9/9/16

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**

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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."

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 <u>only</u>. 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.

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 9th day of **September, 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.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

IN THE MATTER OF COMMUNITY ENTERPRISE, INC. - LEGAL OWNER AND PETITIONER FOR SPECIAL HEARING AND VARIANCE ON THE PROPERTY LOCATED AT 4217 FITCH AVENUE	* * *	BEFORE THE BOARD OF APPEALS OF
14TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* *	BALTIMORE COUNTY CASE NO. 16-328-SPHA

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ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by Edward J. Gilliss, Esquire on behalf of Community Enterprise, Inc., Legal Owner/Petitioner, from a final decision of the Administrative Law Judge dated August 24, 2016, in which the requested variance relief was denied, and Amended Opinion and Order of the Administrative Law Judge dated September 9, 2016 wherein the requested variance relief was denied and the requested special hearing relief was dismissed as moot.

WHEREAS, the Board is in receipt of a Motion to Dismiss filed on December 1, 2016 by Edward J. Gilliss, Esquire on behalf of Community Enterprise, Inc. requesting that the appeal in this matter be dismissed as of December 1, 2016; and

WHEREAS, the Board is in receipt of People's Counsel for Baltimore County's Response to the Motion to Dismiss, filed December 2, 2016 wherein People's Counsel does not oppose the dismissal of this matter.

IT IS ORDERED this 9th day of December, 2016 by the Board of Appeals of Baltimore County that the appeal taken in Case No. 16-328-SPHA be and the same is hereby **DISMISSED with prejudice.**

BOARD OF APPEALS
OF BALTIMORE COUNTY

Maureen E. Murphy, Chairman