

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
SW of Windsor Mill Road, 1,000' SE of	*	OFFICE OF
c/line of Featherbed Lane		
<b>(6727 B Windsor Mill Road)</b>	*	ADMINISTRATIVE HEARINGS
2 <sup>nd</sup> Election District		
4 <sup>th</sup> Council District	*	FOR
Rodger Glenn Price	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2012-0256-SPHA</b>

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owner of the subject property, Rodger Glenn Price. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Administrative Law Judge should approve as a non-conforming use a landscaping business which includes the storage of contractor’s equipment on the premises. The Petitioner is also seeking variance relief from Section 400.3 of the B.C.Z.R., to permit an accessory structure in excess of the height restriction of 15’. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing held for this case was Petitioner Rodger Glenn Price. Alan H. Silverberg, Esquire appeared as counsel and represented Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. The file contains a letter of opposition, dated May 24, 2012, from Robert H. Brauns, Jr., President of LMC Landscaping, Inc., located at 2001 Wells Manor Avenue. Mr. Brauns also attended the hearing, and testified in opposition to the Petitions.

At the outset, Mr. Silverberg indicated the Petition for Variance was being dismissed. He explained that the open carport in question is apparently under 10 feet in height, so that no variance relief is needed for that structure. As such, this Order only addresses the non-conforming use issue.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. There were no adverse comments received from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 1.17 acres (50,965 square feet) and zoned DR 5.5. The Petitioner indicated he has been in the landscaping business for approximately 20 years, which is when he acquired the home located on Windsor Mill Road. Mr. Price testified he has about seven employees and 10-15 lawn mowers of various varieties. The crew starts their work day at approximately 7 am, and is finished at about 5 pm, Monday-Friday. Mr. Price explained that no heavy equipment of any kind is stored on site, and he noted the employees are really only on the premises for 10-15 minutes at the beginning and end of their day.

Mr. Price is a credible witness, and I have no doubt he conducts the business in a professional manner. He is well-liked by his neighbors, and he apparently maintains the neighborhood church and vacant homes in the area. But, unfortunately, he failed to sustain his burden of proof in establishing a non-conforming use under Maryland law.

To establish a non-conforming use, the property owner must show he was -- at or before the enactment of the zoning ordinance forbidding the use in question -- using his property in a lawful manner. Howard County v. Meyer, 207 Md. 389 (1955); See also B.C.Z.R. § 104. The burden of establishing a nonconforming use is on the claimant of such use, and one effective way of meeting this burden is to show that the existence of the use in question was well known throughout the neighborhood at the critical time. *Calhoun v. County Board of Appeals*, 262 Md.

265 (1971). While the mere change in ownership would not destroy a nonconforming use, a Petitioner must establish that the nature and character of the use in question – a landscaping business – remained unchanged and that substantially the same facilities were used throughout the years in question. *Kastendike v. Baltimore Association for Retarded Children*, 267 Md. 389 (1974). As recognized by the Court of Appeals, nonconforming uses are disfavored in the law, and “pose a formidable threat to the success of zoning”. *Prince George’s County v. E.L. Gardner*, 293 Md. 259, 267 (1982).

The testimony in this case established that the Petitioner has been conducting his lawn care business from the subject property for approximately 20 years, at or about the time he acquired the property. According to State tax records, the Petitioner acquired the subject property on December 14, 1994, and the “use” is classified as residential. When the Petitioner purchased his home, the zoning was DR 5.5. The property was first zoned DR 5.5 in 1971. Under that residential zoning classification, a landscaping or lawn care business (including storage of contractor’s equipment) is not a use permitted by right or special exception. As such, the use cannot be deemed a lawful non-conforming use under Maryland law.

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

THEREFORE, IT IS ORDERED, this 27 day of July, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve as a non-conforming use a landscaping business which includes the storage of contractor’s equipment on the premises, be and is hereby DENIED.

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

Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:pz