

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE		
(7400 Dogwood Road)	*	OFFICE OF
2 nd Election District		
4 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Apex Ground Properties, LLC	*	
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0267-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Anthony DiPaula, Esquire, on behalf of the legal owner, Apex Ground Properties, LLC. The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve the planting of horticultural materials in a Secondary Conservancy area in an RC 6 zone as part of a landscape service operation under B.C.Z.R. §404.3. A Petition for Special Exception was filed pursuant to §§ 1A07.3.B.7 and 404.3 of the B.C.Z.R., to use the herein described property for a landscape service operation. Finally, a Petition for Variance was filed pursuant to the B.C.Z.R. as follows: (1) to permit a distance of 57 ft. between principal buildings in an RC 6 zone in lieu of the required 80 ft.; (2) to permit 13% (27,312 sq. ft.) of the lot area in an RC 6 zone to be covered by impervious surfaces in lieu of the permitted 10% (20,933 sq. ft.) and, (3) to permit loading and unloading within a fully enclosed structure of a landscape service operation within 25 ft. of a property line in lieu of the permitted 50 ft.. 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 2.

Appearing at the public hearing in support of the requests were Allen Terrill and Landscape Architect, Thomas Hoff. Anthony J. DiPaula, Esquire, appeared as counsel and represented the Petitioner. There were no opponents in attendance at the hearing, and the file does not contain any letters of protest and/or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS) on June 6, 2013. That agency noted Petitioner was obliged to comply with the County's forest buffer and conservation regulations. In addition, a ZAC comment was received from the Department of Planning (DOP) dated May 31, 2013, which supported the zoning requests.

The subject property consists of approximately 5 ½ acres and is zoned RC 6. The Petitioner has for over 30 years operated a landscaping business and would like to move his operations to this site.

SPECIAL HEARING

The Petition for Special Hearing concerns only whether it is permissible to plant horticultural materials in the RC 6 Secondary Conservancy area. I believe, as does the DOP and DEPS, that the planting of such materials constitutes "cultivated agricultural land" which is permitted under the regulations. The Petitioner stressed that it is customary for landscaping companies to grow their own trees and shrubs for use in customer projects. There will be no on-site or retail sale of these materials, and their planting and cultivation is an appropriate use in the zone and on this relatively large property. As such, the Special Hearing relief will be granted.

VARIANCES

Based upon the testimony and evidence presented, I will 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 satisfied this test. As seen on the site plan, the property is of irregular dimensions and well over half of the site is burdened with environmental features and restrictions. As such, the property is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, Petitioner would suffer a practical difficulty in that he would not be able to open and operate his business on this large site. Finally, the relief will not negatively impact the neighborhood, as demonstrated by the support of County agencies.

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. In this case there was no evidence presented that would tend to rebut this presumption, and the Special Exception relief will therefore be granted.

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

THEREFORE, IT IS ORDERED this 1st day of July, 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve the planting of horticultural materials in a Secondary Conservancy area in an RC 6 zone as part of a landscape service operation under B.C.Z.R. §404.3, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Special Exception filed pursuant to §§ 1A07.3.B.7 and 404.3 of the B.C.Z.R., to use the herein described property for a landscape service operation, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance filed pursuant to the B.C.Z.R. as follows: (1) to permit a distance of 57 ft. between principal buildings in an RC 6 zone in lieu of the required 80 ft.; (2) to permit 13% (27,312 sq. ft.) of the lot area in an RC 6 zone to be covered by impervious surfaces in lieu of the permitted 10% (20,933 sq. ft.) and, (3) to permit loading and unloading within a fully enclosed structure of a landscape service operation within 25 ft. of a property line in lieu of the permitted 50 ft, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for his 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.
2. The Petitioner must comply with the three (3) conditions set forth in the DOP ZAC comment, a copy of which is attached hereto.
3. The Petitioner must comply with the requirements set forth in the DEPS ZAC comment, a copy of which is attached hereto.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County