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| IN RE: **PETITION FOR SPECIAL HEARING** | * | BEFORE THE |
| **(1542 Jordan Sawmill Road)** | | |
| 7th Election District | * | OFFICE OF |
| 3rd Council District | | |
| David Lee Brewer and Frances Brewer | * | ADMINISTRATIVE HEARINGS |
| *Legal Owners* | | |
| | * | FOR BALTIMORE COUNTY |
| **Petitioners** | | |
| | * | **Case No. 2021-0315-SPH** |

* * * * * * * *

## OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition filed by David Lee Brewer and Frances Brewer, legal owners and Petitioners ("Petitioners") for the property located at 1542 Jordan Sawhill Road, Parkton (the "Property"). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations ("BCZR"), §500.7 to permit the outside storage of a commercial vehicle (tractor trailer without trailer) exceeding the 10,000 gross vehicle weight/gross combination weight and to permit the commercial vehicle to be parked in the front yard in lieu of the required side or rear yard.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Petitioner, David Lee Brewer appeared in support of the Petition. His neighbor, Mark Aitken, 1536 Jordon Sawmill Rd., also appeared in support of the Petition. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1 (the 'Site Plan"). There were no Protestants or interested parties at the hearing. However, Protestant Bruce Honkofsky, 1615 Jordon Sawmill Rd., filed a Code Enforcement Complaint, Case No.: CC2115126, against the Property which generated this Petition.

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Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") and Department of Environmental Protection and Sustainability ("DEPS") which agencies did not oppose the requested relief.

The Property is 2.86 acres +/- (SDAT) and is improved with a 2, 052 sf single family dwelling and a 288 sf shed in the rear yard. There is no garage on the Property. It is zoned Resource Conservation – Agricultural (RC 2). Mr. Brewer prepared the Site Plan showing the location of the home and the parking space for his commercial tractor truck. He also submitted photographs of the Property and the truck. (Pet. Ex. 2A-2G). He testified that he has lived in his home with his wife, Frances, for 33 years and has parked his truck in the front yard for 28 of those 33 years. He is not able to park the truck in the rear or side yards. SDAT records show that he purchased the home in 1988. He added that he is planning to retire by the end of December, 2022 and just wants to continue to park the truck in the same location until that time. Mr. Brewer testified that he has no other location where he can park the truck. He admitted that the truck weighs more than 10,000 lbs.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

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"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016). In the instant case I find that the modest relief requested is within the spirit and intent of the BCZR.

The same year that Petitioner purchased the Property, BCZR, §431.1 was enacted (Bill 70-1988) which prohibits parking of a commercial vehicle on residential property. An exception can be granted if <u>all</u> of the following conditions are met:

> B. One commercial vehicle per dwelling unit may be parked on a residential lot for a period exceeding the time essential to the immediate use of the vehicle subject to the following conditions:
>
> 1. The gross vehicle weight or gross combination weight shall not exceed 10,000 pounds.
>
> 2. The owner or operator of the vehicle shall reside on the lot.
>
> 3. The vehicle shall be parked within a fully enclosed structure or, alternatively, if not within a fully enclosed structure:
>
> a. No materials, products, freight or equipment shall be visible.
>
> b. The vehicle shall display no advertising other than lettering, figures or designs located on the driver's door or front seat passenger's door.
>
> c. The vehicle shall be parked in a side or rear yard.

As the above makes clear, the weight of the vehicle being in excess of 10,000 lbs. as well as the inability to park the truck in the rear or side yards of the Property prohibits me from granting an exception under BCZR, §431.1. I have no authority to grant a temporary parking permit under

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the above section until Petitioner retires later this year. Unfortunately, the language in BCZR, §431.1 is mandatory and all elements have not been met.

Based on the record evidence I find that the requested relief is not within the spirit and intent of the BCZR, and must be denied.

THEREFORE, IT IS ORDERED this **14th** day of **February, 2022** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief under the BCZR §500.7 to permit the outside storage of a commercial vehicle (Tractor trailer without trailer) exceeding the 10,000 gross vehicle weight/gross combination weight and to permit the commercial vehicle to be parked in the front yard in lieu of the required side or rear yard **DENIED.**

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

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JOHN A. OLSZEWSKI, JR.
*County Executive*

PAUL M. MAYHEW
*Managing Administrative Law Judge*
MAUREEN E. MURPHY
*Administrative Law Judge*

February 14, 2022

David and Frances Brewer – trucker1542@gmail.com

RE: Petition for Special Hearing
Case No. 2021-0315-SPH
Property: 1542 Jordan Sawmill Road

Dear Mr. and Mrs. Brewer:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

Maureen E. Murphy
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm
Enclosure