mm 5-13-22
11 am

Donna Mignon

From: Peoples Counsel
Sent: Friday, April 8, 2022 11:15 AM
To: Administrative Hearings
Cc: Jeffrey N Perlow; PAI Zoning Advisory Committee; DanielJSalak@msn.com
Subject: Daniel & Jennifer Salak - 21618 Orwig Road - Case No.: 2022-077-A
Attachments: Ltr to Mayhew on Salak Daniel & Jennifer - Case No 2022-077-A.pdf

Good Morning,

Attached for filing, please find a letter from our office relating to the above-mentioned cases.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
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OFFICE OF
ADMINISTRATIVE HEARINGS

Baltimore County, Maryland

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PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 8, 2022

SENT VIA EMAIL
Paul M. Mayhew, Managing Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RE: Daniel & Jennifer Salak
21618 Orwig Road
Case No.: 2022-077-A
Hearing Date: May 13, 2022 at 11:00 a.m.

Dear Judge Mayhew:

The aforementioned case caught our attention because of several analogous CBA denials, both variances and special hearings, for trucks/trailers/inoperative motor vehicles, as well as recreational vehicles, parked on residential lots. The zoning regulations restrict both number and size for said vehicles as well as location on the site. There are 12 such cases in our records, 11 of which were denied and one approved as a nonconforming use. The cases are attached.

The applicable BCZR are:

(a) BCZR 415A.1. Only one recreational vehicle may be stored on a lot with a detached, semi-detached, row house or group house. The statute also requires setbacks from lot lines.

(b) BCZR 415.3.C. No more than one trailer or mobile home is permitted on a residential lot. Setbacks from property lines are also required.

(c) BCZR 428.1. A. An inoperative motor vehicle may not be stored outside on a residential lot.

(d) BCZR 428.1.B. An unlicensed motor vehicle may not be stored outside on a residential lot except under certain conditions, including a limit of one, and for no more than 15 days. Exceptions are farm vehicles located on a farm.

(e) BCZR 431.1.A. A commercial vehicle exceeding 10,000 pounds gross vehicle weight may not be parked on a residential lot for a period exceeding the time required immediate use of the vehicle.

(f) BCZR 431.1.B. A commercial vehicle not exceeding 10,000 pounds may be parked on the vehicle's owner's residential lot if within a fully enclosed structure, or in a side or rear yard and with limited markings and advertising.

Clearly, the common thread is to reinforce and maintain the residential component and ambiance for the neighborhood, and adjoining residents.

The owners here were cited for the following violations (i) having more than one recreational vehicle, all of which are improperly parked on the site, (ii) outside storage of unlicensed and/or inoperative motor vehicles and (iii) maintaining a prohibited open dump/junk yard. They then filed a petition checking the box for a variance with an attachment labeled variance but asking for special hearing relief to maintain three recreational vehicles and to store/park a utility trailer outside in the front yard in lieu of the required real yard.

BCZR 307.1 limits the scope of variances to "height and area regulations, from off-street parking regulations, and from sign regulations. . . . They [Zoning Commissioner and County Board of Appeals] shall have no power to grant any other variances." These are identified as area variances. Our office has consistently maintained that relief outside this scope is a use variance prohibited under BCZR 307.1 and confirmed over 60 years ago by the appellate court. See Loyola Federal Savings & Loan Ass'n v. Buschman 227 Md. 243, 246,247 (1961): *"Section 307 of the Regulations deals specifically and only with variances from area and height restrictions."* This applies whether the petition requests variance or special hearing relief, and regardless of how it is labeled.

Respectfully, in the instant case, the request for more than one recreational vehicle does not involve height, area, off-street parking or a sign. Simply put, it is not eligible for variance relief. Concomitantly, a petition for special hearing cannot be used to circumvent the variance regulation and prevailing law, and must also be denied as a *de facto* use variance.

The special hearing regulations state:

BCZR 500.6. ". . .the Zoning Commissioner shall have the power, . . .to conduct hearings involving any violation or alleged violation or noncompliance with any zoning regulations, or the proper interpretation thereof, and to pass his order thereon, . . .".

BCZR 500.7. The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders there on as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, . . .".

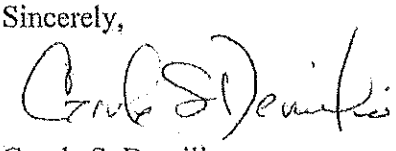
BCZR 307.1 and BCZR 500.6 and 500.7 must be read in mutual compliance. Dept of Human Resources, Balto City v. Hayward and Dixon 426 Md. 638 (2012):

> *"When we undertake to interpret a statute, we do not review it in a vacuum, "nor do we confine strictly our interpretation of [the] statute's plain language to the isolated section alone." . . . Instead, "we analyze the statutory scheme as a whole and attempt to harmonize provisions dealing with the same subject so that each may be given effect."*

Again, respectfully, a special hearing that seeks relief outside the scope of the zoning regulations violates the requirement that it "be necessary for the proper enforcement of all zoning regulations," The special hearing here seeks relief that does not comport with the "proper interpretation" of variance law.

I hope expressing our office's position in this matter is helpful. Moreover, in this case, I thought it fair to the Petitioners to be aware of our concerns prior to the hearing.

Sincerely,



Carole S. Demilio
Deputy People's Counsel for Baltimore County

Enclosures
cc: Daniel & Jennifer Salak, Petitioners, DanielJSalak@msn.com
Jeffrey N. Perlow, Zoning Supervisor, jperlow@baltimorecountymd.gov

IN THE MATTER OF ATKINS FAMILY LIVING TRUST (DENNIS & CAROL ATKINS) - LEGAL OWNERS/PETITIONERS VARIANCE FOR THE PROPERTY LOCATED ON THE W/S OF RIDGE ROAD, 149 FEET S/OF CENTERLINE OF EDMONDSON AVENUE (2 RIDGE ROAD) 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO.: 05-024-A

* * * * * * * * *

OPINION

This case comes before the Board of Appeals from a decision of the Deputy Zoning Commissioner dated October 29, 2004 in which the Petitioners' request for a variance from § 415.A.1.A of the *Baltimore County Zoning Regulations* (BCZR) to allow a recreational vehicle to be stored 1foot from a side lot line in lieu of the required 2½ feet was granted.

A public hearing on the instant matter was held on April 6, 2005. Petitioners were represented by Michael P. Tanczyn, Esquire, and Appellants/Protestants by Leslie M. Pittler, Esquire. A subsequent Public Deliberation was held on April 13, 2005.

Herbert Malmud, a professional land surveyor, was qualified as an expert witness and testified on behalf of the Petitioners. Relating that he had reviewed the applicable plats and records, he described the subject site as containing 6,000 square feet zoned D.R. 5.5, known as "Lot 36"of the "North Paradise" subdivision (recorded in 1920). He described the subject lot as 55 feet wide and 120 feet deep, improved by Petitioners' dwelling set 13.5 feet from the north property line. There is a small overhang from the side entrance, which extends 2.5 feet from the side of the home, extending over a cement parking pad. He noted a remaining 11-foot clear space between the overhang and the north property line.

The witness testified in support of the admission into evidence of a number of exhibits relating to the ownership, history, location, size, and shape of the property. After having reviewed Petitioners' request on site, he opined that the necessary space was extremely narrow and that as a result of the overhang it was impossible for the Petitioners to park their recreational vehicle (RV) closer to the subject dwelling than what was already being done. He concluded that it was his belief that the requested variance would not affect density, would be in harmony with the spirit and intent of the applicable zoning regulations, and should therefore be granted.

In a brief cross-examination, the witness acknowledged that a standard motor vehicle could be parked on the pad without the need for a variance and that the size of the Petitioners' motor home is what has necessitated the request. He had no knowledge of whether or how the overhang could be removed, but agreed that the size and shape of the subject property was not peculiar for the area and was in fact consistent with the rest of the neighborhood.

Petitioner Dennis Atkins testified. He adopted the previous historical and related testimony of witness Malmud and related that he parked an RV on his parking pad over 10 years. He stated that his previous RV was approximately 24 feet long, while the present RV, purchased in 2001, is 31 feet long. Both are approximately the same width. He explained that he backs into the parking pad space because a poorly placed telephone pole hinders maneuverability. This makes it difficult to enter the RV because the door is too close to the house. Additionally, he was concerned that Protestant's fence was too close and was in and of itself a hindrance to the parking of his vehicle.

The witness described the overhang as a protection from the weather and did not remove it when the siding was redone in 1981 because of the cost involved in redoing the siding.

On cross-examination the witness agreed with his surveyor's characterization that the lots in the neighborhood (including his own) were generally the same. He admitted that he had never attempted to pull into the driveway as has been suggested and acknowledged that he was aware of the property lines and limitations when he purchased the most recent recreational vehicle.

Susan Johnson, Protestant, testified as to her concerns with the pending request, including safety issues she believed resulted from the Petitioners' recreational vehicle parking arrangements and the conceivable detrimental effect upon her property value.

The law regarding variance requests in Baltimore County is well settled. Section 307 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:

> ...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare....

This Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md.App. 691 (1995), wherein the Court writes:

> ...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties.... Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes

> requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... Id. at 710.

This Board believes that neither BCZR §307 nor *Cromwell* contains or supports such a suggestion. The testimony from Petitioners' surveyor adopted and confirmed by the Petitioner himself is that the subject site is not peculiar to, but rather is consistent with the neighborhood. The various relevant exhibits, including the Petitioners' Exhibit No. 2, clearly illustrate that the subject site is not unique under either the BCZR or *Cromwell.*

Having so found, we need not proceed to make a determination as to the second prong of the *Cromwell* test. However, in the furtherance of judicial economy, we will briefly discuss the issue of resultant difficulty. This Board believes that the requested variance is an "area" variance. As such, in applying the "practical difficulty" standard set forth in *McClean v. Soley*, 270 Md. 208 (1973), we find that no such practical difficulty exists. Petitioners can continue to reasonably utilize his property even without the requested variance. Moreover, as Petitioners purchased the present recreational vehicle knowing the size and limited nature of the location's available parking arrangements, we find that it is, in fact, a "self-imposed" difficulty; and one that could be relieved by either purchasing a smaller vehicle or by implementing alternate parking arrangements.

Assuming in arguendo, that the required variance would be considered a "use" variance, we would apply the "undue hardship" standard set forth in *Green v. Bair*, 77 Md. App. 140, 151 (1988). Where this standard applies, the Petitioner must meet three criteria:

> 1) If he complied with the ordinance, he would be unable to secure a reasonable return from or to make reasonable use of his property....
>
> 2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district....

3) The hardship was not the result of the applicant's own actions....

The Board unanimously concludes that Petitioners can still clearly secure a reasonable return and use on their property without a variance; that the stated difficulties are not peculiar to the subject property; and that any resultant hardship is self-imposed.

For all of the above, this Board unanimously denies the requested variance relief.

ORDER

THEREFORE, IT IS THIS 16th day of September, 2005 by the County Board of Appeals of Baltimore County

ORDERED that Petition for Variance to allow a recreational vehicle to be stored 1 foot from the side lot line in lieu of the required 1½ feet from any side lot line is hereby **DENIED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules.*

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

Dr. Margaret Brassil

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
ROBERT & ISABEL BAYNES, SR. - LEGAL	*	COUNTY BOARD OF APPEALS
OWNERS; ROBERT & BARBARA BAYNES,		
JR. – C.P. FOR SPECIAL HEARING ON	*	OF
PROPERTY LOCATED ON THE N/S OF		
BOWLEY'S QUARTERS ROAD, 380' WEST	*	BALTIMORE COUNTY
OF CHESTNUT ROAD		
(1047 BOWLEYS QUARTERS RD)	*	Case No. 04-602-SPH
15TH ELECTION DISTRICT	*	
6TH COUNCILMANIC DISTRICT		

* * * * * * * * *

OPINION

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner in which the requested special hearing was denied. The Petition for Special Hearing was filed by the legal owners of the subject property, Isabel C. and Robert T. Baynes, Sr., and the lessees of the Property, Barbara and Robert Baynes, Jr. The Petitioners are requesting special hearing relief for the property located at 1047 Bowley's Quarters Road in the eastern area of Baltimore County. The special hearing request was filed pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (BCZR) to permit the parking of six commercial vehicles with a weight exceeding 10,000 lbs. each in lieu of the permitted one 10,000 lbs. or under for each vehicle per § 431 of the BCZR.

At the hearing before the Board, the Petitioners amended their Petition to request the parking of two commercial vehicles with a weight exceeding 10,000 lbs. each in lieu of the permitted one 10,000 lbs. or under for each vehicle.

At the hearing before the Board, Tammy Eichorn, the daughter of Barbara Baynes and an officer of the company, "Barbie's Recycling and Hauling," represented the company *pro se*. Peter M. Zimmerman, People's Counsel for Baltimore County, entered his appearance and

participated fully. A hearing was held on May 26, 2005, and public deliberation was held on July 20, 2005.

Facts

Bruce Doak, land surveyor with the firm of Gerhold, Cross, and Etzel, a surveying firm that prepared the plan to accompany the request, testified before the Board. He stated that a subdivision was created in the mid-1990s on a lot of 1.667 acres and another of 3.228 acres. The 3.228-acre parcel was classified R.C. with a small portion of the southeast corner classified as B.L. The 1.667-acre lot was classified B.L. A trucking facility was in place at the time that the subdivision was created in the 1990s. The Baynes built a dwelling on the 1.667-acre lot, and there was also a dwelling on the 3.228-acre lot.

The property where the trucks are being parked is classified B.L. and is the only blacktop area. It is enclosed. Mr. Doak testified that the trucks that are to be parked weigh 26,000 lbs. empty and up to 70,000 lbs. when they are full.

Robert Baynes, Jr., testified that he had resided at the property for at least 50 years. He has been operating a dump truck business in that area for approximately 29 years. At the present time, the company stores trucks off of the property but they desire to store two trucks in the B.L. zone overnight in the garage which has been built for that purpose.

Mr. Baynes stated that, when he married his wife, she had a trucking business, "Barbie's Recycling and Hauling." They have a rented space at Sullivan's Operation where they store the trucks and do repair work if necessary. He stated that he began working in the business in 1970, and he has two trucks on the property. This is the first time he filed a zoning request for the use of the trucks. In response to a question by the Chairman, Mr. Baynes stated that he had one truck up until 1988 at which time he purchased another truck. He stated that there was no change in

the zoning in the area since he started working in the business. He stated that he thought the zoning has been the same since 1950.

Mrs. Baynes testified that she was in the trucking business prior to marrying her husband. She has lived at 1047 Bowley's Quarters Road for 5 years, since their marriage. When she married Mr. Baynes, she had one truck and bought four more trucks in the ensuing years. Mrs. Baynes and her daughter, Ms. Eichorn, drive the trucks when necessary.

Three neighbors, Melvin Bauerfeind, Marie Fraley, and John Larnantia, testified on behalf of the Petitioners that they live in the area and have for a number of years. They testified that they were not opposed to the trucks being parked on Petitioners' property and that they had never been disturbed by the trucks being parked there or utilizing the property as a trucking facility.

People's Counsel presented Mark Cunningham, a development review planner in the Baltimore County Office of Planning. Mr. Cunningham testified that he had reviewed the situation and felt that the request was for a Class II Trucking Facility, which would allow the parking of commercial vehicles over 10,000 lbs. He stated that this was not allowed by right or by special exception in an R.C. 2 or B.L. zone. It was allowed by right in an M.H. zone and by special exception in an M.L. zone. Mr. Cunningham stated that under § 431 of the BCZR no vehicle weighing 10,000 lbs. would be allowed on a residential lot. He stated it was his opinion that, even though the smaller lot was classified in the B.L. zone, there was a residence on the property and it would be considered a residential lot. It was his view that, even though there was only the intention to park two trucks on the property, this would still be considered a Class II Trucking Facility.

Anthony Sersen, a neighbor living ½ mile from the property, stated that he was opposed to the parking of the trucks on the property. In his opinion, the neighborhood had changed dramatically since Hurricane Isabel and property values had escalated. He felt that a trucking company was not compatible with the up-scale neighborhood which the area was becoming.

Clare Hash, another neighbor who lives approximately five to six houses down from the Baynes, stated that she was concerned with the trucks being parked there; that the diesel fumes would permeate the air in the Chesapeake Bay Critical Area. She stated that she felt that the trucking facility would cause property values to go down in the vicinity of the property in question.

Michael Vivirito, another neighbor living 1-½ miles from the property, testified on behalf of the Bowley's Quarters Improvement Association. He presented "Rule 8" papers which authorized him to testify on behalf of the Association. According to Mr. Vivirito, the Association's Board of Directors did not object to the parking of two trucks in the residential neighborhood if they were parked in the commercial area (the B.L. zone) and were in the garage.

Warring Justis, a Certified General Appraiser, also testified. He stated that he had lived in the area since 1980. He was concerned with the environmental issues as well as safety. There are no shoulders on the road, and the lanes are very narrow. He testified that the residential areas in the vicinity of the property in question have homes which are valued from $350,000 to $1,000,000. He had no problem with one truck being parked on the property, but he was against parking more than one truck on the property.

Decision

The *Baltimore County Zoning Regulations* define a trucking facility as follows:

> TRUCKING FACILITY – A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types in order to facilitate

> the transportation of such goods or chattels; or (b) for truck or truck-trailer parking or storage. A trucking facility may include as incidental uses only sleeping quarters and other facilities for trucking personnel, facilities for the service or repair of vehicles or necessary space for the transitory storage of goods or chattels....
>
> As used in this definition, the term "trucks," "truck-trailers," and "truck tractors" do not include any vehicle whose gross maximum gross weight is 10,000 lbs. or less as rated by the State Motor Vehicle Administration.
>
> TRUCKING FACILITY, CLASS I (TRUCK TERMINAL) – A trucking facility whose primary purpose is to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels.
>
> TRUCKING FACILITY, CLASS II – A trucking facility other than a Class I trucking facility, including a truck yard (the primary purpose of which is to accommodate the parking or storage of trucks, truck trailers, or truck tractors.

It is clear that the Baltimore County Office of Planning believes that the proposed parking of the trucks on the B.L. portion of the property in question would constitute a Class II Trucking Facility, which is not allowed in either an R.C. or B.L. zone. There is no question that the dump trucks to be parked on the property weigh 26,000 lbs. empty. Section 431 of the BCZR prohibits the parking of any vehicle weighing in excess of 10,000 lbs. on a residential lot for a period exceeding the time essential to the immediate use of the vehicle. In the opinion of Mr. Cunningham, even though the smaller lot was classified B.L., it was still a residential property since there was a residence constructed on the property. It is quite clear that the restrictions of the *Baltimore County Zoning Regulations* prohibit the parking of trucks in excess of 10,000 lbs. in the B.L. and R.C. zones even by special exception. The Board is mindful of the service which the Petitioners have performed for the residents in the Bowley's Quarters area; however, the Board is bound by the law and has no authority to allow the parking of the trucks as requested by the special hearing. Therefore, the special hearing must be denied.

ORDER

THEREFORE, IT IS THIS 28th day of September, 2005 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioners' request for special hearing relief pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (BCZR) to permit the parking of two commercial vehicles with a weight exceeding 10,000 lbs. each in a B.L. zone, or to allow two vehicles in excess of 10,000 lbs. each to be parked in a residential lot in lieu of the permitted one vehicle weighing 10,000 lbs. or less under § 431 of the BCZR be and is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

Margaret Brassil, Ph.D.

IN THE MATTER OF THE APPLICATION OF BONNER-JOPPA, LLC – PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SW/CORNER OF "C" STREET AND AVONDALE ROAD (3015 E JOPPA ROAD)	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY
11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	* CASE NO. 04-127-SPH

* * * * * * * * *

OPINION

This case comes to the County Board of Appeals as an appeal filed by the Office of People's Counsel from a decision of the Deputy Zoning Commissioner's decision issued on December 3, 2003, granting the special hearing request to approve an amendment to the Order in Case No. 02-066-SPHA, Restriction No. 9, to permit one tow truck to be stored on-site for the purpose of providing emergency towing services under contract from Baltimore County from the subject property at 3015 East Joppa Road.

The Petitioner, Mr. Timothy Bonner, of Bonner-Joppa, LLC, was represented by F. Vernon Boozer, Esquire. Peter M. Zimmerman, People's Counsel for Baltimore County, appeared on behalf of that office. The Board conducted a public hearing on September 22, 2004, and a public deliberation on November 4, 2004.

In his opening statement, Mr. Zimmerman described the zoning history of the subject site, which dates back to 1975. The lot is zoned for commercial use (B.L.-A.S.) but is surrounded by a residential neighborhood (D.R. 5.5). The most recent zoning decision is dated September 28, 2001. Mr. Zimmerman noted that a compromise agreement was reached at that time with the neighborhood which set 10 restrictions on the granting of the special exception. The instant case (Case No. 04-127-SPH) involves Restriction No. 9, which prohibited tow trucks from operating on the property.

The main issue in this case, according to Mr. Zimmerman, was whether an agreement that

was reached only a few years ago could be changed unless the situation had changed dramatically. He argued that residents needed to have confidence when entering into an agreement to a special exception that it is going to hold; otherwise, they will be disinclined to enter into such agreements.

Mr. Zimmerman also argued that the Deputy Zoning Commissioner should not have based his decision on the "emergency need" by the County for an additional tow truck operator, but on the special exception requirements set for in § 502.1 of the *Baltimore County Zoning Regulations* (BCZR).

In his opening statement, Mr. Boozer submitted Petitioner's Exhibit 1, a copy of the decision in Case No. 02-066-SPHA dated September 28, 2001, which granted the Petitioner's request to amend a previously approved special exception granted in Case No. 95-423-SPH (decision dated August 2, 1995), and a request for variance, subject to ten restrictions.

Testimony

The first witness called by the Petitioner was Mike Walkley, a Civil Engineer who prepared the site plan for the tow truck operation at the subject location. He testified that the tow truck would be stored on the west side of the building (known as Tim's Auto), and that a fence would screen the truck. The truck would also be screened from Avondale Avenue by the building itself. Two parking spaces would be eliminated as a result. Petitioner's Exhibit 2 was accepted into evidence showing a plan of the site.

Testimony was then given by Officer Ruark, of Baltimore County Traffic Management. Mr. Ruark had prepared a report for permitting a tow truck operation at 3015 Joppa Road, which was submitted as Petitioner's Exhibit 3. Officer Ruark testified that the report recommended that

another towing operation was needed in the Harford Road corridor. However, Officer Ruark noted that the Police Department took a position of "neutrality" on whether Bonner-Joppa should be granted a towing license, stating that the report did not reach a conclusion as to whether this particular site filled the Department's needs.

Mr. Timothy Bonner next testified regarding the subject property. He bought the property in September 2001, at which time it was an "old rundown garage" with two service bays. Because the building was dilapidated, he tore it down and went through the zoning process to rebuild. Petitioner's Exhibits 4A-H were introduced to show the new building, the location of parked cars, the fence, and where the tow truck operation would be run.

Mr. Bonner was asked why he now wanted tow trucks on the site, when the original special exception included a condition prohibiting them. Mr. Bonner replied that he had originally intended to run the tow trucks from his first location in Baltimore City, but as his business on Joppa Road has grown, he needs the tow trucks to further expand. He further testified that he wanted the Police Department towing license and needed to be able to operate tow trucks from the subject site. Mr. Bonner stated that the agreement entered into 2 years ago is now limiting his business.

Mr. Bonner further testified that he owns a house in the nearby residential neighborhood on 6th Avenue, which he owns with his brother.

Upon cross-examination, Mr. Bonner admitted that he currently has a tow truck operation in Perry Hall. Mr. Zimmerman offered People's Counsel Exhibits 2A-P, which Mr. Bonner identified. Exhibits 2A-C are photos showing Tim's Auto on the subject site. Exhibit 2D shows vans from Tim's Auto parked on Avondale Avenue, around the corner from the shop. Exhibit

2H and 2I show vehicles on C Street. Exhibit 2K shows a van on Avondale. Exhibit 2L show's Mr. Bonner's house and garage on Avondale.

When asked by Mr. Zimmerman how often the tow trucks would operate, Mr. Bonner testified that it would be a 24-hour operation, because towing could occur at all hours whenever a customer breaks down. Mr. Zimmerman pointed out that this would be contrary to Condition 7 of the original request for variance, which limits hours of operation to from 7 a.m. to 6 p.m. Monday through Friday and 8 a.m. to 3 p.m. on Saturdays. Mr. Bonner stated that he understood this restriction to mean those were the hours he could be open for business, but that this did not preclude him from towing a vehicle to his business.

Upon questioning by Panel Chairman Don Mohler, Mr. Bonner admitted that the towing operation would enable him to serve more customers, not just the Police Department.

Mr. Zimmerman introduced People's Counsel Exhibit 3, an aerial photo of the site and surrounding neighborhood, and People's Counsel Exhibit 4, a zoning map of the area, with the location of the site marked in yellow. People's Counsel Exhibit 5 is a copy of the decision granting a special exception to operate a service garage granted on June 4, 1975 to the original owner of the site (Case No. 75-262-X), and People's Counsel Exhibit 6 is a copy of the decision granting a Special Hearing in August 1995 to amend the 1975 Special Exception to remove Condition 2 (Case No. 95-423-SPH). Finally, Mr. Zimmerman introduced People's Counsel Exhibit 7, a letter from the Carney Improvement Association to Mr. Timothy Kotroco, the Deputy Zoning Commissioner for Baltimore County, dated September 21, 2001, in which the community association expressed support for Mr. Bonner's Petition for a Special Hearing on condition that certain restrictions be placed on the business.

The first witness called by People's Counsel, Marilyn Ryan, of 3414 Sixth Avenue in Carney, testified regarding her concern for the proposed towing operation. Her concern centered on the continued expansion of the business. She stated she was concerned that tow trucks would be running all night. She also testified that she was concerned about what would be done with cars towed to the site from accidents, since Tim's Towing was not allowed to do body work - one of the original conditions. She further testified that vehicles from the auto shop have been parked illegally on nearby vacant property and at the house that Bonner owns on 6th Avenue.

The second witness called by Mr. Zimmerman was Ruth Baisden, representing the Greater Parkville Council (People's Counsel Exhibit 10). She testified that, while the neighborhood wanted to see the property improved, it was initially concerned about the size and scope of the business, which was why the restrictions were originally placed on it in 2001. Ms. Baisden pointed out that the nearby area is all residential, and the community must constantly police Bonner's actions to enforce the current restrictions.

Other witnesses testified to seeing the commercial vans that Bonner's shop repairs parked on Avondale, where they are not allowed, and at Bonner's house on 6th Avenue (People's Counsel Exhibits 13A-E).

In his closing argument, Mr. Boozer pointed out that Mr. Bonner had eight tow trucks at his Perry Hall location and only wanted one at this location, and that he wanted the one at the subject location for his convenience and his customers. He argued that Mr. Bonner had complied with the original restrictions during the last two years, but because his business had grown, he now needs the restrictions amended to allow a tow truck on the site.

In his closing, Mr. Zimmerman argued that, although the Bonner property is zoned B.L.-

A.S., the surrounding area is residential zoning, D.R. 5.5. In order for his special exception request to be granted, Mr. Bonner had to meet the conditions placed on it to accommodate the residential neighborhood's concerns. Since the decision in 2001, Mr. Zimmerman argued, there had been no "substantial change in conditions" as to the facts or the law, as required by *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956), for the Board to now modify the conditions placed on the subject property. Mr. Zimmerman pointed out that the only change has been that Bonner's business has grown, but that the original intent of the 2001 restrictions was to moderate the business. Mr. Zimmerman further argued that the special exception requirements of BCZR 502.1 require that the impact on the neighborhood be considered.

Mr. Boozer then argued that this was not a 502.1 case, because the special exception for a service garage had been made in 1975. The request now was for an amendment to the conditions made in 2001.

Decision

The history of this case dates back to 1952, when the special exception for a two-bay service station was first granted (Case No. 22435A). In 1975, a second Petition for Special Exception was filed. In his opinion in that case (Case No. 75-262-X), the Deputy Zoning Commissioner for Baltimore County, James Dyer, noted that "[t]estimony by several area residents established that the subject property has, in the past, been a blight on the neighborhood due to maintenance, junk, etc." (Peoples Counsel Exhibit 5, p. 1). Because the residents thought the new owner "was providing a service to the community," the Deputy Zoning Commissioner found that the use met the requisites of § 502.1 and granted the special exception with certain restrictions. Among the four restrictions were Restriction 2, which prohibited body or fender

work; and Restriction 3, which required that overnight storage of vehicles take place only behind a stockade fence.

Twenty years later, in 1995, the same owner, Antoni Horodowizc, petitioned for special hearing to amend the 1975 special exception to remove Restriction 2 and allow body and fender work to be performed on the site (Case No. 95-423-SPH). Area resident testimony again cited problems with the maintenance of the property. Although one witness for the neighborhood did not oppose the removal of the restriction, he did request that the "property be cleaned up and kept that way." (Peoples Counsel Exhibit 6, p. 2). The Deputy Zoning Commissioner, Timothy Kotroco, granted the amendment, but again set four restrictions. Among those restrictions were Number 2, which requires that all wrecked or damaged vehicles be stored within the fenced/screened area on site; and Number 3, which required improvement and maintenance of the property, in accordance with the dictates of the Office of Planning and Zoning.

We then come to the first Petition for Special Hearing and Variance of September 2001 (Case No. 02-066-SPHA), requested by the current owner of the subject property, Bonner Joppa LLC/Tim's Automotive, in conjunction with the original owner Antoni Horodowicz (Petitioner's Exhibit 1). This petition requested permission to allow the construction of a new building on the subject property and grant a variance from § 409.8.4 of the BCZR to allow existing parking spaces to continue with a 0-foot setback from the street right-of-way in lieu of the required 10 feet. In his opinion in this case, Mr. Timothy Kotroco states, "In order to proceed with the redevelopment of this property, the special hearing request, as well as the variance request, are necessary." (Petitioner's Exhibit 1, p. 2) In granting the request, Mr. Kotroco goes on to state, "I believe it is necessary to place appropriate conditions and restrictions upon this Petitioner, in

order to protect the interests of the surrounding residential community." (Petitioner's Exhibit 1, p. 3)

A total of ten restrictions were placed upon the business as a condition for granting the special hearing and variance request. Among these restrictions are Number 5, which specifies that damaged vehicles should be stored on Petitioner's property and that automobiles waiting for repair should be in designated spaces on the property; Number 7, which limits the hours of operation; and Number 9, which prohibits a towing operation and the storing of a tow truck, but does allow tow trucks to bring automobiles to the site for repair.

The petition before us now seeks to amend the Special Hearing and Variance of September 2001 by removing Restriction Number 9 and allowing a single tow truck to operate from the site.

The neighborhood thus has a 50-year history with the operation of a service station/garage on this site, and most of that history appears to have been negative from the neighborhood's viewpoint.

Counsel for Petitioner argues that, because Mr. Bonner's business has increased since 2001, conditions have changed as to allow the amendment of the restrictions placed upon the site.

People's Counsel argues that the standard of *res judicata* applies. Mr. Zimmerman cites *Whittle v. Board of Zoning Appeals*, which states:

> The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it *may properly grant such a permit only if there has been a substantial change in conditions* [emphasis added]. . . .

> This rule seems to rest not strictly on the doctrine of res judicata, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law. ....It is our view that where *the facts are subject to changes which might reasonably lead to an opposite result* from that arrived at in an earlier case, and if there have been *substantial changes in fact and circumstances between the first case and the second,* the doctrine of res judicata would not prevent the granting of the special permit sought by the appellees [emphasis added].

The Board finds that the Petitioner has not shown substantial change in fact and circumstances that would lead to approval of removing the restriction on a towing operation. The restrictions were originally placed on the service garage with the express purpose of protecting the neighborhood, which has suffered for at least 30, and possibly 50, years from poorly maintained service garages on this site. The argument that the business has grown and therefore needs to operate a tow truck from the premises, if anything, supports the community concerns that led to the initial restrictions. As Mr. Zimmerman pointed out in his closing arguments, the restrictions were intended to moderate the business, so it would not have a harmful impact on the surrounding residential community. In this respect, the changing circumstances of Mr. Bonner's business do not lead to an opposite result, but to the same result: the restrictions remain necessary to protect the surrounding community.

Testimony by Mr. Bonner and witnesses for People's Counsel seems to support the argument by the People's Counsel that removing Restriction 9 would, in effect, also remove Restriction 7 (regulating the hours of business), because the towing operation would potentially operate 24 hours.

In granting the special exception in 1975, and in amending and modifying that special exception subsequently, the zoning commissioners placed certain restrictions on the property in order to address the requirements of BCZR 502.1. Without these conditions, particularly the ten

placed on the property in 2001, the special exception and subsequent amendments might not have been granted. The relevant portions of BCZR 502.1 state:

> Before any special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
>
> A. Be detrimental to the health, safety, or general welfare of the locality involved;
>
> B. Tend to create congestion in roads, streets, or alleys therein;
>
> C. Create a potential hazard from fire, panic, or other dangers.

Based upon the testimony, which indicated that there was already congestion caused by vehicles awaiting repair parked on the public streets -- contrary to Restriction #5 -- and since a towing operation would potentially only increase the vehicles brought to the site, the Board finds that the proposed use would be detrimental to the health, safety or general welfare of the locality and would tend to create congestion in the roads, streets, or alleys therein. The Board voted unanimously against amending the restrictions.

Further, this Board is concerned with the precedent that would be set if an agreement between a community and a business were set aside within only 2 years of being reached. The community acted in good faith in not opposing Mr. Bonner's original petition in 2001 because he agreed to the ten conditions they requested. The community should not have to fight the same battle every 2 years.

Although the Deputy Zoning Commissioner, in his December 2003 decision, cited the Baltimore County Police Department's need for a towing operation in the Harford Road area, that is not one of the criteria for granting a special exception – and, therefore, in this matter, it is not a criteria for amending the special exception.

Therefore, this Board will deny the special hearing request and will so order.

ORDER

THEREFORE, IT IS THIS 27th day of January, 2005 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioner's special hearing request to approve an amendment to the Order in Case No. 02-066-SPHA, Restriction No. 9, to permit one tow truck to be stored on-site be and the same is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY[1]

Margaret Brassil, Ph.D.

Edward W. Crizer, Jr.

[1] While the third member of this panel, Donald I. Mohler III, publicly deliberated and participated in reaching the above unanimous decision of the Board, Mr. Mohler resigned from the Board prior to signature of this Opinion and Order. Therefore, this written decision has been signed by the two remaining panel members.

IN THE MATTER OF THE THE APPLICATION OF KENNETH T. BOSLEY, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH WEST SIDE THORNTON MILL ROAD, 124' NORTHWEST OF CENTERLINE OF YORK ROAD 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	* * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 90-315-SPH

* * * * * * * * *

AUG 07 1991

O P I N I O N

This is an appeal from the decision of the Deputy Zoning Commissioner denying a Petition for a Special Hearing for parking commercial vehicles on a property in an R.C. 4 zone in the Third Councilmanic District of Baltimore County at Thornton Mill Road near York Road.

The property owner, Mr. Kenneth T. Bosley, represented himself without legal counsel in this matter and reviewed the past and recent use of the subject site, bounded by woodland in an R.C. 4 zone. The parcel of .182 acre utilized for occasional parking over the years is part of a 36-acre tract owned by Mr. Bosley, immediately north of the Masonic Home on York Road. In tracing the use of the property, Mr. Bosley recalled several occasions of commercial use by State and County contractors for parking equipment, and of the original grist mill on the Western Run that utilized the location. He further testified that public water, sewage and electricity are available to service the location since installation by the County in 1974.

Acknowledging that the subject site is near the Western Run, Mr. Bosley noted that it is elevated such that it does not lie within the flood plain. Use of the property by a contract purchaser for casual parking of tree service equipment would act as an asset for the citizens of the County who often require this specialized and skilled service. The casual use by the contract purchaser to park his equipment is for overnight, and only for the

time his service is in demand.

Mr. Bosley responded to inquiries by People's Counsel that the tree service company has used his site for 2 years prior to the decision of the Deputy Zoning Commissioner on March 16, 1990.

Mr. Jeffrey Long, of the Baltimore County Office of Planning & Zoning, visited the site and determined that the parking area is too close (60 feet) to the Western Run, which serves the metropolitan water supply. He cited Section 1A03.1 of the Baltimore County Zoning Regulations (BCZR) that the R.C. 4 zone was not subject to reclassification when property is close to a major stream. Mr. Long observed large vehicles on the site and considered their presence a misuse.

Mr. Glen Shaffer, a specialist with the Department of Environmental Protection & Resource Management (DEPRM), testified that he investigated the property and drafted a report for the Zoning Commissioner noting that 50 percent of the site is in a flood plain, and had been built on fill. His office recommended denial of the special hearing to allow parking of commercial vehicles on the site.

The property owner, Mr. Bosley, inquired of the existence of County-prepared parking lots on bike trails in the Gunpowder watershed, and whether Mr. Long or Mr. Shaffer recognized a similarity to his case before this Board. Neither were familiar with the permit process of the trails, which apparently are on State property.

Peter Max Zimmerman, Office of People's Counsel, addressed Mr. Bosley's premise for approval on the grandfathered use of the parcel for parking as not being continuous, with many lapses of 2 years, as required for a nonconforming use. Citing Section 1A03.3

(Use Regulations), he further emphasized that the zoning classification does not permit such a use, even by special exception, and that there is no zoning regulation permitting a "casual use." The property is ineligible for reclassification.

Although there are numerous uses permitted as of right or by special exception in R.C. 4 zones, testimony in this case unquestionably stresses that the entire site would be restricted from development because of its location, and in particular, for the parking of commercial vehicles. The location of the subject site within 300 feet of a stream that flows into a public water reservoir is one criterion among others that makes the requested use unsuitable.

For the reasons indicated above, the Board will deny the Petition for Special Hearing and will so order.

ORDER

IT IS THEREFORE this 7th day of August, 1991 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing to use .182 acre for parking commercial vehicles in an R.C. 4 zone be and the same is hereby DENIED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett

William T. Hackett, Chairman

Harry E. Buchheister Jr.

Harry E. Buchheister, Jr.

C. William Clark

C. William Clark

IN THE MATTER OF THE APPLICATION OF ELLA L. & JOHN E. BROWN - LEGAL OWNERS /PETITIONERS FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE NE/SIDE BACK RIVER NECK ROAD, 247' NW OF C/L BROWNS RD (335 BACK RIVER NECK ROAD) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 00-157-SPH

* * * * * * * * *

OPINION

This matter is before the Board on appeal from a decision of the Deputy Zoning Commissioner approving a special hearing on a request for a modification to a previously approved development plan in Case No. 80-137-SPH, with conditions. Appellant /Protestant, Joyce Gray, was represented by Benjamin Bronstein, Esquire. Petitioners /Appellees, Ella L. Brown and John E. Brown, Jr., were represented by Deborah Dopkin, Esquire. A hearing was held before the Board on November 16, 2000, and January 16, 2001. Public deliberation was held on January 30, 2001.

Background

Petitioners filed for a special hearing on property which they own at 335 Back River Neck Road, which is zoned D.R. 3.5. The special hearing requested a modification of a previously approved site plan, approved in Case No. 80-137-SPH. That plan, approved by Deputy Zoning Commissioner Jean Jung, gave the Petitioner therein approval for a nonconforming use, granting the owner the right to store no more than four trucks on the subject property and also approved the operation of a "piggery" on the site. At the time of the approval of that plan, the property consisted of 9.4 acres. The decision of Deputy Zoning Commissioner Jung was dated April 15, 1980.

Since the date of Commissioner Jung's decision, there have been several conveyances of portions of the property to other members of the Brown family. The property which is the

subject of this hearing consists of .95 acre and is located on the east side of Back River Neck Road just north of Browns Road. It is approximately 123 feet in width and 415 feet in depth. It is improved with a 1½ -story dwelling which is situated on the front of the property. A wood frame shed exists on the rear of the property. The Appellant, Ms. Gray, and her mother built a single-family dwelling on the lot next to the lot in question. This home was constructed in 1997.

During the hearing below before Deputy Zoning Commissioner Kotroco, Protestants testified with respect to the noise generated by the parking of the Petitioners' garbage trucks on the subject property. This prompted the Deputy Zoning Commissioner to place several restrictions on the Petitioners when granting the special hearing.

At the beginning of the hearing, Petitioners submitted a Motion to Dismiss the appeal based upon the fact that the Appellants had not complied with Rule 6 of the Board's *Rules of Practice and Procedure*, by failing to include the address of the parties taking the appeal. Appellants were represented by attorney, Richard G. Greene, Sr., below. Mr. Greene answered the Motion to Dismiss, stating that the names and addresses of the Protestants were in the file of the Deputy Zoning Commissioner which was in the possession of the Board, and that all parties were served with the appropriate papers; therefore, the Motion to Dismiss was based upon a mere technicality, since it was quite clear who the Protestants and their attorneys were. Subsequent to the filing of the Motion, Mr. Greene withdrew his appearance, and Mr. Bronstein entered his appearance on behalf of the Protestants. Mr. Bronstein renewed his opposition to the Motion, and the Board denied the Motion to Dismiss.

Some question was raised by Mr. Bronstein with respect to whether or not the Petitioners were in violation of the County noise ordinances. At the time of the Petition, no evidence was produced to show that there was any violation. Therefore the Board proceeded with the hearing.

Bruce Doak, professional land surveyor, Towson, Maryland, testified with respect to the property in question. Mr. Doak indicated that the property had consisted originally of 9.4 acres but that various parcels had been conveyed away, and that the present parcel, consisting of .95 acre, was the parcel in question. He traced the history of the land and the matter before the Deputy Zoning Commissioner Jung in 1980. The land had been used for parking trucks which were used in hauling refuse and also as a pig farm up until some time after the death of John Brown, Sr., in 1988. The evidence presented by Mr. Doak indicated that the nonconforming use continued from the time it was granted in 1980 until the present, with the exception of the "piggery."

Reverend John E. Brown, one of the current owners, testified also with respect to the use of the property and the fact that he had been on the property since he was a young boy, with the exception of 2 years in the army when he continuously visited the property. He stated that his father had hauled refuse and sewerage from septic tanks, and that presently he has three commercial vehicles which are stored on the property and are used to collect trash. He has a fourth vehicle which is licensed but is inoperable and is not parked on the property.

Protestants attempted to introduce testimony with respect to the testimony which they gave in the hearing in 1980 before Deputy Zoning Commissioner Jung. The Board ruled that it would not hear any testimony with respect to that hearing as any protest with respect to Jung's decision should have been appealed at that time, and it would not be timely to hear such testimony at the present time. Mr. Bronstein made a proffer that, if his clients were allowed to testify, they would testify that the affidavits which were obtained during that hearing were obtained fraudulently and that the trucks were not used during the 1930s and 1940s to haul garbage and refuse. The Board noted Mr. Bronstein's objection to its decision not to hear the testimony.

There was no further testimony, and the evidence that was offered by Petitioners indicated that the Petitioners had received an order approving a nonconforming use to allow him to park and store four trash trucks on the subject property. The testimony did indicate that the "piggery" had been discontinued some time around 1988, and therefore that nonconforming use has been abandoned. The evidence indicates that the present configuration of the property as indicated on the site plan submitted by Petitioners accurately depicts the property as it exists and today, and consists of approximately .95 acre. The parking area and the driveway appear to be the same as was approved by Deputy Zoning Commissioner Jung in 1980.

Deputy Zoning Commissioner Kotroco, in his decision below, attached certain restrictions to the granting of the special hearing with respect to the noise generated by the trash trucks on the property. Mr. Kotroco recognized that he did not have authority to rule on the noise violation since that was within the province of the Maryland Department of the Environment. However, in his attaching the restrictions, he made certain requirements with respect to the operation of the trucks and where the trucks could be parked on the parking lot. The Board does not consider that it has the authority to regulate when the trucks are started, how long they idle, and where they are parked on the property with respect to any noise violations. That is a matter for the Maryland Department of the Environment and the Protestants to work out with the Petitioners. It is clear that the piggery has been abandoned, and that the Petitioners must be in compliance with the requirements of the Maryland Department of the Environment with respect to any noise violations.

ORDER

THEREFORE, IT IS THIS 9th day of March, 2001 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing requesting a modification to a previously approved plan in Case No. 80-137-SPH be and the same is hereby **GRANTED**, subject, however, to the following restrictions:

1. The Petitioners shall be required to bring their property and the parking and storage of the four trash trucks into compliance with all noise regulations imposed upon ~~him~~ them by the Maryland Department of the Environment;

2. The Petitioners shall be prohibited from operating a "piggery" on the property in the future, as that use has terminated.

3. All other conditions and restrictions contained in the Order in Case No. 80-137-SPH shall remain in effect.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Margaret Worrall

Donna M. Felling

IN THE MATTER OF THE THE APPLICATION OF ROGER BRENT BROWN FOR A SPECIAL HEARING AND VARIANCES ON PROPERTY LOCATED ON THE NORTH SIDE SHEPPERD ROAD, 676' W OF GERTING ROAD (2800 SHEPPERD ROAD) 10TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 92-202-SPHA

* * * * * * * * *

JUL 21 1992

OPINION

This case comes before this Board on appeal from a restriction imposed by the Deputy Zoning Commissioner forbidding the Petitioner to store any recreational vehicles (motor homes) other than his own personal motor home on the subject property.

Petitioner testified that it was not his intention to store motor homes for lease or sale on his property. He further testified that his business, renting/selling motor homes, was conducted solely from his site on Weisburg and Big Falls Road. However, he took strong exception to the wording of the restriction which did not permit guests to park their motor homes on the subject site while visiting his property. Testimony from protesting neighbors indicated their fear that, if these visitors' motor homes were allowed to stay on the premises, Mr. Brown would somehow attempt to continue his rental business from this site.

The matter before the Board is basically an interpretation of what would constitute storage of a motor home on-site. Section 415.A of the Baltimore County Zoning Regulations (BCZR) states:

> Contrary provisions of these regulations notwithstanding, one recreational vehicle may be stored on a residential lot as set forth below. Such vehicle, except a truck camper, shall have a current license, may not be lived in, or otherwise occupied, when stored on a lot and shall be mechanically ready to be moved at any time. The space occupied by such a vehicle may be counted as a required parking space.

Under this regulation, Mr. Brown is allowed to store permanently

one such motor home. The Board is of the opinion that interpretation of this statute does not encompass occasional visitors for non-business reasons of owner-occupied motor homes as guests of the property owner. The Board will therefore amend the Deputy Zoning Commissioner's restrictions to permit the occasional and limited use of the Petitioner's property to receive guests in owner-occupied recreational vehicles, and will so order.

O R D E R

IT IS THEREFORE this 21st day of July, 1992 by the County Board of Appeals of Baltimore County

ORDERED that Restriction #2 imposed by the Deputy Zoning Commissioner in his Opinion and Order of December 20, 1991 be and is hereby **VACATED**. The following restrictions are hereby imposed on the Petitioner:

1. All other restrictions and rulings in the above-captioned decision by the Deputy Zoning Commissioner shall stand.

2. Petitioner shall not allow or cause any recreational vehicles (motor homes) in which Petitioner has any ownership interest either directly or indirectly other than his own personal motor home to be stored on the subject property. However, Petitioner may allow such other motor homes to remain on his property for a period of time not to exceed 48 hours for each such vehicle. Any such visiting motor home shall be currently tagged, licensed and registered, and mechanically ready to be moved at any time, and shall be owner-occupied.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T Hackett

William T. Hackett, Chairman

C. William Clark

C. William Clark

S. Diane Levero

S. Diane Levero

IN THE MATTER OF THE APPLICATION OF GABRIEL & MELISSA CROY - PETITIONERS FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE E/S SPARROWS POINT ROAD, 30' S OF C/L McCOMAS AVE (2931 SPARROWS POINT ROAD) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 04-470-SPH

* * * * * * * * *

OPINION

This case comes to the County Board of Appeals as an appeal filed by the Office of People's Counsel from a decision of the Deputy Zoning Commissioner issued on June 18 2004, granting the special hearing request in Case No. 04-470-SPHA to permit the parking of a vehicle in excess of 10,000 pounds of gross weight (tractor /trailer) on a residential lot.

The Petitioners, Gabriel and Melissa Croy, appeared *pro se,* and Peter M. Zimmerman, People's Counsel for Baltimore County, appeared on behalf of that office. The Board conducted a public hearing on February 8, 2005, and a public deliberation on February 8, 2005.

Testimony

The Petitioner, Gabriel Croy, was the only witness for the Petitioners. Mr. Croy introduced Petitioner's Exhibit #1, Site Plan, and Petitioner's Exhibit #2, 18 photos of the area. Mr. Croy testified that he worked for Atlas Van Lines. He stated that he owned a tractor and trailer and needed to park his equipment at his home because the Atlas parking lot was constantly being vandalized. He also stated that none of his neighbors had protested the use of the area for parking. Mr. Croy also indicated that much of the area is mixed use and many other individuals in the area park commercial vehicles in their yards. Mr. Croy testified that the combined weight of his vehicle and trailer is in excess of 80,000 lbs. Mr. Croy further indicated the time he was

parking the vehicle was over night.

Mr. Zimmerman introduced People's Counsel Exhibit #1, § 431 of the *Baltimore County Zoning Regulations* (BCZR); People's Counsel Exhibit #2, A.D.C. Map; People's Counsel Exhibit #3, an aerial photo of the site and surrounding neighborhood; People's Counsel Exhibit #4, a zoning map of the area; People's Counsel Exhibit #5, Planning Board Comment dated May 25, 2004; and People's Counsel Exhibit #6, Department Of Assessments and Taxation owner information report.

The only witness called by People's Counsel was Mark Cunningham of the Baltimore County Office Of Planning. Mr. Cunningham indicated he had visited the site on two occasions and was concerned that granting the request would change the nature of the residential neighborhood and would lead to others doing the same. He also believed it would affect the property located next door.

Decision

Section 431 A of the BCZR provides:

> A commercial vehicle exceeding 10,000 pounds gross weight or combination weight may not be parked on a residential lot for a period exceeding the time essential to the immediate use of the vehicle.

The Board finds that the Petitioners' request would violate § 431 A. The vehicle weight of 80,000 lbs would exceed the 10,000-lb. weight limit. The regulations do not allow any exception to this requirement.

Therefore, the Board will deny the special hearing request and will so order.

ORDER

THEREFORE, IT IS THIS 23rd day of February, 2005 by the

County Board of Appeals of Baltimore County

ORDERED that the Petitioner's special hearing request to approve the parking of a vehicle in excess of 10,000 pounds of gross weight (tractor /trailer) on a residential lot be and the same is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chair

Michael O. Ramsey

Margaret Brassil, Ph. D.

	*	IN THE
IN THE MATTER OF:	*	CIRCUIT COURT
JOYCE GRAY	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 01-C-3898

OCT 11 2001

* * * * * * * * * * * * *

OPINION

On April 15, 1980, the Zoning Commission approved a non-conforming use of 335 Back River Neck Road for storing four (4) garbage trucks used in sanitary waste removal and for operating a piggery. The owners of 335 Back River Neck Road, Ella and John Brown, filed a Petition for a Special Hearing to modify their site plan to reflect changes to their property. Appellant Gray, the Browns's neighbor, opposed that Petition. On December 9, 1999, the Zoning Commission granted the Browns's Petition. On March 9, 2001, the Baltimore County Board of Appeals affirmed the Zoning Commission. Ms. Gray appealed the matter to the Circuit Court as an appeal pursuant to the Maryland Rules. This court has thoroughly reviewed the transcript of the proceedings below and all Memoranda submitted by counsel, and affirms the judgment.

The standard of review for an administrative appeal is whether a reasoning mind could have reached the same conclusion as the agency. State Ins. Comm'r v. National Bureau of Casualty Underwriter, 248 Md. 292 (1967). It is not this Court's responsibility to substitute its judgment for that of the agency.

This Court finds that the following recitation of this case is supported by the record. At

the time that the Zoning Commission initially approved the non-conforming use in 1980, the property was 9.4 acres. Since 1980, portions of the property have been conveyed to other people, and the size of the property has been reduced from 9.4 acres to .95 acres. In 1997, Appellant built a residential home on the lot next to the Browns. Appellant claimed that she was disturbed by the operation of the waste removal business on the Brown property. Subsequently, the Browns petitioned the Zoning Commissioner for a special hearing to modify their site plan to reflect the changes in the property. The piggery operation has since been abandoned.

Appellant's primary argument is that the reduction in the size of the Brown property constitutes an improper extension of the non-conforming use. In support of her argument, Appellant cites the case of County Commissioners of Carroll County v. Zent, 86 Md. App. 745 (1991), which lists the factors to be considered in determining whether an activity is within the scope of a non-conforming use:

> 1) to what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
> 2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
> 3) does the current use have a substantially different effect upon the neighborhood; and
> 4) is the current use a "drastic enlargement or extension" of the original non-conforming use.
>
> Id. at 753.

This Court concludes that these four (4) elements do not apply to the present case. As to the first element, the nature and purpose of the original non-conforming use is exactly the same as it was in 1980. The site was originally approved for a waste removal business, and the site continues to operate for that purpose today. As to the second element, the character, nature, and

kind of use is also exactly the same as it was in 1980. There are still only four (4) garbage trucks used and stored on the property, and the waste removal operation has not expanded or grown since 1980. The third element does not apply, because while the property surrounding the site has changed, the current use of the Brown property has remained the same. As to the fourth element, the size of the waste removal business has remained the same; just the size of the property upon which it is conducted has been reduced. Therefore, the fourth element does not apply.

In conclusion, this Court is convinced that there is substantial evidence supporting the findings and judgment below, and therefore, the decision is AFFIRMED.

10/5/01
DATE

DANA M. LEVITZ, Judge

Cc: Thomas Gisriel, Esq.
Deborah Dopkin, Esq.

IN THE MATTER OF THE APPLICATION OF MARK D. LOY – LEGAL OWNER /PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATEAD ON THE N/S OF MT CARMEL RD, 1,450' E OF THE C/L OF GRACE ROAD (4714 MT. CARMEL ROAD) 5TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * Case No. 06-315-SPH

* * * * * * * * *

OPINION

This case comes to the County Board of Appeals as an appeal of the Zoning Commissioner's decision to deny a special hearing request to park a commercial vehicle in a private driveway. An appeal was filed on behalf of the subject property owner, Mark D. Loy, by his attorney, Jason T. Vettori, Esquire.

Appearing at the de novo hearing in support of the request was Mark Loy and his wife, Kimberly Loy, property owners. Mark and Debra Hermann, adjacent property owners, appeared in opposition. Appearing on behalf of the Office of People's Counsel was Carole S. Demilio, Deputy People's Counsel for Baltimore County.

Through evidence and testimony, the Board was able to learn that the property is a rectangular shaped parcel located on the north side of Mt. Carmel Road, east of Grace Road, in Hampstead. The property measures a gross area of 1.1698 acres, more or less, is zoned R.C. 2, and is improved with a two-story dwelling and detached garage with a large blacktop parking area. A driveway leads into the property from Mt. Carmel Road and provides access to the garage and parking area, which are situated to the rear of the house. The Petitioners have owned and lived on the property since 2002.

Mark Loy testified that he works for H & H Concrete Construction, Inc., in the petroleum division of the company, building and repairing gas stations. The company has assigned a

company truck to Mr. Loy for his duties. As part of his duties, Mr. Loy is dispatched to emergency calls for gasoline leaks because he holds a certification by the State of Maryland's Department of the Environment (MDE), Waste Management Administration. He is called upon at all hours and needs his truck with him because the truck is equipped to handle all types of emergency situations. It was noted that, although he carries a certification from the State, he is not affiliated with MDE in any way. His certification allows him to work on tanks and underground pumps. Mr. Loy hopes to keep his truck on his property in the area shown on the site plan. It is also to be noted that, because the truck weighs in excess of 10,000 lbs, a variance from § 431 of the *Baltimore County Zoning Regulations* (BCZR) would be required to permit the storage of such a vehicle on residential property.

Mark Hermann testified that he and his wife live in the home that is located to the rear of Mr. Loy's property. It is accessed from Mt. Carmel Road on a private drive that runs the length of Mr. Loy's property. Mr. Hermann testified that the area is a residential rural setting that is generally quiet. He has lived in his home for 16 years. He stated that, when Mr. Loy moved in, he owned a small truck that they did not hear. Mr. Hermann was concerned because Loy's new truck has a loud diesel engine that wakes up the Hermanns at 5:30 a.m. when Mr. Loy leaves for work. Mr. Hermann's bedroom faces the Loy property. Mr. Hermann related the case of a commercial truck owned by "Ted's Towing" that was parking in the residential area. According to Hermann, the truck was forced to move.

Hermann acknowledged that he drives a commercial truck for Verizon and has to respond to emergencies. After the "Ted's Towing" case, Hermann started leaving his truck at work and driving to his company in his personal vehicle. He indicated that some of the neighbors park trucks in a lot owned by Black & Decker located 3 or 4 miles away. Mr. Hermann also testified to traffic concerns due to Mr. Loy backing down his driveway from Mt. Carmel Road and the

impact his truck will have on the value of their property.

The Board convened for public deliberation on November 15, 2006. After considering all the testimony and evidence presented, this Board finds that it would be a direct violation of BCZR § 431 to allow Petitioner to park his commercial truck weighing over 10,000 lbs. in his driveway. The Board also feels it would have a negative impact on the surrounding property values, and would have adverse impacts on the quality of living in the surrounding area. Therefore, the Board will deny Petitioner's request and will so order.

ORDER

THEREFORE, IT IS THIS 7th day of June, 2007 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioner's request to park the subject commercial vehicle in a private driveway be and the same is hereby **DENIED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman (2006)

Robert W. Witt

Edward W. Crizer, Jr.

IN THE MATTER OF: THE APPLICATION OF OWEN T. MEADOWS –LEGAL OWNER /PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE NE/S SEVERN AVENUE, 225' W OF C/L OF WALNUT AVENUE (610 SEVERN AVENUE) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO.: 05-498-SPH

* * * * * * * * * * *

OPINION

This matter comes on appeal from the decision of the Zoning Commissioner's dated May 19, 2005 in which the Petitioner's request for special hearing pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (BCZR), to approve the storage of a dump truck, trailer and backhoe on residential property, was DENIED. The Board of Appeals heard this case *de novo*.

Testimony and Evidence

The Petitioner (Owen T. Meadows) testified that he is the owner of the property 610 Severn Avenue. This property backs up to the Baltimore Beltway (I-695) as shown in Petitioner's Exhibit 4a-h. He is retired and has owned the property since 1973 and has been parking his vehicles on the property without complaint since that time. Petitioner submitted Exhibits 1,2, and 3 (*Strucco*, *Cochran* and *Butts* decisions) which were past zoning commissioner's decisions granting zoning variances in the geographical area as the Petitioner; Exhibits 4A-H and 5A-D, which are photographs of his property and the surrounding area indicating commercial use and storage of other similar vehicles; and Exhibit 6, a list of signatures of his neighbors proclaiming "no opposition" to the Petitioner's parking his vehicles on his lot. The Petitioner testified that he has no other site to park his vehicles and that it would

be a financial hardship on him to pay rent to park his vehicles on a commercial lot. He testified he would have to sell his vehicles if he were unable to park his vehicles on his property. He stated that he did not use the backhoe and dump truck commercially but only for work around the neighborhood and for friends.

Six neighbors of the Petitioner (Mr. Lindsey, Mr. Stichel, Mr. Horseman, Mr. Long, Mr. Myers and Mr. Coffman) all testified that the Petitioner was an excellent neighbor, that they were aware of the vehicles, and had no issue with the Petitioner parking them on his property. They testified that the Petitioner was an asset to the neighborhood and often acted as a "Good Samaritan." They noted that the Petitioner helped numerous neighbors with snow removal of driveways and roads, before the County could reach the neighborhood; and further that the Petitioner repaired and maintained the road behind his property (Petitioner's Exhibit 7- aerial photo) for himself and his neighbors despite the road being a County road. They testified that the Petitioner was a volunteer at the local church, using his equipment to defray costs of expansion, and he has helped neighbors save money by using his equipment to offset high commercial rates for neighborhood jobs. They stated that the Petitioner's equipment was not an eyesore and that they never see the equipment where it is now stored.

The only opposition was by letter from Peter M. Zimmerman, People's Counsel for Baltimore County, in which he noted the position of the Office of Planning and the comment dated May 25, 2004, which is part of the record in this case. The Office of Planning opposes the relief requested because it " will negatively affect the adjoining properties and the immediate residential neighborhood in general, and would in essence constitute a use variance." People's Counsel also refers to BCZR § 431, which establishes a "use" for parking commercial vehicles on residential property, subject to specific standards. Mr. Zimmerman's position is that the

Petitioner does not comply with any of the standards, and that the special hearing must therefore be denied. People's Counsel additionally points out that there are no "use" variances permitted in Baltimore County. He argued that use is permitted in Baltimore County in three instances: (I) as a "permitted" use, (ii) a "special exception use", which permits a conditional use under BCZR 502.1, or (iii) a use permitted by a specific statute, for example such as 409.8 above, or under 304.1 to permit a dwelling on an undersized lot if specific standards are met. As such, People's Counsel's position is that the Petitioner is not entitled to a special hearing relief as requested.

Decision

This Board does not believe that Petitioner is requesting or is entitled to a so-called "use variance." We do, however, believe that § 500.7 of the BCZR, *Special Hearings*, does apply. Section 500.7 states:

> The 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. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

The Board bases its conclusions on the testimony of the Petitioner and the neighbors' testimony as well as People's Counsel's letter. This Board concludes that there is a difference between the backhoe and the dumptruck. The Board agrees unanimously that the dump truck is a commercial vehicle and has no uses to the property. The backhoe, however, given the topography, is essential to the Petitioner's property as well as numerous documented uses on behalf of the greater neighborhood. The Board is not unmindful of the esthetic factors involved and has carefully considered the testimony of the other neighbors closely engaged with the Petitioner's property. The Board also concludes, based on testimony, that the concerns of the

health, safety and general welfare of the community are more than met and satisfied with the backhoe remaining on the property.

ORDER

THEREFORE, IT IS this 12th day of April, 2006, by the County Board of Appeals of Baltimore County

ORDERED that Petitioner's request for special hearing relief to approve the storage of a dump truck be and is hereby **DENIED**; and it is further

ORDERED that Petitioner's request for special hearing relief pursuant to § 500.7 of the *Baltimore County Zoning Regulations*, to approve the storage of a backhoe on the subject property, be and is hereby **GRANTED**, subject to the following restrictions:

1. That the backhoe be housed in an accessory building with the proper permit; or
2. That it be enclosed with a privacy fence over that portion of the property where it is stored.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chair

Mike Mohler

Wendell H. Grier

IN THE MATTER OF THE APPLICATION OF FRANK D. REITTERER AND FRANCES M. LEONARD -PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE NORTH AVENUE, 470' NORTHWEST OF CENTERLINE LEEDS AVENUE (1220 NORTH AVENUE) 13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 98-406-A

* * * * * * * * *

O P I N I O N

This case comes before the Board on appeal filed by the Office of People's Counsel of Baltimore County from a decision of the Zoning Commissioner dated August 19, 1998, granting a variance from Section 431 of the Baltimore County Zoning Regulations (BCZR) to allow a commercial vehicle (roll back tow truck) with advertising to be parked daily in the side yard driveway of the subject property.

The Petitioner, Frank Reitterer, appeared pro se. Carole S. Demilio, Deputy People's Counsel, appeared on behalf of the Office of People's Counsel.

This matter was heard by this Board de novo on February 18, 1999. In lieu of final argument, Petitioner was given one week to review prior cases referenced by Deputy People's Counsel in opening statements relevant to the subject matter, and submit Memorandum. Deputy People's Counsel subsequently submitted a Brief in response. Public deliberation was held on March 23, 1999, due notice of which was provided to all interested parties.

The subject property, known as 1220 North Avenue, is rectangular in shape, approximately .149 acre in area, and zoned D.R. 5.5. The lot is located in the Maiden Choice subdivision of

Arbutus and is improved with a two-story block and frame house. The subject site contains a detached garage to the rear, and a concrete driveway on the eastern side of the property where the subject tow truck is parked.

The subject case originated from a complaint registered by the Maiden Choice Community Association indicating a zoning violation wherein a commercial vehicle in excess of 10,000 lbs. existed on the subject site. In response to the complaint, an inspector with Baltimore County was dispatched and a zoning citation was issued.

Mr. Reitterer testified he is employed by Varsity Towing and has continually parked a company tow truck on the subject property since 1989. He stated he commutes to and from work via the tow truck in question. He leaves home at approximately 8:00 a.m. and returns in the evening around 5:00 p.m. He further stated that it was necessary to bring the truck home, since he was on call around the clock during the week and on certain weekends. He further indicated that having the truck at home presented a convenience which enabled quick response time to emergency calls from the Police Department, as Varsity Towing is a licensed towing operator for Baltimore County.

On cross-examination, Mr. Reitterer described the vehicle in question as a 1995 International truck, 22 feet in length overall, weighing in excess of 10,000 lbs, with a capacity gross weight of 21,400 lbs. He stated that he is also on call to the Baltimore City Police Department (in addition to Baltimore County) and responds to car dealership as well as private calls.

For his service, he is compensated by salary and commission as

it relates to the mileage travelled, and at no time does he bring any of the disabled vehicles back to his home. He also stated that his property is reflective of the neighborhood in character, and the tow truck is parked in the side driveway along with two other cars, while two remaining vehicles (all licensed) are kept in the garage to the rear of the property.

The Petitioner further indicated that Varsity Towing is approximately 5 miles from his home and employs 30 to 40 people, which includes five tow truck operators. Mr. Reitterer is fearful that his job will be in jeopardy if the variance request is not granted, since two other drivers also take two trucks home, while two trucks remain at Varsity Towing.

Ms. Lorna Ochs, the Petitioner's immediate neighbor for the past 8-1/2 years, testified on his behalf. She indicated that the use of the tow truck has never presented any problems. The truck is shielded from her view by way of a hedge. The truck has never awakened her in the middle of the night nor caused any disturbance. Ms. Ochs opined that the Petitioner provides a service for the general public of which she was fully supportive.

Eleanor VanDevender testified in opposition to the parking of the commercial vehicle (tow truck) on Petitioner's property. Ms. VanDevender resides approximately 1/2 mile from the subject property. She is a current member of the Maiden Choice Community Association, and in the past held numerous offices, including President and Chairman of the Zoning Committee. She stated that, as an active member of the Association, she has worked with Code Enforcement officials in Baltimore County addressing different

violations in the community, and was not singling out the Petitioner. She opposed the parking and use of a commercial vehicle in a residential community due to safety concerns relative to narrow residential roads and noise factors which ultimately lead to the decline of the neighborhood. She stated that the neighborhood primarily consists of D.R. 5.5 single-family homes which date to the 1940s, with lot sizes of 4,500 to 6,000 square feet.

Ms. VanDevender referenced People's Counsel's Exhibit #4 (a photo of North Avenue and Leeds Avenue) and People's Counsel's Exhibit #5 (a photo of Linden Avenue and Talbot Place) which depict "No Thru" truck signs in which vehicles over 3/4 ton are not permitted. She further stated that Varsity Towing was approximately 10 minutes from the Petitioner's residence, when travelling the local street system, and would actually take less time to reach if the Beltway would be used. Ms. VanDevender opined that, if the variance request was granted, it would set a precedent for other uses of commercial vehicles to exist in residential neighborhoods.

Ms. Paula Wolfe also appeared in opposition to the variance request. Ms. Wolfe resides approximately 1 mile from the subject site. She is President of the Greater Arbutus Community Association (People's Counsel Exhibit #8, Rule 8 documentation submitted). She stated that Mr. Reitterer was a responsible person, but granting of this variance would set a precedent which would open the door for other commercial vehicles. She indicated the neighborhood is an older community, and the streets are not

receptive to this large a vehicle due to on-street parking. She also confirmed the testimony of the previous witness in that Varsity Towing was approximately 7 minutes away.

Mr. Robert Hooe, who has owned an existing service garage and towing company for the past 30 years, also testified on behalf of People's Counsel. Mr. Hooe also owns a tow truck very similar to that of the Petitioners. He indicated his truck weighs 14,000 lbs., which is about 1,000 lbs. lighter than Petitioner's due to the aluminum frame. He opined that the tow truck in question is very large and fairly maneuverable for its size, but would still pose difficulty in navigating smaller streets. He also indicated that his business actually has two tow trucks but that both are dispatched from his business property in compliance with Baltimore County regulations.

The granting of variances is governed by Section 307.1 of the BCZR which provides, in relevant part, that variances may be granted:

> ...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance...would result in practical difficulty or unreasonable hardship.

The Court of Special Appeals, in Cromwell v. Ward, 102 Md.App. 691 (1995), has construed this regulation to mean that obtaining a variance is ~~basically~~ at least a two-step process. The first step requires a finding that the subject property is unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes

the zoning provision to impact disproportionately upon that property. The second step requires a finding that denial of the requested variance would result in practical difficulty or unreasonable hardship.

Cromwell v. Ward states that "[u]nless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship."

The Petitioner failed to present any testimony or evidence to this Board showing that the subject site possessed any peculiar, unusual or unique factors when compared to other properties in the neighborhood such that the requirements of Section 431 of the BCZR, governing the parking of commercial vehicles on residential property, would impact disproportionately upon his property.

Thus, the first step of the variance process was not met, and the practical difficulty or unreasonable hardship requirement cannot be properly considered.

However, even assuming, for the sake of argument, that the property meets the requirement of uniqueness, the Petitioner failed to produce convincing evidence of practical difficulty or unreasonable hardship. The record indicates that Varsity Towing has available parking on site, and that Petitioner admitted that bringing the truck home was a matter of convenience. As testimony by both the Petitioner and Protestants indicated, Varsity Towing is approximately 7 to 10 minutes from the subject site.

Even if this Board found that Petitioner had met his burden satisfying the requirements of Section 307.1 of the BCZR, and

subsequently the stringent test of Cromwell v. Ward, in granting a variance, the Board must recognize Article VI of the Baltimore County Code which regulates towing businesses.

Ms. Deborah Kendall, Supervisor with the Department of Permits & Development Management, referenced People's Counsel's Exhibit #2 in which Baltimore County granted a towing license to Varsity Auto Repair, Inc., dated January 5, 1999. Specifically, the application states that Varsity Towing is "hereby granted" a license:

> To operate TOWING VEHICLES within the bounds of Baltimore County in accordance with the terms and provisions of Article VI, TOWING BUSINESS, Sec. 24-226 through 24-235 of the Baltimore County Code, as amended and any Rules and Regulations from the Department of Permits and Development Management in accordance with Section 24-223.

Section 24-226(d) states:

> No license shall be issued or renewed unless the applicant has provided secure fenced-in storage facilities for ten (10) or more vehicles on the premises shown on the license or within sight of the premises shown on the license. Towing vehicles are to be dispatched from the fenced-in storage lot. Such storage facilities shall also comply with the county zoning regulations and the fencing requirements of the county building code, if such location is located in the county.

Section 24-229(b) states:

> No licensee shall dispatch a tow vehicle from any location other than what is indicated on his license or from fenced-in storage facilities within view of the business shown on license. Each licensee shall have only one (1) business telephone number at his place of business but may have an extension of such telephone in his home or at any other location where he may be contacted.

In conclusion, the Board finds that Petitioner has failed to satisfy the requirements of Section 307.1 of the Baltimore County

Zoning Regulations and also is violative of Sections 24-266(d) and 24-229(b) of the Baltimore County Code. Therefore, this Board must deny Petitioner's request for variance.

ORDER

THEREFORE, IT IS THIS 17th day of May, 1999 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance seeking relief from Section 431 of the Baltimore County Zoning Regulations (BCZR) to allow a commercial vehicle (roll back tow truck) with advertising to be parked daily in the side yard driveway of the subject property be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

Margaret Worrall

Thomas P. Melvin

IN THE MATTER OF THE APPLICATION OF JAKE RUBINSTEIN -Petitioner FOR A VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE WINDSOR ROAD, 75' NORTH OF THE CENTERLINE OF CARYSBROOK ROAD (902 WINDSOR ROAD) 2ND ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 97-52-A

* * * * * * * * *

O P I N I O N

This case comes to the County Board of Appeals of Baltimore County based on an appeal by the Appellant whereby the Petitioner is seeking relief from Section 431 of the Baltimore County Zoning Regulations (BCZR) to permit a commercial vehicle of 15,000 lbs. to be parked in the front yard of his property in lieu of the maximum permitted 10,000 lbs. in the side or rear yard. The Deputy Zoning Commissioner for Baltimore County had denied the variance relief requested by Order dated September 17, 1996.

The Appellant, Mr. Jake Rubinstein, testified in support of the variance. He indicated that he owned a 14,500 lb. roll-back towing vehicle used in his business that he normally parks on his driveway at the subject property, 902 Windsor Road, which is situated in the Sudbrook Park area of Baltimore County. He indicated that he operates his business essentially from his home; and was required to respond to his clients' towing requests as soon as they are received on his pager. He stated that he had resided at the Windsor Road property for approximately 18 years, and has always had a commercial vehicle parked on the premises. The Petitioner explained that, while Sudbrook Park is located in the National Register of Historic Districts, his property was slightly

outside the boundaries of that District. Mr. Rubinstein indicated that he had always attempted to park the truck in the driveway as infrequently as possible, since he works 10 to 12 hours a day. He stated that there were two residences across the street from his property; and described other homes in proximity to his. Petitioner's Exhibits No. 1, 2 and 3 were admitted into evidence, detailing deed descriptions of 904 Windsor Road, 906 Windsor Road, and 908 Windsor Road. All of these properties reflected the original sale prices of the various properties and subsequent indications that the various properties had increased in value from the original dates of purchase.

The Appellant did not believe that the on-site parking of his truck had had any detrimental effect on the immediate neighborhood by reason of the appreciation on the houses recently sold in the area as reflected on the deeds. Appellant's Exhibits No. 4 and 5 were admitted into evidence, reflecting the Petitioner's truck and other commercial vehicles and Mr. Rubinstein related the various comparisons between the various commercial vehicles. The Petitioner stated that he had made extensive efforts to find another area in which to park the tow truck, but had not been successful. Those areas that he had searched were either not secure for his truck or in sections of the County that were not safe for him to travel at night, or were not accessible during the times that he might be required to tow a disabled vehicle. Petitioner's Exhibit No. 6 was admitted reflecting various newspaper articles outlining the Sudbrook area as a "good place to

live." The Petitioner stated that the presence of his one tow truck could not have any serious impact on the livability aspects of Sudbrook Park.

On cross-examination by Mr. Holzer, the Petitioner admitted that he was aware of the limitations imposed by Baltimore County relative to his tow truck; and the 10,000 lb. GVW imposed on such vehicles. He stated that in September 1995 he had received a letter from the Sudbrook Community Association relative to the tow truck parking, which first objection went back as far as 1982. He stated that he had met with an officer of the Association, Mr. Frank, and realized he was in violation of the parking restriction. He again restated that he only owned this one vehicle but did have a trailer parked at Liberty and Millford Road, but it was not the safest area to park the towing vehicle. The Petitioner further described his property as perpendicular to Windsor Road with a small garage used for limited storage. He was never aware that he could apply for a variance, but admitted that the other houses in the area were basically of the same configuration as his, and that some garages had been converted to smaller, private residences. He stated that the size of his lots were about 6 feet to 8 feet to the property line; and, while his home was not in the Historic District, it was immediately on the other side of the street delineating the District. He restated that the truck was only present on the property at night and on Sundays, and also that he frequently worked a full six days a week. The Petitioner indicated that he did not perform any work on the vehicle on the premises and

that he was a member of a local towing organization, but he was not aware of any formal areas that had been designated by the towing organization on which vehicles such as his could be stored when not in use.

In closing, Petitioner stated that the towing vehicle was needed to be parked on his property essentially to provide clients' service when he was called on his pager, and he also felt that the vehicle would be more secure if he could monitor its presence on the property. Petitioner's Exhibits 7, 8 and 9 were submitted to the Board for consideration and represented comments from local neighbors in which they did not register any specific complaint about the towing vehicle being parked on Petitioner's property.

Mr. Thomas A. Hayden, 1004 Kingston Road, Pikesville, also testified on behalf of the Petitioner and indicated that his property was outside the Historic District and that he had moved to the area in 1991. He stated that he had purchased his home in the Sudbrook area for $90,000 and was fully aware of the Petitioner's towing operation, and of the vehicle being parked on Petitioner's property. He indicated that he did not have any difficulty with the truck being there.

Mr. Brian H. Reynolds, 904 Windsor Road, the Petitioner's next-door neighbor also testified on behalf of the Petitioner and indicated he had purchased his home in the area because Sudbrook was fine residential area, and that he was aware of the commercial vehicle being parked on the premises, but that this did not affect his lifestyle.

Mr. Eddie James Jones, 7 Greenwood Road, also testified on behalf of the Appellant. He indicated he had purchased his home in 1980, was aware of the vehicle, and did not have any difficulty with it being parked in the residential area. On cross-examination, Mr. Jones indicated that he lived about 10 blocks away from the Petitioner's property, and that he uses the Petitioner's towing service.

That finalized the Appellant's case-in-chief, at which point in time Mr. Holzer moved for dismissal of the matter based on the fact that the Appellant had not produced any testimony or evidence that would enable this Board to grant the variance, in light of Section 301.7 of the Baltimore County Zoning Regulations; and also the variance guidelines that have been established by the Court of Special Appeals and the Court of Appeals in both Cromwell v. Ward and the Chesterhaven cases. The Board adjourned for approximately 15 minutes and reconvened, at which time the Motion to Dismiss was granted. Section 307.1 of the BCZR specifically states that a variance may only be granted in cases where special circumstances exist that are peculiar to the land or structure that is the subject of the variance request, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship; and, further, such a variance may be granted only if in strict harmony with the spirit and intent of the subject regulations, and only if it does not do injury to the public health, safety and general welfare.

In accordance with the decision rendered in the Cromwell v.

Ward case, it is first necessary that this Board establish that there are special circumstances that exist that are peculiar to the land or structure that is the subject of the variance request, and if that cannot be established by the testimony and evidence produced at the hearing, the Board is not required to probe any further relative to the practical difficulty or unreasonable hardship issue. It was very clear and conclusive to all the Board members that the Petitioner had failed to meet that burden and had not demonstrated in any way that either the land or structure was in any way different than any other dwelling or land areas in the immediate community; and, indeed, by the Petitioner's own admission, the housing in the general area of the subject property was basically the same configuration. Additionally, the Appellant indicated that the only reasons the vehicle was being parked on his property was essentially for his own convenience and security purposes, but there was no conclusive evidence that the vehicle could not be parked elsewhere.

For all of these reasons, the Board will deny the Appellant's Petition for Variance.

O R D E R

THEREFORE, IT IS THIS 17th day of April, 1997 by the County Board of Appeals of Baltimore County

ORDERED that the request for variance from Section 431 of the Baltimore County Zoning Regulations (BCZR) to permit a commercial vehicle of 15,000 lbs. to be parked in the front yard of the subject property in lieu of the maximum permitted 10,000 lbs. in

the side or rear yard be and is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles L. Marks, Acting Chairman

Margaret Worrall

S. Diane Levero