

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1101 Bowleys Quarters Road)		
15 th Election District	*	OFFICE OF
6 th Council District		
MGJ Properties, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0342-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of MGJ Properties, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit an existing office and accessory indoor/outdoor storage as more particularly shown on the site plan. A petition for special hearing is in essence a proceeding for a declaratory judgment. *Antwerpen v. Baltimore County*, 163 Md. App. 194 (2005). That is, Petitioner seeks a determination that its activities are lawful under the BCZR. A site plan was marked and admitted as Petitioner’s Exhibit 1.

Mark Goloboski appeared in support of the petition. Lawrence E. Schmidt, Esq. represented Petitioners. Numerous members of the community opposed the request. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”), the Bureau of Development Plans Review (“DPR”) and the Department of Planning (“DOP”).

The subject property is 1.79 acres in size and zoned BL. Petitioner purchased the property in 2009 and has operated at the site the business/administrative office for his construction

company, Bay Country Professional Concrete. Mr. Goloboski described the site and explained the nature of the work his firm performs. Neighbors testified that for several years they did not have any concerns with Petitioner's operation of the office at the subject property. However, they stated in the last 2-3 years there has been significant construction activity and vehicles at the site, along with an increase in noise.

Mr. Goloboski testified he will occasionally have concrete, steel and other raw materials delivered to the site if they are not needed at the conclusion of a project. He also testified there are occasionally "bobcats" and other pieces of construction equipment at the site, although he stated he did not like leaving such equipment idle for too long since it should be in the field generating revenue for his company. Several neighbors testified about the activities at the site, and they submitted photos and videos showing large construction vehicles being transported to/from the site by a tractor-trailer. Other photos showed individuals on the site working with or fabricating concrete or steel materials.

While there is some disagreement concerning the nature and scope of the activities at this property, it is clear a portion of the site is used for the storage of metal, concrete, wood and other items used in Petitioner's business, along with various construction vehicles like a bobcat or excavator. Petitioner contends these activities and storage of materials are "accessory" to the operation of the office, a use permitted by right in the BL zone. BCZR § 230.1.A.6.

The BCZR defines office as a "building or portion of a building for conducting the affairs of a business, profession, service, industry or government." BCZR §101.1. Mr. Goloboski testified he has several employees who work in the office at this site, and they perform payroll, billing and construction estimating functions for the business. These are clearly appropriate activities and fit within the definition of an office. The operative question is whether storage of construction

materials and/or vehicles can be deemed “accessory” to that use.

Under BCZR Section 101.1, an “accessory use” is defined as follows:

ACCESSORY USE OR STRUCTURE

A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served.

In *Carroll County v. Zent*, 86 Md. App. 745 (1991), the court of special appeals conducted an exhaustive survey of out-of-state cases discussing accessory uses in a variety of land use categories. The court noted Connecticut has one of the “most restrictive definitions of accessory use” in that its ordinance requires the use to be “subordinate and customarily incidental to the main building and use on the same lot.” *Id.* at 767-68. As quoted above the BCZR defines accessory use in a similar manner, using nearly identical language. The *Zent* court used the restrictive Connecticut standard to determine whether the use in that case was in fact accessory under Maryland law.

In discussing whether a use is “customarily” incidental to the primary use on a property, the *Zent* court held a zoning board must determine “whether it is usual to maintain the use in question.” *Id.* at 768. Petitioner did not present testimony or evidence which would tend to establish that the storage of construction equipment and materials is usually found in connection with an office, and I do not believe it can be described as a customary practice. Indeed, the storage of such equipment and materials describes precisely the operation of a “contractor’s equipment storage yard” or “construction materials storage yard,” as defined in BCZR 101.1. Neither of these uses are permitted in the BL zone, which is the most restrictive of the business zones.

In describing the storage use at the site Mr. Goloboski testified that “materials from the job site sometimes make it back to the shop.” While perhaps an offhand reference, it also demonstrates that the subject property is in fact considered a contractor’s shop. Carl Rossmark, a neighbor who is himself a contractor, testified that every construction company needs a “shop” in which to store, repair and maintain materials and equipment. Mr. Goloboski owns a large and successful construction company, and in the absence of any evidence that the shop for the business is located at some other location, I believe the subject property is being used for that purpose.

Aside from this issue (which addresses whether the use is expected or customary) I also believe the special hearing must be denied since the storage of materials and equipment at the site is not “subordinate in area, extent or purpose to the principal use or structure.” BCZR §101.1. The business office occupies only the 2,000 sq. ft. building adjacent to Chestnut Road. But the “outdoor storage area” shown on the plan encompasses a much larger portion of the site. There is also shown on the plan a newer 3,000 sq. ft. building used (at least in part) for storage. In these circumstances I do not believe the storage use in this case can be deemed accessory under the restrictive definition found in the BCZR.

THEREFORE, IT IS ORDERED this 1st day of **November, 2018** by this Administrative Law Judge, that the Petition for Special Hearing to permit, as uses accessory to the existing office, indoor/outdoor storage of materials and/or vehicles as more particularly shown on the site plan, be and is hereby DENIED.

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

____ Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln