

**IN RE: PETITIONS FOR SPECIAL  
EXCEPTION AND VARIANCE  
(11437 Eastern Avenue)  
15<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District  
Christopher W. & Barbara A. Pasko  
Petitioners**

\* BEFORE THE  
\* OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* FOR BALTIMORE COUNTY  
\*  
\* **Case No. 2013-0194-XA**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 11437 Eastern Avenue. The Petitions were filed by Christopher & Barbara Pasko, the legal owners of the subject property. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) to use the herein described property for: (1) contractor’s equipment storage yard, and (2) living quarters in a commercial building. As originally filed, Petitioners sought Variance relief under B.C.Z.R. Sections 409.4.A, 409.4.C and 409.6.A: (1) to permit a 10’ width driveway in lieu of the required 20’ width two-way traffic, (2) to permit a 14’ drive aisle in lieu of the required 22’ drive aisle, and (3) to permit 3 parking spaces in lieu of the required 9 spaces. At the hearing, those variance requests were modified as follows: (1) to permit a 15.75’ width driveway in lieu of the required 20’ width for two-way traffic, (2) to permit a 12’ drive aisle in lieu of the required 22’ drive aisle, and (3) the variance pertaining to the number of parking spaces was withdrawn; the plan shows the requisite 9 spaces are provided. The subject property and requested relief are more fully described on the site plans which were marked and accepted into evidence as Petitioners’ Exhibits 1 and 2.

Appearing at the hearing was owner Christopher W. Pasko and Bernadette L. Muskunas from Site Rite Surveying, Inc., the firm that prepared the site plan. Timothy M. Kotroco, Esquire

with Whiteford, Taylor & Preston, LLP, represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Though Mr. Kennedy (on behalf of Development Plans Review [DPR]) originally opposed the requested variance relief, he provided to the undersigned a letter dated April 10, 2013 (Exhibit 3) wherein he indicated the Petitioners had satisfied his ZAC comments dated March 13, 2013. Mr. Kennedy also indicated that the Petitioners did not need to provide a “durable and dustless surface” for the parking area. The only other substantive comment was from the Department of Planning (DOP), which did not oppose the petitions, but did request that the Petitioners relocate a storage trailer which was actually encroaching on neighboring property owned by Baltimore County. The redlined plan shows that the trailer will be relocated so that it is entirely on Petitioners’ property, Exhibit 2, and the relief granted herein will be so conditioned.

Testimony and evidence offered at the hearing revealed that the subject property is 0.64 acres and is zoned BR. For the past six years, Petitioners have operated a landscaping business on the property. The County contends Petitioners are operating a contractor’s equipment storage yard, and as such Petitioners were able to have the property re-zoned from BM to BR in the 2012 Comprehensive Zoning Map Process (CZMP). That zone permits the use by special exception.

#### SPECIAL EXCEPTION

Under Maryland law, a Special Exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a Special Exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question

would be above and beyond those inherently associated with the Special Exception use. There was no such evidence presented in this case, and the Petition for Special Exception will therefore be granted.

### VARIANCE

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test. The property has several "pinch points." The most significant of which is at the junction with Eastern Avenue where a utility pole and fire hydrant prevent the Petitioners from complying with the driveway width requirements. Thus, the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, in that they would be unable to lawfully operate their business on the property. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County and/or community opposition.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 15<sup>th</sup> day of April, 2013, that Petitioners' request for Special Exception relief under the B.C.Z.R., to use the herein described property for: (1) contractor's equipment storage yard, and (2) living quarters in a commercial building, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance relief from the B.C.Z.R.: (1) to permit a 15.75' width driveway in lieu of the required 20' width for two-way traffic; and (2) to permit a 12' drive aisle in lieu of the required 22' drive aisle, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Variance to permit 3 parking spaces in lieu of the required 9 spaces, be and is hereby WITHDRAWN; the plan shows the requisite 9 spaces are provided.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners must relocate, within thirty (30) days of the date of this Order, the storage trailer to the location shown on the revised site plan (Exhibit 2).

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

Signed  
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JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/dlw