

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(16 Alt Road)	*	OFFICE OF
8 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
3 <sup>rd</sup> Council District	*	FOR BALTIMORE COUNTY
Beynon Family, LLC, <i>Legal Owner</i>	*	<b>Case No. 2019-0457-SPHA</b>
Petitioner	*	
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**AMENDED OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Beynon Family, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) for the construction of a **12<sup>1</sup> foot** diameter welded carbon steel tank (“silo”) and replacement fireproof/flood proof chemical storage container within the 100-year floodplain and within the minimum required setback area. In addition, a petition for variance seeks front setback of 25 feet and rear setback of 20 feet. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 2.

Elsie Dare appeared in support of the requests. Professional Engineer, Melanie Repp, of Hanover Land Services, Inc., also attended. Whitney E. Wilder, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), the Department of Public Works

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<sup>1</sup> The original Opinion and Order in this case mistakenly stated the diameter of the silo as 10 feet, rather than the 12 foot diameter stated in the Petition and the Site Plan. Our office was made aware of this typographical error after the Order was prepared and sent out. This Amended Order makes this one correction. The balance of the Order remains unchanged.

(“DPW”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of these agencies opposed the requested relief.

Ms. Repp explained that a chemical solvents plant currently occupies the site, which is within the Cockeysville Road Industrial Park. She further explained that the proposed improvements will replace the outdated storage facilities there. It is acknowledged by the Petitioner and the county agencies, as well as by the Maryland Department of the Environment (“MDE”) that the proposed improvements will be located within a 100 year floodplain. However, the current chemical facilities are also in the floodplain.<sup>2</sup> Petitioner’s Exhibit 1 is a Floodplain Impact Analysis performed by the engineer Ms. Repp. Appendix A to this exhibit is an “Alternative Silo Location Analysis” which was done in order to determine the safest possible location for the storage silo. Ms. Repp explained that they settled on this proposed location because it is within the “conveyance shadow” of the plant building and therefore buffered from the brunt of flood impacts. The DPW comments refer to this as the “hydraulic shadow.” A geotechnical engineering study was also performed by Herbst/Benson & Associates Geotechnical Engineers under the auspices of Hanover Land Services. That report is also contained within Exhibit 1 and certifies that the design and installation of the silo is state of the art. Finally, Petitioner’s Exhibit 3 is an “Authorization to Proceed” issued by MDE, which green lights the design and construction of the proposed facilities as being compliant with state law.

#### SPECIAL HEARING

A Special Hearing under BCZR Sec. 500.7 is in the nature of a request for a declaratory judgment. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). In an unreported opinion the court of special appeals explained that “the administrative practice in Baltimore

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<sup>2</sup> Evidently the county agencies acknowledge that these existing buildings within the floodplain are a valid non-conforming use under BCZR § 101. That issue was not before me.

County has been to determine whether the proposed Special Hearing [relief] would be compatible with the community and generally compatible with the spirit and intent of the regulations. Based on the record evidence I find that the Special Hearing relief should be granted. It is quite unusual for DPW to endorse any construction within a riverine floodplain as this is prohibited by the plain language of the County Code and Building Code. However, in the instant case there is an existing building and accessory structures within the floodplain and the proposed upgrades will substantially improve the site's capacity to withstand flooding events. This was also recognized by the MDE. As a result, the other businesses and residences in this community will be rendered safer. In sum, these improvements are within the spirit and intent of the BCZR.

#### VARIANCE

As to the variance, it requires a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

As explained above, the entire site is within the 100 year floodplain and has an existing building and accessory structures. It is also within an industrial park. As such, the property is unique in a zoning sense. If the Regulations were strictly interpreted Petitioner would experience hardship and practical difficulty because it would be unable to construct the proposed silo and storage container. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of county agency or community opposition.

THEREFORE, IT IS ORDERED this **28th** day of **June, 2021**, by this Administrative Law Judge, that the Petition for Special Hearing for the construction of a **12 foot** diameter welded carbon steel tank (“silo”) and replacement fireproof/flood proof chemical storage container within the 100-year floodplain and within the minimum required setback area, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance for front setback of 25 feet and rear setback of 20 feet, be and is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits, Petitioner must comply with ZAC comments received from DEPS, DOP and DPW, 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.

Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM:dlm