

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
<b>(1901 Halethorpe Avenue)</b>	*	OFFICE OF
13 <sup>th</sup> Election District		
1 <sup>st</sup> Councilmanic District	*	ADMINISTRATIVE HEARINGS
Daniel E. Rosenberger	*	FOR BALTIMORE COUNTY
Petitioner	*	
	*	<b>Case No. 2013-0229-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Bruce Doak, on behalf of the Petitioner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows: (1) to allow shipping containers in the BR zone within a proposed enclosed building; and (2) to allow commercial parking in a residential zone (DR 2). The Variance petition seeks relief from B.C.Z.R. §§ 409.8A2 and 409.8A6, to: (1) allow a gravel surface of the parking area in lieu of a durable and dustless surface; and (2) to allow no striping of the parking area. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Bruce E. Doak and Daniel E. Rosenberger. There were no Protestants or interested citizens in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received and are included in the file. Although the Bureau of Development Plans Review (DPW) indicated it did not support the

variance relief regarding the parking area, the Department of Planning (DOP) advised that after a site visit it did not oppose the Petitioner's Special Hearing or variance requests.

The subject property is 1.78 acres in size and is zoned BR & DR 2. The Petitioner purchased the property in 2011, and operates on site a landscape design business. In addition, the site is improved with a one-story building, which Petitioner leases to a company that sells deck materials and related hardware to contractors and builders. The Petitioner indicated that approximately one half of the lot was paved and one half was covered with road millings, which he explained creates a very durable surface that also accommodates the bobcats and other heavy equipment he operates on site as part of his landscape business.

The petition for Special Hearing seeks approval for shipping containers on site, which will be stored inside a proposed building, as shown on the plan. The containers are used by the Petitioner to store materials and equipment for his landscaping business, and neither the containers themselves nor the contents will be visible to adjoining owners or motorists. This request seems reasonable, and I do not believe the relief would in any way jeopardize the public's health or safety.

The second aspect of Special Hearing relief seeks approval for commercial parking in a residential zone. As shown on the plan, the DR 2 zoned portion of the property is extremely small; it could accurately be described as a "sliver." Given other site constraints, the Petitioner needs to locate four (4) of the fifteen (15) spaces required on the DR 2 portion of the site. The Petitioner testified the nearest dwelling was approximately 230' from the proposed parking spaces, and photos submitted also show that screening and vegetation will screen the parking spaces from view. In these circumstances, I believe the Petitioner has satisfied the requirements set forth in B.C.Z.R. 409.8B and the Special Hearing relief should be granted.

Based upon the testimony and evidence presented, I will also grant the request for variance relief. 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).

The Petitioner has met this test. The site is split zoned and of irregular dimensions, and is thus unique for zoning purposes. The Petitioner would experience a practical difficulty if the regulations were strictly enforced, given that he would incur great expense to pave a portion of his current parking lot, that has been operated in its current condition for many years without complaint.

Finally, I do not believe the grant of variance relief would endanger the public's health, safety and welfare.

Pursuant to the advertisement, posting of the property, and the public hearing, 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 this 12th day of June 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), (1) to allow shipping containers in the BR zone within a proposed enclosed building; and (2) to allow commercial parking (four spaces) in a residential zone (DR 2) and a use permit for same, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance pursuant to §§ 409.8A2 and 409.8A6, to allow a gravel surface of the parking area in lieu of a durable and

dustless surface; and (2) to allow no striping of the parking area, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate 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 such time as the 30-day appellate process from 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.

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/sln