

IN RE: PETITIONS FOR VARIANCE AND SPECIAL HEARING (2202 Halethorpe Farms Road) 13th Election District 1st Councilmanic District Recovermat Mid-Atlantic LLC <i>Legal Owner</i> Petitioner	* * * * * *	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY CASE NOS. 2014-0178-A AND 2014-0278-SPH
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OPINION AND ORDER

These matters come before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed on behalf of the legal owner, Recovermat Mid-Atlantic LLC (“Recovermat”), and a Petition for Special Hearing filed by North Point Recycling, LLC. The Variance Petition seeks relief from the rear yard setback requirements, while the Petition for Special Hearing seeks a declaration that Recovermat is operating a “junkyard” at the site. The cases were combined for hearing.

Howard L. Alderman, Jr., Esquire with Levin & Gann, PA, represented the Petitioner in the Variance case, and Edward J. Gilliss, Esquire with Royston, Mueller, McLean & Reid, LLP, represented the Petitioner in the Special Hearing case. The Petitions were advertised and posted as required by the Baltimore County Zoning Regulations (B.C.Z.R.). Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP). That agency did not oppose the Variance request, but noted in the Special Hearing case that it “does not support a defined junkyard for this location.”

PETITION FOR VARIANCE

The subject property is approximately 10 acres and is zoned M.H.-I.M. Recovermat

operates at the site a scrap metal processing business. Paul Tharp, a Recovermat employee, described the operation of the business in some detail, and underscored that scrap metal is not stored at the site for any length of time, and that no retail sales are conducted on the premises. He explained the current building on site is deficient, and Recovermat proposes to construct a new building on the property for storage and maintenance purposes. Given the configuration of the site, and the flow of traffic in and out of the business, Mr. Capalongo (a landscape architect) stated the proposed location of the new building was really the only sensible choice. Mr. Capalongo testified the property is shaped like a “carving knife,” and that environmental constraints prevent the western portion of the site from being developed.

The proposed building shown on the plan would be located 10' from the eastern property line, while the regulations require 30' and 50' (the M.H. regulations impose differing rear yard requirements along the length of the proposed structure). Recovermat submitted a letter from the Maryland Food Bank (the immediate neighbor to the east) expressing support for the requests. Petitioner's Exhibit 5, Case No. 2014-0178-A.

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).

While variances are not to be routinely granted, I believe Petitioner has met this test. The property is irregularly shaped and is constrained by environmental features on the western portion of the site. If the B.C.Z.R. were strictly interpreted the Petitioner would suffer a practical difficulty, since it would be unable to construct the new building in the location proposed. 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 absence of County agency opposition, as well as the support of the neighbor which would be most impacted by the encroachment.

PETITION FOR SPECIAL HEARING

In Case No. 2014-0278-SPH, the Petitioner seeks a declaration that Recovermat is operating a junkyard on the property. It is undisputed that a special exception is required to operate a junkyard in the M.H. zone, and Recovermat has not been granted a special exception. Instead, in an earlier zoning case (Case No. 1994-0135-A; Petitioner's Exhibit 8 in Case No. 2014-0278-SPH), Recovermat was permitted to operate a demolition and construction materials recycling business which the Deputy Zoning Commissioner determined to be a "manufacturing use" permitted in the M.H. zone. In the years that followed, Recovermat obtained from Baltimore County two "spirit and intent" letters that permitted, under the auspices of the prior zoning Order, the processing under certain conditions of "white goods" and scrap metal at the site. Petitioner's Exhibit Nos. 9 and 10, Case No. 2014-0278-SPH.

Under the B.C.Z.R., a "junkyard" is defined in pertinent part as "[a]ny land used commercially or industrially for storage or for sale of scrap metal." B.C.Z.R. § 101.1. I believe that Recovermat's operation, as described by witnesses at the hearing, constitutes a "junkyard" under the B.C.Z.R., for which a special exception is required in the M.H. zone. B.C.Z.R. § 256.2.

While Mr. Tharp stressed that no "retail" sales were conducted on site, it is clear from his testimony (as well as the testimony of Edgar Johnson) that "scrap metal" is shredded on site, and then conveyed by rail or truck to steel mills, pursuant to sales contracts entered into by Recovermat. This "sale" (to the steel mills) of "scrap metal" leads inexorably to the conclusion

Recovermat is operating a “junkyard” (as defined by the B.C.Z.R.) on the property.

THEREFORE, IT IS ORDERED, this 1st day of October, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to permit a rear yard setback of 10 feet in lieu of the 30 feet required pursuant to §§ 258.1 and 238.2; (2) to permit a rear yard setback of 10 ft. in lieu of the 50 ft. required pursuant to §§ 258.2 and 243.3; and (3) modification of the site plan approved in Case No.: 94-135-A consistent with this Petition and Plan, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing, be and is hereby GRANTED, upon finding that Petitioner (i.e., Recovermat) operates a “junkyard” on the premises.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner must (prior to issuance of permits) obtain a special exception to operate a junkyard, or a final decision from a court of competent jurisdiction reversing the decision in Case No. 2014-0278-SPH.

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

JEB:dlw

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County