IN RE: **PETITION FOR SPECIAL HEARING (11019 Gateview Road)**	*	BEFORE THE
8th Election District	*	OFFICE OF
3rd Councilmanic District		
Karole & James Riffin	*	ADMINISTRATIVE HEARINGS
Petitioners		
	*	FOR BALTIMORE COUNTY
	*	**Case No. 2014-0094-SPH**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by Karole and James Riffin, the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows: (1) to determine whether the owner's proposed principal and accessory uses enumerated in the petition (and the personal property and equipment described therein) are lawful; and (2) to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land.

Appearing at the public hearing in support of the requests was James Riffin, property owner. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants in attendance at the hearing. Will Geddes, Petitioners' neighbor, attended the hearing and expressed support for the Petitioners. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.

The subject property is 13 +/- acres in size and is split-zoned RC 6 and DR 1. The Petitioners have filed a petition for special hearing which, as noted by the Maryland Court of Special Appeals, is akin to a declaratory judgment action. *Antwerpen v. Balto. Co.*, 163 Md. App. 194, 209 (2005).

In terms of the second issue concerning the code inspector's entry onto private land, I believe that this inquiry is beyond the jurisdictional scope of the OAH. Both the Baltimore County Code (B.C.C.) and the B.C.Z.R. provide that the Zoning Commissioner may interpret the zoning regulations. B.C.C. § 32-3-301; B.C.Z.R. § 500.7. But the Zoning Commissioner (or Administrative Law Judge [ALJ]) is not given the power to construe or interpret the B.C.C. in the context of a petition for special hearing. As such, I will not address this issue, other than to note the court of appeals recently decided a case involving the "open fields" doctrine, and the court found that the presence of a "no trespassing" sign (a fact upon which Riffin places emphasis) will not create a reasonable expectation of privacy if such a sign was posted on "open land," which is the same verbage found in B.C.C. § 32-3-602. *Jones v. State*, 407 Md. 33, 45-46 (2008). The *Jones* court also held that the "front door" area of a dwelling is not subject to a reasonable expectation of privacy. *Id.*

The primary focus of the Petition seeks a determination of the lawful uses of the Petitioners' property, including whether certain enumerated vehicles and equipment may be kept on the premises. This is an unwieldy task, given that the record contains only a site plan, zoning and subdivision maps, and affidavits from nearby owners (Exhibit 4), all of whom state they do not object to Petitioners' activities or storage of equipment on the premises. The only photographs in the file (Exhibits 2 and 3) are black and white photocopies of several photos allegedly taken by the County inspector, which Petitioner introduced to show that the inspector conducted an illegal search. What is missing are photographs of the 13 acre site and the personal property ("chattels") at issue.

The only testimony was from James Riffin, who testified to the historic use of the property, his current use of the property for dwelling and agricultural purposes, and his use of the

equipment in those endeavors. In these circumstances, it is difficult to make a determination as to the propriety of the uses and/or equipment. Just the same, based on Mr. Riffin's testimony and an examination of the plan and zoning/subdivision maps (Exhibit 1), it seems clear the principal use of the property is for residential/dwelling purposes. According to tax records, the dwelling on the property was constructed in 1976, and the property is categorized as "residential."

Based on Mr. Riffin's testimony, it is plausible (though not free from doubt) that the Petitioners utilize the property for residential agricultural purposes, as an accessory use. Both this accessory use and the principal residential use are permitted as of right in the DR 1 and RC 6 zones. B.C.Z.R. §§ 1A07.3 and 1B01.1. For purposes of this opinion, it is safe to assume that the agricultural accessory use exists, even though Petitioners submitted no exhibits indicating that produce and/or fruit is grown or sold from the property, and the State of Maryland does not categorize the property – – in whole or part – – as being used for agricultural purposes.

But neither the principal or accessory use of the property entitles the Petitioners to keep on the property those items described in the petition.

With regard to the railroad cars, tracks, ties and related equipment, Mr. Riffin testified that some of the equipment is to "maintain rails," and he indicated he hopes to start a new railroad in New Jersey. He also indicated that a caboose is used as a "recreational amenity." Neither the residential or agricultural uses of the property would necessitate any of the described railroad equipment, and none of the equipment (including the caboose) is commonly or customarily associated with such uses. As such, I do not believe it can be lawfully kept on DR 1 and RC 5 zoned property.

Mr. Riffin also testified that he has a large crane, man lift, 70' tractor trailer and trucks. He indicated that these items are "very handy" and that he uses them "a lot" to pull pipes out of wells, assist in harvesting trees or to help his neighbors. Again, such heavy equipment and materials are not customarily used for residential or even agricultural purposes. No evidence was presented that any of the vehicles or equipment were registered as "farm vehicles" with the State of Maryland. These items, as alleged by Baltimore County, are items that must be stored in a "contractor's equipment storage yard", and not on residential property. That term is defined as follows in the B.C.Z.R.:

> "The use of any space, whether inside or outside a building, for the storage or keeping of contractor's equipment or machinery, including building materials storage, construction equipment storage or landscaping equipment and associated materials."

I find that Petitioners are in fact using the property for such a purpose, which is permitted by special exception only in commercial zones. As such, I do not believe these items can be lawfully kept on the premises.

With respect to the untagged motor vehicles on site, Mr. Riffin contends that those (and some of the truck trailers as well) have been transmogrified into "utility sheds." While a creative argument, I do not believe it can withstand scrutiny. If such an argument were accepted, every citizen in the County could keep on his/her residential property inoperable and/or untagged vehicles (which is illegal per B.C.Z.R. § 428) by the expedient of storing household items or personal belongings inside. The regulations are clear that such vehicles may not be kept on residential property, and as such the Petitioners may not keep such vehicles on this residential property. This same conclusion applies to any "commercial vehicles" stored on the property, the outside storage of which on residential property is unlawful per B.C.Z.R. § 431.

The B.C.Z.R. excludes from the definition of "commercial vehicle" and from the sections prohibiting storage of unlicensed motor vehicles, "farm tractors" or "farm equipment" actually and regularly used on a farm. B.C.Z.R. §§ 101, 428.1.C. These terms are not defined in the B.C.Z.R. or Webster's 3rd New International Dictionary. As such, generally accepted principles of statutory construction indicate that these terms should be given their "ordinary and natural meaning." *O'Connor v. Balto. Co.*, 382 Md. 102, 113 (2004).

The ordinary meaning of "farm equipment" would include combines, farm tractors, plows, harrows, seeders, balers and spreaders. Such items could be kept on the premises if Petitioners could establish they were "actually and regularly used" for farming purposes. But none of these items are described in the Petition, and I do not believe that any of the vehicles or equipment listed would be considered "farm equipment," even if employing a generous definition of that term. Accordingly, I do not believe Petitioners can avail themselves of this "farm equipment" exception.

Pursuant to the advertisement, posting of the property, and the public hearing, I find that Petitioners' Special Hearing request should be dismissed without prejudice with respect to the code inspector issue, and denied with respect to the proposed uses and storage of enumerated equipment in the DR and RC zone.

THEREFORE, IT IS ORDERED this **7th** day of January, 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to determine whether the owner's proposed principal and accessory uses enumerated in the petition (and the personal property and equipment described therein) are lawful, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land, be and is hereby DISMISSED without Prejudice.

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw