

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
14225 Longnecker Road; SE/S Longnecker	*	BOARD OF APPEALS
Road, 2920' NE of Piney Grove Road	*	FOR
4 th Election & 3 rd Councilmanic Districts	*	BALTIMORE COUNTY
Legal Owner(s): Russ & Brenda Kahn	*	CASE NO.: 10-173-SPH
Petitioner(s)		

* * * * *

OPINION

This matter comes before the Board on an appeal from the decision of the Deputy Zoning Commissioner on a Petition for a Special Hearing filed by the Petitioners, Russ and Brenda Kahn. The Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a request to allow a cabinetry business to operate from the basement of their residence on 14225 Longnecker Road. A hearing was held before the Board on October 26, 2010. Petitioners were represented by Francis X. Borgerding, Jr., Esquire. People's Counsel, Carole S. Demilio appeared in opposition to the Petition as well as the Protestants, Richard Deurer, Nancy Baldwin and Neil Kravitz, adjacent property owners, who were unrepresented. Hearing the matter was Chairman Lawrence Stahl, and members Maureen Murphy and Robert Witt. After the hearing, Chairman Stahl left the Board to become an Administrative Law Judge for Baltimore County. Prior to the Public Deliberation on January 6, 2011, Board member Lawrence Wescott was designated as the third member to deliberate the case. Mr. Wescott listened to the taped recording of the hearing and reviewed all of the documents submitted into evidence during the hearing and participated in the deliberation of this matter.

At the close of the hearing, Counsel for the Petitioner presented oral argument. People's Counsel was allowed to file a brief which was due December 3, 2010.

Background

The subject property owned by Petitioners is a rectangular shaped piece consisting of approximately 5.938 acres zoned RC.2. The property is located in a wooded area northeast of the intersection of Longnecker Road and Piney Grove Road, with Hanover Pike (Rt. 30) to the west and Butler Road to the east. It is a rural area north of Reisterstown in Baltimore County. Petitioners live off of a private road which extends from Longnecker Road through Petitioners' property and serves several other properties located in the wooded area. The Petitioners purchased the property in 2003 and the property is presently improved with a two-story single family dwelling which is under construction. The Petitioner, Mr. Kahn, indicated that he constructed and is presently continuing with the construction of the home, and is doing all of the work himself. He purchased the lot with the idea to build his custom home and operate his high-end cabinetry business with a workshop to be located in the basement.

At the time of the hearing before the Board, Mr. Kahn was still working on his home. Periodically he received deliveries of plywood and lumber which he used in the construction of his house. In addition, Mr. Kahn had established his workshop in the basement of the home where he engaged in his specialty cabinet business. He also received deliveries to the site of lumber and plywood for his business.

On August 12, 2009, Mr. Kahn was issued a Correction Notice by a Baltimore County Code Inspector, for an alleged illegal business being conducted in his home. Thereafter, the Inspector issued a Citation for the alleged illegal business in the home and as a result of the Correction Notice and Citation, Mr. and Mrs. Kahn filed the Petition for Special Hearing.

Mr. Kahn contends that he meets the requirements of Section 1A01.2.B.9.d of the Baltimore County Zoning Regulations as an artist; and that the custom woodwork which he

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designs and installs is of such an artistic nature that it will be considered unique, and could be considered a "collector's item".

In support of his position, Mr. Kahn testified that he employed one (1) individual and that all of the work was performed in his basement. Kahn stated that the entire house totaled 9,035 square feet. He stated that his basement totaled 3,000 square feet, but the shop only took up 2,008 square feet or 22 % of the total square footage of the house. No lumber or material was kept outside and there was no sign on his property indicating his business. He indicated that he operated the business under the title of The Kahn-struction Company, Ltd. He stated that the outside world would not know that he was operating this business in his home, except for the occasional delivery to him and deliveries from his place. He stated that he used a rental truck to make deliveries of his finished product.

Mr. Kahn stated that he does receive a delivery of lumber from O'Shea Lumber Company on twenty (20) foot trucks and also deliveries by tractor-trailer which stop at his mailbox at the top of the road. He receives from one (1) to twenty (20) sheets of plywood at a time from the tractor trailer. He then brings his own pick-up truck with a trailer, from his house to the mailbox where he puts several sheets of plywood at a time on the trailer and takes them back to his home. He receives plywood deliveries every 4 to 5 weeks and has kept track of the number of deliveries that he had made and the number of deliveries that he had received from 2008 through 2010. The largest number of deliveries were from May 1, 2008 to May 22, 2009, in which he received seventeen (17) deliveries in twelve (12) months.

On cross examination, Mr. Kahn stated that he was a graduate of Towson University and completed a B.A. in 1986. He stated that he had started a second Bachelor Degree in Elementary Education but did not complete it. He admitted that he had no formal training as an artist or art

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student. He did take several courses in architecture at the University of Maryland and a drafting course while attending high school. Mr. Kahn stated that he markets directly to interior designers by direct mail. He has postcards of previous work that he has performed which he shows to potential customers. Mr. Kahn generally meets with an interior designer at the designer's office or at the client's home and shows them photographs of his previous work. The designers then tell him what the customer would like and they discuss the ideas for constructing the pieces, which will meet the customer's satisfaction. Mr. Kahn designs the pieces which he will then construct and takes them to the customer's home where he will install the pieces.

In addition, Mr. Kahn submitted photos showing the areas both before and after he had completed the design work and the construction of various cabinets, stairways, etc. He also presented a photograph of his workshop in the basement of his home, where he has wood working machines and equipment, which he utilizes in the construction of his various cabinets and other decorative pieces.

In further support of his position, the Petitioner presented Mitchell J. Kellman of Daft McCune Walker, Inc., who was qualified as an expert in zoning, planning and the zoning regulations for Baltimore County. Mr. Kellman indicated that he had conducted an investigation approximately one (1) month ago and he visited the site and talked to Mr. Kahn about his work and reviewed the work which Mr. Kahn had performed. In Kellman's opinion, Mr. Kahn qualifies as an artist. He stated that Mr. Kahn's shop took up twenty-two percent (22%) of the total floor area of the residence, therefore coming within the twenty-five percent (25%) allowed under Section 1A01.2.B.9d. Kahn employed only one (1) employee as required by Section 1A01.2.B.9d. Mr. Kellman also felt that Mr. Kahn's business met all the requirements of Section 502.1 of the Baltimore County Zoning Regulations. He also compared the use by Mr. Kahn with

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the uses permitted for physicians and dentists and indicated the he felt that physicians and dentists would utilize more parking and more trips back and forth on the road, then would Mr. Kahn in pursuit of his occupation.

Petitioners also presented Michaela Robinson, as an expert in Interior Design. She has a Bachelor of Arts from Vanderbilt University and a Master of Fine Arts from George Washington University. Ms. Robinson has been an Interior Designer for sixteen (16) years.

Ms. Robinson will work with a client to come up with a concept to renovate a room which is unattractive or to construct some types of furniture or cabinets to hide unattractive video or CD players or other types of equipment. She then contacts Mr. Kahn to have him design or create the woodwork, which she envisions will meet her clients goals.

Ms. Robinson cited several instances of Mr. Kahn's work which she considered to be artistic. She stated he has worked with her over nine (9) years and has created a number of custom pieces. Several pictures of items which Mr. Kahn had created, such as a headboard, a cabinet for CD players, and other items were presented in evidence. She stated that Mr. Kahn has created several pieces of furniture and did an office suite for an attorney in which he made a desk and other items.

In opposition, People's Counsel presented one of Mr. Kahn's neighbors, Mr. Neal Kravitz, who lives on Longnecker Road. He lives on the same right-of-way that Mr. Kahn utilizes. Mr. Kravitz presented a number of pictures showing the tractor-trailer truck being unloaded and also a Budget Rental car or truck being loaded and driven out of the Kahn residence. Mr. Kravitz stated that he lived on a dairy farm and that the area was an agricultural area. He feels that Mr. Kahn is manufacturing in a rural area and that large trucks coming in and out could have an adverse affect on the aquifer for the wells in the area. On cross-examination, Mr. Kravitz

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admitted that he has a truck that he utilizes in going to gun shows where he sells ammunition. He states that he is a consultant in firearms for the Police Department and has worked out of his house. His truck goes in and out once a month.

People's Counsel also presented Richard Deurur, who also lives on the same right-of-way as Mr. Kahn and Mr. Kravitz. Mr. Deurur has been to Mr. Kahn's home and seen his operation and feels that he is doing manufacturing in a rural zone. His concern is the safety issue with respect to the trucks going in and out of the area.

Decision

Section 1A01.2.B.9 states:

Uses permitted as of right. The following uses only are permitted as of right in all R.C.

2 zones:

9. Accessory uses or structures, including, but not limited to, the following:

*** "d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee."

Since the term 'artist' is not defined in the Baltimore County Zoning Regulations, the Petitioner submits that the definition as set forth in Webster's Third New International Dictionary Unabridged, must be utilized in determining whether or not Mr. Kahn qualifies as an artist under the BCZR and that this is required by Section 101.1 of the BCZR, which states:

"For the purposes of these regulations, certain terms and words are defined below.

Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged."

Webster's definition of 'artist' states:

"*artiste* artist, artisan, learned man, *artista* student or master of the liberal arts, 1a: one who professes and practices an art in which conception and execution are governed by imagination and taste b: a person skilled in one of the fine arts; *esp* : painter 2a: a performer of music in public (as a singer, pianist, or conductor) b: a theatrical performer <a dramatic>; *broadly* : a usu. adept or skillful public performer or entertainer <a trapeze> : ARTISTE 3a *obs* : one skilled or versed in learned arts – used esp. of philosophers, savants, physicians or surgeons, astrologers, or alchemists b. *archaic* : one skilled in some technical or mechanical art or trade (as a cobbler, miner, surveyor, or seaman) : ARTISAN 4: one who is adept esp. at deception, fraud, artifice, or stratagem : one who is expert esp. at something dubious or reprehensible <with load dice>, <a short-weight in the coal business> 5: one whose vocation involves drawing, painting, designing, or layout work <landscape>"

In making its determination, the Board must look at all of the wording in the Baltimore County Zoning Regulations. Specifically, the Board finds that the words in Section 9d. "or other professional persons" defines a type of individual that the County Council was contemplating in its drafting of this regulation. The definition of a professional as set forth in Webster's Third New International Dictionary of the English Language Unabridged is as follows:

"a : of, relating to, or characteristic of a profession; or b : engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency characterized by or conforming to the technical or ethical standards of a profession or an occupation manifesting fine artistry or workmanship based on sound knowledge and conscientious reflecting the results of education, training and experience."

It is the opinion of the Board, that Mr. Kahn's workshop does not qualify as an artist's studio. It contains all types of woodworking equipment and it is utilized by him to construct cabinets and other pieces which he has designed for his customers. In addition, Mr. Kahn has

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had no formal training as an artist. He may be considered a skilled tradesman or an artisan, but he doesn't qualify as a "professional" as the work is commonly interpreted. He does not create any type of artistic product such as a landscape painting or sculpture.

In the brief submitted by People's Counsel, she cites various zones in the BCZR where cabinetry can be manufactured. The Manufacturing Restricted (M.R.) zone permits by right the "Manufacturing, compounding, electroplating, assembling, machining or other comparable light processing or treatment of articles of merchandise from the following previously prepared materials:... canvas...glass...precious or semiprecious metals or stones...wood...". The stated use defined in the M.R. zone is incorporated by reference in three other manufacturing zones – M.L.R., M.L. and M.H. The Manufacturing Light (M.L.) zone also specifically permits by right as an industrial use in §253.1A.54 "Wood products manufacture or processes-restricted production." "Restricted production" is defined in BCZR §253.3 as the "assembly, manufacture or compounding of articles of merchandise from previously prepared materials, or the machining, ... or other comparable light processing or treatment of such articles;...".

The Business Major and Business Roadside zones (B.M. and B.R.) also permit by right "Carpentry. . . shops" and the Service Employment zone permits a "contractor's office" as defined in BCZR Section 101.

Therefore, the County Council has set forth a number of zones where the manufacturing of cabinets, such as that performed by Mr. Kahn, can be performed as a matter of right. The Board does not mean to denigrate in any way the work which Mr. Kahn performs. However, Mr. Kahn has not been trained in any of the professions which are listed in Section 9.d. The product which he produces is not a work of art, as produced by a painter or sculpter. Therefore, the Board finds that Mr. Kahn is actually performing a manufacturing operation in his basement

woodshop and the majority finds that the Petitioner does not qualify as an artist under Section 1A01.2B.9.d.

ORDER

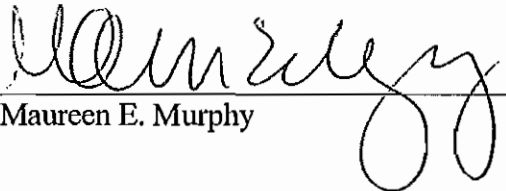
THEREFORE, IT IS THIS 25th day of January, 2011 by the Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing from §500.7 of the Baltimore County Zoning Regulations requesting approval to allow a cabinetry business to operate from the basement of the residence of the Petitioners, in case number 10-173-SPH, be and the same is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence Wescott, Panel Chair


Maureen E. Murphy

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CONCURRING OPINION

This matter came before the Board on an appeal from the decision of the Deputy Zoning Commissioner dated March 15, 2010 denying Petitioner's request for a Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a custom cabinetry business, known as The Kahn-struction Company, Ltd., to operate from the basement of the Petitioner's residence located at 14225 Longnecker Road, in the 4th Election District and 3rd Councilmanic District in Baltimore County. The property is zoned RC 2.

A public *de novo* hearing was held by the Board on October 26, 2010 and a Public Deliberation was held on January 6, 2011. At the hearing the Petitioners argued that The Kahn-struction Company, Ltd. met the definition of artist as required by the BCZR Section 1A01.2.B.9.d and Section 101.1, and was permitted by right to operate from the basement of their residence.

Board members Lawrence S. Wescott, Panel Chairman, and Maureen E. Murphy concluded that The Kahn-struction Company, Ltd. did not meet the definition of artist as required by BCZR Section 1A01.2.B.9.d and Section 101.1 and is operating as a manufacturer of custom cabinets. The members denied Petitioner's request for Special Hearing relief pursuant to BCZR 500.7 to operate The Kahn-struction Company, Ltd. from their residence.

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It is my opinion that the design and drawing of custom cabinets, as presented by the exhibits and testimony at the hearing, can be defined as artistry using the broad definition of artist in the Webster's dictionary designated by the BCZR and therefore be permitted as a right in the RC 2 zone. I would grant the request for Special Hearing to operate that function of the business from the residence. However, I concur with Mr. Wescott and Ms. Murphy that, in addition to the design and drawing function, The Kahn-struction Company, Ltd., is operating a manufacturing facility for custom cabinets in the basement of the residence. Manufacturing is not permitted in an RC 2 zone.

Therefore, I join Mr. Wescott and Ms. Murphy and deny the Petitioner's request for Special Hearing to operate The Kahn-struction Company, Ltd. from the basement of their residence on the basis that they are operating as a manufacturer.

For the reasons stated, this Board member concurs with the other members of the Board's panel and finds that Mr. Kahn is performing a manufacturing operation in his basement woodshop as set forth in the Majority Opinion and Order.


Robert W. Witt

DATE: 1/25/11