

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SE corner of Oakland Road and		
Ruby Avenue	*	DEPUTY ZONING
13 th Election District		
1 st Councilmanic District	*	COMMISSIONER
(4701 Ruby Avenue)		
	*	FOR BALTIMORE COUNTY
Joseph M. Smor		
<i>Petitioner</i>	*	CASE NO. 2009-0226-SPH

* * * * *

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 Joseph M. Smor, the legal property owner. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a commercial vehicle weighing 12,000 pounds gross vehicle weight on residential property exceeding the permitted 10,000 pounds gross vehicle weight. 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 Joseph M. Smor. Also appearing in support of the requested relief was Petitioner’s father, Francis M. Smor and Petitioner’s mother, Susan Rettaliata. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is irregular in shape with approximately 15,000 square feet in area or 0.35 acre, more or less, zoned D.R.5.5. The property actually consists of Lot 1 of the Wynnewood subdivision (containing 0.19 acre) and adjacent Parcel “A” of that subdivision (containing 0.16 acre). The property is located at the southeast corner of Ruby Avenue and Oakland Road, approximately one mile south of Interstate

95 and east of Interstate 195, in the Halethorpe area of southwestern Baltimore County. The property is also bordered by the merger of Southwestern Boulevard and Washington Boulevard, located about 200 yards east. As depicted on the site plan, the property is improved with Petitioner's 1½-story single-family dwelling, situated at an angle and located on Lot 1 of the property. There is a concrete walkway leading from the front door to the handicapped access sidewalk corner at Ruby Avenue and Oakland Road. The property is also improved with a one-story garage located on Parcel "A" of the subject property. There is a separate driveway leading from the garage to Ruby Avenue. Photographs of the property and improvements were marked and accepted into evidence as Petitioner's Exhibits 2A through 2D.

Petitioner purchased the property that includes Lot 1 and Parcel "A" about 3½ years ago. The subdivision goes back over 50 years and indeed, Petitioner's home was built in 1959. When Petitioner purchased the property, the home was in a state of disrepair and needed work. Fortunately, Petitioner is in the home improvement business. Petitioner previously attended Towson University and thereafter, worked for his mother and stepfather's construction business, Cossentina, Inc. located in Howard County, for approximately five years. Petitioner then started his own home improvement business about one year ago. When Petitioner moved into his home, he and his then-girlfriend, who also lived at the home and shared expenses, gutted the interior and exterior and made significant upgrades to the home. The photographs (Petitioner's Exhibits 2A through 2D) show the improvements to the exterior, with a new roof, new siding, and attractive landscaping, just to name a few.

During the time Petitioner has lived at the subject location, he has had a truck parked at the location, on the driveway in front of his garage, next to his pickup truck (*See*, Petitioner's Exhibits 2A through 2D). This common "box" type truck has a front cab with a storage box

attached to the back. Petitioner explained that he uses the truck to store his equipment and materials for his home improvement business for aesthetic as well as security purposes. The truck is white and has no advertising, lettering, or other markings. Petitioner is requesting special hearing relief in order to store the vehicle on his property due to the fact that his truck has a gross vehicle weight of approximately 12,000 pounds, in excess of the 10,000 pounds permitted for the storage of one commercial vehicle on a residential lot, pursuant to Section 431.1.A of the B.C.Z.R.

In support of the special hearing request, Petitioner indicated that the truck and its contents are vital to his home improvement business. As a young man (29 years of age) just starting out on his own, with the obligations of home ownership and the significant responsibility of running his own business, Petitioner candidly indicated that his profit margins are relatively small at this stage in his career. He also no longer has the benefit of his former girlfriend contributing to the expenses and helping him keep the books for his business. Petitioner is essentially “on his own” and is trying to make a go of his small business. In his words, not allowing the truck to be parked in front of his garage would “literally put me out of business and into foreclosure.” He also emphasized the need for having his tools and equipment close to his home to reduce the potential for theft.

Petitioner also pointed out that his property presents a very unusual situation, in that it consists of Lot 1 with his primary residence and the adjacent Parcel “A” which, unlike other properties in the area, almost doubles the size of his property and reduces the potential visual impact of the truck parked in his driveway. Moreover, as shown on the site plan, the closest property on the side where the truck is parked is the unimproved remainder of Parcel “A.” Further, Petitioner indicated that in this “working class” neighborhood as he described it, there

are a number of similar and even larger box trucks stored on peoples' property. This was verified by the photographs that were marked and accepted into evidence as Petitioner's Exhibits 3A through 3G. They show various truck types parked in area of the Wynnewood subdivision, most of a similar size or larger than Petitioner's, and some with lettering and advertising.

Finally, Petitioner presented a Petition stating that "[t]he undersigned neighbors of Joseph M. Smor, 4701 Ruby Avenue, do not object to the parking of his company box-truck on his property." This Petition was signed by the adjacent neighbors Linda Vaeth of 4700 Ruby Avenue (directly across the street), Kelley Brown of 5840 Oakland Road (across the street near the corner), Ken Hoffman of 5837 Oakland Road (next door), Betty Pitman of 5838 Oakland Road (also across the street), and Kevin McLaughlin of 2 Dove Court (directly behind Petitioner's garage next to where the truck is parked). A copy of the Petition was marked and accepted into evidence as Petitioner's Exhibit 4. Petitioner also presented a letter dated April 26, 2009 from Lois J. Brocato, P.E., PhD, who resides at 4715 Ruby Road (also near Petitioner's property) and is Membership Director for the Community Association of Wynnewood. In his letter, a copy of which was marked and accepted into evidence as Petitioner's Exhibit 5, Mr. Brocato indicates that he "heartily recommends" that Petitioner's zoning relief be approved. He also points out that Petitioner's property is always clean and orderly, and that the truck is always parked at the extreme rear of the driveway, making it neither an eyesore nor a distraction.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Based on the testimony and evidence as the hearing, I am persuaded to grant the special hearing relief in this particular case. While the truck at issue does exceed the allowable weight

for storage of a commercial vehicle by approximately 2,000 pounds, in my view the unusual circumstances associated with Petitioner's property and the outpouring of support for the requested relief from the most affected neighbors leads me to the conclusion here that Petitioner's request is within the spirit and intent of the Zoning Regulations and would have no negative or detrimental impacts on the locale. The obvious intent of Section 431.1 of the B.C.Z.R. is to limit the parking of excessively large commercial vehicles in residential areas, and to control the number of smaller commercial vehicles that may be parked on a residential lot in a residentially zoned community. From the evidence produced at the public hearing, it does not appear that Petitioner's unmarked, unobtrusive white vehicle would be a blight on the surrounding neighborhood, nor would it be contrary to the intent and purposes of Section 431.1. Hence, I shall grant the relief, but the granting of the relief shall be limited explicitly to the circumstances presented in this case.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, 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 13th 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.) to allow a commercial vehicle weighing 12,000 pounds gross vehicle weight on residential property exceeding the permitted 10,000 pounds gross vehicle weight 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. The relief granted herein is limited to the particular facts and circumstances presented in this case and shall in no way serve as future precedent to the possible granting of relief under Section 431.1 of the B.C.Z.R. Each case is to be decided on its own merits based on evidence presented to this Commission.
3. The relief granted herein shall be limited to Petitioner himself, and shall not extend to any other persons or successors to the subject property. In the event Petitioner vacates the property or discontinues his home improvement business while residing at the property, the relief granted in this case shall cease and no longer be in effect.
4. Petitioner shall ensure that the subject truck be parked on the driveway as close as possible to the existing garage (shown in Petitioner's Exhibits 2A through 2D), and shall contain no markings, advertising, or lettering. Moreover, there shall be no storage of tools, equipment, or materials outside of the truck on the property. All such tools, equipment, or materials shall be contained completely within the subject truck.
5. Any future site plans filed in connection with the subject property must reference this case and set forth and the address the conditions and/or restrictions of this Order

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