

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S side of Riverside Drive, 5 feet SE to	*	OFFICE OF
c/line of intersection of Taylor Avenue		
15 th Election District	*	ADMINISTRATIVE HEARINGS
7 th Councilmanic District		
(516 Riverside Drive)	*	FOR BALTIMORE COUNTY
Michael Kraus	*	CASE NO. 2012-0022-SPHA
<i>Legal Owner</i>		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by the legal property owner, Michael Kraus. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a gravel surface in lieu of the required durable and dustless surface. In addition, the Petitioner is requesting variance relief from Section 409.6.A of the B.C.Z.R. to allow 13 parking spaces in lieu of the required 17 parking spaces. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the Special Hearing and Variance requests was Michael Kraus and Robert Infussi with Expedite, LLC, who is assisting the Petitioner with the permitting process. Also in attendance was William Bafitis with Bafitis & Associates, Inc., the professional engineer who prepared the site plan. There were no Protestants or other persons present, and the file does not contain any letters of protest or opposition from neighboring owners.

Testimony and evidence offered revealed that the subject property consists of 17,606 square feet (or .404 acre), zoned D.R.5.5 and is located in the Essex area of the County. The

property is used as a boatyard and is also the Petitioner's residence. The property contains 24 boat slips.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Bureau of Development Plans Review (DPR), dated August 9, 2011, as follows: the base flood elevation for this site is 7.7 feet [NAVD 88]. The flood protection elevation for this site is 8.7 feet. The proposed entrance road width should be reduced to 18 feet so that there will be 4 feet of space between the entrance road and the property line of 518 Riverside Drive. If this is done and the 4 foot wide space is landscaped, they can support using a gravel surface rather than a durable, dustless surface. Petitioner should contact Avery Harden, Baltimore County Landscape Architect, for landscaping requirements.

ZAC comments were also received from the Department of Environmental Protection and Sustainability (DEPS), dated August 22, 2011. The subject property is located within the Chesapeake Bay Critical Area, and as such B.C.Z.R. Section 500.14 is applicable. As required by that section, DEPS submitted written recommendations describing how the proposed request would:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located within a Limited Development Area and is subject to Critical Area lot coverage requirements. The proposed gravel surface meets the definition of lot coverage as defined in Natural Resources Article §8-1802(a)(17). The existing lot coverage on this property appears to exceed the maximum allowance for this property and that amount cannot be increased. To minimize impacts on water quality, lot coverage requirements must be met. Reduction of the required number of parking spaces will help reduce lot coverage, but it appears that other lot coverage removal would be required. By meeting the lot coverage requirements, the proposal will result in minimal impacts to water quality, but gravel use in place of a durable and dustless surface will not result in any additional benefits based on Critical Area requirements.

2. Conserve fish, wildlife, and plant habitat; and

This waterfront property is located within a Buffer Management Area (BMA) of the Critical Area. The applicant's plan accompanying this zoning petition shows that the proposed parking area is located outside of the 100-foot tidal buffer. With no new lot coverage proposed within the tidal buffer, and by meeting lot coverage and planting requirements, buffer functions can be maintained and conserve fish habitat in Back River.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

The applicant's proposal can be consistent with this goal and with established land-use policies provided that the applicants meet the requirements stated above, and any applicable water dependent facility requirements.

As to the variance relief, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner. Indeed, the boatyard has long operated with the existing 13 parking spaces, and the Petitioner testified he has never experienced a parking overflow.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

I am also persuaded to grant the requested Special Hearing relief. The small driveway area shown on Petitioner's Exhibit 1 has always had a gravel surface, and it is preferable from an environmental perspective (especially in the Critical Area) to limit impervious surfaces. Mr. Dennis Kennedy, Supervisor of the Bureau of Development Plans Review, was also supportive of this request, provided certain requirements were met, and the relief granted will be so conditioned.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's requests for Special Hearing and Variance should be granted.

THEREFORE, IT IS ORDERED this 30th day of September, 2011 by the Administrative Law Judge, that Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a gravel surface in lieu of the required durable and dustless surface, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Variance relief requested pursuant to Section 409.6.A of the B.C.Z.R. to allow 13 parking spaces in lieu of the required 17 parking spaces, be and is hereby GRANTED.

The relief granted is subject to the following conditions:

1. Petitioner may apply for his 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Any improvements shall be designed and constructed so as to meet the applicable provisions of the Baltimore County Fire Prevention Code, Council Bill 48-10.
3. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability (DEPS), dated August 22, 2011, and the Bureau of Development Plans Review (DPR), dated August 9, 2011; copies of which are attached hereto and made a part hereof.

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

JEB:dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County