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IN RE: PETITIONS FOR SPECIAL HEARING \* BEFORE THE AND VARIANCE – 1,300' NE/S Church ZONING COMMISSIONER Rd., 1,300' W Teresmarie Court (4116 Church Road) 6<sup>th</sup> Election District FOR 3<sup>rd</sup> Council District **BALTIMORE COUNTY** John Elligson, III, Legal Owner **Case No. 07-262-SPHA** Petitioner

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance for the property known as the "Elligson Property" in a northern Baltimore County community known as Millers, Maryland. The Petitions were filed by John Elligson, III, property owner, through his attorney, Lawrence E. Schmidt, Esquire. Special hearing relief is requested to permit a special order gun sales/repair operation in an R.C.2 zone as a home occupation pursuant to Baltimore County Zoning Regulations B.C.Z.R. Section 1A01.2.B.9.c and, if necessary, to permit an accessory structure with attached lean-to structures, containing a total footprint area greater than the footprint area of the principal structure. Variance relief is requested to permit a setback of 13 feet in lieu of the required 35 feet for an existing dwelling as required in B.C.Z.R. Section 1A01.3.B.3 and from Section 400.1 to allow accessory structures in the side yard in lieu of the required rear yard. The subject property and requested relief are more particularly described on the site plan submitted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing held on this request were John Elligson, III, property owner, and Lawrence E. Schmidt, Esquire, attorney for the Petitioner. Also appearing in support of the petitions was Timothy R. Burgess, a nearby neighbor. There were no Protestants or other interested persons present.

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Uncontradicted testimony and evidence offered by the Petitioner was that the subject property is approximately one acre in area (43,560 square feet) and zoned R.C.2. The property is located with frontage near Church Road in rural northern Baltimore County. The Petitioner's subject lot was created in the 1980s and was part of a larger overall tract owned by the Elligson family. This tract currently operates as a large family farm in excess of 200 acres. There are various parcels which comprise the total farm property, all of which are owned by various members of the Elligson family. Exhibit 6 is an aerial view of the family farm. The Petitioner's one-acre lot is but one small piece.

The subject one-acre parcel is surrounded on three sides by the farm and on the fourth side by a neighboring property owned by Ronald Long. Vehicular access to the Petitioner's lot is by way of a shared right-of-way which also serves a lot owned by Mr. Elligson's parents. That lot is also part of the overall farm property. The Petitioner's property is improved with a one-story frame house in which the Elligson family reside. In addition to the dwelling, there are two other structures on the site. One is a small frame utility shed used for storage of yard equipment and similar household accessory items. The second is a concrete block garage building. The garage also features two attached wooden lean-tos that immediately abut the building. This structure is used to store various farm tractors, farm implements and motor vehicles.

Turning first to the petition for special hearing, Mr. Elligson testified that he is presently a full-time employee of a company that sells and services John Deere farm equipment. However, as a hobby/side occupation, he also sells and repairs firearms. He is licensed and regulated by the onerous regulations for the sale of such items imposed by both federal and state governments. Mr. Elligson indicated that he did this as a side occupation in view of his interest in sport shooting.

A "Home Occupation" is a permitted use as of right in the R.C.2 zone pursuant to Section 1A01.2.B.9.c of the B.C.Z.R. A home occupation is defined in Section 101 of the B.C.Z.R. as:

"any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence other than a permitted sign, as stated in Section 450.4 to indicate that the building is being utilized for any purpose other than that of a dwelling; when in connection with which no commodities kept for sale on the premises, not more than one person per dwelling is employed on the premises other than domestic servants or members of the immediate family, and no mechanical equipment, other than computers, printers, fax machines, modems, standard office copy machines and similar office equipment is used except such as may be used for domestic purposes. A 'home occupation' does not include fortune-telling."

In analyzing this definition, it is clear that there are six elements that must be satisfied in order for any use to be considered a home occupation. The testimony and evidence presented evidenced that Mr. Elligson's pursuit meets each of these six criteria. First, the use is conducted entirely within a building used as a dwelling. Mr. Elligson and his family reside in the dwelling and the gun sale/repair operation is conducted entirely within that building. The utility shed and concrete block garage buildings are not utilized in connection with the business. Photographs were submitted at the hearing that showed that the business occupies a small portion of the basement area of the dwelling. The photographs show that this basement area is similar to a typical home workshop which many individuals maintain within their homes.

Secondly, it is clear that the use is incidental to the main use of the building as a dwelling. The workshop area contains only a small percentage of square footage of the area of the building.

Third, there is no exterior evidence of this use. There is no sign, notwithstanding the fact that a small sign is permitted.

Fourth, no commodity is kept for sale on the premises. Mr. Elligson offered extensive oral testimony and produced business records regarding his operation. As noted above, he is a

licensed firearms dealer. He sells hunting/sport-shooting guns (long guns), not handguns or automatic weapons. The business is largely by way of word of mouth. Typically, when Mr. Elligson receives an order for a particular firearm, he orders that hardware from the manufacturer and, upon receipt, immediately delivers the gun to the buyer. He performs all requisite background checks and completes all required paperwork in connection with the sale. Examples of the paperwork were offered at the hearing as Petitioner's Exhibits 4 (Firearms Repair Log) and 5 (Firearms Acquisition & Disposition Record). Additionally, it was indicated that no weapon inventory is maintained on the premises. Moreover, the Petitioner maintains a gun safe so that the weapons being held for repair are secure while on site. In addition to the gun sales, Mr. Elligson also performs maintenance and repair services on firearms. The tools/equipment used for this purpose is kept in the basement workshop area and consists of small hand tools similar to those types of tools kept by many homeowners. Additionally, given the specifications required, the Petitioner indicated that parts needed for repair are ordered on an as-needed basis. The testimony was uncontradicted that no commodity is kept on the premises for sale as prohibited by the definition. Additionally, this testimony was confirmed by business records and photographs submitted at the hearing. I am persuaded that the Petitioner has met this requirement.

Fifth, in terms of employees, the Petitioner indicated that he is the sole employee of the business. As indicated above, this is a sideline business and Mr. Elligson uses same to supplement his income.

Sixth, there is no mechanical equipment kept on the site. As noted above, the Petitioner utilizes small hand tools which are common in many homes to undertake repairs.

It is vital in evaluating this case to understand that the matter is not before the Zoning Commissioner as a petition for special exception. Although the testimony in evidence offered was persuasive that this small operation does not adversely impact the surrounding locale, this is not the criteria to be considered. The lack of an appearance by any concerned neighbor is significant, notwithstanding the notice of this hearing.

Finally, the facts in this case are remarkably similar to the matter of the application of Joseph Albert Witt (Case No. 95-468-SPH). In that matter, a similar operation was proposed and approved by the then Zoning Commissioner. An appeal of that decision was filed to the County Board of Appeals, which also found that the proposed operation was encompassed within the home occupation definition.

As to the second prong of the special hearing, I find as a matter of fact that same is unnecessary and therefore moot. Although the wooden lean-tos attached to the garage arguably increase the footprint of the size of that structure larger than the dwelling, examination of those lean-tos shows that they are open structures and are therefore not part of the garage. Thus, I find as a matter of law that the relief requested in the petition for special hearing to allow a larger footprint is not required in this case.

Turning to the petition for variance, there are two variances requested. The first relates to an existing thirteen-foot setback (shown as fifteen-foot on the site plan) from the dwelling to an internal property line. This property line separates Mr. Elligson's lot from a portion of the farm property owned by his father. Clearly, this is a nonconforming situation and variance relief should be granted.

Finally, variance relief is requested in that the small utility shed and garage are technically in the front and side yard of the lot. This is due to the unusual configuration of the lot and the shared right-of-way which provides access to not only the subject lot, but also the other farm parcels. Relief will also be granted here. I find that both of these variances should be granted in accordance with Section 307 of the B.C.Z.R. and authoritative variance case law.

Date 2-12-01
By

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth above, I find that the relief requested shall be granted.

THEREFORE, If IS ORDERED by the Zoning Commissioner of Baltimore County, this day of \_\_\_\_\_\_\_, 2007, that the Petition for Special Hearing to approve a special order gun sales/repair operation in an R.C.2 zone as a home occupation, pursuant to Sections 1A01.2.B.9.c and 101 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that Special Hearing relief to permit an accessory building with a footprint larger than a principal building is DISMISSED, as moot; and,

IT IS FURTHER ORDERED that a Variance from B.C.Z.R. Section 1A01.3.B.3 to permit a setback of 15 feet in lieu of the required 35 feet for an existing dwelling to an internal property line be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a Variance from B.C.Z.R. Section 400.1 to allow accessory structures (shed and garage) in the side and front yards in lieu of the required rear yard, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

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

Zoning Commissioner for Baltimore County



JAMES T. SMITH, JR. County Executive

WILLIAM J. WISEMAN III

Zoning Commissioner

February 12, 2007

Lawrence E. Schmidt, Esquire Gildea & Schmidt, LLC 600 Washington Avenue, Ste. 200 Towson, MD 21204

RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE 1,300' NE/S Church Rd., 1,300' W Teresmarie Court (4116 Church Road)
6<sup>th</sup> Election District - 3<sup>rd</sup> Council District
John Elligson, III, Legal Owner - Petitioner
Case No. 07-262-SPHA

Dear Mr. Schmidt:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted and dismissed as moot in part and the Petition for Variance has been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

Very duly yours,

WJW:dlw Enclosure

c: Mr. John Elligson, III, 4116 Church Road, Millers, Md. 21102 Mr. Timothy R. Burgess, 3440 Beckleysville Road, Manchester, Md. 21102 People's Counsel; Case File



## Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 4116 Church Road	 
which is presently zoned	

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

- 1. Special Order gun sales in an RC-2 zone as a home occupation pursuant to BCZR Section 1A01.2.B.9.c; and
- 2. If necessary, to permit an accessory structure with attached lean-to structures, with a total footprint greater than the footprint of the principal structure.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

#### I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition. Legal Owner(s): Contract Purchaser/Lessee: John Elligson, III N/A Name - Type or Pytot Name - Type or Print edow To Signature Name - Type or Print Telephone No. Address Zip Code Signature City State (410) 239-7249 4116 Church Road Attorney For Petitioner: Telephone No. Address MD 21102 Millers Lawrence E. Schmidt Zip Code State City Name Type or Print Representative to be Contacted: Signature Lawrence E. Schmidt Gildea & Schmidt Name Company (410) 234-0070 300 E. Lombard Street, Suite 1440 (410) 234-0070 300 E. Lombard Street, Suite 1440 Telephone No. Telephone No. Address Address MD 21202 21202 MD Baltimore Baltimore, Zip Code City State State Zip Code City OFFICE USE ONLY ESTIMATED LENGTH OF HEARING \_\_\_\_\_ Case No. 07-262-SPIJA UNAVAILABLE FOR HEARING \_\_\_\_\_\_ Reviewed By LTM Date 12/7/06 REV 9/15/98 ر د المطالحة و و المساعدة المساعدة و المساعدة ا



# Petition for Variance

#### to the Zoning Commissioner of Baltimore County

for the property located at: 4116 Church Road
which is presently zoned: RC-2

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s):

- 1. 1A01.3.B.3 to allow a setback of 13' in lieu of the required 35' for an existing dwelling; and
- 2. 400.1 to allow accecory structures in the side yard in lieu of required rear yard.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

To be presented at hearing

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s):

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING \_

UNAVAILABLE FOR HEARING

#### Contract Purchaser/Lessee:

Case No. 07-262-SPHA

REV 9/15/98

#### N/A John Elligson, III Name - Type or Print Name - Type or Print Signature Telephone No. Address Name - Type or Print City Zip Code State Signature 4116 Church Road (410) 239-7249 Attorney For Petitioner: Address Telephone No. Lawrence E. Schmidt MD Millers 21102 Name - Type or Print City Zip Code State Representative to be Contacted: Lawrence E. Schmidt Gildea & Schmidt, LLC Company Name 300 East Lombard Street, Suite 1440 300 East Lombard Street, Suite 1440 (410) 234-0070 (410) 234-0070 Address Telephone No. Address Telephone No. 21202 Baltimore MD MD Baltimore 21202 City Zip Code City Zip Code State State

Reviewed By \_\_\_\_\_\_

#### Zoning description for 4116 Church Rd.

Beginning at a point on the centerline of Church road which right of way varies, at the distance of 1300 feet +/- Northwesterly of the centerline of the nearest improved intersecting street Teresmarie court, which right of way varies. As recorded in Deed Liber 7624, Folio 661:

To a point as shown as at the end of the fifth or S 64 degrees 25 minutes 10 seconds E 592.25 feet line of the whole tract of which the parcel described herein is a part, which was conveyed by William P. Elligson and Eleanor L. Elligson, his wife, to J. Lawrence Elligson and Thelma E. Elligson, his wife, by deed dated December 27, 1963, and recorded among the Land Records of Baltimore County, Maryland in Liber RRG No. 4248, folio 134, etc., thence running reversely with and binding on the said fifth line

- 1. N 64 degrees 25 minutes 10 seconds W 165.00 feet thence for lines of division now made through the whole tract the following two courses and distances
- 2. N 20 degrees 38 minutes 49 seconds E 234.82 feet thence parallel to the first line described herein and reversing the same
- 3. S 64 degrees 25 minutes and 10 seconds E 207.39 feet to intersect the sixth or S 31 degrees W 751.0 feet line of that tract or parcel of land which was conveyed by J. Lawrence Elligson and Thelma E. Elligson, his wife to John Lawrence Elligson Jr, and Josephine C. Elligson, his wife, by deed dated June 25, 1964, and recorded among the aforementioned Land Records in Liber RRG No. 4320, folio 630, etc., thence running with and binding on the said sixth line
  - 4. S 31 degrees 00 minutes 00 seconds W 235.00 feet to the place of beginning.

Containing 1.00 acre, also known as 4116 Church road, and located in the 6<sup>th</sup> Election District, and the 3<sup>rd</sup> Councilmanic District.

# NOTICE OF ZONING \*\*EABING

The Zoning Continussioner of Egylimore County, by authority of the Zoning Act and Regulations of Battimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 07-262-SPHA

4116 Church Rd

500 feet west of Teresmarie Court

6th Election District - 3rd Councilmanic District

Legal Owner(s): John Elligson, Ill

Special Hearing: to approve Special Order gun sales in an RC-2 zone as a home occupation pursuant to BCZR

Section 1401.2.8.9.c, and if necessary, to permit an accessory structure with attached lean-to structures, with a total footprint greater than the footprint of the principal structure.

Variance: to permit a setback of 13 feet in lieu of the required rear yard.

Hearing: Monday, February 5, 2007 at 9:00 a.m. In Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for
special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing,
Contact the Zoning Review Office at (410) 887-3391.

1/190 Jan. 18

1181,2007

THIS IS TO CERTIFY, that the annexed advertisement was published successive weeks, the first publication appearing in the following weekly newspaper published in Baltimore County, Md., ō each once in

**如** The Jeffersonian

Arbutus Times

Towson Times

Catonsville Times

Owings Mills Times

North County News

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NE Booster/Repor

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LEGAL ADVERTISING

			CASHIER'S VALIDATION	
BALTIMORE COUNTY, MARYLAND  OFFICE OF BUDGET & FINANCE  MISCELLANEOUS RECEIPT	DATE 12 TO COUNT ROOL OCCOUNT ROOL SO COLO COLO COLO COLO COLO COLO COL	FROM: GLUDEM SCHIMITS	DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER	The Sales of the S

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#### CERTIFICATE OF POSTING

RE: Case No.: 07-262-SPHA

Petitioner/Developer: DHN

ELLIGSON, 111 Date of Hearing/Closing: 2-5-07 **Baltimore County Department of** Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, Maryland 21204 ATTN: Kristen Matthews {(410) 887-3394} Ladies and Gentlemen: This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: 4116 CHURCH RD 1-20-07 The sign(s) were posted on (Month, Day, Year) Sincerely, (Signature of Sign Poster) **SSG Robert Black** CASE #07-262.5H: (Print Name) A PUBLIC HEARING WILL BE HELD BY THE IONING COMMISSIONER IN TOWSON, MD 1508 Leslie Road ROOM 407, COUNTY COURTS BUILDING (Address) DATE AND TIME MONTAY FERMAN 5, 2001 AT 9:00 A. .. Dundalk, Maryland 21222 (City, State, Zip Code) (410) 282-7940 (Telephone Number)

RE: PETITION FOR SPECIAL HEARING
AND VARIANCE
4116 Church Road; 1,300' NE/S Church
Road, 1,300' W Teresmarie Court
6<sup>th</sup> Election & 3<sup>rd</sup> Councilmanic Districts
Legal Owner(s): John Elligson, III
Petitioner(s)

- \* BEFORE THE
- \* ZONING COMMISSIONER
- \* FOR
- \* BALTIMORE COUNTY
- \* 07-262-SPHA

#### ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/documentation filed in the case.

RECEIVED

DEC 1 \$ 2006

Per....

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47

400 Washington Avenue Towson, MD 21204

(410) 887-2188

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of December, 2006, a copy of the foregoing Entry of Appearance was mailed Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

TO: PATUXENT PUBLISHING COMPANY

Thursday, January 18, 2007 Issue - Jeffersonian

Please forward billing to:

Lawrence Schmidt Gildea & Schmidt 300 E. Lombard Street, Ste. 1440 Baltimore, MD 21202

410-234-0070

#### **NOTICE OF ZONING HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 07-262-SPHA

4116 Church Road

1300 feet +/- northeast side of Church Road, 1300 feet west of Teresmarie Court

6th Election District – 3rd Councilmanic District

Legal Owners: John Elligson, III

Special Hearing to approve Special Order gun sales in an RC-2 zone as a home occupation pursuant to BCZR Section 1A01.2.B.9.c, and if necessary, to permit an accessory structure with attached lean-to structures, with a total footprint greater than the footprint of the principal structure. Variance to permit a setback of 13 feet in lieu of the required 35 feet for an existing dwelling an to allow accessory structures in the side yard in lieu of the required rear yard.

Hearing: Monday, February 5, 2007 at 9:00 a.m. in Room 407, County Courts Building,

401 Bosløy Avenue, Towson 21204

WILLIAM J. WISEMAN III

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



JAMES T. SMITH, JR. County Executive

TIMOTHY M. KOTROCO, Director

Department of Permits and

Development Management

#### **NOTICE OF ZONING HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 07-262-SPHA

4116 Church Road

1300 feet +/- northeast side of Church Road, 1300 feet west of Teresmarie Court

6<sup>th</sup> Election District – 3<sup>rd</sup> Councilmanic District

Legal Owners: John Elligson, III

Muty Kotroco

Special Hearing to approve Special Order gun sales in an RC-2 zone as a home occupation pursuant to BCZR Section 1A01.2.B.9.c, and if necessary, to permit an accessory structure with attached lean-to structures, with a total footprint greater than the footprint of the principal structure. Variance to permit a setback of 13 feet in lieu of the required 35 feet for an existing dwelling an to allow accessory structures in the side yard in lieu of the required rear yard.

Hearing: Monday, February 5, 2007 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco

Director

TK:klm

C: Lawrence Schmidt, 300 E. Lombard Street, Ste. 1440, Baltimore 21202 John Elligson, 4116 Church Road, Millers 21102

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JANUARY 20, 2007.

- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

### DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

#### ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

#### OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:
Item Number or Case Number:
Address or Location: 4116 Church Rd, Millers, MD 21102
PLEASE FORWARD ADVERTISING BILL TO:
Name: Lawrence & Schmidt
Address: 300 E. Lamburd St. Suite 1440
Balhmare MD 21202
Telephone Number: 410-234-0070



JAMES T. SMITH, JR. County Executive

TIMOTHY M. KOTROCO, Director

Department of Permits and

Development Management

January 31, 2007

Lawrence E. Schmidt Gildea & Schmidt 300 E. Lombard Street, Suite 1440 Baltimore, MD 21202

Dear Mr. Schmidt:

RE: Case Number: 07-262-SPHA, 4116 Church Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on December 7, 2006.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

Supervisor, Zoning Review

U. Cal Robal,

WCR:amf

**Enclosures** 

c: People's Counsel John Elligson, III 4116 Church Road Millers, MD 21102

BW2/5

#### BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

**TO:** 

Timothy M. Kotroco, Director

DATE: December 19, 2006

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 7-262- Special Hearing

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Bill Hughey in the Office of Planning at 410-887-3480.

Prepared By

**Division Chief:** 

CM/LL

DEC 2 .. 2006

#### Fire Department

700 East Joppa Road Towson, Maryland 21286-5500 Tel: 410-887-4500



#### **Baltimore County**

James T. Smith, Jr., County Executive John J. Hohman, Chief

County Office Building, Room 111 Mail Stop #1105 111 West Chesapeake Avenue Towson, Maryland 21204

December 12, 2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: December 11, 2006

Item No.: 252, 253, 254, 255, 256, 257, 258, 259, 261, 262, 263, 264 and 265.

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

#### The Fire Marshal's Office has no comments at this time.

Acting Lieutenant Don W. Muddiman Fire Marshal's Office 410-887-4880 MS-1102F

cc: File



Robert L. Ehrlich, Jr., Governor Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: 12-13-2006

Ms. Kristen Matthews Baltimore County Office Of Permits and Development Management County Office Building, Room 109 Towson, Maryland 21204

RE: **Baltimore County** 

> Item No. 7-262-5PHA 4116 CHURCHROAD

ELLIGSON PROPERTY SPECIAL HEINZING

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 7-262-5PHA.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chiet

**Engineering Access Permits** 

Division

SDF/MB

Street Address: 707 North Calvert Street · Baltimore, Maryland 21202 · Phone: 410.545.0300 · www.marylandroads.com

#### BALTIMORE COUNTY, MARYLAND

#### INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

**DATE:** December 15, 2006

Department of Permits & Development Management

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

**SUBJECT:** 

Zoning Advisory Committee Meeting

For December 18, 2006

Item Nos. 07-252, 253, 257, 258, 260,

261, 262) 263, 264, and 265

The Bureau of Development Plans Review has reviewed the subject zoning items and we have no comments.

DAK:CPN:clw

cc: File

ZAC-NO COMMENTS-12132006.doc

# PLEASE PRINT CLEARLY

CASE NAME O'1- 262-5/H/ CASE NUMBER 6/11,950N DATE 2/5/07

PETITIONER'S SIGN-IN SHEET

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CHURWE E Shmid					

PREPARED BY John L. Ellingson, III	<ul> <li>① Well (off property) (approx.)</li> <li>② Septic system (approx.)</li> <li>NORTH</li> <li>→ - → Setback measurement</li> </ul>	SUBDIVISION MANE Ellingson Property  PLAT BOOK FALLO F	MPANY PETITION FOR ZONING [X] VARIANCE
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Case No.:	$O^{\tau}$	7 –	20	62	 SPHA	\
Case Ind		•				•

#### **Exhibit Sheet**

#### Petitioner/Developer

#### Protestant

No. 1			
	SITE PLAN		
No. 2			
	SHOP PHOTO graphs		
No. 3	Hotory of Case No.		
	440 tong of Case No. 95-468-5PH		
No. 4	Juann Papari Cos.		-
No. 5	7		
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No. 6	FAMILY FARM AERIAL PHOTOGRAPHA.		
No. 7			
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No. 10		<u></u>	· · · · · · · · · · · · · · · · · · ·
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+ - → Setback measi	nce: 7624 Folio: 661  perty) (approx.)  ② Septic system (approx.)	NOTES:  NOTES:	PLAT TO ACCOMPANY PETITION FOR ZONING  X   VARIA  PROPERTY ADDRESS 4116 Church Road  SEE PAGES 5 & 6 OF THE CHECKLE  PLAT BOOK # FOLIO # SECTION #
REVIEWED BY ITEM# CASE #	≺┃╵╴	Hoffmanville  ROCATION INFORMATION  ELECTION DISTRICT 6  COUNCILMANIC DISTRICT 3  I"=200" SCALE: MAP #  ZONING RC 2  LOT SIZE 1.0  ACREAGE SOUTRE FEET  PUBLIC PRIVATE  SEWER	FOR ADDITIONAL REQUIRED INFORMATION

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FILING

IN RE: PETITION FOR SPECIAL HEARING E/S Seabright Avenue, 465 ft. +/-N of Bayside Drive (15 Seabright Avenue) 15th Election District 7th Councilmanic District

> Joseph Albert Whitt, et ux Petitioners

- BEFORE THE
- ZONING COMMISSIONER
- OF BALTIMORE COUNTY
- Case No. 95-468-SPH

#### MEMORANDUM OPINION

By correspondence dated August 9, 1995, the Office of People's Counsel of Baltimore County, Maryland has requested reconsideration of my decision in the within case dated July 27, 1995. Therein, I granted a Petition for Special Hearing filed by Joseph A. Whitt for his property located at 15 Seabright Avenue, Baltimore County. Specifically, I determined that the Petitioner's business of conducting sales of firearms from the subject property as described during the hearing was permissible under the BCZR as a home occupation. People's Counsel offers a variety of reasons alleging that this decision was erroneous. These contentions will be addressed, in turn.

First, People's Counsel observes that the Baltimore County Charter assigns to that office the responsibility to defend the comprehensive zoning maps. It is asserted that the Office is obligated to express its interest in issues of public importance. People's Counsel did not participate in this case originally, nor was their appearance entered. Thus, a question is presented as to People's Counsel's standing to file its Motion. Without prejudice to a reconsideration of this issue in a future case, I will entertain the Motion now before me. The issues now raised by People's Counsel were not raised previously and the matter deserves full and complete evaluation at this administrative level.

Turning to the merits, People's Counsel requests reconsideration alleging that the sale of firearms is a commercial use and not allowed in a residential zone. It is alleged that a firearms dealership is not a home occupation, in accordance with the traditional meaning of that term. As authority, Peoples Counsel cites Maurer v. Snyder, 199 Md. 551 (1952), as well as Anderson, American Law of Zoning 3d, Sec. 13.01, et seq. (1986).

People's Counsel is no doubt familiar with <u>UPS v. People's Counsel of Baltimore County, Md.</u>, 93 Md. App. 59 (1992), a case in which it actively participated. Moreover, this Zoning Commissioner, while a member of the Board of Appeals, authored a dissenting opinion in that case. That dissenting opinion was essentially adopted at the Circuit Court level and by the Court of Special Appeals. The Court of Appeals ultimately reversed the case on other grounds. In any event, as I observed in <u>UPS</u>, Section 101 of the BCZR defines many of the terms used in the regulations, including certain land uses. For example, an airport, a boat yard and a night club are all defined terms. For land uses not defined by Section 101, the regulations direct that the "ordinarily accepted definition" as set forth in <u>Webster's Third New International Dictionary, Unabridged</u>, should be adopted. It is significant that the "ordinarily accepted definition" is applied <u>only</u> when Section 101 fails to define a term.

In <u>UPS</u>, the subject use was labeled by the Corporate Petitioner as a "warehouse" and by the Protestants as "a trucking facility". Under the commonly accepted meaning of those terms, the <u>UPS</u> facility was neither. Trucking facilities, as they exist in most numerous numbers on the eastern side of Baltimore County, bear little resemblance to the <u>UPS</u> facility. Nonetheless, I found that the UPS facility was a "trucking facility" as defined by the BCZR.

Application of this same logic dictates the conclusion that a "home occupation" is what is defined in the BCZR, not what is the traditional concept of that phrase. Clearly, a firearms dealership is not a use which is most associated with the home occupation. People's Counsel is correct that a firearms dealership would not fall within the ordinarily accepted concept of a home occupation.

However, that does not matter here. As I have set forth in detail in July 27, 1995 opinion, the subject use, as described by the the uncontradicted testimony, meets squarely each and every portion of the definition of home occupation found in the BCZR. Specifically, the proposed use occurs entirely within a dwelling, is incidental to the use of the building as a dwelling, has no exterior evidence of its use, does not have storage of any commodity kept for sale, does not employ any person other than the Petitioner and uses no mechanical equipment except as may be used for domestic purposes. People's Counsel's argument, therefore, misses the point. For so long as the use meets the provided definition, irrespective of what the layman might consider a "home occupation", the definition applies. Thus the Maurer case is irrelevant. (It is of note that Maurer came to the Court of Appeals from the Circuit Court of Anne Arundel County. A reading of the Maurer opinion discloses that no definition of home occupation apparently existed in the Anne Arundel County's zoning regulations. Thus, the Court was required to apply the ordinarily accepted meaning of the term.)

Additionally, People's Counsel cites <u>Leimbach Construction Co. v.</u>

<u>Baltimore City</u>, 257 Md. 635 (1970) and <u>Kowalski v. Lamar</u>, 25 Md. App.

493 (1975) for the general propositions that commercial uses are prohibited in residential zones and that any use not explicitly permitted in the district is disallowed. Although People's Counsel correctly states the

law here, such law does not warrant a reversal of my decision. Baltimore County Zoning Regulations are indeed written in the inclusive; only those uses specifically identified as of right, or by special exception, are allowed. Quite simply, the proposed use is a home occupation and thus is specifically permitted as of right in the subject zone. (See Section 1801.1 (14)(d) Having found that the use fits the home occupation definition, Kowalski is thus satisfied. This use is permitted by right.

People's Counsel also states that the subject use is a sporting goods store and, therefore, illegal in the D.R.zone. A "sporting goods store" is not defined in the BCZR. Thus, as noted above, the BCZR directs the reader to consult with Websters Third New International Dictionary, Un-abridged, for the definition of that term. In Webster's, "sporting goods" are not defined, although a common interpretation of that term would, not doubt, include any product or device associated with a sport or leisure activity. Thus, sporting goods can include soccer balls, in addition to hunting rifles. The testimony offered by the Petitioner before me was not that the firearms sold were expressly used for hunting purposes. Where the definition of home occupation fits so squarely, it is improper to attempt to fit this use into a category not defined in either the BCZR or in Webster's.

Lastly, a mention must be made of the holding in Cromwell v. Ward, 102 Md. App. 691 (1995). That case came to the Court of Special Appeals on a Petition for Variance. Therein, Judge Cathell was critical of this Zoning Commissioner and the Baltimore County Board of Appeals for their alleged attempts to interpret and broaden their authority provided by the Baltimore County Code and the BCZR. As Judge Cathell noted, "When an administrative entity, such zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of

government, they substitute their policies for those of the policy mak-That is improper." (page 726) In this case, the County Council saw ers. fit to define home occupations using the words which have been employed. I will consider those words with their clear meaning. I will not substitute my judgment for that of the Council. Had the Council desired a different result, they could have defined the terms "firearms dealer and/or sporting goods store" and further provided that such uses are prohibited in the subject zone. The Council did not do this. Therefore, I will strictly apply the language of "home occupation" which the Council adopteđ. My Findings of Facts and Conclusions of Law disclose that the Petitioner met squarely each and every portion of that definition. use is unquestionably a "home occupation". The Motion for Reconsideration is, therefore, denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 22 day of August, 1995 that, pursuant to the Petition for Special Hearing (granted on July 27, 1995), approval to conduct sales of firearms from the subject property as a home occupation, be and is hereby GRANTED, and that the Motion for Reconsideration be and is hereby DENIED.

LES:mmn

LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

#### Baltimore County Government Zoning Commissioner Office of Planning and Zoning



Suite 112 Courthouse 400 Washington Avenue Towson, MD 21204

(410) 887-4386

August 22, 1995

Peter Max Zimmerman, Esquire Carole S. Demilio, Esquire People's Counsel for Baltimore County Room 47, Old Court House 400 Washington AVenue Towson, Maryland 21204

RE: Memorandum Opinion
Joseph Albert Whitt, et ux, Petitioners
Case No. 95-468-SPH
Property: 15 Seabright Avenue

Dear Mr. Zimmerman and Mrs. Demilio:

Enclosed please find the Memorandum Opinion rendered in the above captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3353.

Very truly yours,

Lawrence E. Schmidt Zoning Commissioner

LES:mmn att.

cc: Mr. and Mrs. Joseph A. Whitt 15 Seabright Avenue Baltimore, Maryland 21222

cc: Michael Gambrill, Chief Baltimore County Police

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IN RE: PETITION FOR SPECIAL HEARING E/S Seabright Avenue, 465 ft. +/-N of Bayside Drive (15 Seabright Avenue) 15th Election District 7th Councilmanic District

> Joseph Albert Whitt, et ux Petitioners

BEFORE THE

ZONING COMMISSIONER

\* OF BALTIMORE COUNTY

\* Case No. 95-468-SPH

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as 15 Seabright Avenue in the West Inverness community of Baltimore County. The Petition was filed by the of the property, Joseph A. Whitt and Kathryn L. Whitt, his wife. Special hearing relief is requested to approve Mr. Whitt's business of conducting sales of firearms from the subject property as a home occupa-The subject property and relief sought are more particularly detion. scribed on the site plan submitted and marked into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing held for this case was Joseph A. Whitt, Petitioner. There were no Protestants or other interested persons present.

Uncontradicted testimony and evidence offered by the Petitioner was that the subject property is approximately 6,000 sq. ft. in area (.13 acres +/-) and is zoned D.R.5.5. The property lies within the old community of West Inverness. As is the case with many older communities in Baltimore County, this subdivision was originally laid out on 25 ft. wide Mr. Whitt owns lots Nos. 98 and 99. When combined, they total 50 lots. ft. in width and range to a depth of 115 to 128 ft. Mr. Whitt has resided on the site with his wife since September of 1989. In addition to the single family dwelling which improves the site, a small shed exists to the rear of the property and vehicular access is provided by a driveway.

FOR FILING

M. M. F. H. ING

It is Mr. Whitt's business which has brought about the filing of the Petition for Special Hearing. Mr. Whitt indicated that he is normally employed in the aerospace technology field, however, has suffered several layoffs over the past recent years. In order to supplement his income, he began a firearms sales business out of his home in 1991. The business is known as Whitt's weapons.

Mr. Whitt does not operate a retail outlet, per se. Rather, he takes orders from individuals for specific firearms that his customers have seen at other retail outlets, or elsewhere. When a specific order is received, Mr. Whitt obtains that weapon from the manufacturer or a wholesaler and sells same to his customer. Thus, no firearms are kept on the premises but for a very short time which is from the time of the delivery from the manufacturer/wholesaler to Mr. Whitt's sale to his customer. In most cases, this period is less than 24 hours.

Mr. Whitt is licensed by the Bureau of Alcohol, Tobacco and Firearms. Moreover, he is regulated by the State of Maryland and has possessed a pistol and revolver dealers license on a ongoing basis since he began business operations. Apparently, the Petition for Special Hearing filed in this case was instituted at the request of the Baltimore County Police Department. That department advised Mr. Whitt, by letter of May 22, 1995, that the federal firearms license could be granted only if proof were obtained by the property owner that he was in compliance with local zoning ordinances and regulations.

Mr. Whitt further testified that he sells hand guns, some rifles and shot guns. He estimates approximately 40 to 50 sales per year. The business is entirely set up in one room of the house which is a converted bedroom. Several photographs were submitted of that room which shows no inventory of firearms. The only equipment visible was a computer and

DATE OF THE PRICE PLANS.

other household type furniture. Owing to the nature of the business, Mr. Whitt indicated he has very little traffic. Moreover, there are no signs advertising the business and no employees.

As noted above, the property is zoned D.R.5.5. Pursuant to Section 1801.1.14.d. of the BCZR, home occupations are allowed, as of right, in D.R. zones. A home occupation is defined as:

"Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence, other than a permitted sign, to indicate that the building is being utilized for any purpose other than that of a dwelling; and in connection with which no commodity is kept for sale on the premises, not more than one person is employed on the premises other than domestic servants or members of the immediate family, no mechanical equipment is used except such as may be used for domestic purposes".

Breaking down this definition in to sub-parts, it is easily determined that Mr. Whitt's business is a home occupation. Clearly, the business is conducted entirely within the subject dwelling, which serves as the Whitts' residence. Thus, the main use of the building is for dwelling purposes. Moreover, there is no exterior evidence, including any signage, to indicate the existence of the business. In this respect, letters of support were received from neighbors. One letter, from the local community association, indicated an ignorance of the existence of the business, in that there is no exterior evidence of same. Most importantly, firearms are not kept within the premises for sale. Importantly, there is no inventory or commodity stored on the premises. Moreover, Mr. Whitt is the sole employee and there is no mechanical equipment used for conducting the For all of these business, I am persuaded that Mr. Whitt's business. business qualifies as a home occupation and is, thus, permissible. Therefore, the Petition for Special Hearing should and must be granted.

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Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT, IS ORDERED by the Zoning Commissioner of Baltimore County this 27 day of July, 1995 that, pursuant to the Petition for Special Hearing, approval to conduct sales of firearms from the subject property as a home occupation, be and is hereby GRANTED, subject, however, to the following restriction:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

LES:mmn

IN THE MATTER OF THE THE APPLICATION OF JOSEPH ALBERT WHITT, ET UX FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE EAST SIDE SEABRIGHT AVENUE, 465' NORTH OF BAYSIDE AVENUE (15 SEABRIGHT AVENUE) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT

\* BEFORE THE

\* COUNTY BOARD OF APPEALS

OF

\* BALTIMORE COUNTY

\* CASE NO. 95-468-SPH

### OPINION

This case comes on appeal of the July 27, 1995 Order of the Zoning Commissioner in which a Petition for Special Hearing was granted, and the Zoning Commissioner's August 22, 1995 Ruling on People's Counsel's Motion for Reconsideration, which Motion was denied. Petitioner appeared before the Board de novo on a special hearing to determine that his business in gun sales is an allowed home occupation. Petitioner appeared pro se; the Office of People's Counsel participated as Appellant, represented by Carole S. Demilio, Deputy People's Counsel. There were no other protestants present. This case was heard in a single day of open hearing, and publicly deliberated immediately following the conclusion of the evidentiary portion of the proceeding.

Petitioner's case consisted of testimony brought by Petitioner and nine pieces of evidence. People's Counsel's case consisted of opening statement, and the testimony of Captain William Kalista, Baltimore County Police Department, and Detective-Lieutenant William Faul, Baltimore County Police Department, as well as the testimony of Mr. Donald Gerding, resident of Rodgers Forge, Baltimore County, Maryland. It should be noted here that this case involves an issue of a special hearing for a home occupation

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located presently, and to be located, in Dundalk, Baltimore County, Maryland.

Mr. Whitt is an assembly worker in the aerospace industry who works the 6:00 a.m. to 2:30 p.m. shift at his place of employment. His spouse works as a bookkeeper. They purchased their home in Dundalk in 1989, and in 1991, seeing an opportunity to earn extra income, successfully sought licensure with the Federal and State governments to begin selling guns from his home. Their home is located in Dundalk, off Wise Avenue, and is zoned D.R. 5.5. It's clear from the history of unencumbered license renewals as required by law since 1991 that Mr. Whitt operates well within Federal and State regulations concerning the conduct of his business. Mr. Whitt testified that he maintains no inventory on-site, and that he keeps no inventory of powder nor ammunition.

On both direct and cross-examination, Mr. Whitt testified to the operation of his business; that, although he did run one advertisement for his business in 1990, he has not done so since, and does not intend to in the future; that he keeps no sign posted on the property to indicate that he maintains such a business in his home; that all of his weapon sales are by word-of-mouth; that he keeps weapons catalogues on the premises for customers to review, and keeps no inventory of weapons related to his business; that all customers pay cash; and that he orders from roughly 60 wholesalers with which he has no line of credit, and with which he deals on a credit card or cash basis; that all requisite forms are filed with the police for each sale; and that deliveries with UPS

and other carriers must be done in person. In the afternoon, upon return from work and when there is an ordered weapon awaiting pickup, Mr. Whitt personally travels to the carrier pick-up office to retrieve the weapon(s), and the customers for whom those weapons were ordered are immediately notified to pick them up from his place of business. For the period between his pickup from the carrier's office and his customer's inspection and pick-up, Mr. Whitt keeps those weapons in a locked gun safe. Finally, Mr. Whitt indicated that he only sells rifles, handguns, and shotguns.

The testimony of Captain Kalista centered around Baltimore County's new involvement with the weapons dealers' licensure coming as a result of the Crime Control Act of 1994. Prior to that legislation, licensure was handled strictly by Federal and State authorities. As part of the Baltimore County Police Department's license application review, the zoning for operation of the intended establishment is checked during the normal course of business. Captain Kalista indicated that, of the 440 weapons sales licensees in Baltimore County on the date of the hearing, 115 were home licensees. Captain Kalista indicated that no fire code issues exist at the Whitt residence, and that only zoning appears to be an issue to be resolved. He opined that firearms are generally sold via sporting goods stores, and that the presence of firearms on any property is always a consideration when an officer responds to a He also indicated that the Baltimore County Police Department is concerned about safety and security on property such as the Petitioner's as it might concern storage and burglar alarms.

Detective-Lieutenant Faul's brief testimony indicated the Baltimore County Police Department's reliance on the office of zoning as it relates to this case and others like it (115 home licensees noted above), as well as statements concerning the availability of catalogues, the "usual" methods and requirements of purchasing handguns, as well as the statement that handguns are the only weapons which are recorded. On cross-examination, he indicated that assault weapons are in fact regulated.

Mr. Gerding's testimony centered around his concern that a successful Petition for Special Hearing in this matter signals further commercial encroachment into residential communities.

This case revolves around the definition of "home occupation" found in the general provisions of the <u>Baltimore County Zoning</u> Regulations (BCZR). In those regulations, home occupation is defined as:

"Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes and does not have any exterior evidence, other than a permitted sign, to indicate that the building is being utilized for any purpose other than that of a dwelling; and in connection with which no commodity is kept for sale on the premises, not more than one person is employed on the premises other than domestic servants or members of the immediate family, and no mechanical equipment is used except such as may be used for domestic purposes. A "Home Occupation" does not include fortune telling."

People's Counsel argues that in Baltimore County zones are divided by use and that home occupations are historically very narrow; i.e., dressmaking might be acceptable, barber and beauty shops at one time were allowed uses, and certainly medical

professionals in their area of specialty are known to keep home offices. People's Counsel focuses on the term "incidental" as meaning subordinate, and People's Counsel alleges that the Petitioner maintains inventory on-site, albeit briefly, in the time in which he has possession of the weapons until his customers retrieve them.

Finally, People's Counsel indicated that an allowed use in another zone cannot be done as a home occupation, and that this case has tremendous potential for future other similar cases (again, the 115 aforementioned licenses) which would come before the Board.

Analysis of these facts is very simple for this case, when this Board takes each case on its own merits. What potential there might be for the other 114 home licenses is of no concern to this Board in analyzing the facts of this case. The clear and plain reading of the definition found in the BCZR for "home occupation" carries a list of criteria which the Petitioner must demonstrate he is able to meet. First, the use of his home to conduct his gun sales is conducted entirely within his dwelling and is incidental to the main use of the building for dwelling purposes. Clearly, Mr. Whitt maintains no sales area, no showrooms, essentially keeping only a desk and gun safe to hold weapons while a customer travels to his home to retrieve his weapon(s). The use of the dwelling is still for dwelling purposes; further, both Mr. and Mrs. Whitt have permanent full-time employment in their main careers which serve as their main source of income, further indicating that

the income earned by weapon sales is a minor, casual or subordinate circumstance. Mr. Whitt has no sign to indicate the presence of his business; he is the sole proprietor of his enterprise; and he uses no mechanical equipment to run his business.

Therefore, in the plain reading of the definition in the BCZR, Mr. Whitt clearly satisfies the criteria of a "home occupation." The Board notes with interest, and reiterates here, that that definition also includes a sentence which reads: "A 'Home Occupation' does not include fortune telling." Issues raised by People's Counsel in its arguments concerning other uses allowed in other zones as not being allowed in the residential zone are addressed by the very fact that the County Council has deemed it necessary to begin enumeration of specific uses which may not be considered as appropriate as a home occupation. This Board is being asked in essence to make a similar judgement where this Board believes it is not empowered to do so. Only the County Council may, in its wisdom, decide to alter the definition of "home occupation" to specifically exclude all other uses in zones other than the D.R. zone, or to take similar action as they have taken in the past with "fortune telling" as a specific use, and include the words "weapon sales" or other similar terminology to preclude Petitioner's like Mr. Whitt from lawfully operating as a home occupation.

For all of the above reasons, the Board shall grant the Petition for Special Hearing allowing Mr. Whitt to continue lawful operation of weapon sales as a home occupation, and will so order.

### ORDER

IT IS THEREFORE this 23rd day of April , 1996 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing seeking approval of Petitioner's business of conducting sales of firearms from the subject property as a home occupation be and is hereby GRANTED.

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 of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Robert O. Schuetz, Chairman

S. Diane Levero

Margaret Worrall



### County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204 (410) 887-3180

April 23, 1996

Peter Max Zimmerman People's Counsel for Baltimore County Room 47, Old Courthouse 400 Washington Avenue Towson, MD 21204

> RE: Case No. 95-468-SPH Joseph Albert Whitt, et ux

Dear Mr. Zimmerman:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

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 and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco

Administrative Assistant

encl.

CC: Mr. Joseph Albert Whitt
 Michael D. Gambrill, Chief
 Baltimore County Police Department
 Pat Keller
 Lawrence E. Schmidt
 W. Carl Richards, Jr. /PDM
 Docket Clerk /PDM
 Arnold Jablon, Director/PDM
 Virginia W. Barnhart, County Attorney

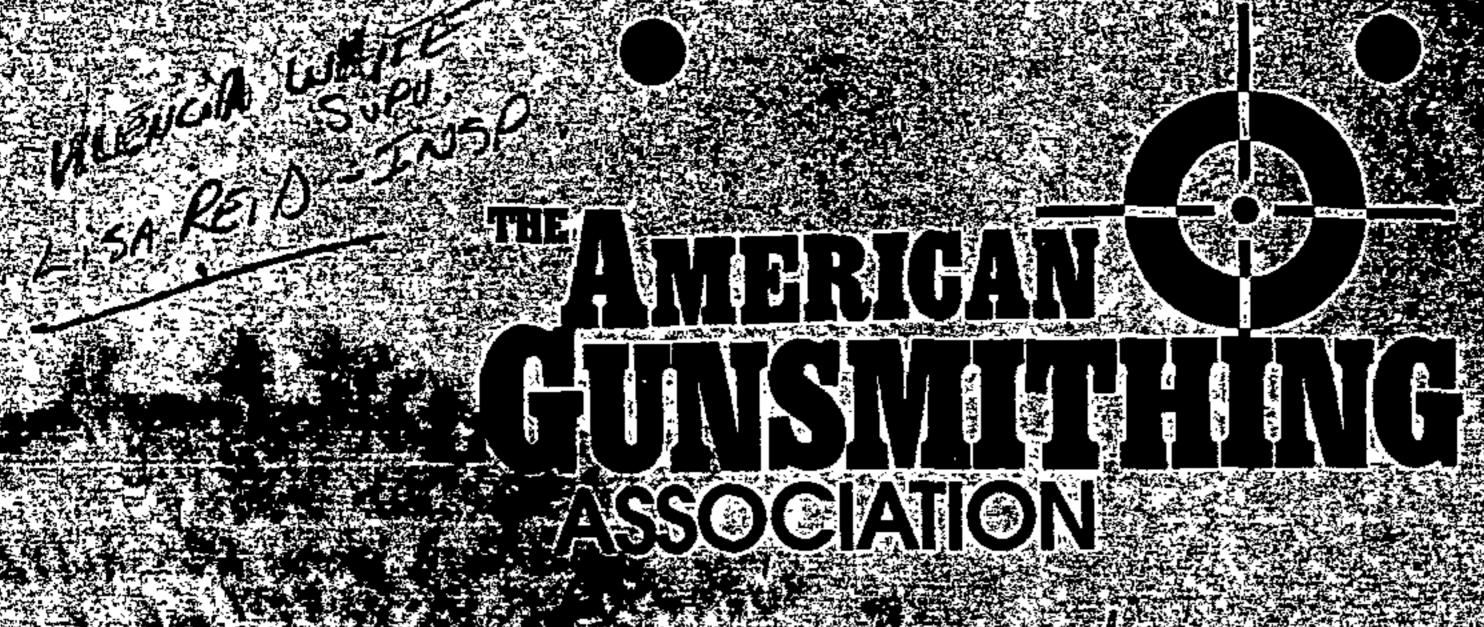
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# FIREARMS PREPAIR LOG

PETITIONER'S

EXHIBIT NO.

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PETITIONER'S

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# Overview of tarm Zoom out



### PETITIONER'S

EXHIBIT NO.

## OVERVIEW OF FARM CLOSE-UP



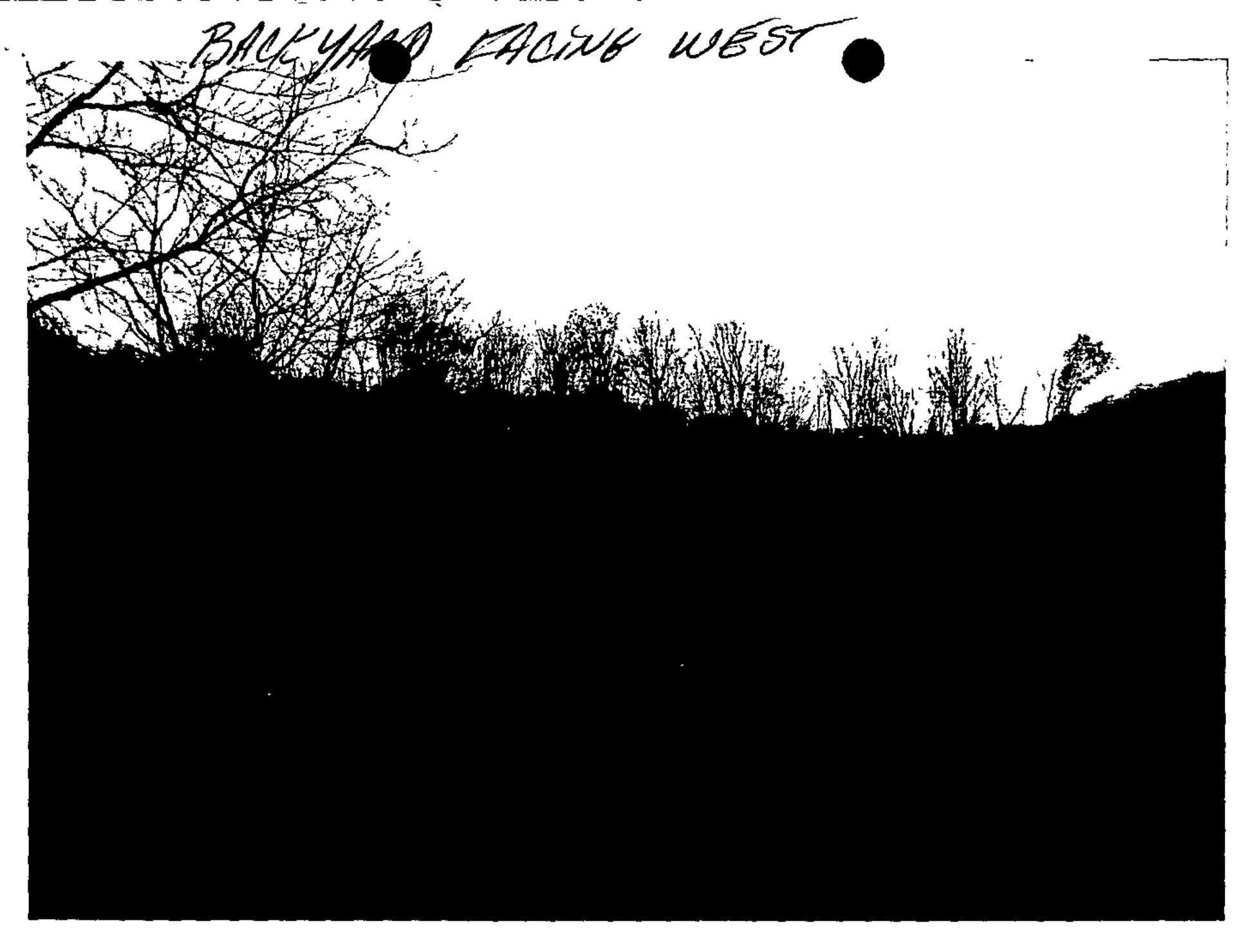
PETITIONER'S

EXHIBIT NO.





FRANT GAND É DAIVE WAY.





PETITIONER'S

LHOUR RAD FAING EAST FROM MY DEWEURY





DRIVEWAY From CHURCH RO

300' TO MY HOUSE





FRANT GAM EAST SIDE

PETITIONER'



APROX 15'W 20'2

PETITIONER'S

EXHIBIT NO.

