

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(NO PARTICULAR LOCATION)</b>		
N/A Election District	*	OFFICE OF
N/A Council District		
GSD White Marsh, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
<b>Petitioner</b>	*	<b>Case No. 2019-0246-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 GSD White Marsh, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve the “cannibalized” re-use of shipping containers as permanently affixed (and covered by brick or other siding) construction material in the build-out of a multi-story warehouse, a permitted use in a BM zone, so that the repurposed containers would not be deemed a Trucking Facility.

David Ledoux appeared in support of the petition. Edward J. Gilliss, Esq. represented Petitioner. Mike Pierce attended the hearing to obtain additional information regarding the request. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the reviewing County agencies.

**SPECIAL HEARING**

This is a unique case in that it does not involve any particular piece of property. Instead, as permitted by BCZR §500.7, Petitioner seeks an interpretation of the regulations; specifically the definition of “trucking facility.” As noted by the court of appeals a “request for special hearing is, in legal effect, a request for a declaratory judgment.” *Antwerpen v. Balto. Co.*, 163

Md. App. 194, 209 (2005). For present purposes, the BCZR defines “trucking facility” in pertinent part as including “facilities for the storage of freight-shipping containers designed to be mounted on chassis for part or all of their transport.” BCZR §101.1.

Mr. Ledoux testified his firm has a patented method of constructing self-storage facilities which involves an adaptive reuse of shipping containers. He explained his company would use as many as 400 such containers which are welded together and then affixed to a concrete or steel foundation. The containers are then “skinned” with stucco, brick or other durable and attractive exterior finish, and when complete an observer could not tell the difference between a facility constructed in this fashion versus one using traditional construction methods. Numerous photos were submitted of a recently completed self-storage facility in Texas (Pet. Ex. 3) which is attractive and looks exactly like any other such facility.

From a legal perspective, I believe the containers when welded together and to a foundation cease being shipping containers or personal property. Since they are permanently affixed to the structure and land I believe they would become “fixtures,” which are considered part of the real estate. *Maryland SDAT v. Metrovision of Prince George’s Co.*, 92 Md. App. 194, 201 (1992)(a fixture is an item “which has been actually or constructively affixed either to the soil itself, or some structure legally a part of such soil”). In addition, Mr. Ledoux testified that after they are welded and incorporated into the foundation of the building the containers could never again be transported by motor carrier or vessel. In light of the above I believe that post-construction these are no longer shipping containers and that the self-storage facility could not reasonably be labeled a “trucking facility” as that term is defined in the BCZR.

THEREFORE, IT IS ORDERED this 26<sup>th</sup> day of **April, 2019** by this Administrative Law Judge, that the Petition for Special Hearing to approve the “cannibalized” re-use of shipping

containers as permanently affixed (and covered by brick or other siding) construction material in the build-out of a multi-story warehouse, a permitted use in a BM zone, so that the re-purposed containers would not be deemed a Trucking Facility, 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.

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