General Site Conditions: Pre August 2020 | Pages 1-5

Exhibit 1-A: Looking at 2301 and 2217 Sulphur Spring Rd from 2222 Sulphur Spring Rd.

Exhibit 1-B: Looking at 2301 and 2217 Sulphur Spring Rd from 2222 Sulphur Spring Rd.

Exhibit 1-C: Looking at 2301 and 2217 Sulphur Spring Rd from 2222 Sulphur Spring Rd.

Exhibit 2-A: Google Maps photo from summer 2018

Exhibit 2-B and 2-C: Google Maps photo prior to 2018

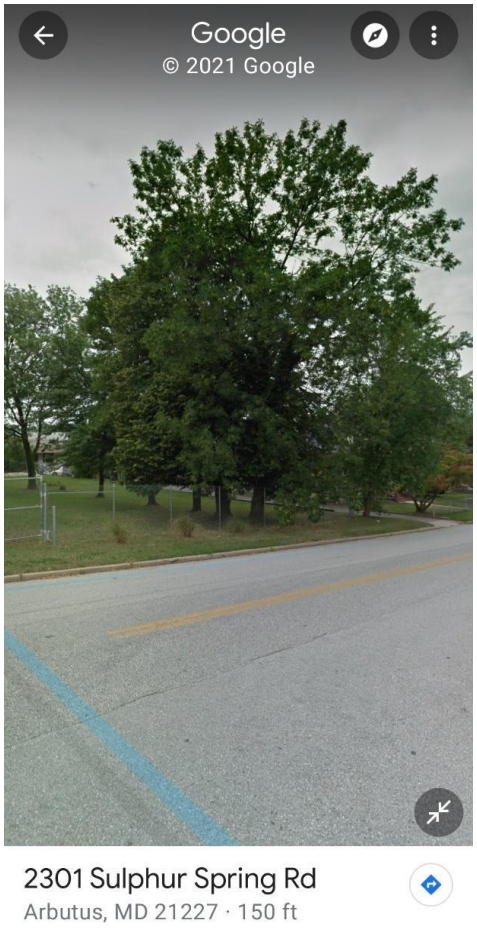


Exhibit 2-D: Google Maps photo from summer 2018

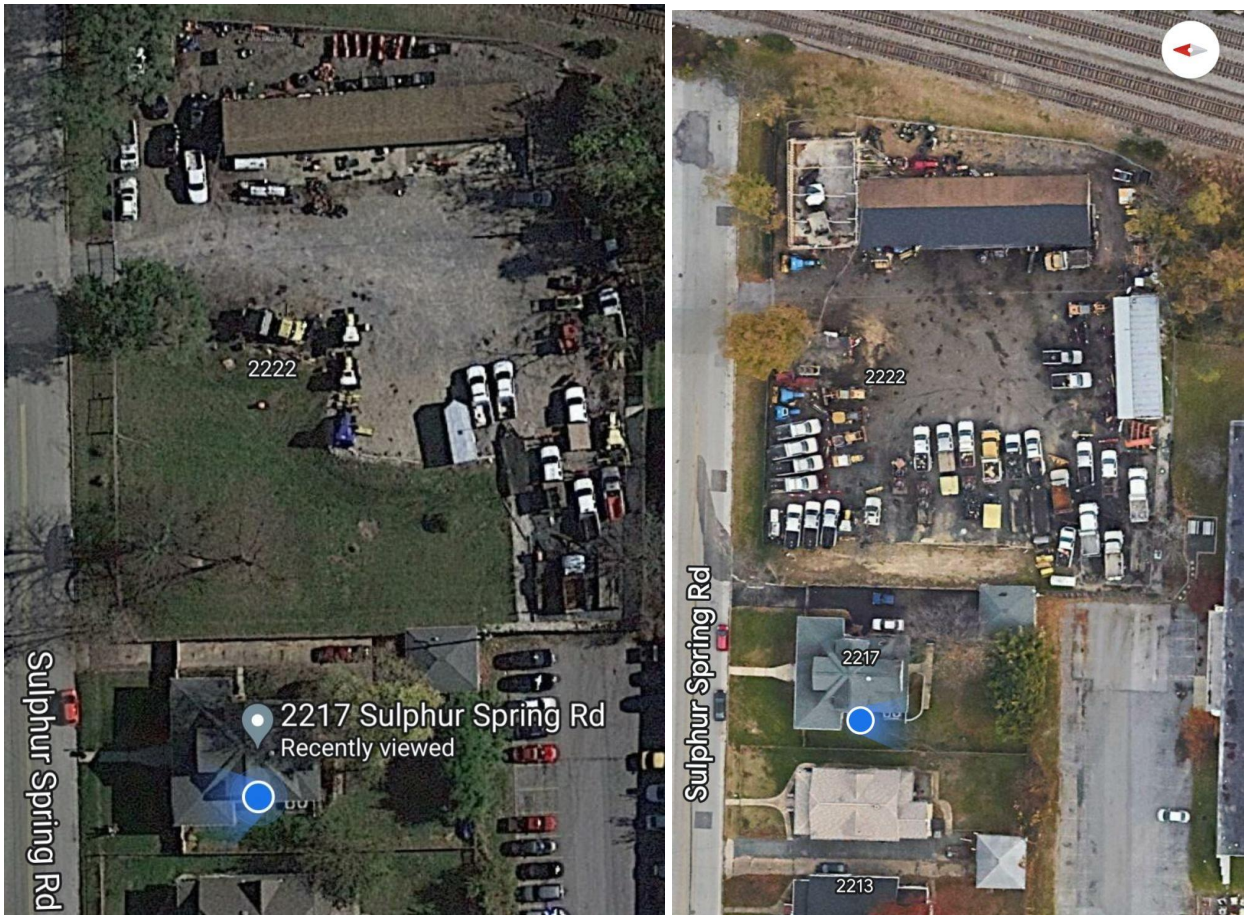
Exhibit 3-A: Looking down driveway of 2217 at Sulphur Spring Rd. 2301 on right side.

Exhibit 3-B: From street looking up 2217 Sulphur Spring driveway. 2301 on left side.

Exhibit 3-C: From street looking up 2217 Sulphur Spring driveway. 2301 on left side.

Exhibit 3-D: On 2301 Sulphur Spring Rd. property expansion looking at 2217 Sulphur Spring Rd.

Exhibit 4-A and 4-B: Google Maps aerial photo from late summer 2019 (left) and December 2021 (right)



General Site Conditions: August 2020 – Present | Pages 7-20

Exhibit 5-A: Looking from 2217 Sulphur Spring Rd. at 2301 Sulphur Spring Rd. water drainage

Exhibit 5-B: Looking from 2217 Sulphur Spring Rd. at 2301 Sulphur Spring Rd. water drainage

Exhibit 5-C: Looking from 2217 Sulphur Spring Rd. at 2301 Sulphur Spring Rd. ineffective drain

Exhibit 5-D: Looking from 2217 Sulphur Spring Rd. at 2301 Sulphur Spring Rd. ineffective drain

Exhibit 5-E and 5-F: Looking from 2217 Sulphur Spring Rd. at 2301 Sulphur Spring Rd. ineffective drain (left). Water from 2301 onto 2217 Sulphur Spring Rd. driveway (right).

Exhibit 5-G: September 2020 water flow after first small expansion

Exhibit 5-H: September 2020 water flow after first small expansion

Exhibit 5-I: Flooding in 2217 Sulphur Spring Rd. front yard coming from 2301 Sulphur Spring Rd.

Exhibit 5-J: Flooding in 2217 Sulphur Spring Rd. front yard coming from 2301 Sulphur Spring Rd.

Exhibit 5-K: Ineffective drain at 2301 Sulphur Spring Rd.

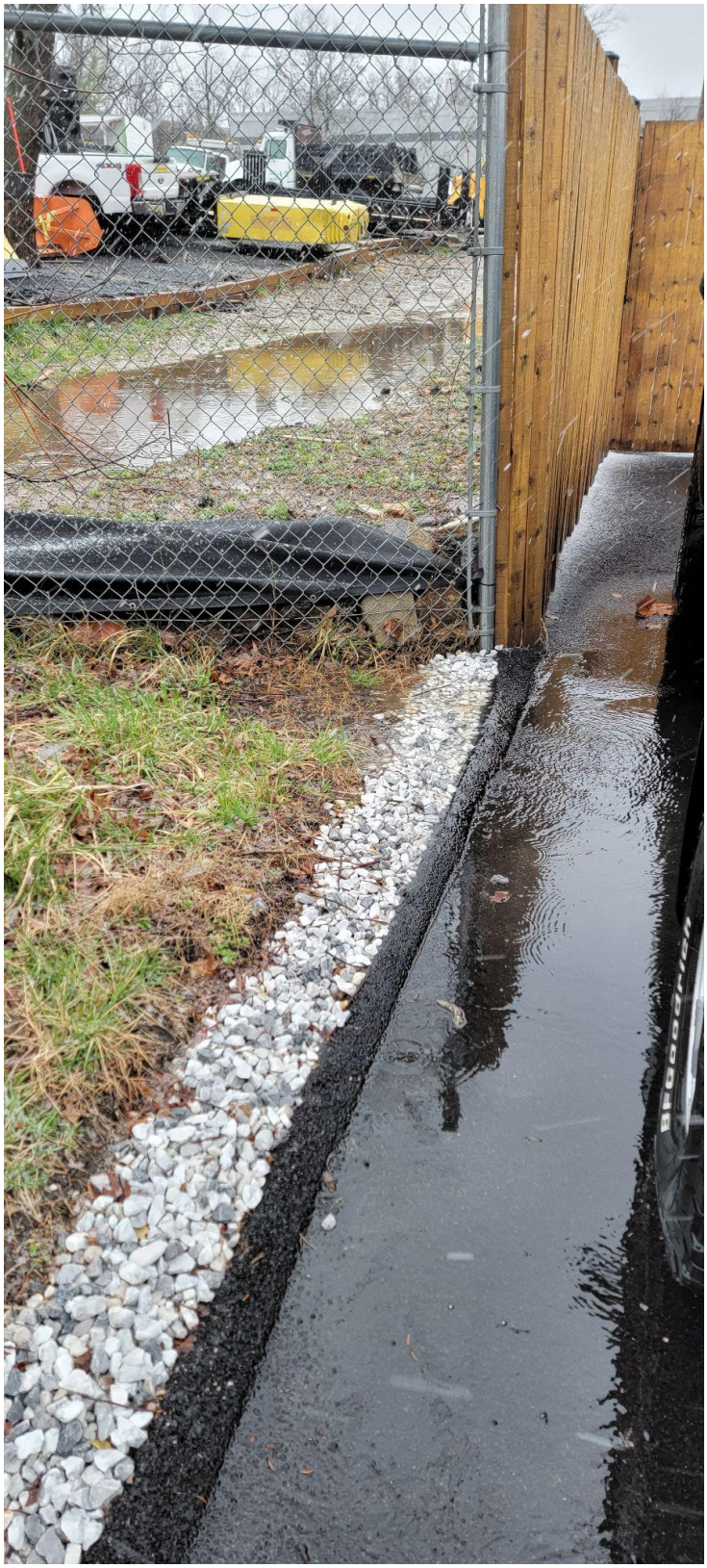


Exhibit 6-A and 6-B: Facebook photos from 2301 Sulphur Spring Rd showing storage expansion

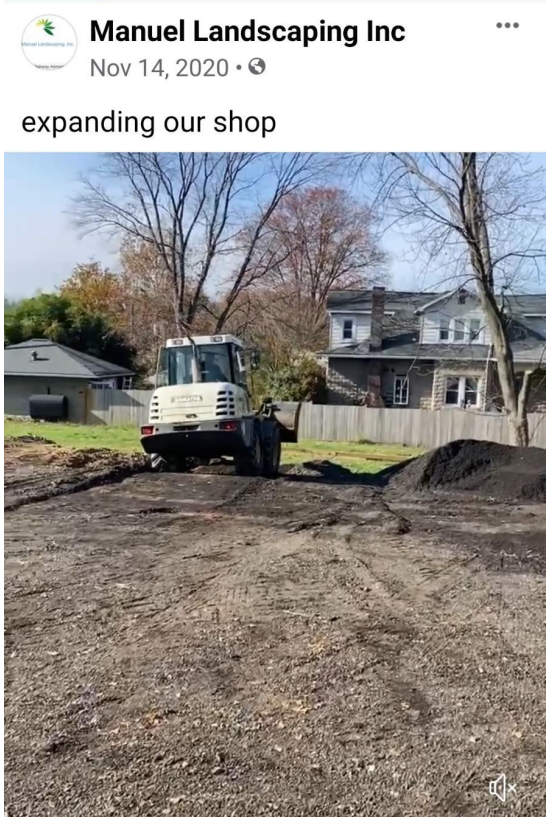


Exhibit 6-C: Facebook photos from 2301 Sulphur Spring Rd showing storage expansion

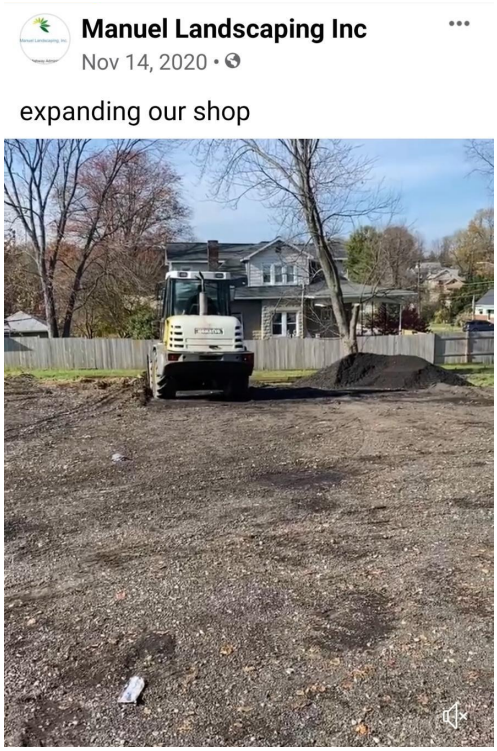


Exhibit 6-D and 6-E: Facebook photos showing equipment storage after expansion at 2301 Sulphur Spring Rd.

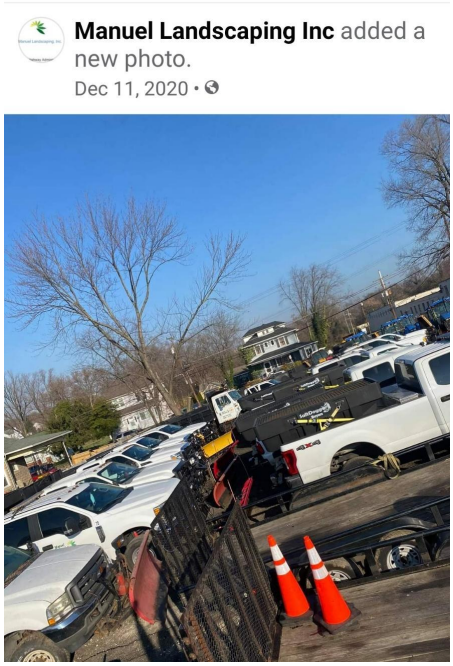
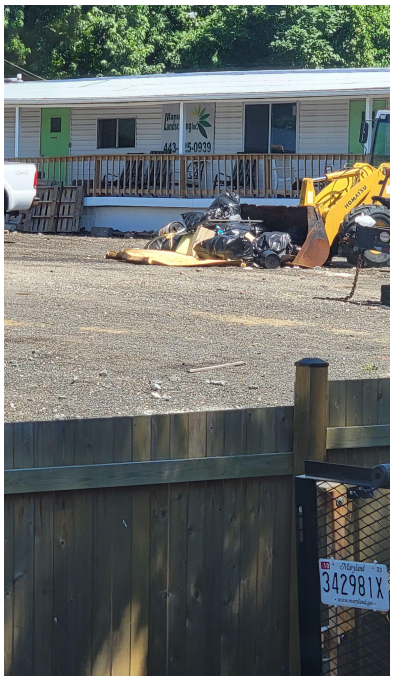


Exhibit 6-F: Facebook photos showing adding more equipment as of 11/22/22.

Exhibit 7-A: Trash piles on 2301 Sulphur Spring Rd. as of 12/05/22.

Exhibit 7-B: Trash piles on 2301 Sulphur Spring Rd. summer 2022

Exhibit 7-C and 7-D: Trash piles on 2301 Sulphur Spring Rd. summer 2022



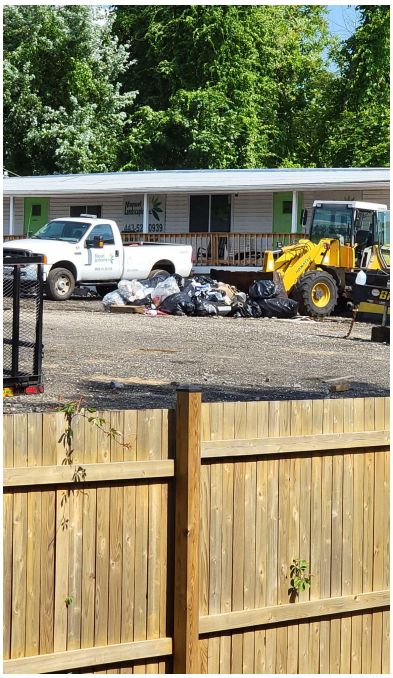


Exhibit 7-E and 7-F: Tall grass and weeds on 2301 Sulphur Spring Rd. growing through fence summer 2022

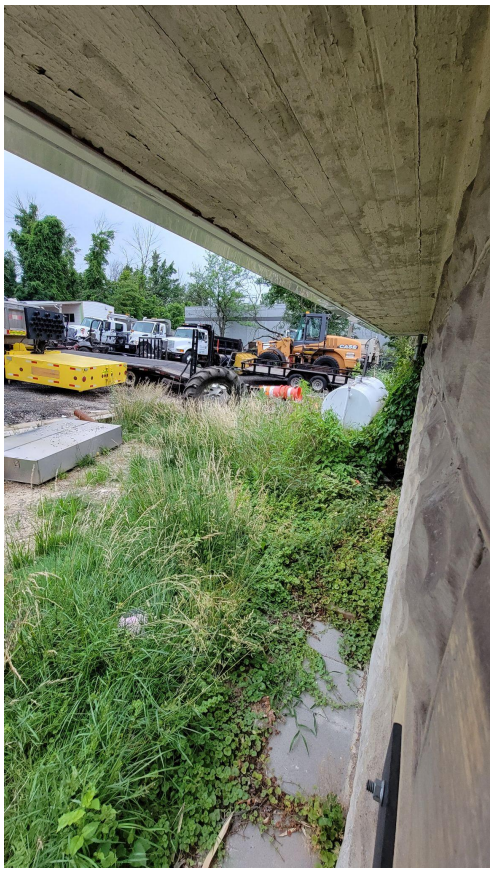
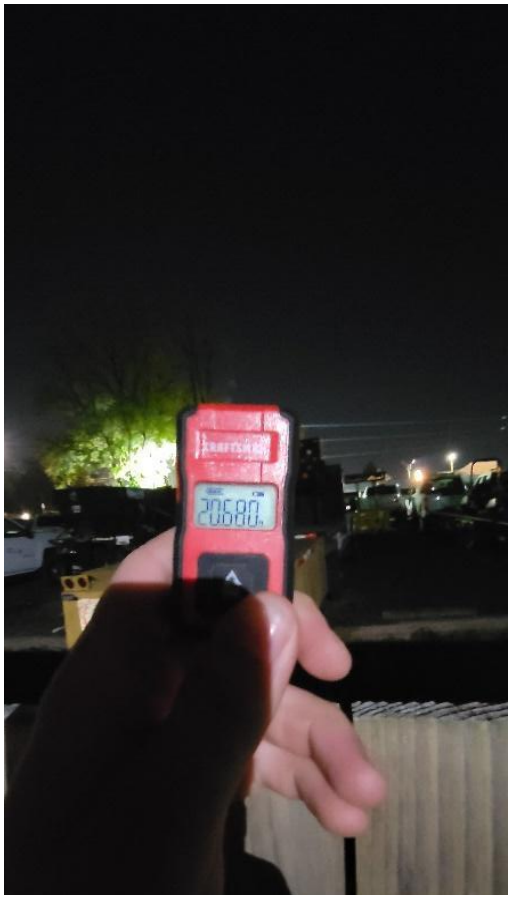


Exhibit 7-G: Tall grass and trees dying on 2301 Sulphur Spring Rd. August 2021

Exhibit 8-A and 8-B: Laser measurements of equipment storage November 9, 2022

Exhibit 8-C and 8-D: Laser measurements of equipment storage November 9, 2022

Exhibit 8-E and 8-F: Laser measurements of equipment storage November 9, 2022



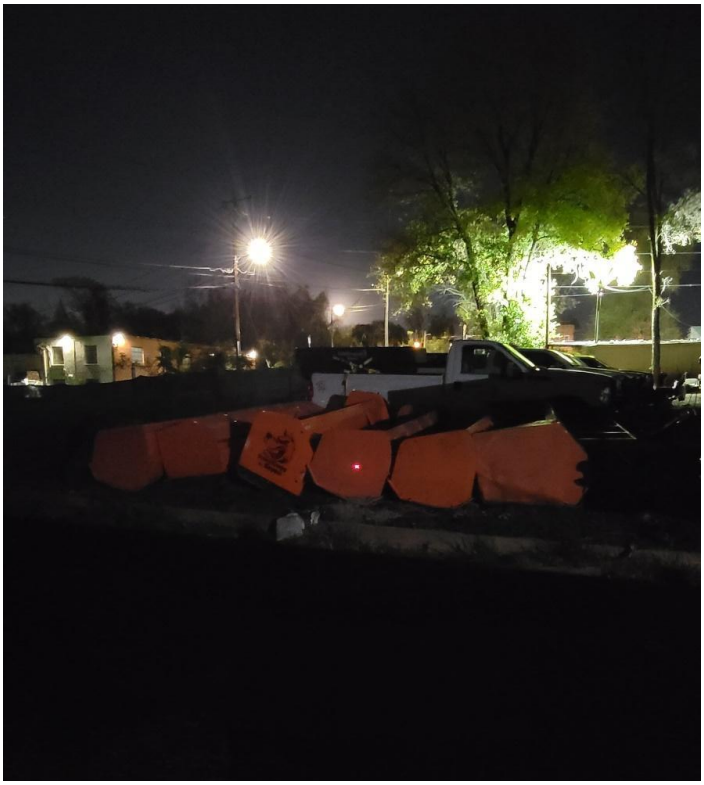


Exhibit 9-A, 9-B, 9-C: Current storage of construction equipment from 2217 Sulphur Spring Rd. 12/05/22

Exhibit 10-A: 4217 Fitch Ave. Case #2016-0328-SPHA

JB 8-22-16

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(4217 Fitch Avenue)	*	OFFICE OF
14th Election District		
5th Council District	*	ADMINISTRATIVE HEARINGS
Community Enterprise, Inc.		
Owner	*	FOR BALTIMORE COUNTY
Petitioner		
	*	**Case No. 2016-0328-SPHA**

* * * * * * * *

AMENDED
OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Community Enterprise, Inc., legal owner ("Petitioner"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to determine if the sorting of material from a construction site by a tenant, a general contractor, can be done on-site, outside of the building, prior to hauling the material to a recycling center. In addition, a Petition for Variance seeks to reduce the setback from a residential zone boundary to 35 ft. in lieu of the required 100 ft., for construction equipment storage as shown on the "Plan to Accompany Petition," which was marked and accepted into evidence as Petitioner's Ex. 1.

Appearing at the public hearing in support of the requests were Paul Redding and landscape architect Thomas Hoff. James S. Pezzulla, Esq. represented the Petitioner. Several members of the community attended and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). In addition, the zoning review office indicated it "does not permit someone to sort materials outside of a structure."

Exhibit 10-B: 4217 Fitch Ave. Case #2016-0328-SPHA

The subject property is 3.52 acres in size and is zoned ML-IM. The site is bound on two sides by D.R. zoned parcels. For many years an 84 Lumber store operated at the site, and Petitioner acquired the property in 2010. The site is leased to a company known as A-L Abatement, Inc. (A-L), which is a general contractor. Mr. Redding explained A-L brings to the site by truck construction waste materials (from its own projects) such as concrete, metal and wood. These materials are then sorted and placed into separate dumpsters, which are later taken from the site to be sold or disposed of. In addition, asbestos containing products removed from construction projects are brought to the site by A-L and are stored in an enclosed truck trailer at the site, and the witness stated such materials are handled safely in compliance with federal and state regulations.

In addition to a special hearing request, Petitioner requests a variance to reduce the "setback from a residential zone boundary to 35' in lieu of the required 100' for construction equipment storage." Having reviewed the M.L. zone regulations, I do not believe the Administrative Law Judge (ALJ) is authorized to grant the request.

Under the B.C.Z.R., the ALJ is authorized to grant variances from height and area, parking and sign regulations only. Indeed, the Regulations state the ALJ "shall have no power to grant any other variances." B.C.Z.R. §307.1. In this case, I do not believe the referenced 100' is a "setback" or area regulation. The applicable setbacks in the M.L. zone are set forth at B.C.Z.R. §255. That regulation provides that if the yard area is located within 100 feet of a residential zone boundary the applicable setbacks are those found in the M.R. zone. B.C.Z.R. §255.2. Under the M.R. regulations, side and rear yards must be at least 50 ft., while the front yard setback is 75 ft. B.C.Z.R. §243.1, 243.2 and 243.3.

Exhibit 10-C: 4217 Fitch Ave. Case #2016-0328-SPHA

The 100' buffer at issue in this case is found at B.C.Z.R. §253.4, which governs "uses" in the M.L. zone within 100 feet of a residential zone boundary. If a property is located within 100 ft. of a residential zone boundary (as this property is), the only uses permitted are passenger vehicle parking and those uses permitted in the M.R. zone. The uses allowed in the M.R. zone are listed at B.C.Z.R. §241. A "contractor's equipment storage yard" or "construction equipment storage yard" is not permitted. In fact, all of the uses allowed in the zone must be conducted "entirely within an enclosed building," a point highlighted by the zoning review office.

As such I do not believe the 100 ft. requirement is a "setback." Instead, it is a buffer, the reduction of which would in my opinion constitute a "use variance" not permitted under the B.C.Z.R. In other words, by reducing the buffer to 35 ft. the Petitioner would be entitled to engage in a much greater number of uses (as specified in B.C.Z.R. §253.1) including a "construction equipment storage yard." Under the regulations only height, area, sign and parking variances may be granted, and thus I believe the Petition must be denied. Under the circumstances, the petition for special hearing is rendered moot by the variance denial.

THEREFORE, IT IS ORDERED this 24th day of August, 2016, by this Administrative Law Judge that the Petition for Variance which seeks to reduce the setback from a residential zone boundary to 35 ft. in lieu of the required 100 ft. for construction equipment storage as shown on the "Plan to Accompany Petition," be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to determine if the sorting of material from a construction site by a tenant, a general contractor, can be done on-site, outside of the building, prior to hauling the material to a recycling center, be and is hereby DISMISSED as Moot.

3

Exhibit 11-A: Cromwell v. Ward

Cw1

Cromwell v. Ward

Court of Special Appeals of Maryland

Jan 4, 1995

102 Md. App. 691 (Md. Ct. Spec. App. 1995)

Copy Citations

Download Treatment

No. 617, September Term, 1994.

Decided January 4, 1995.

Appeal from the Circuit Court, Baltimore County, Lawrence Daniels, J. *692

Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith Hobbs, P.A., on the brief), Towson, for appellants.

Newton A. Williams (Nolan, Plumhoff Williams, Chtd., on the brief), Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

Exhibit 11-B: Cromwell v. Ward

240 Md. at 554, 214 A.2d 810. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48-1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship arises. . . . [The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship.] . . [T]he [hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief.] . . ."

Exhibit 11-C: Cromwell v. Ward

CW2

> within the above general rule. . . . [I]f the appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant hardship could have been avoided]. The hardship . . . was entirely self-created.] . .

Id. at 554-55, 214 A.2d 810 (emphasis added). [Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided.] *See also Burns v.*

Exhibit 11-D: Cromwell v. Ward

Cw3

We resolve here only the issue of the granting of the variance sought and applied for by Ward.

There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

Exhibit 11-E: Cromwell v. Ward

Cw 4

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

Exhibit 12 A: Bill Nos. 176-1981; 31-1984; 137-2004

§ 253.4. - Uses within 100 feet of residential boundaries and motorways; screening.

[Bill Nos. 176-1981; 31-1984; 137-2004]

Within 100 feet of any residential zone boundary or the right-of-way of any street abutting such a boundary, only passenger automobile accessory parking and those uses permitted in M.R. Zones, as limited by the use regulations in Section 241, are permitted. Any use other than passenger automobile accessory parking and those uses permitted in M.R. Zones as limited by the use regulations in Section 241 established within 100 feet of the right-of-way of an existing or proposed freeway or expressway so designated by the Planning Board shall be screened from the motorway in accordance with the standards and criteria contained in the Baltimore County Landscape Manual adopted pursuant to § 32-4-404 of the Baltimore County Code. Notwithstanding the foregoing, no trucking facility or part of a trucking facility may be established within 100 feet of such a right-of-way.

Exhibits Listing:

- Exhibit 1-A: Looking at 2301 and 2217 Sulphur Spring Rd from 2222 Sulphur Spring Rd.
- Exhibit 1-B: Looking at 2301 and 2217 Sulphur Spring Rd from 2222 Sulphur Spring Rd.
- Exhibit 1-C: Looking at 2301 and 2217 Sulphur Spring Rd from 2222 Sulphur Spring Rd.
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- Exhibit 2-B: Google Maps photo prior to 2018
- Exhibit 2-C: Google Maps photo prior to 2018
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- Exhibit 3-B: From street looking up 2217 Sulphur Spring driveway. 2301 on left side.
- Exhibit 3-C: From street looking up 2217 Sulphur Spring driveway. 2301 on left side.
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- Exhibit 5-C: Looking from 2217 Sulphur Spring Rd. at 2301 Sulphur Spring Rd. ineffective drain
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- Exhibit 5-E: Looking from 2217 Sulphur Spring Rd. at 2301 Sulphur Spring Rd. ineffective drain
- Exhibit 5-F: Water from 2301 onto 2217 Sulphur Spring Rd. driveway
- Exhibit 5-G: September 2020 water flow after first small expansion
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Exhibit A-C: Fitch Avenue Zoning Hearing

- Exhibit 10-A: 4217 Fitch Ave. Case #2016-0328-SPHA | Pg. 1
- Exhibit 10-B: 4217 Fitch Ave. Case #2016-0328-SPHA | Pg. 2
- Exhibit 10-C: 4217 Fitch Ave. Case #2016-0328-SPHA | Pg. 3

Exhibit 11 A-E: Cromwell V. Ward Zoning Hearing

- Exhibit 11-A: Cromwell v. Ward | Pg. 1
- Exhibit 11-B: Cromwell v. Ward | Pg. 2
- Exhibit 11-C: Cromwell v. Ward | Pg. 3
- Exhibit 11-D: Cromwell v. Ward | Pg. 4
- Exhibit 11- E: Cromwell v. Ward | Pg. 5

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