

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(2036 Tred Avon Road)</b>		
15 <sup>th</sup> Election District	*	OFFICE OF
7 <sup>th</sup> Council District		
Thomas & Erin Neimiller	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
<b>Petitioners</b>		
	*	<b>Case No. 2019-0200-SPH</b>

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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 on behalf of Thomas and Erin Neimiller, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit a home occupation in an existing improved detached accessory building as more particularly shown on the site plan marked and admitted as Petitioners’ Exhibit 1.

Petitioners and surveyor Scott Lindgren appeared in support of the petition. Lawrence E. Schmidt, Esq. represented Petitioners. Several neighbors 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”) and the Department of Planning (“DOP”). Neither agency opposed the request.

The subject property is 15,511 square feet in size and is zoned DR 3.5. Petitioners recently constructed a new single-family dwelling and detached accessory building on the site. When attempting to obtain an occupancy permit for the accessory building Petitioners were informed by a county inspector that the structure was in fact “living quarters” since it has a bathroom, shower and kitchen.

As stated at the outset of the hearing this is an unusual case. The petition was filed after Petitioners received a code citation for converting a garage into living quarters. The neighbors in attendance, however, do not oppose the bathroom, shower or other facilities in the structure. Instead, the neighbors believe Petitioners will use the building in connection with their general contracting business, which could generate a large volume of heavy equipment and truck traffic and perhaps storage of equipment and materials in the garage.

Petitioners' counsel is correct the accessory building itself is lawful and complies with the height and area restrictions in the BCZR. The question concerns what use is made of that structure. Petitioners obviously cannot store on site or in the accessory building construction vehicles, materials or supplies; that would constitute a "contractor's equipment storage yard" or "construction equipment storage yard," neither of which is permitted in the DR 3.5 zone.

Petitioners stated the building will be used as an office for their business. They believe the use would be permitted by right in the zone as a "home occupation" pursuant to BCZR Section 1B01.1.A.18. The BCZR specifies a home occupation must be "conducted entirely within a dwelling." BCZR §101.1. I do not believe such a use can be conducted in a detached building, since it would undercut the fundamental attribute of a home occupation; *i.e.*, that the use be "incidental to the main use of the building for dwelling purposes." *Id.*

In addition, I do not believe a business office as described by Petitioners would qualify as a "home occupation." The Zoning Commissioner's Policy Manual ("ZCPM") explains there must be a nexus between the household/dwelling and the home occupation at issue. The ZCPM provides that "the use must be of a domestic nature," and that manual lists "ironing or washing of clothes, sewing or dress making, and/or cooking" as examples that would satisfy the definition. ZCPM, p. 1-18. The manual states that computers and other modern devices can be used in connection with

a home occupation so long as their use is “associated in some way with the normal domestic functions of the dwelling.” *Id.* In my opinion the use described by Petitioners constitutes a normal business office, not a “home occupation” as that term is defined under the BCZR.

THEREFORE, IT IS ORDERED this 24th day of **July, 2019** by this Administrative Law Judge, that the Petition for Special Hearing to permit a home occupation in an existing improved detached accessory building, be and is hereby DENIED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln