IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(2301 Sulphur Spring Road)	*	OFFICE OF
13th Election District		
1st Council District	*	ADMINISTRATIVE HEARINGS
Jose Blandon, *Legal Owner*		
	*	FOR BALTIMORE COUNTY
Petitioner		
	*	**Case No. 2022-0197-SPHA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Variance filed by Jose Blandon, Petitioner for the property located at 2301 Sulphur Spring Road. The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations ("BCZR") § 500.7 to permit a temporary trailer. Variance relief is sought pursuant to BCZR §§ 255.1 and 238.1:

1.) To permit the storage of construction equipment within 30 ft. of a residential zone boundary in lieu of the required 100 feet minimum setback.

2.) From the BCZR §§ 255.1 and 238.1: To permit a front property setback of 16.3 ft. in lieu of the required 25 ft.

3.) From the BCZR §§ 255.1 and 238.1: To permit a 39 ft. setback to the street centerline in lieu of the required 50 ft.

4.) From the BCZR §§ 255.1 and 238.2: To permit an existing side yard setback of 13.3 ft. in lieu of the required 30 ft.

Due to COVID-19, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A Substantive Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP"). They did

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not oppose the relief requested, subject to a proposed condition. Jose Blandon the property owner, appeared in support of the Petition. Terri D. Mason, Esquire represented the Petitioner. Two of the adjoining property owners attended the hearing and expressed their opposition to the requested zoning relief.

Counsel submitted a site plan that was admitted as Petitioner's Exhibit 1. The property is approximately .95 acres and is zoned ML-IM. Counsel explained that the genesis of this Zoning case was a code enforcement citation that was issued to Petitioner for various code violations. The relief requested in the Petition purportedly seeks to bring the site into compliance. The code case was held sub curia pending resolution of this case. Counsel explained that Petitioner owns and operates a commercial landscaping company out of this site. His company performs work on a contract basis for both the State of Maryland and Baltimore County as well as other private entities. He uses this site to store all his equipment and material. He also has a construction trailer on the site that evidently houses his offices. Counsel explained that if the variance relief were denied it would cause Petitioner practical difficulty and hardship because he has no other place to conduct his business operations. The residential neighbors, one of whom lives directly next door and the other directly across the street, complained that the site is an "eyesore" and generates a lot of noise and disturbance.

SPECIAL HEARING

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

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to

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> determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

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

In the instant case Petitioner seeks a declaration that it is permissible to have a "Temporary Trailer" on this site in the ML-IM zone. The site plan and site photos shows that the trailer in question is already existing and in use, and that it is located well within the 30 ft. minimum rear yard setback. Pursuant to BCZR § 253.1.F.3, "trailers or mobile homes for temporary use" are permitted in this zone, but only "as permitted under Section 415." And, BCZR § 415.2.B.1 only permits temporary trailers "during a construction period;" and § 415.2.B.2 permits trailers only as "a continuing use for a sales office in connection with the following types of outdoor *retail sales* areas . . . Farm products, Garden supplies and plants, Trailer sales and storage, Used motor vehicles."

Therefore, it does not appear that the trailer at this site is permitted as it is not being used "during a construction period," or as a sales office for retail sales. It is being used on an ongoing basis as the offices of a commercial landscaping business, with no retail sales on site.

VARIANCE

Under Maryland common law "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Mueller v. People's Counsel for Baltimore*

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County, 177 Md. App. 43, 71 (2006). This is because "a variance is an authorization for that which is prohibited by a zoning ordinance." *Cromwell v. Ward,* 102 Md. App. 691, 699 (1995). And because "citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds,* 240 Md. 547, 555-56 (1965). Therefore, "[t]he burden is on the applicant to show facts to warrant a variance," and "the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant." *Mueller,* 177 Md. App. at 70.

Under BCZR Sec. 307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity is what necessitates the requested variance relief; and
(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, supra. Further, "unless 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." *Mueller, supra,* 177 Md. App. at 70. Finally, under Maryland law variance relief is properly denied when an owner can still make "reasonable use of his property" without the variance. *Montgomery County v. Rotwein,* 176 Md. App. 716, 732-33 (2006).

The first "variance" request in this case seeks "to permit the storage of construction equipment within 30 feet of a residential zone boundary in lieu of the required 100 feet minimum setback." However, as I explained at the hearing, what is actually being requested here is a *use* variance, as it is a request to operate a construction equipment yard within the 100 foot *buffer* that is prescribed by BCZR § 253.4. This identical scenario was presented in Case No. 2016-0328-

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SPHA, wherein Administrative Law Judge John E. Beverungen succinctly explained the difference between *area* regulations, which are subject to variance relief, and *use* regulations, which are not:

> "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."
>
> *Id.,* at pps. 2-3.

For these same reasons the "variance" requested from the 100 ft. residential buffer must be denied because I am without power to grant it under BCZR § 307.1 Further, even if it was an area variance being requested I do not think it would be within the spirit and intent of the regulations because of the adverse impact it would have on the residential property next door. The very

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purpose of the 100 ft. buffer is so to mitigate the impacts that commercial uses have on adjoining residential neighbors. And, as explained above, "citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds,* 240 Md. 547, 555-56 (1965).

I find that the remaining variances are within the spirit and intent of the regulations and that they can be granted without harming the public health, safety or welfare. First, in a previous case (Case No. 1988-0431-SPHA) the subject property was found to be unique in a zoning sense and I concur with that finding. It is irregularly shaped and is bounded on one side by a residential property, on two sides by commercial properties, and on the fourth side by railroad tracks. Further, as explained above, the usable area of the site is constrained by the 100 ft. residential buffer on the west side of the site.

Variance requests Nos. 3 and 4 seek modest relief from the front property line and street center line setback requirements (7 ft. and 11 ft., respectively). The relief is needed because Petitioner has already begun construction on an addition to the existing principal vehicle storage building at the far northeast corner of the site. This addition is a substantial distance and across Sulphur Spring Road from any residences. The addition will allow Petitioner to store more of his equipment inside, which will also benefit the residential neighbors.

These variances present a case of "begging for forgiveness after failing to ask for permission," which is never encouraged. And, variance relief is not normally granted to spare a petitioner from self-inflicted hardships. *Cromwell v. Ward, supra,* 102 Md. App. at 722. Here, Petitioner began construction of the vehicle storage addition without first obtaining the necessary variances. However, in weighing the equities I find that a denial of the front setback variances would cause substantial and undue harm and practical difficulty because Petitioner would have to

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demolish that part of the addition within the setback area, and the requested variances are modest. Further, as explained above, the additional indoor storage space will enable Petitioner to get more of his equipment stored inside, which will lessen the visual impacts on the residential neighbors. In sum, in my view it would serve no good purpose to deny these two variances.

Finally, Variance request No. 5 seeks relief from the side setback requirement – 13.3 ft. in lieu of the required 30 ft. This setback pertains to the principal existing storage building on the side of the site that adjoins the railroad tracks. Again, if this relief were denied the Petitioner would have to demolish part of a building that was on the site when he acquired the property. And the variance will have no impact on the residential property owners several hundred feet away. I therefore find that the relief is within the spirit and intent of the regulations and that it will not harm the public health, safety, or welfare.

THEREFORE, IT IS ORDERED this **21st** day of **December 2022** by this Administrative Law Judge that the Petition for Special Hearing from BCZR § 500.7 to permit a temporary trailer, is hereby **DENIED.**

IT IS FURTHER ORDERED that the Variance from BCZR:

1.) From the Baltimore County Zoning Regulations ("BCZR") §§ 255.1 and 238.1: To permit the storage of construction equipment within 30 ft. of a residential zone boundary in lieu of the required 100 ft. minimum setback, is hereby **DENIED**;

2.) From the BCZR §§ 255.1 and 238.1: To permit a front property setback of 16.3 ft. in lieu of the required 25 ft., is hereby **GRANTED.**

3.) From the BCZR §§ 255.1 and 238.1: To permit a 39 ft. setback to the street centerline in lieu of the required 50 ft., is hereby **GRANTED.**

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4.) From the BCZR §§ 255.1 and 238.2: To permit an existing side yard setback of 13.3 ft. in lieu of the required 30 ft., is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

- Petitioner shall plant and maintain a continuous unbroken vegetative buffer of arborvitae or similar evergreen along the entire eastern property line in order to provide a visual and sound barrier for the adjoining residential property.

- Petitioner shall not park any vehicles or equipment on Sulphur Spring Road or Willow Avenue.

- Petitioner shall maintain and use the site in strict conformance with the Baltimore County Zoning Regulations.

- Petitioner shall submit for approval by the Baltimore County Landscape Architect a Landscape and Lighting Plan.

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

Paul M Mayhew

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm

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JOHN A. OLSZEWSKI, JR.
County Executive

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

December 21, 2022

Terri D. Mason, Esquire – terrimason@terridmason.com
2833 Smith Avenue, Suite 307
Baltimore, MD 21209

RE: Petitions for Special Hearing & Variance
Case No. 2022-0197-SPHA
Property: 2301 Sulphur Spring Road

Dear Ms. Mason:

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

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

Sincerely,

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
Enclosure

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