

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
E side of Hammonds Ferry Road, 280 feet N of the c/l of Minebank Lane	*	DEPUTY ZONING
13 th Election District	*	COMMISSIONER
1 st Councilmanic District	*	FOR BALTIMORE COUNTY
(2319 Hammonds Ferry Road)	*	
Grace Bros., Inc.	*	
<i>Petitioner</i>	*	Case No. 2009-0228-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by F. Michael Grace, President of Grace Bros., Inc., the legal owner of the subject property. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to amend a previous hearing to permit screening per current landscape manual in lieu of a 6 foot fence with slats pursuant to Section 409.8.A.1 of the B.C.Z.R. Petitioner is also requesting Variance relief from Section 409.8.A.2 of the B.C.Z.R. to permit crush and run in lieu of dustless durable surface required. The subject property and requested relief are more fully described on the redlined site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.¹

Appearing at the requisite public hearing in support of the requested relief was Petitioner Michael Grace, and his attorney, Charles E. Kountz, Esquire. There were no Protestants or other interested citizens in attendance at the hearing.

¹ The site plan submitted by Petitioner in this matter is actually a revised redlined version of the site plan dated March 15, 1971 that was entered into evidence in the original special hearing case. This plan was approved by the Office of Planning and Zoning on July 30, 1971 and incorporated into the Zoning Commissioner’s decision in that case. The site plan shows the conditions as they were at that time, and the redlined version dated March 3, 2009 prepared by Matis Warfield, consulting engineers, shows the updated changes to the property and surrounding areas and the requested zoning relief in the instant matter.

Testimony and evidence presented revealed that the subject property is irregular in shape and contains approximately 121,154 square feet or 2.781 acres, more or less, zoned B.L. (40,085 square feet) and D.R.5.5 (81,069 square feet). The property is located on the east side of Hammonds Ferry Road, east of Washington Boulevard, in the Lansdowne area of southwestern Baltimore County. The property is also bordered by the CSX Transportation rail line to the west, Mine Bank Lane to the south, and Ridge Avenue to the north. The property is home to Petitioner's family catering business known as Grace Bros., Inc. trading as Town & Country Caterers. The business has been a fixture in the Lansdowne community for many years. The subject property is improved with a large one-story masonry building that is used as an assembly hall for the catering business. The structure measures approximately 65 feet wide by 100 feet deep. As indicated previously, the property is split-zoned B.L. and D.R.5.5. The entrance area fronting Hammonds Ferry Road and the assembly hall are located in the B.L. zoned portion of the property, as well as approximately 35 parking spaces. The remaining area of the property toward the rear is relatively unimproved with macadam paving leading to a large area of crush and run stone for approximately 140 additional parking spaces.

Petitioner has requested the instant special hearing relief in order to amend a previous zoning hearing. In Case No. 72-19-SPH, Petitioner requested approval of off-street parking in a residential (D.R.5.5) zone. In an Order dated August 13, 1971, then-Zoning Commissioner Eric DiNenna granted the requested relief. A condition of granting the relief was written on the original site plan labeled "Exhibit 'A'" and indicated that Petitioner would be required to erect a 6 foot high chain link fence with slats in order to provide screening from car headlights during periods of ingress and egress for surrounding residential neighbors. Petitioner complied with this condition and erected a fence along the southern (side) and eastern (rear) property lines; however, during the ensuing years, the fence rusted and deteriorated and eventually was removed

during the 1990's in favor of landscaping that included trees and shrubs and naturally growing vegetation. In particular, Petitioner planted an extensive row of Bradford Pear trees along the southern property line. Petitioner submitted a disc with extensive photographs of the property that was marked and accepted into evidence collectively as Petitioner's Exhibit 2. The photographs provide a view of the property including the entranceway, the assembly hall, and the front, side, and rear parking areas. They also show the tree line that has replaced the chain link fence, as well as some of the topographical features of the subject property.

Petitioner is also requesting variance relief to permit crush and run stone in the rear parking area in lieu of the durable and dustless surface required pursuant to Section 409.4 of the B.C.Z.R. Mr. Grace testified that the crush and run surface has been utilized at the site over many years and has proven to be a dependable and durable surface for his customers' parking and walking needs. It has required very little maintenance over the years and when necessary, Petitioner has brought in additional stone to level deficient areas. He also indicated that more frequently, patrons have sufficient space to park in the macadam parking areas, and that the crush and run area is used mainly for overflow parking. He also stressed that the pervious surface of crush and run is appropriate at this site due to the unique topography of the property, especially toward the rear. As the site plan and photographs show, the property slopes fairly dramatically -- over 20 feet -- from north to south. If the crush and run area were to be paved with macadam, this impervious surface would result in significant runoff from Petitioner's property to adjacent residential properties to the south.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated March 16, 2009 which indicates that Petitioner should demonstrate to the Zoning Commissioner how the proposed alternative paving material will allow for equal or better results in preventing dust,

erosion or other undesirable conditions pursuant to the definition of Durable and Dustless Surface in Section 101.1 of the B.C.Z.R. The Planning Office, however, supports the Petitioner's Special Hearing to permit screening per the current Landscape Manual in lieu of a 6 foot fence with slats. Landscaping should be shown on the plan to reflect the Baltimore County Landscape Manual requirements of a 15 foot landscape strip with Class A screening. *See*, Sections III.B.1.c and III.B.1.c(1) on page 19. A landscape plan should be submitted to the Baltimore County Landscape Architect, Avery Harden, for his review and approval. Comments were received from the Department of Environmental Protection and Resource Management dated April 8, 2009 which indicates that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains. Development of the property must also comply with the Forest Conservation Regulations. Development of the site may also require a Forest Buffer Variance request submittal and mitigation address. Comments were received from the Bureau of Development Plans Review dated March 10, 2009 which indicates that Avery Harden, Landscape Architect for Baltimore County, should be contacted for approval of the landscape work. They recommend that the durable, dustless surface be required unless the lot is frequently used by tracked vehicles.

Turning first to the Petition for Special Hearing, I am persuaded to grant the relief and allow the existing landscaping to provide screening in lieu of a 6 foot high chain link fence with slats, as was required by a previous special hearing case in 1971. After reviewing the site plan and Petitioner's photographs, I am satisfied that the existing landscape screening is sufficient to meet the intent of the original case, while also providing a visual improvement and upgrade to the original fencing.

As to the variance request, considering all of the testimony and evidence presented, I am also persuaded to grant this relief. Section 101 of the B.C.Z.R. defines a “durable and dustless surface” as:

A surface adequately covered in accordance with good practice with bituminous surface treatment, concrete, bituminous concrete or equivalent paving material approved by the Zoning Commissioner, and maintained in good condition at all times. The words “equivalent paving material” as used herein mean any alternative paving material that, in the judgment of the Zoning Commissioner, will, in the case of a particular property or use, allow for equal or better results in preventing dust, erosion or other undesirable conditions.

In my judgment, the existing crush and run surface provides an “equivalent paving material” that allows for equal or better results in preventing dust, erosion, or other undesirable conditions. The uncontroverted testimony indicates that the crush and run surface has been utilized by Petitioner for many years with no adverse results. It has proven to be a long-lasting and resilient surface for Petitioner’s needs.

In addition, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. In particular, the significant slope of the property and its proximity to residential properties makes the use of concrete, bituminous concrete, or other impervious surfaces impractical, and could potentially result in an unnatural flow of storm water runoff to nearby residential properties. Further, I find there would be no adverse impacts to the surrounding community if the requested variance relief were granted. Hence, I find that the relief can be granted in strict harmony with the spirit and intent of the Zoning Regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner’s special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 15th day of May, 2009 that Petitioner's Special Hearing request in accordance with Section 500.7 of the B.C.Z.R. to amend a previous hearing to permit screening per current landscape manual in lieu of a 6 foot fence with slats pursuant to Section 409.8.A.1 of the B.C.Z.R. be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 409.8.A.2 of the B.C.Z.R. to permit crush and run in lieu of dustless durable surface required be and is hereby GRANTED, subject to the following:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of 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. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
3. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
4. Development of the site may also require a Forest Buffer Variance request submittal and mitigation address.

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