

RE: PETITION FOR SPECIAL EXCEPTION *	BEFORE THE
S/E Side of Hanover Pike, 2,400' N of	
Lees Mill Road *	ZONING COMMISSIONER
(111 Hanover Pike)	
	FOR
5 th Election District	
3 rd Council District *	BALTIMORE COUNTY
111 Hanover Pike, LLP, <i>Owner</i> *	Case No. 2010-0269-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by John Martindale on behalf of 111 Hanover Pike, LLP, the legal owner of the subject property. The Petitioner has requested special exception relief from the following sections of the Baltimore County Zoning Regulations (B.C.Z.R.):

- (1) From Section 236.2 to permit a contractor’s equipment storage yard in the B.R.-C.R. zone;
- (2) From Section 259.3.C.1 to permit a 31,500 square foot building in excess of the 8,800 square foot limit pursuant to Section 259.3.B.3;
- (3) From Section 259.3.C.1.a to permit 26,484 square feet of building on the ground floor in lieu of the permitted 6,600 square feet pursuant to Section 259.3.B.3; and
- (4) From Section 259.3.C.1.b to permit a Floor Area Ratio of 0.23 in lieu of the permitted 0.20 pursuant to Section 259.3.B.3.

The subject property and requested relief are more particularly described on the site plan, which was submitted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requests were John Martindale, partner of 111 Hanover Pike, LLP and CEO of Brothers Services Company, G. Scott Barhight, Esquire and Adam D. Baker, Esquire, of Whiteford, Taylor & Preston, LLP, attorneys for Petitioner; Dean Hoover and Matthew Bishop with Morris & Ritchie Associates, Inc., who

supervised the preparation of the site plan, schematic landscape plan and elevations for the Petitioner. Also in attendance were S. Glenn Elseroad, Vice President of the Hanover Road Association, and Rick Cobert, with the Baltimore County Department of Economic Development, who each appeared in support of the zoning petition. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is an irregularly shaped parcel containing approximately 5.22 acres of land located in the Hampstead area of northwestern Baltimore County. The property is located directly on the border of Baltimore County and Carroll County and is bisected by the County line with approximately 3.14 acres of the eastern half of the property located in Baltimore County and approximately 2.08 acres of the western half of the property located in Carroll County. The property is zoned B.R.-C.R. (Business Roadside – Commercial Rural District overlay) on the Baltimore County portion of the property that is pertinent to this request, but is accessed from Hanover Pike (Maryland Route 30) with the entire road frontage located on the Carroll County side of the property.

Petitioner submitted an aerial photograph of the surrounding area, which was marked and accepted into evidence as Petitioner's Exhibit 2. The photograph reveals that the property is bordered to the east by a railroad line and the Piney Branch Golf Course. The area southeast of the property appears rural in character and is primarily used for agricultural and residential purposes. Approximately one mile north of the property is the town of Hampstead, which contains a more dense configuration of commercial and residential uses. Indeed, the property lies just south of the Hampstead Bypass, a Carroll County road recently constructed to improve access to the surrounding area.

Mr. Barhight explained that the property is currently improved with an office building and accessory parking that house the Brothers Services Company, a construction firm that has operated its business from this location for over twenty (20) years. Brothers Services specialize in exterior construction and provides residential and commercial clients with roofing, windows, doors, and skylights, among other services. On account of the growth that the company has experienced over the years, the existing facilities have become outdated and Petitioner is seeking to expand the operation on the property in order to meet the rising demand for their construction services. Specifically, Petitioner has proposed to build an approximately 20,000 square foot enclosed contractor's storage yard and a 10,500 square foot expansion of the existing office building. The proposed construction will enable the Petitioner to expand the business and hire up to fifty additional employees over the next two (2) years. However, given the size of the proposed additions, a special exception is required.

The regulations governing Petitioner's request for special exception are particularly complex due to the location of the property in the Commercial Rural (C.R.) District, which was established in 1988 and codified in Section 259.3 of the B.C.Z.R. In addition to the requirements generally imposed by Section 502.1 of the B.C.Z.R., applicants requesting a special exception for property in the C.R. District are subject to the additional requirements outlined in Section 259.3, including the area regulations contained in Section 259.3.C and the various additional requirements set forth in Section 259.3.E.

Turning first to the Petitioner's request for a contractor's storage yard, this particular use is permitted by special exception in the underlying B.R. zone pursuant to B.C.Z.R. Section 236.2. As stated in Section 259.3.B.1, uses permitted by special exception in the underlying zone are permissible if the proposal meets the bulk regulations contained in Section 259.3.C.1 of

the B.C.Z.R. However, the proposed buildings in this case exceed the bulk regulations of Section 259.3.C.1 in several ways: (1) the gross floor area of the proposed buildings would be 31,500 square feet in lieu of the maximum 8,800 square feet, (2) the ground floor of the proposed building will contain 26,484 square feet in lieu of the maximum 6,600 square feet, and (3) the resulting floor area ratio will be 0.23 in lieu of the maximum 0.20 ratio. Accordingly, Section 259.3.B.3 requires the Petitioner to demonstrate that “the proposed development is in compliance with site design guidelines and performance standards which are part of a duly adopted Master Plan for the district.” Additionally, Section 259.3.B.4 states that in addition to the Section 502.1 criteria that generally apply to requests for special exception, any use permitted by special exception in C.R. Districts shall meet the requirements contained in Section 259.3.E, which states as follows:

1. The petitioner shall document the need for the development at the proposed location.
2. The proposed development shall take into account existing and proposed roads, topography, existing vegetation, soil types and the configuration of the site. The proposed development will not disturb slopes with grades exceeding 25%; will minimize disturbance to vegetated areas, wetlands and streams; and will not result in undue site disturbance or excessive erosion and sediment loss. Infiltration will be maximized and stormwater management discharge will be decentralized.
3. Architecturally or historically significant buildings and their settings shall be preserved and integrated into the site plan.
4. The buildings shall be sited to protect scenic views from public roads and so that the natural rural features, including but not limited to pastures, croplands, meadows and trees, are preserved to the extent possible. Additional open space may be required to preserve and enhance the enjoyment of the natural amenities and visual quality of the site.
5. The proposed development will not be detrimental to neighboring uses and the tranquility of the rural area through excessive noise and will not result in a nuisance or air pollution from dust, fumes, vapors, gases and odors. Altogether, the regulations are complex and place a high burden on the Petitioner that is not taken lightly by this Commission. However, as will be explained in greater detail,

the Petitioner has gone to great lengths to ensure that the request meets all of the aforementioned criteria and has submitted a site plan that is the product of years of negotiations with the surrounding community.

At the outset of the public hearing, Mr. Barhight provided a historical overview of the property and the requested relief. Since 2008, Mr. Martindale has been communicating with the surrounding community, explaining the proposal to expand the facilities for Brothers Services and attempting to propose a site plan that would account for any community concerns. Prior to the 2008 Comprehensive Zoning Map Process (CZMP), the community and property owner reached an agreement where the owner would apply for a zoning change to rezone the property B.R. (initially the owner wanted M.L. but compromised to B.R.) and would submit the site plan proposed today, which includes significant mitigation such as setting the contractors storage yard structure back 200 feet from the road and shielding the building from the neighboring community with a landscaping strip containing a mix of flowers, trees, and shrubs. However, negotiations were contingent on the property being rezoned B.R., and much to the surprise of the owner and the community, the property was rezoned B.R.-C.R. during the CZMP.¹

Following the 2008 CZMP, the property owner resumed discussions with the surrounding community, again attempting to propose a solution where Brothers Services could improve their existing facilities without negatively impacting the surrounding community. The conversations were reduced to writing and the owner agreed to enter into a Declaration of Restrictive Covenants whereby the Hanover Road Association would support this Petition in exchange for the owner making improvements to landscaping, lighting and stormwater management facilities. An executed copy of the Declaration was marked and accepted into evidence as Petitioner's

¹ Mr. Barhight candidly stated that the owners considered filing a petition for reclassification but rezoning the property B.R.-C.R. did not seem to fit into any of the limited grounds for filing such a petition. Accordingly, the owner resumed negotiations with the surrounding community.

Exhibit 5. All of the owner's obligations are incorporated into the site plan submitted at the public hearing, and the Hanover Road Association submitted a letter fully supporting the petition for special exception, stating that the proposed use does not pose any adverse impacts to the surrounding community and explaining that the proposal is a "logical extension of the Brothers Services operation on the property." *See* Petitioner's Exhibits 6, 7. As previously stated and as reflected on the site plan, the proposed structure will be set back 200 feet from the road and will be shielded from public view and earthen berm and substantial with a strip of vegetation as depicted on the elevations marked and accepted into evidence as Petitioner's Exhibit 4. The majority of the storage will be enclosed in the storage structure, and any loading/unloading will take place behind the building and will be shielded from neighboring citizens and motorists traveling on Hanover Pike.

Mr. Martindale also obtained the support of the Baltimore County Department of Economic Development prior to submitting the petition for special exception. Rick Cobert, who specializes in office and industrial expansion in the Owings Mills and Reisterstown areas of Baltimore County, appeared at the public hearing and testified in support of the petition. Mr. Cobert stated that in light of the recent economic downturn, Baltimore County is actively supporting and encouraging the expansion of successful businesses such as Brothers Services. Additionally, the County aims to support redevelopment rather than sprawl development, and the proposed expansion will create jobs, serve a legitimate corporate purpose, and increase the tax base for Baltimore County. The development will have a multiplier effect for Reisterstown residents who will be employed by Brothers Services and will utilize the services offered by the company. In sum, the Department of Economic Development, similar to the surrounding community, was strongly in favor of the proposed expansion to Brothers Services.

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 May 21, 2010, which state that the Office of Planning opposes the Petitioner's request for special exception. The Office of Planning noted that this property was the subject of 2008 CZMP Issue 3-027, where the Petitioner requested that the property be re-zoned from 0.8 acres of B.R.-C.R. and 2.6 acres of R.C.2 to 3.3 acres of M.L. After discussions with the Hanover Road Association, which is the local community group in the area, the Petitioner decided that they would rather seek B.R. as opposed to M.L. zoning with a 10-foot strip of R.C.2 along the southern boundary of the property. The Office of Planning recommended that the zoning be changed to B.R. for the entire site, including the C.R. overlay insuring that there would not be a large commercial enterprise amidst a rural agricultural setting and along a County designated scenic route. According to the 2010 Master Plan, medical facilities, stores, and other services and amenities should be located within urban areas, and to some extent, rural commercial centers. This area of the County is not a designated rural commercial center and is listed as an Agricultural Preservation Area under the Land Management Areas in the Master Plan 2010 and the property is also included in the Rural Legacy Area. With that said, the Office of Planning would be willing to support buildings that are of a smaller size and more closely conform to the CR District regulations.

Comments were also received from the Department of Environmental Protection and Resource Management (DEPRM) dated May 21, 2010. The DEPRM comment stated that the County line bisects this parcel. Afforestation to meet Forest Conservation requirements may be met for the entire parcel in Baltimore County per an agreement between the Carroll County Planning and Baltimore County DEPRM. The proposed commercial office building permit will

be reviewed by the Groundwater Management Section since the site is on well and septic. Additional comments were received from the Bureau of Development Plans Review dated April 23, 2010. The Bureau stated that it appears that vehicles must cross the outdoor storage yard to get to proposed parking spaces; therefore, the outdoor storage yard should be paved with a durable and dustless surface.

Considering all of the evidence and testimony presented at the public hearing, I am persuaded to grant the requested special exception. As previously stated, in addition to the requirements generally imposed by Section 502.1 of the B.C.Z.R., this Petitioner is subject to the additional restrictions imposed by in Section 259.3 of the B.C.Z.R., including the area regulations contained in Section 259.3.C and the criteria set forth in Section 259.3.E. For the following reasons, I find that the requested relief should be granted.

Turning first to the requirements that generally apply in special exception cases, uses permitted by special exception enjoy a legislative presumption that they are compatible with the uses that are permitted in adjoining areas under the applicable zoning regulations. In *Schultz v. Pritts*, 291 Md. 1, 14 (1981), the leading Maryland case on special exceptions, the Court stated:

[T]he appropriate standard to be used in determining whether a special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

See, also *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008) quoting *Schultz* and confirming that the analysis of an individual case must be focused on the particular locality or neighborhood around the proposed site, *Id.* @ 101-102.

There is no evidence that the proposed contractor's equipment storage yard in this particular location would have adverse impacts above and beyond those inherently associated

with such a use throughout the B.R.-C.R. zone. In fact, this request for a storage yard is somewhat unique in that the “yard” will actually be enclosed. Furthermore, the location of the parking and loading area is shielded from public view by the warehouse building, which is amply setback, screened, and buffered from the roadway. Accordingly, there is actually less impact than would be expected from a typical contractor’s storage yard throughout the underlying zone.

I am further convinced that this request meets all of the requirements imposed by Section 502.1 of the B.C.Z.R. The Petitioner, and their counsel, should be commended for taking a cooperative approach with the surrounding community and incorporating community concerns with regard to several of the 502.1 factors into the site plan submitted at the public hearing. While this use, absent mitigating factors, may cause adverse impacts on a community, the Petitioner has incorporated a vegetative buffer to shield the proposed building from public view, has set the structure 200 feet back from the roadway, and has developed a layout where all loading and unloading will take place behind a building away from nearby citizens. These factors, as well as the improvements being made to the stormwater management system, ensure that the proposal meets the requirements of Section 502.1 of the B.C.Z.R.

Turning next to the additional requirements contained in Section 259.3 of the B.C.Z.R., I find that the Petitioner has justified the request to exceed the bulk requirements set forth in Section 259.3.C.1 of the B.C.Z.R.² Section 239.3.B.3 requires that buildings exceeding the bulk regulations set forth in Section 259.3.C.1 comply with site design guidelines and performance standards which are part of a duly adopted Master Plan for the district. While the Office of

² It is worth noting that while the regulations require property owners to achieve area modifications from Section 259.3.C via special exception, the request to exceed bulk regulations appears more similar to a request for variance relief, which is typically reviewed under the stringent standards set forth in *Cromwell v. Ward*, 102 Md. App. 691 (1995). Indeed, requests to exceed area regulations in any zone other than the C.R. District would be processed under a request for variance.

Planning noted that this property is located in an area primarily used for residential and agricultural purposes, the comment overlooks the fact that the property is bisected by the Baltimore and Carroll County lines and that the area to the north of the property is filled with a dense mix of commercial and residential uses. Indeed, the subject property lies one mile south of the town of Hampstead, and a bypass was recently constructed to improve access to the area surrounding the subject property. This property is more oriented to the north, as the sole access point is from the Carroll County side to the west of the property. It must be noted that the proposed use is permitted as of right in the B.G. (General Business) zone comprising the western, Carroll County half of the property. However, after discussing this proposal at length with the surrounding community, the Petitioner determined that even though zoning relief would be required in order to set the proposed structure back onto the Baltimore County side of the property, the proposal submitted in this petition would better serve the interests of the surrounding community than forcing the improvements into the western half of the property. Taking into account the community-friendly layout and the development of the area west and north of the property, I find that the proposal is appropriate at this location and is located in a rural commercial center in line with the requirements of Section 259.3B.3 of the B.C.Z.R.

Finally, I find that the Petitioner has satisfied the additional requirements imposed by Section 259.3.E of the B.C.Z.R. Petitioner established that there is a need for the development at the proposed location, which will satisfy the Department of Economic Development's interest in redevelopment rather than sprawl development and the community's interest in setting the structure back from the road to the west of the property. The development will create much needed jobs in this area, and will continue a use that has existed in this location for over twenty years without incident. Petitioner has also made improvements to the existing stormwater

management facilities and has sited the buildings to protect scenic views from public roads to preserve the natural rural features of the surrounding area. Indeed, the elevations submitted demonstrate that the structure will be largely shielded from public view by a mix of trees, flowers and shrubs. Finally, the proposed development will not be detrimental to neighboring uses or create a nuisance or air pollution from dust, fumes, vapors, gases and odors. In fact, the Hanover Road Association submitted a signed agreement certifying that the development would not pose any adverse impact to the surrounding community. *See Exhibit 6.*

As previously stated, the Petitioner and their attorneys and engineering firm are commended for taking a cooperative approach and working with the surrounding community to present a proposal that fulfills the needs of a growing business without posing any risks to the surrounding community. It was particularly important to take this approach in the case at hand, where the complex C.R. regulations place added restrictions on property owners seeking a special exception. While the burden for obtaining a special exception from these regulations is undoubtedly high, this particular proposal satisfies the regulations, Department of Economic Development, and surrounding community while allowing a growing business to update their facilities to meet the increased demand for their services. For all of these reasons, I find that the request for special exception should be granted.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 14th day of June 2010, that the Petition for Special Exception from the following sections of the Baltimore County Zoning Regulations (B.C.Z.R.):

- (1) From Section 236.2 to permit a contractor's equipment storage yard in the B.R.-C.R. zone;

- (2) From Section 259.3.C.1 to permit a 31,500 square foot building in excess of the 8,800 square foot limit pursuant to Section 259.3.B.3;
- (3) From Section 259.3.C.1.a to permit 26,484 square feet of building on the ground floor in lieu of the permitted 6,600 square feet pursuant to Section 259.3.B.3; and
- (4) From Section 259.3.C.1.b to permit a Floor Area Ratio of 0.23 in lieu of the permitted 0.20 pursuant to Section 259.3.B.3.

is hereby GRANTED subject to the following conditions:

1. The Petitioner may apply for its building permits and be granted same upon receipt of this Order; however, the 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 an appeal is filed, and his Order is reversed, the relief granted herein shall be rescinded.
2. That the Declaration of Restrictive Covenants, dated May 26, 2010, by 111 Hanover Pike, LLP and entered as Petitioner's Exhibit 5 is made a part of this Order as a condition to the approval. This agreement will be attached to the Order kept in the Zoning Commissioner's Office.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County