hardware store) in lieu of the required 27 spaces; and §232.2 for a side yard setback of 3 ft. in lieu of the required 10 ft. for an existing garage to a new lot line, be and is hereby GRANTED.

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

1. Petitioner must provide landscaping for the site, as determined in the sole discretion of the County’s landscape architect. Such landscaping must be installed within 90 days of the date a plan for same is approved by the County’s landscape architect.
2. Petitioner must within 15 days of the date hereof submit a revised, redline site plan containing a heading for “zoning relief requested,” wherein the particulars of both the special exception and variance petitions must be described. The revised

- site plan must also contain a conspicuous depiction of the 13,624 sq. ft. special exception area for the service garage.
3. No vehicles shall be stored or kept on the adjacent property owned by Baltimore County at the southern portion of the site along Back River Neck Road.
  4. All parking spaces for the retail use (hardware store) must be striped in accordance with the site plan.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/sln