

<b>IN RE: PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
N side of Cockey's Mill Road, 2780 feet		
W of the c/l of Reisterstown Road	*	DEPUTY ZONING
4 <sup>th</sup> Election District		
4 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(212 Cockey's Mill Road)		
	*	FOR BALTIMORE COUNTY
<b>Bohica LLC</b>		
<i>Petitioner</i>	*	<b>CASE NO. 2009-0219-SPH</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Neil Miller on behalf of Bohica LLC, the legal property owner. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for an amendment to the site plan and Order in Case No. 03-466-SPHXA including additional proposed buildings. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing was Petitioner Neil Miller on behalf of Bohica LLC, Barbara Reynolds of 306 Lauren Hill Court in Reisterstown and John Parks of 220 Cockey’s Mill Road also in Reisterstown. John B. Gontrum, Esquire appeared as attorney for Petitioner. Also appearing in support of the requested relief was Bill Keeney with Keeney Architects, Inc., who prepared the site plan. Appearing as an interested citizen was George Harmon of 5429 Weywood Drive in Reisterstown.

Testimony and evidence offered revealed that the subject property is triangular in shape and consists of approximately 24 acres, more or less, zoned R.C.4. The property is located on the north side of Cockey's Mill Road, just west of the Northwest Expressway (Interstate 795), in the Reisterstown area of Baltimore County. The property has a number of improvements owing to its

use as a landscape service operation, wood chipping and mulch storage, and nursery operation. As shown on the site plan, the property is also somewhat uniquely configured by the existence of a notch along Cockey's Mill Road, which limits the property's frontage along that road and is comprised of two lots owned by others, one of whom is Mr. Parks -- Petitioner's supporting witness.

Petitioner currently runs his tree and landscaping business on the property, as well as a mulch processing and storage operation. Petitioner also leases the property to other entities that perform landscaping as well as nursery and seasonal firewood operations. Petitioner acquired the property in 2003 and at that time desired to relocate his tree and landscaping operation to the subject site. To that end, Petitioner filed Petitions for Special Exception, Special Hearing and Variance in Case No. 03-466-SPHXA. In particular, the special exception requested approval pursuant to Sections 1A03.3.B.10 and .11 of the B.C.Z.R. to use the property for a horticultural nursery and landscape service operation. In addition, the special hearing requested approval of (1) a wood waste chipping facility (mulching operation) as an accessory use to a nursery and landscaping operation; (2) a horticultural nursery and landscape service operation concurrently on the same property; and (3) plant materials to be sold at retail as allowed by a horticultural nursery. In an Order dated July 22, 2003, then-Zoning Commissioner Lawrence E. Schmidt granted the requested zoning relief. A copy of the site plan from the prior case was marked and accepted into evidence as Petitioner's Exhibit 2.

At this juncture, Petitioner desires an amendment to the previous Order and site plan to include additional buildings. Mr. Miller explained that during the ensuing six years since the aforementioned relief was granted, the property has been used primarily for mulch processing and storage and for his tree and landscaping business. The horticultural nursery business he

envisioned as part of his business has never really come to fruition due to competition from existing nurseries in the area; however, he does lease part of the property to a tenant that does use it for a nursery operation. He also leases part of the property to another tenant that does tree work and firewood. As shown on the site plan, Petitioner requests approval to construct two storage buildings on the property to assist in his tree and landscape service operations, as well as the tree and firewood tenant, in order to store vehicles and heavy equipment and materials. A detailed drawing of the buildings is depicted on the site plan. Both buildings would be approximately 40 feet wide by 200 feet deep and 35 feet in height, with pitched roofs. Building #1 would be fully enclosed and have nine bays with overhead doors and an office area. Building #2 would be an open projection structure with 10 open bays.

Testifying as an interested citizen was George Harmon of 5429 Weywood Drive in Reisterstown. Mr. Harmon, who is President of the Reisterstown – Owings Mills – Glyndon Coordinating Council and is an active member of the local community, lives approximately two miles north of the subject property. He expressed concerns over the property's uses and the effects on streams and wetlands, as well as storm water runoff issues. He also questioned how the site was presented in 2003 and how the current use is not exactly as presented then; in particular, the lack of a horticultural nursery that was requested in 2003. He is fearful that further changes in the uses will erode the purpose of the R.C.4 zoning classification to preserve water quality.

The Zoning Advisory Committee comments were received and are made part of the record of this case. The comments from the Office of Planning dated March 16, 2009 indicate that after visiting the site and having discussions with Petitioner, the purpose for the requested additional building is to store equipment associated with the approved nursery business. The equipment is currently being stored outside and is being compromised by the weather. The Planning Office

recommends approval of the requested special hearing to amend the site plan and Order in Case No. 03-466-SPHXA including the additional proposed buildings, provided Petitioner agrees to use the buildings exclusively for the storage of their own equipment and to not operate a service garage in which they repair equipment or vehicles not associated with the subject operation.

Considering the testimony and evidence presented, I am persuaded to grant the relief. Initially, I find that Petitioner's current use of the property is clearly within the spirit and intent of the relief granted in the 2003 case. The property is being utilized for tree and landscaping operations, and for mulch processing and storage. In addition, Petitioner leases parts of the property to tenants for nursery as well as tree and firewood operations. In order to enhance these operations and provide necessary storage for vehicles and heavy equipment and materials, Petitioner desires the above-described buildings, to be located on the westernmost side of the property. In my view, these two storage buildings and the purposes for which they are requested will have little, if any, negative impacts on nearby properties. The property to the immediate west is owned by Baltimore Gas & Electric Company and appears to be unimproved. Moreover, there are natural tree buffers that surround virtually the entire property, providing screening from the road and other properties, particularly the two properties within the "notch" fronting on Cockey's Mill Road. Finally, I find that the addition of the proposed buildings will enhance the aesthetics of the property by allowing Petitioner to have vehicles, heavy equipment, and materials stored inside or under cover, rather than strewn about the property in a haphazard manner. In short, it will enable Petitioner to effectively "clean up" the site and keep it better organized. It is also noteworthy that Petitioner's neighbor, Mr. Parks, testified that Petitioner has kept the site in good condition over the years and has not detrimentally impacted his property -- he has essentially been a "good neighbor."

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 11<sup>th</sup> day of May, 2009 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for an amendment to the site plan and Order in Case No. 03-466-SPHXA including additional proposed buildings be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner may use the building for the storage of their own vehicles, equipment, or materials, or that of their participating lessees, and shall not operate a service garage in which they repair equipment or vehicles not associated with the operations at the subject location.

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

\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz