

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: August 19, 2016

TO: David Duvall
Zoning Review Office
Permits, Approvals & Inspections

FROM: Tammy McDiarmid, Legal Secretary
Board of Appeals 

SUBJECT: CLOSED APPEAL CASE FILES

The following cases have been closed as of the above date and are being returned to your office for storage. All of the cases were appealed to the Court of Special Appeals and are now complete.

<u>Case No:</u>	<u>Case Name:</u>
10-173-SPH	Russell and Brenda Kahn
12-238-SPHA	Zekarias Chaka
13-147-SPHA	Reverend Lucy Ware

c: Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

4/14/14

10-173-S4H

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APR 15 2014

BALTIMORE COUNTY
BOARD OF APPEALS

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0350

September Term, 2013

RUSS KAHN ET UX.

v.

BALTIMORE COUNTY, MARYLAND

Krauser, C.J.,
Kehoe,
Nazarian,

JJ.

Opinion by Kehoe, J.

Filed: April 14, 2014

Russell Kahn is a custom cabinetmaker, that is, he designs and fabricates furniture, cabinets and less utilitarian items such as paneling and molding, for customers who possess the sensibilities to appreciate his efforts and the means to afford them. He does this from his home, which is located in a rural portion of Baltimore County.

Should Mr. Kahn be considered an artist? The question is important because the Baltimore County zoning ordinance (the "Ordinance") allows what it terms "professional persons" to earn their livelihoods from home offices. The Ordinance permits artists and musicians to do the same from home studios but denies this privilege to others who work with their hands. If, under the provisions of the Ordinance, Mr. Kahn is an artist, and the area within his house in which he makes the items he sells is a studio, then he can continue to do business from his home. If he is not an artist, or if his workspace is not a studio, then he will have to relocate or go out of business. These questions eventually came before the Baltimore County Board of Appeals (the "Board"), which decided that Mr. Kahn was neither an artist, nor his workshop a studio, as the Board construed the Ordinance's use of those terms.

Mr. Kahn and his spouse filed a petition for judicial review of the Board's decision with the Circuit Court for Baltimore County, the Honorable Jan M. Alexander, presiding, which affirmed the Board's decision. The Kahns have appealed to this Court and assert that both the circuit court and the Board were incorrect. The appellee is the People's Counsel for Baltimore County, who argues to the contrary. We will affirm the judgment of the circuit court.

Background

When an appellate court reviews a judgment of a circuit court in a judicial review action, it “look[s] through” the circuit court’s decision and evaluates the decision of the agency itself. *People’s Counsel v. Loyola*, 406 Md. 54, 66 (2008) (quoting *People’s Council v. Surina*, 400 Md. 662, 681 (2007)). We must accept the agency’s factual findings if they are supported by substantial evidence but exercise a less deferential mode of review for the agency’s legal conclusions—we review them *de novo* while at the same time giving weight to the agency’s expertise in construing the law or regulation it is charged with administering. See *Lewis v. Dept. Nat’l Resources*, 377 Md. 382, 405 (2003); *White v. Spring*, 109 Md. App. 692, 699 (1996). In order to place this case in its proper context, we will turn briefly to the most pertinent provisions of the Ordinance before setting out the facts.

The Ordinance

Mr. Kahn filed this action as a petition for special hearing with the Baltimore County Zoning Commissioner. “A request for special hearing is, in legal effect, a request for a declaratory judgment.” *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). Ordinance § 500.7 authorizes the Zoning Commissioner for Baltimore County to consider petitions for special hearings in order to “pass such orders . . . as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, [including] to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.”

Ordinance § 102.1, in turn, provides:

No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use.

Thus, § 102.1 prohibits any use other than those specifically identified as permitted, either as a matter of right or as a special exception use, by the Ordinance. *See Kowalski v. Lamar*, 25 Md. App. 493, 498 (1975). Here, Mr. Kahn contends that he satisfies the requirements of Ordinance § 1A01.2.B.9.d, which permits certain enumerated accessory uses as a matter of right.

The Kahn's residence is located within Baltimore County's RC.2 (Agricultural) zoning district. Ordinance § 1A01.2.B.9.d provides, in pertinent part (emphasis added):

B. Uses permitted as of right. The following uses only are permitted as of right in all R.C.2 Zones:

9. Accessory uses or structures, including, but not limited to the following:

d. Offices or **studios** of physicians, dentists, lawyers, architects, engineers, **artists**, musicians or **other professional persons**, provided that any such office or **studio** is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; does not involve the employment of more than one nonresident employee.

The instant case turns on whether Mr. Kahn is an "artist" and whether his woodworking shop constitutes a "studio" as those terms are used in § 1A01.2.B.9.d. The Board denied Mr. Kahn's petition on both of these grounds, concluding that he was neither an artist nor worked in an artist's studio.

We turn now to the evidence before the Board.

The Facts

The facts of this case were thoroughly summarized by Judge Alexander and we quote from his opinion. *See Sturdivant v. Maryland Dep't of Health & Mental Hygiene*, ___ Md. ___, 2014 WL 282677 *1 (filed Jan. 27, 2014). (An appellate court “can sometimes fulfill [its] role . . . without indulging the conceit that we could somehow say it better . . .”).

[Mr. Kahn] testified that his property is located in a farming community and comprises just less than six acres The house [which Mr. Kahn is building] measures 9,035 square feet and consists of a basement, first floor, second floor, and loft.

[Mr.] Kahn testified that he operates a business, named “Kahn-Struction Company, Ltd.,” out of a wood shop in his basement. The wood shop comprises 2,008 square feet of the basement’s total square feet, and it houses various pieces of woodworking equipment and tools. [Mr.] Kahn estimated that his wood shop space encompasses 22% of the total square footage of the house. [Mr.] Kahn also testified that, in addition to using his wood shop to produce woodwork for the continued construction of his house, he and his one employee also use the wood shop to craft furniture and cabinetry from raw wood for his customers.

[Mr.] Kahn testified that he receives solid lumber and plywood panels on a straight truck with a flatbed measuring approximately twenty feet. The materials are delivered to [Mr.] Kahn’s garage door on an as-needed basis, which he averages to be approximately once every three to five weeks.

[Mr.] Kahn also testified that he receives deliveries of sheets of plywood by tractor trailer once every four to five weeks

[Mr.] Kahn testified that the pieces he produces for customers are unique and custom-made with specific size, color, finish, and texture to meet his customers’ needs [He] explained that the production process entails several steps and includes discussing the idea with either the homeowner, the interior designer, or both; measuring the site to-be-improved-upon in the

home; sketching the design; purchasing the materials; manufacturing the piece; and delivering and installing the finished product. [Mr.] Kahn also testified that, oftentimes, during the initial phase, he is asked what he thinks or would suggest for a particular project. In response, [Mr.] Kahn offers his suggestions, based on the space, the purpose of the piece, and the likes and needs of the homeowner.

[Mr.] Kahn . . . likens his work to that of an artist and his woodshop to an artist's studio. However, on cross-examination, [Mr.] Kahn testified that he does market himself as a cabinetmaker for his business, Kahn-Struction Company, Ltd. and, although he admitted to having had no formal training as an artist, [Mr.] Kahn asserted that the design and manufacturing process is a creative one in which he synthesizes his experiences, education in history, and understanding of architecture and design to conceive an idea. He testified that his products are not mass-produced; rather they are custom-made and unique, crafted with high quality. [Mr.] Kahn stated that he considers his wood shop a studio because it is where he works, crafts, and creates, with natural light and an atmosphere for creativity. For these reasons, [according to Mr.] Kahn . . . his use of the wood shop in his house to craft pieces for customers of Kahn-Struction Company, Ltd. qualifies as an accessory use permitted as of right under [Ordinance §] 1A01.2.B.9.d.

Other witnesses also testified before the Board. Mitchell Kellinan was qualified as an expert in zoning, planning, and Baltimore County land development regulations. He opined that not all cabinetmakers would meet the Ordinance's definition of artist but that Mr. Kahn did because of the small scale of his operation and the originality and unique nature of his work. He concluded that the Kahns' use of their property was permitted as an accessory use under § 1A01.2.B.9.d.

Michaela Robinson testified as both a fact and an expert witness. Her fact testimony was to the effect that she had worked with Mr. Kahn on ten projects in the preceding eight years and that he custom-designed and built products to meet her clients' needs and

expectations. She also was qualified as an expert in the field of interior design and, from that perspective, opined that Mr. Kahn was an artist because "he engages and practices in the art from conception to execution with imagination and taste." She further supported this view by testifying that Mr. Kahn's products were, in her opinion, equal in quality to pieces that are exhibited in museums. Ms. Robinson also testified that, in her opinion, Mr. Kahn's wood shop qualifies as a studio under the Ordinance because "[i]t is simply a working place for a creative worker."

The People's Counsel called two witnesses in opposition—two of Kahn's neighbors, Mr. Kravitz and Mr. Deurer. Their testimony, to the extent it is relevant to the issues before us, echoed Mr. Kahn's, and we need not recount it in any sort of detail for purposes of our analysis.

The Board's Decision

The majority of the Board were not persuaded that Mr. Kahn is an artist. Focusing on the term "professional" as used in § 1A01.2.B.9.d., they stated:

Mr. Kahn has no formal training as an artist. He may be considered a skilled tradesman or an artisan, but he doesn't qualify as a "professional" as the word is commonly interpreted. He does not create any type of artistic product such as a landscape painting or sculpture. **** Mr. Kahn has not been trained in any of the professions which are listed in Section 9.d. The product he produces is not a work of art, as produced by a painter or sculptor. **** [T]he majority finds that [Mr. Kahn] does not qualify as an artist under Section 1A01.2.B.9.d.

As an alternative basis for their decision, the majority concluded:

that Mr. Kahn's wood shop does not qualify as an artist's studio. It contains all types of woodworking equipment and it is utilized by him to construct cabinets

and other pieces which he has designed for his customers. **** Mr. Kahn is actually performing a manufacturing operation in his basement wood shop....

In support of the latter conclusion, the Board cited to various other zones recognized under the Ordinance which clearly permitted the operation of wood shops such as Mr. Kahn's.

One member of the Board—Mr. Witt—wrote a concurring opinion, stating:

It is my opinion that the design and drawing of custom cabinets . . . can be defined as artistry using the board definition of art in the Webster's dictionary designated by the [Ordinance] and therefore be permitted as a right in the RC 2 Zone. I would grant the Special Hearing to operate that function of the business from the residence. However, I concur with [the majority] that, in addition to the design and drawing function, The Kahn-Struction Company, Ltd., is operating a manufacturing facility for custom cabinets in the basement of the residence. Manufacturing is not permitting in an RC 2 zone.

The Circuit Court Proceedings

The Kahns filed a petition for judicial review in the Circuit Court for Baltimore County, challenging the Board's interpretation and application of the terms "artist" and "studio" as used in Ordinance § 1A01.2.B.9.d. In the petition, they repeated their contentions that Mr. Kahn's cabinetry constituted "art," thus making him an "artist," and that his woodworking shop satisfied the requirements of a "studio." The People's Counsel opposed the Kahns' petition. After a hearing, the circuit court issued its opinion and order affirming the Board's decision on both of the grounds relied upon by the majority of the Board. This appeal followed.

DISCUSSION

Mr. Kahn challenges the Board's conclusions that he is neither an artist nor works in an artist's studio. Addressing his contentions in turn, we conclude that Mr. Kahn satisfies the definition of artist provided for by the Ordinance, but that his wood shop is not a studio. We will affirm the decision of the Board on the latter ground.

I. An Artist?

At issue is Ordinance § 1A01.2.B.9.d, which permits professional offices and artist's studios as accessory uses. The Ordinance does not define the terms "artist," "professional," and "studio." Ordinance § 101.1 instructs us to look to "the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged" ("Webster's") for the meaning of terms not specifically defined in the ordinance.

Recourse solely to a dictionary is not the only way, nor indeed usually the best way, by which a court can discern legislative intent.¹ As a result, courts do not normally view statutory language in isolation but rather consider it "within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Mummert v. Alizadeh*, 435 Md. 207, 213 (2013) (citation omitted). We do not view § 101.1 as prohibiting such an exercise. However, the principle expressed in

¹As Judge Richard A. Posner recently observed: "the choice among meanings [of words in statutes] must have a footing more solid than a dictionary—which is a museum of words, an historical catalog rather than a means to decode the work of legislatures." *United States v. Costello*, 666 F.3d 1040, 1043 (7th Cir. 2012) (quoting Frank H. Easterbrook, *Text, History, and Structure in Statutory Interpretation*, 17 HARV. J.L. & PUBLIC POLICY 61, 67 (1994)).

Mummert and numerous other cases is of no assistance to us because the parties can point to no other provision of the Ordinance that sheds any meaningful light on what the Baltimore County Council had in mind when it included the term "artists" in its list of permitted accessory uses.² We turn to the dictionary.

Webster's defines "artist" in relevant part as "one who practices an art in which conception and execution are governed by imagination and taste." This definition necessarily leads us to consider the meaning of "art," another term not defined in the Ordinance. Webster's informs us that "art" means, in pertinent part as (emphasis added):

- 1 **a: the power of performing certain actions esp. as acquired by experience, study, or observation**
 - b: (1) skill in adaption of things in the natural world to the uses of human life
 - (2) technical skill often as though aided by magic

* * * *
- 3 a: an occupation or business requiring knowledge or skill
 - b: an organization of men practicing a craft or trade
 - c: the general principles of any branch of learning or of any developed craft: a system of rules or of organized modes of operation serving to facilitate the performance of certain actions
 - d: **systematic application of knowledge or skill in effecting a desired result**
- 4 **a: application of skill and taste to production according to aesthetic principles: the conscious use of skill, taste, and creative imagination in the practical definition or production of beauty**
 - b: the product of skill and taste applied according to aesthetic principles: expression of beauty

* * * *

²As we will explain, the situation is different with regard to the second basis of the Board's decision, *viz.*, whether Mr. Kahn's workspace is a studio.

- 6 a: the craft of an artist
 b: a method or device that produces an artistic effect or is used for decorative purposes
- 7 a: fine arts
 b: one of the fine arts
 c: a plastic art
 d: a graphic art
 e: painting

* * * *

“Fine arts” is defined by Webster’s as:

- 1 a: art that is concerned primarily with the creation of beautiful objects: art for which aesthetic purposes are primary or uppermost
 b: the objects themselves
 c: any art (such as painting, drawing, architecture, sculpture, music, ceramics, or landscape architecture) for which aesthetic purposes are primary or uppermost[.]

The Board based its decision in part upon its construction of the term “professional.”

Webster’s defines “professional” in pertinent part as follows (emphasis added):

- 1 a: of, relating to, or characteristic of a profession or calling
 b: (1) engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency
 (2) characterized by or conforming to the technical or ethical standards of a profession or an occupation: **manifesting fine artistry or workmanship based on sound knowledge and consciousness**: reflecting the results of education, training, and experience
- 2 a: participating for gain or livelihood in an activity or field of endeavor often engaged in by amateurs
 b: engaged or participated in by persons receiving financial return
- 3: following a line of conduct or assuming a role as though it were a profession[.]

Applying these definitions, the Board concluded that:

[Mr.] Kahn is not an artist because he had no formal training as an artist. He may be considered a skilled tradesman or an artisan, but he does not qualify as a "professional" as that term is commonly interpreted. He does not create any type of artistic product such as a landscape painting or sculpture.

With all respect to the Board, we cannot square its reasoning with the very expansive definitions of "art," "artist," and "professional" set forth in Webster's and adopted by reference by the Ordinance. There is nothing in the dictionary definitions of "artist" and "art" that suggests that an artist must be academically or formally trained. Indeed, applying this logic, the Board would be forced to conclude that some of the world's most famous and influential artists, such as Rembrandt, Leonard Da Vinci and Michelangelo, were not artists because they had no formal or academic training.³

We conclude that Mr. Kahn satisfies the dictionary definition of "artist" because he "practices an art in which conception and execution are governed by imagination and taste." His cabinet-making is "art" because it involves "the application of skill and taste to production according to aesthetic principles" According to Webster's, Mr. Kahn must also be considered a "professional" because he engages in cabinetmaking "for gain or livelihood," demonstrating "fine artistry or workmanship," in "an occupation requiring a high

³Rembrandt, Da Vinci and Michelangelo "learned by doing" by working as assistants to other artists. The undisputed testimony before the Board was that Mr. Kahn's works were equal in quality to those displayed in museums. Whether self-taught or otherwise, he brings a high degree of proficiency and skill to his calling.

level of training and proficiency.”⁴ We agree with Board Member Witt that Mr. Kahn meets the definition of “artist” as the term is defined in Webster’s.⁵

II. A Studio or a Manufacturing Facility?

The Ordinance also does not define the constitution of a studio. Webster’s defines “studio” in relevant part as “the working place of a creative worker (as a painter or sculptor).” The Board concluded that Mr. Kahn’s wood shop was a manufacturing facility, and not an artist’s studio. The Ordinance does not define the term “manufacture” and so we again turn to Webster’s. It defines “manufacture” as:

- 1: something made from raw materials by hand or by machinery
- 2
 - a: the process or operation of making wares or other material products by hand or machinery esp. when carried on systematically with division of labor
 - b: a productive industry using mechanical power and machinery
- 3: a manual occupation or trade
- 4: a factory
- 5: the act or process of making, inventing, devising, or fashioning: production, creation[.]

and a “manufacturer” as someone who is:

- a: a worker in a factory
- b: an employer of workers in manufacturing: the owner or operator of a factory

⁴By the same reasoning, the Board’s conclusion that Mr. Kahn is not an artist because he is not a “professional” as the word is commonly interpreted” is inconsistent with the Ordinance, which directs those who wish to infer the legislature’s intent in choosing certain words to Webster’s Dictionary, not to common interpretations.

⁵Our conclusion is based upon the expansive definitions contained in Webster’s. We cannot blame the dictionary—consensus as to what constitutes “art” has eluded humanity since at least the time of Socrates.

c: one who changes the form of a commodity or who creates a new commodity[.]

There was substantial evidence presented to the Board that Mr. Kahn's wood shop was a manufacturing facility, albeit one of a small scale. As the Board observed, the shop:

contains all types of woodworking equipment and it is utilized by [Mr. Kahn] to construct cabinets and other pieces which he has designed for his customers.

The record contains other evidence to support the Board's conclusion. That Mr. Kahn regularly receives by flatbed truck large quantities of wood and other supplies is consistent with the notion that he operates a manufacturing facility, and not an artist's studio.

In contrast to the term "artist," other provisions of the Ordinance provide insight into what the County Council meant—or rather did not mean—by the term "studio." Section 101 defines "home occupation" as (emphasis added):

Any use conducted entirely within a dwelling which is incidental to the main use of the building for dwelling purposes . . . ; **and in connection with which no commodity is 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.

Based on the evidence before the Board, it is clear that Mr. Kahn's woodworking shop does not qualify as a "home occupation" pursuant to the Ordinance. Indeed, as Mr. Kahn himself testified, his shop contains various types of mechanical woodworking machines which he uses to craft cabinets, bookshelves, and other items. Characterizing a shop with such machinery as a "studio" under § 1A01.2.B.9.d. would permit Mr. Kahn—and others in

comparable positions—to effect an end-run around the Ordinance’s prohibitions against using such equipment as part of a home occupation.

The Board also relied on its observation that cabinetry and others types of woodworking shops were explicitly permitted as of right in other zones under the Ordinance, whereas the regulations governing the RC.2 zone make no provision for such operations. For example, as the Board highlighted, the M.R. (Manufacturing Restricted) zone permits “[m]anufacturing, compounding, electroplating, assembling, machining or other comparable light processing or treatment of articles of merchandise from . . . previously prepared materials” including “wood.” Ordinance § 241.1. The M.L. (Manufacturing Light) zone permits “[w]ood procedures manufacture or processes-restricted production, ”—i.e, the “assembly, manufacture, or compounding of articles of merchandise from previously prepared materials, or the machining, . . . or other comparable light processing of treatment of such articles....” Ordinance §§ 253.1A.54 & 253.3. In addition, both the B.M. (Business Major) and B.R. (Business Roadside) zones permit the operation of “[c]abinetry” shops. Ordinance §§ 233.1 & 236.1.

We read the Ordinance as a whole. *See People’s Insurance Counsel Division, et al. v. Allstate Ins. Co.*, 408 Md. 336, 351(2009) (statutes must be read “as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.” (quotation marks and citation omitted)). Doing so, we conclude that the Board did not err in its interpretation of “studio” as that term is used in § 1A01.2.B.9.d. Woodworking

shops of the type being operated by Mr. Kahn are expressly permitted in the zones identified above, among others, whereas such uses are not provided for in the regulations governing the RC.2 district. More importantly, the expansive interpretation of "studio" posited by Mr. Kahn is inconsistent with the Ordinance's prohibition against using mechanical equipment as part of a home occupation.

In conclusion, the Board's decision that Mr. Kahn's workspace should not be considered a studio is consistent with the Ordinance and is supported by substantial evidence in the record.

**THE JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY IS AFFIRMED.
APPELLANTS TO PAY COSTS.**

4/11/13

PETITION OF: RUSS AND BRENDA KAHN	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE	*	FOR
OPINION OF THE COUNTY BOARD	*	BALTIMORE COUNTY
OF APPEALS OF BALTIMORE	*	
COUNTY	*	
IN THE MATTER OF:	*	CASE NO.: 03-C-11-001706
RUSS AND BRENDA KAHN,		
LEGAL OWNERS AND PETITIONERS	*	
FOR SPECIAL HEARING ON		
14225 LONGNECKER ROAD,	*	
SE/S LONGNECKER ROAD	*	
2920' NE OF PINEY GROVE ROAD	*	
4 TH ELECTION DISTRICT	*	
3 RD COUNCILMANIC DISTRICT	*	
COUNTY BOARD OF APPEALS OF	*	
BALTIMORE COUNTY	*	
CASE NO.: 10-173-SPH	*	
* * * * *		

RECEIVED
APR 12 2013
BALTIMORE COUNTY
BOARD OF APPEALS

OPINION AND ORDER

FACTUAL AND PROCEDURAL OVERVIEW

Appellants, Russ Kahn and his wife Brenda Kahn (initially Petitioners in this proceeding), appeal the decision of the County Board of Appeals of Baltimore County ("Board of Appeals" or "Board"). Appellants are the legal owners of the subject property, 14225 Longnecker Road, Glyndon, Maryland. (Transcript of Record, *In Re: Petition for Special Hearing 14255 Longnecker Road; SE/S Longnecker Road, 2920' NE of Piney Grove Road 4th Election & 3rd Councilmanic Districts Legal Owner(s): Russ & Brenda Kahn*, County Bd. of App. for Balt. County, Case No. 10-173-SPH (October 26, 2010 Hr'g) at 3 [hereinafter Tr.].) Appellants initiated these proceedings as Petitioners by filing their Petition for Special Hearing to the Zoning Commissioner of Baltimore

County pursuant to section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), requesting that they be allowed to operate a cabinetry business from the basement of their residence.¹ A public hearing was held, and on March 15, 2010, the Deputy Zoning Commissioner for Baltimore County issued his Findings of Fact and Conclusions of Law, denying the Petition. On April 13, 2010, Appellants appealed the decision, which resulted in a hearing before the Board of Appeals on October 26, 2010.

In that hearing, Appellant Russ Kahn ("Appellant Kahn") testified that his property is located in a farming community and comprises just less than six acres. (Tr. at 6.) He testified that it is accessible via a private right-of-way, which is an unpaved, gravel road, originating at Longnecker Road, near the intersection of Piney Grove Road and Longnecker Road, and extending past Appellants' property. (Tr. at 6, 77; Pet'rs' Ex. 2.) The private right-of-way serves as the access road for eight other homes, in addition to Appellants' home. (Tr. at 77.) Appellant Kahn also testified that in 2003, he personally began building his house, and that, although he and his wife moved into the house in 2006, construction remains ongoing. (Tr. at 7-9.) The house measures 9,035 square feet and consists of a basement, first floor, second floor, and loft. (Tr. at 18-19; Pet'rs' Ex. 6.)

Appellant Kahn testified that he operates a business, named "Kahn-Struction Company, Ltd.," out of a woodshop in his basement. (Tr. at 20-21, 54.) The woodshop comprises 2,008 square feet of the basement's 3,270 total square feet, and it houses various pieces of woodworking equipment and tools. (Tr. at 19-20, 85-90, 97; Pet'rs' Ex. 6-7.) Appellant Kahn estimated that his woodshop space encompasses 22% of the total

¹ "A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005).

square footage of the house. (Tr. at 41.) Appellant Kahn also testified that, in addition to using his woodshop to produce woodwork for the continued construction of his house, he and his one employee also use the woodshop to craft furniture and cabinetry from raw wood for his customers. (Tr. at 20-21, 34, 42, 54.)

Appellant Kahn testified that the private right-of-way is used both to receive deliveries of raw wood materials at his woodshop and to transport finished products to customers. (Tr. at 35-40.) To deliver the majority of finished products to customers' homes, Appellant Kahn rents a fourteen-foot box truck from Ryder, which he loads at his house and drives along the private right-of-way to Longnecker Road. (Tr. at 35, 67, 69-71.) In addition to receiving materials for the ongoing construction of his house, Appellant Kahn stated that he receives deliveries of raw wood materials for his business in several ways, depending on the materials and the supplier. (Tr. at 36-40.) Appellant Kahn testified that he receives solid lumber and plywood panels on a straight truck with a flatbed measuring approximately twenty feet. (Tr. at 36; Pet'rs' Ex. 15A.) The materials are delivered to Appellant Kahn's garage door on an as-needed basis, which he averages to be approximately once every three to five weeks. (Tr. at 36.)

Appellant Kahn also testified that he receives deliveries of sheets of plywood by tractor trailer once every four to five weeks. (Tr. at 37-38.) However, the tractor trailer does not traverse the private right-of-way. *Id.* Appellant Kahn testified that he meets the driver of the truck at a property located at the intersection of Piney Grove Road and Longnecker Road and then uses either his employee's pickup truck or his own trailer to transport the sheets along the private right-of-way to his house. (Tr. at 37-38, 66-67; Pet'rs' Ex. 15B-D.)

Appellant Kahn testified that the pieces he produces for customers are unique and custom-made with specific size, color, finish, and texture to meet his customers' needs. (Tr. at 28.) Through testimony, he offered several examples of these pieces and provided before and after photographs, along with design plans. (Tr. at 26-32; Pet'rs' Ex. 9A-12B.) Appellant Kahn explained that the production process entails several steps and includes discussing the idea with either the homeowner, the interior designer, or both; measuring the site to-be-improved-upon in the home; sketching the design; purchasing the materials; manufacturing the piece; and delivering and installing the finished product. (Tr. at 25-26.) Appellant Kahn also testified that, oftentimes, during the initial phase, he is asked what he thinks or would suggest for a particular project. (Tr. at 29-31, 42-43.) In response, Appellant Kahn offers his suggestions, based on the space, the purpose of the piece, and the likes and needs of the homeowner. (Tr. at 26-31, 42-43.)

Appellant Kahn testified that he likens his work to that of an artist and his woodshop to an artist's studio. (Tr. at 42-44.) However, on cross-examination, Appellant Kahn testified that he does market himself as a cabinetmaker for his business, Kahn-Struction Company, Ltd. (Tr. at 61-63.) And, although he admitted to having had no formal training as an artist, Appellant Kahn asserted that the design and manufacturing process is a creative one in which he synthesizes his experiences, education in history, and understanding of architecture and design to conceive an idea. (Tr. at 42-43, 48.) He testified that his products are not mass-produced; rather they are custom-made and unique, crafted with high quality. (Tr. at 42-43.) Appellant Kahn stated that he considers his woodshop a studio because it is where he works, crafts, and creates, with natural light and an atmosphere for creativity. (Tr. at 43-44.) For these reasons, Appellant Kahn

testified that his use of the woodshop in his house to craft pieces for customers of Kahn-Struction Company, Ltd. qualifies as an accessory use permitted as of right under section 1A01.2.B.9.d of the B.C.Z.R. (Tr. at 40-42.)

At the hearing before the Board of Appeals, and to support their Petition, Appellants offered Mitchell Kellman as their first witness. (Tr. at 105.) Witness Kellman was qualified as an expert in zoning, planning, and Baltimore County zoning development regulations. (Tr. at 108-09.) He testified that he is currently Director of Zoning Services for Daft, McCune & Walker, Inc., but that he had previously worked for the zoning review office of the Baltimore County Department of Permits and Development Management. (Tr. at 105-07; Pet'rs' Ex. 21.) Witness Kellman also testified that, in preparation for testifying before the Board, he read the Order of the Deputy Zoning Commissioner and conducted two site visits. (Tr. at 109.)

Witness Keller stated that the issue of whether or not Appellant Kahn falls within the definition of "artist," as defined by Webster's Third New International Dictionary of the English Language, Unabridged (2002) ("Webster's Dictionary"), appears to be a case of first impression, and acknowledged that not all cabinetmakers are artists. (Tr. at 148-49.) He distinguished artist cabinetmakers from non-artist cabinetmakers. (Tr. at 149.) He described non-artist cabinetmakers as manufacturers by citing several factors, including the volume of cabinet production and the level of specificity used in cabinet measurements and designs, and offered Home Depot as an example of a non-artist cabinetmaker. *Id.* In Witness Keller's opinion, Appellant Kahn does fall within the definition of the term "artist" because Appellant Kahn's work "seems so specialized, or unique." (Tr. at 147.) Therefore, in Appellant Kahn's opinion, Appellants' use of their

property is permitted in the Resource Conservation 2 Zone ("R.C.2 Zone") of Baltimore County as an accessory use as of right under section 1A01.2.B.9.d of the B.C.Z.R. (Tr. at 113-14.)

Appellants' second witness, Michaela Robinson, was qualified as an expert in the field of interior design. (Tr. at 165.) Witness Robinson testified that she has been working in the field of interior design for approximately sixteen years and has a Master's Degree in Fine Arts. (Tr. at 154-55.) Witness Robinson testified that there are times when she will contract with a cabinetmaker, like Appellant Kahn, "to produce a piece of furniture or built-in piece for the client." (Tr. at 159.) She also testified that she will employ someone like Appellant Kahn when she feels that she has a "particular unique need that [she] cannot provide through a selection from a catalog." (Tr. at 168.) Witness Robinson testified that she had worked with Appellant Kahn over the past eight years on ten projects for seven clients, and she testified regarding several photographs offered as examples of the work that Appellant Kahn had performed for her clients. (Tr. at 162-63, 168; Pet'rs' Ex. 24A-C.)

On voir dire, Witness Robinson conceded that she does not have any experience in zoning law, but stated that she does consider a cabinetmaker to be an artist. (Tr. at 161-62.) During Witness Robinson's direct examination, and upon an objection by the Deputy People's Counsel to Witness Robinson's testimony regarding whether Appellant Kahn's work qualifies him as an artist, the Chairman of the Board of Appeals distinguished between the standard used to determine what an artist is within the context of zoning regulations and the standard used by an expert interior designer to determine what an artist is. (Tr. at 173-74.) The Chairman of the Board of Appeals issued his

evidentiary ruling and allowed Witness Robinson to offer her opinion as an expert interior designer on whether or not she, as an interior designer, believes Appellant Kahn is an artist, as defined by Webster's Dictionary, and whether his woodshop qualifies as a studio, as defined by that same dictionary. (Tr. at 174-75.)

Witness Robinson testified that, in her opinion, Appellant Kahn qualifies as an artist because "he engages and practices in the art from conception to execution with imagination and taste." *Id.* She further added that Appellant Kahn's pieces are of equal quality to those pieces produced by other cabinetmakers and exhibited in museums. (Tr. at 175.) Witness Robinson also testified that, in her opinion, Appellant Kahn's woodshop qualifies as a studio because "[i]t is simply a working place for a creative worker." (Tr. at 175-76.) However, on cross-examination, she conceded that, in her opinion, there is no uniform, objective standard of what an artist is, rather, it is merely her personal, subjective opinion. (Tr. at 180.) When further questioned on cross-examination, Witness Robinson stated, "I'm saying that to be an artist, yes, you must be creative, but you also have to be able to execute your creativity with a high level of quality." (Tr. at 181.)

In support of the County's case, the People's Counsel called Neil Kravitz as Appellee's first witness. (Tr. at 182.) Witness Kravitz lives at 14207 Longnecker Road, on the same private right-of-way as Appellants. (Tr. at 182-83.) His house is located at the bottom of Longnecker Road, close to the intersection of Longnecker Road and Piney Grove Road. (Tr. at 183.) Witness Kravitz describes the area that he lives in as being "purely agricultural." (Tr. at 194.) He characterized Appellant Kahn's work as manufacturing and testified that he objects to Appellant Kahn operating his cabinetry business out of his home. (Tr. at 194-95.) Witness Kravitz also testified that he is

concerned about the negative effect that large trucks traveling on the single lane private right-of-way may have on the live aquifer sitting below his property; about the upkeep and maintenance needed on the private right-of-way; and about the effect of the trucks on safety. (Tr. at 195-96.)

People's Counsel called Richard Deurer as Appellee's second witness. (Tr. at 216.) Witness Deurer is also a neighbor of Appellants and lives further up the private right-of-way, past Appellants' house, at 14219 Longnecker Road. *Id.* Witness Deurer testified that he has noticed an increase in traffic since Appellant Kahn began conducting his business out of his house. (Tr. at 218.) He testified that he shares Witness Kravitz's concerns about the impact of trucks on the safety and the condition of the right-of-way, particularly the reduction of gravel on the surface and the increased number of potholes. (Tr. at 217.) Witness Deurer also stated that, in his opinion, Appellant Kahn is "running a cabinet manufacturing shop." (Tr. at 221.)

On January 6, 2011, the Board of Appeals held a public deliberation. On January 25, 2011, the Board issued its Opinion and denied Appellants' Petition. The Board ruled that Appellant Kahn's use of the property to manufacture cabinets is not permitted as a matter of right in the R.C.2 Agricultural Zone of Baltimore County. Board Member Robert W. Witt issued a Concurring Opinion, in which he distinguished between the design and drawing aspect of Appellant Kahn's business and the manufacturing aspect of his business but concurred with the Opinion of the Board.

In response to the Board's Opinion, Appellants filed their Petition for Judicial Review before this Court on February 23, 2011, pursuant to Maryland Rule 7-202. The Appellants and Appellee each filed a memorandum in support of their positions on June

1, 2011 and June 29, 2011, respectively. On September 14, 2011, a hearing was held and arguments were made before this Court.

ISSUE ON APPEAL

Appellants present one issue for this Court to consider on appeal:

Did the County Board of Appeals of Baltimore County err in denying Petitioners' Petition for Special Hearing pursuant to section 500.7 of the Baltimore County Zoning Regulations requesting that they be allowed to operate a cabinetry business from the basement of their residence, located at 14225 Longnecker Road, Glyndon, Maryland?

STANDARD OF REVIEW

The Court of Appeals has established the standard that a court is to apply when reviewing an adjudicatory decision of an administrative agency. In *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59 (1999), the Court stated, "A court's role in reviewing an administrative agency adjudicatory decision is narrow; it is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law."² *Id.* at 67-68. (citations omitted) (internal quotations omitted).

With regard to a reviewing court's first determination, "In judicial review of zoning matters, including special exceptions and variances, 'the correct test to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to

² "In Baltimore County, since at least 1978, the Board of Appeals has been charged with 'all the functions and duties relating to zoning [appeals] described in Article 25A of the Annotated Code of Maryland.' Baltimore County Charter, § 602 (a). As such, its presumed expertise in interpreting the BCZR, developed over the ensuing years, is what gives weight to appropriate deference in our analysis of its legal reasoning in this matter." *Marzullo v. Kahl*, 366 Md. 158, 173 n.11 (2001) (alteration in original).

different conclusions.” *Mills v. Godlove*, 200 Md. App. 213, 223 (2011) (quoting *White v. North*, 356 Md. 31, 44 (1999)). “The basic reason for the fairly debatable standard is that zoning matters are, first of all, legislative functions . . .” *White v. Spring*, 109 Md. App. 692, 699 (1996) (citations omitted). “In order to be ‘fairly debatable, the administrative agency overseeing the . . . decision must have ‘substantial evidence’ on the record supporting its decision.” *Mills*, 200 Md. App. at 224 (quoting *North*, 356 Md. at 44). “Substantial evidence has been defined as more than a scintilla of evidence.” *Bozeman v. Disability Review Bd. of the Prince George’s County Police Pension Plan*, 126 Md. App. 1, 4-5 (1999). As the Court of Special Appeals has stated, the question is “whether the zoning body’s determination was supported by ‘such evidence as a reasonable mind might accept as adequate to support a conclusion . . .’” *Mills*, 200 Md. App. at 224 (quoting *People’s Counsel for Balt. County v. Loyola College in Md.*, 406 Md. 54, 67 (2008)). Additionally, as the Court of Appeals has stated, “A reviewing court must review the agency’s decision in the light most favorable to it; . . . the agency’s decision is prima facie correct and presumed valid, and . . . it is the agency’s province to resolve conflicting evidence and to draw inferences from that evidence.” *Marzullo*, 366 Md. at 172 (quoting *CBS v. Comptroller*, 319 Md. 687, 698 (1990)) (internal quotations omitted).

With regard to a reviewing court’s second determination, a court’s review of conclusions of law is “less deferential” than its review of findings of fact. *Trinity Assembly of God of Balt. City, Inc. v. People’s Counsel for Balt. County, et al.*, 407 Md. 53, 78 (2008). “When an agency makes ‘conclusions of law’ in a contested case, the court, on judicial review, decides the correctness of the agency’s conclusions and may

substitute the court's judgment for that of the agency's." *Spencer v. Md. State Bd. of Pharm.*, 380 Md. 515, 528 (2004). However, "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Marzullo*, 366 Md. at 172 (quoting *Lussier v. Md. Racing Comm'n*, 343 Md. 681, 696-97 (1996)). Furthermore, the expertise of the agency in its own field should be respected. *Id.*

DISCUSSION

Appellants' property is located in the R.C.2 Zone of Baltimore County. (See Pet'rs' Pet. for Special Hr'g; Opinion, *In Re: Petition for Special Hearing 14255 Longnecker Road; SE/S Longnecker Road, 2920' NE of Piney Grove Road 4th Election & 3rd Councilmanic Districts Legal Owner(s): Ruß & Brenda Kahn*, County Bd. of App. for Balt. County, Case No. 10-173-SPH (January 25, 2011) at 2 [hereinafter Op].) Section 1A01 of the B.C.Z.R. governs the use of lands located in the County's R.C.2 Zone, also known as the Agricultural Zone. See Baltimore County Zoning Regulations § 1A01 [hereinafter B.C.Z.R.]. Section 1A01.2.B lists the uses permitted as of right in the Agricultural Zone. B.C.Z.R. § 1A01.2.B.

Upon appeal to the Board of Appeals of Baltimore County, Appellants argued that their use is permitted as of right under section 1A01.2.B.9.d of the B.C.Z.R., which permits certain accessory uses and structures. (Pet'rs' Mem. at 8.) Section 1A01.2.B.9.d of the B.C.Z.R. reads, in pertinent part:

1A01.2 Use Regulations.

* * *

B. Uses permitted as of right. The following uses only are permitted as of right in all R.C.2 Zones:

* * *

9. Accessory uses or structures, including, but not limited to the following:

* * *

d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; does not involve the employment of more than one nonresident employee.

B.C.Z.R. § 1A01.2.B.9.d. Appellants asserted that Appellant Kahn is an artist and his woodshop is a studio for the purposes of section 1A01.2.B.9.d of the B.C.Z.R. (Pet'rs' Mem. at 8-11.)

I. Decision of the County Board of Appeals

In its Opinion, the Board of Appeals ruled that Appellant Kahn does not produce works of art; rather he uses the property to manufacture cabinets and other pieces for his business customers – a use that is not permitted as a matter of right in the R.C.2 Agricultural Zone. (Op. at 1-9.) The Board considered the full language of the B.C.Z.R. in making its determination. (Op. at 7.) The Board also focused specifically on the definitions of the terms “artist” and “professional,” as well as the meaning of the term “studio,” in its reading of section 1A01.2.B.9.d of the B.C.Z.R. (Op. at 7-8.)

The Board of Appeals first examined the term “artist,” as defined by Webster's Dictionary. (Op. at 7.) It next considered the category of persons listed in section 1A01.2.B.9.d of the B.C.Z.R. – “professional persons” – used to describe the term “artist.” (Op. at 8.) The Board reasoned that the phrase, “or other professional persons”

included in section 1A01.2.B.9.d "defines a type of individual that the County Council was contemplating in its drafting of [the] regulation." (Op. at 7.) The Board determined that "[Appellant] Kahn has had no formal training as an artist[.]" and "[h]e does not create any type of artistic product such as a landscape painting or sculpture." (Op. at 7-8.) As a result, the Board concluded that, although "[h]e may be considered a skilled tradesman or an artisan," Appellant Kahn does not qualify as a professional artist, which is the way that the term "artist" is used in section 1A01.2.B.9.d of the B.C.Z.R. (Op. at 7-9.)

The Board also considered the meaning of the term "studio" in making its determination that Appellant Kahn's cabinet manufacturing is not permitted as of right under section 1A01.2.B.9.d of the B.C.Z.R. It reasoned that Appellant Kahn's woodshop "contains all types of woodworking equipment[.] and it is utilized by him to construct cabinets and other pieces which he has designed for his customers." (Op. at 7.) As a result, the Board concluded that Appellant Kahn's woodshop does not qualify as an artist's studio, which is the way that the term "studio" is used in that section. *Id.*

Finally, the Board examined other sections of the B.C.Z.R. (Op. at 8.) It noted several zones where the manufacturing of cabinets is permitted as a matter of right. *Id.* As a result, the Board concluded that the County Council had established a number of other locations outside of the R.C.2 Zone in which Appellant Kahn could manufacture his wood products. *Id.*

II. Appellants Argue That the Board of Appeals Erred Because Appellants' Use of Their Basement Is an Accessory Use Permitted as of Right Under the B.C.Z.R., as Appellant Kahn Is an Artist and His Woodshop Is a Studio

Upon appeal, Appellants contest the Board of Appeals' decision and contend that Appellant Kahn's use of his woodshop to produce wood products for his business does

qualify as an accessory use permitted as of right under section 1A01.2.B.9.d of the B.C.Z.R. because Appellant Kahn is an artist; his woodshop is a studio; his studio is established within the same building serving as his primary residence; his studio does not occupy more than 25% of the total floor area of his residence; and his studio does not involve the employment of more than one non-resident employee. (Pet'rs' Mem. at 8-11.) They assert that the testimony and evidence presented support their contention. (*Id.* at 9-10.) Therefore, Appellants argue, the Board of Appeals erred in denying their request for a Special Hearing. (*Id.* at 6-11.)

III. Appellee Argues That the Board of Appeals' Decision Should Be Affirmed Because Appellants' Use of Their Basement Is Not an Accessory Use Permitted as of Right Under the B.C.Z.R., as Appellant Kahn Is Not an Artist and His Woodshop Is Not a Studio

In response, Appellee seeks to affirm the Board's decision and contends that a Petition for Special Hearing under section 500.7 of the B.C.Z.R. cannot be used to approve a use that is not specifically permitted under section 1A01 of the B.C.Z.R. (Mem. of People's Counsel for Balt. County at 18.) Appellee asserts that Appellant Kahn's woodshop does not qualify as an accessory use permitted as of right under section 1A01.2.B.9.d of the B.C.Z.R. (*Id.* at 10-26.) Specifically, Appellee argues that, contrary to Appellants' assertion, Appellant Kahn is not an "artist" or "professional," as those terms are used in the B.C.Z.R. (*Id.* at 21.) As a result, Appellee argues that the Board of Appeals' decision should be affirmed. (*Id.* at 26.)

IV. Analysis

In the case *sub judice*, the facts are not in dispute; however, the Board of Appeals' interpretation and application of the B.C.Z.R. is in dispute. Reading section 1A01.2.B.9.d and applying it to the facts of this case, the issue of determining whether Appellant Kahn is an artist and whether his woodshop is a studio for the purpose of determining whether Petitioners' use is an accessory use permitted as of right is one of statutory interpretation. The Court of Appeals recently reiterated the standard of review regarding statutory interpretation in *Harrod v. State*, 423 Md. 24 (2011):

In statutory interpretation, our primary goal is always to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision, be it statutory, constitutional or part of the Rules. We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the statute is clear and unambiguous, we need not look beyond the statute's provisions and our analysis ends. Occasionally we see fit to examine extrinsic sources of legislative intent merely as a check of our reading of a statute's plain language. In such instances, we may find useful the context of a statute, the overall statutory scheme, and archival legislative history of relevant enactments.

If, however, the language is subject to more than one interpretation, it is ambiguous, and we endeavor to resolve that ambiguity by looking to the statute's legislative history, case law, statutory purpose, as well as the structure of the statute. When the statute is part of a larger statutory scheme, it is axiomatic that the language of a provision is not interpreted in isolation; rather, we analyze the statutory scheme as a whole considering the purpose, aim, or policy of the enacting body, and attempt to harmonize provisions dealing with the same subject so that each may be given effect.

Id. at 33 (quoting *Evans v. State*, 420 Md. 391, 400 (2011)).

In following with the statutory interpretation analysis established by the Court of Appeals, this Court must first examine the normal, plain meaning of section 1A01 R.C.2 (Agricultural) Zone of the B.C.Z.R.³ Specifically, it must examine the language of section 1A01.2.B.9.d. to determine if Appellants' use is permitted as of right as an accessory use, based on Appellants' claim that Appellant Kahn is an artist and his woodshop is a studio. Section 101.1 of the B.C.Z.R. governs word usage and provides definitions for words used in the B.C.Z.R. B.C.Z.R. § 101.1. Section 101.1 also dictates what is to happen when a term is not defined in section 101.1. It states, "Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged." B.C.Z.R. § 101.1.

Here, the terms "artist" and "studio" are not defined in section 101.1 of the B.C.Z.R. *See id.* As a result, per section 101.1, those terms shall be given the definitions found in Webster's Dictionary. That dictionary defines the term "artist" as:

1 a : one who professes and practices an art in which conception and execution are governed by imagination and taste b : a person skilled in one of the fine arts; *esp* : PAINTER 2 a : a performer of music in public (as a singer, pianist, or conductor) b : a theatrical performer <a dramatic ~>; *broadly* : a usu. adept or skillful public performer or entertainer a <trapeze ~> : ARTISTE 3 a *obs* : one skilled or versed in learned arts – used *esp.* of philosophers, savants, physicians or surgeons, astrologers, or alchemists b *archaic* : one skilled in some technical or mechanical art or trade (as a cobbler, miner, surveyor, or seaman) : ARTISAN 4 : one who is adept *esp.* at deception, fraud, artifice, or stratagem : one who is expert *esp.* at something dubious or reprehensible <an ~ with

³ "[A court] interpret[s] ordinances under the same canons of construction that [it] appl[ies] to the interpretation of statutes." *Mueller v. People's Counsel for Balt. County*, 177 Md. App. 43, 85 n.17 (2007) (citing *Howard Research and Dev. Corp. v. Concerned Citizens for the Columbia Concept*, 297 Md. 357, 362 (1983); *Ahalt v. Montgomery County*, 113 Md. App. 14, 25 (1996)).

loaded dice > a short-weight ~ in the coal business 5 : one whose vocation involves drawing, painting, designing, or layout work <landscape ~> syn see EXPERT[.]

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 124 (2002) [hereinafter WEBSTER'S DICTIONARY]. It defines the term "studio" as:

1 a : the working place of a creative worker (as a painter or sculptor) b : a place for the study or practice of various performing or individual arts (as dancing, singing, acting) 2 : a group of buildings including offices, laboratories, and stages where motion pictures are made 3 : a room or place maintained and esp. equipped for the transmission of radio or television programs[.]

WEBSTER'S DICTIONARY at 2268.

Appellants contend that the language of section 1A01.2.9.d of the B.C.Z.R. and the definitions in Webster's Dictionary are clear and unambiguous. (Pet'rs' Mem. at 8-9.) They argue that when applying the definitions, Appellant Kahn qualifies as an artist and his woodshop qualifies as a studio. *Id.* Appellants assert that the testimony of Appellant Kahn; Mitchell Kellman, an expert in zoning, planning, and the Baltimore County Zoning Development Regulations; and Michaela Robinson, an expert in the field of interior design, presented at the hearing before the Board of Appeals supports their argument. (*Id.* at 9.)

Appellee, on the other hand, argues that the rules of statutory construction must be considered, and that this includes examining the historical treatment of traditional professions as conditional uses in residential zones. (Mem. of People's Counsel for Balt. County at 17.) In making this argument, Appellee asserts that the home office and studio exception has been strictly applied in comprehensive zoning contexts. (*Id.* at 21.)

Further, it argues that to expand the meanings of the terms "artist" and "professional" to include Appellant Kahn would be inconsistent with the overall statutory scheme because Appellant Kahn's use of his woodshop to manufacture cabinet products is manufacturing and commercial in nature. (*Id.* at 17, 21.) Appellee contends that such a use is permissible in a number of other zones under the B.C.Z.R., which is indicative of the County Council's intent to create an overall statutory scheme when drafting the zoning regulations. (*Id.* at 15-17.)

In arguing that Appellant Kahn is an artist, Appellants focus on one of several senses of the definition of the term "artist" listed in Webster's Dictionary, namely: "1 a : one who professes and practices an art in which conception and execution are governed by imagination and taste[.]" (*See* Pet'rs' Mem. at 9.) They buttress their assertion that Appellant Kahn is an artist by pointing to the testimony of Appellant Kahn and witnesses Mitchell Kellman and Michaela Robinson. (*See id.* at 9-10.) However, even when applying this definition, Appellant Kahn is not an artist within the meaning of section 1A01.2.B.9.d of the B.C.Z.R.

Here, the conception and execution of Appellant Kahn's wood products are not governed by his imagination and taste. Rather, they are governed by the intended form and function of each piece, based on his client's practical needs. Appellant Kahn himself testified that his pieces are custom-made to fit the specific size, color, finish, and texture of his customers' needs. (Tr. at 28.) Although Appellant Kahn's own imagination and taste may, at times, be used in the manufacturing process, they do not govern it. They are limited by the space of the area to be filled, the purpose of the piece, and the likes and needs of the homeowner. (Tr. at 26-31, 42-43.) It is the specific form and function of

each piece as determined by his customers' and/or interior designers' needs that dictate what Appellant Kahn will create for his customers.

The testimony of Appellants' expert witnesses was not convincing in establishing that Appellant Kahn meets the definition of the term "artist" as defined by Webster's Dictionary. Although Witness Kellman testified that, in his opinion, Appellant Kahn qualifies as an artist, his reasoning was lacking. Witness Kellman stated, "Mr. Kahn is, in my opinion, very specialized, and I believe that the work that he does is -- it's art." (Tr. at 132.) He further explained, "My opinion is that, in looking at Mr. Kahn's work, it seems so specialized, or unique, and I think that the work he does is phenomenal work." (Tr. at 147.) Additionally, Witness Robinson offered her opinion as an expert in interior design, and her opinion, too, was unconvincing. She stated that, in her opinion, "Mr. Kahn is a creative worker and an artist," because, although his work has never been displayed in a museum, the quality of Appellant Kahn's furniture and fixtures compares to the quality of construction and pieces that she has seen in museums. (Tr. at 176, 181-82.)

Although his work is very appealing and of high quality, Appellant Kahn is more akin to an artisan, or an artist in the archaic sense of the word. Appellant Kahn markets his business as a cabinetry business and himself as a cabinetmaker. (Tr. at 61-63.) Webster's Dictionary defines the term "cabinetmaker" as "a skilled woodworker who cuts, shapes, and assembles high-grade articles of furniture calling for fine finish (as decorative cabinets, desks, and chairs, store fixtures, office equipment)[.]" WEBSTER'S DICTIONARY at 310. The dictionary's definition of the term "artist," as stated above, notes an archaic definition: "3 . . . b *archaic* : one skilled in some technical or mechanical

art or trade (as a cobbler, miner, surveyor, or seaman) : ARTISAN[.]”⁴ *Id.* at 124. The Dictionary defines the term “artisan” as “1 *obs* : one who practices an art : ARTIST 2 : one trained to manual dexterity or skill in a trade : HANDICRAFTSMAN . . . [.]”⁵ *Id.*

Holding true to his marketing, and based on the nature of his work, Appellant Kahn is a cabinetmaker. And, a cabinetmaker is fittingly an artisan, as that term is defined, not an artist in the non-archaic, non-obsolete, sense of the word. Certainly, archaic and obsolete definitions do not qualify under section 101.1 as “the *ordinarily accepted definition* as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged.” B.C.Z.R. § 101.1 (emphasis added).

Furthermore, as Webster's Dictionary notes, not all senses of a definition are to be applied in defining a word. The Dictionary lists five senses, or meanings, with subsenses, separated by numbers and letters, in its definition of the term “artist.” The dictionary explains its organization of senses within the definition of each term, stating,

12.4 The system of separating by numbers and letters reflects something of the semantic relationship between various senses of a word. It is only a lexical convenience. It does not evaluate senses or establish an enduring hierarchy of importance among them. The best sense is the one that most aptly fits the context of an actual genuine utterance.

WEBSTER'S DICTIONARY, Explanatory Section 12.4 at 17a. Here, neither the archaic sense of the term “artist” nor its synonym, “artisan,” aptly fit the context of section 1A01.2.B.9.d of the B.C.Z.R., which governs limited permitted uses as of right by certain professional persons in the R.C.2 Agricultural Zone.

⁴ “The temporal label *archaic* means standard after 1755 but surviving in the present only sporadically or in special contexts[.]” WEBSTER'S DICTIONARY, Explanatory Section 8.1.2 at 17a.

⁵ “The temporal label *obs* for “obsolete” means that no evidence of standard use since 1755 has been found or is likely to be found” WEBSTER'S DICTIONARY, Explanatory Section 8.1.1 at 16a.

An examination of the other language contained in section 1A01.2.B.9.d supports this interpretation. It states that the use of "[o]ffices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons" are accessory uses permitted as of right in the R.C.2 Zone. B.C.Z.R. § 1A01.2.B.9.d. Webster's Dictionary defines "studio" as

1 a : the working place of a creative worker (as a painter or sculptor) b : a place for the study or practice of various performing or individual arts (as dancing, singing, acting)
2 : a group of buildings including offices, laboratories, and stages where motion pictures are made 3 : a room or place maintained and esp. equipped for the transmission of radio or television programs[.]

WEBSTER'S DICTIONARY at 2268.

As stated, "creative worker" is explicitly described in sense "1 a" of the definition as "a painter or sculptor." *Id.* Although not an exclusive list, these examples serve to further differentiate between an "artist," as that term is used in section 1A01.2.B.9.d, and non-artists, such as an artisan. Moreover, noticeably absent from section 1A01.2.B.9.d are terms such as "woodshop" or "workshop," which are associated with artisans. As a result, reading the definition of the term "studio" in conjunction with the definition of the term "artist," as discussed above, indicates that Appellant Kahn is not an artist and his woodshop is not a studio within the meaning of section 1A01.2.B.9.d of the B.C.Z.R.

Additionally, the inclusion of the phrase "other professional persons" further buttresses the interpretation that Appellant Kahn is not an artist within the meaning of section 1A01.2.B.9.d of the B.C.Z.R. B.C.Z.R. § 1A01.2.B.9.d. This phrase indicates that the terms "physicians," "dentists," "lawyers," "architects," "engineers," "artists," and "musicians" in section 1A01.2.B.9.d refer to professionals in their respective fields. The

term "professional person" is synonymous with the noun "professional," which Webster's Dictionary defines as:

1 a : one that engages in a particular pursuit, study, or science for gain or livelihood b : one that competes in sports or athletics for gain or livelihood or who has taught or trained for money – compare AMETUER c : one who receives money for appearing in theatrical productions : one who is engaged professionally 2 a : one who belongs to one of the learned professions or is in an occupation requiring a high level of training or proficiency b : one with sufficient authority or practical experience in an area of knowledge or endeavor to resemble a professional[.]

WEBSTER'S DICTIONARY at 1811.

Reading this definition in conjunction with the definition of the term "artist" indicates that to be an artist within the meaning of section 1A01.2.B.9.d would require a high level of training or proficiency in the field of art, or sufficient authority or practical experience in the field of art. Although Appellant Kahn has worked as a contractor and a cabinetmaker for some time, he has, admittedly, had no formal training, proficiency, sufficient authority, or practical experience as an artist. (Tr. at 48-56.) Additionally, Appellant Kahn is listed as a contractor/salesman on his home improvement license, (Tr. at 55) and he markets his business in internet listings with other cabinetmakers. (Tr. at 61-63.) As a result, reading the phrase "other professional persons" in conjunction with the definitions of the terms "artist" and "studio" further indicates that Appellant Kahn is not an artist and his woodshop is not a studio within the meaning of section 1A01.2.B.9.d of the B.C.Z.R.

As stated above, the goal of statutory interpretation is to discern the legislative purpose and the ends to be accomplished. *See Harrod*, 423 Md. at 33. Additionally, statutory interpretation analysis requires that the statute, which in this case is the R.C.2

Agricultural zoning regulation, be read as a whole. *See id.* The County Council explicitly included section 1A01.1.A, the legislative statement of findings, and section 1A01.1.B, the purposes of the regulation, to aid in its interpretation. *See* B.C.Z.R. § 1A01.1. The legislative statement of findings includes a declaration of findings, which states, among other findings,

b. That the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry; . . . d. That continued urban intrusion into the productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area;

B.C.Z.R. § 1A01.1.A.1. The purposes of the R.C.2 regulations are also included in the regulation: "The R.C.2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses." B.C.Z.R. § 1A01.1.B.

Here, in addition to manufacturing wood products in the basement of his house, Appellant Kahn also receives deliveries of wood materials via tractor trailers and flatbed trucks at or near his home and transports final products from his home to his customers via a box truck. (Tr. at 35-38, 67, 69-71; Pet'rs' Ex. 15A.) Given the legislative purpose of section 1A01, Appellant Kahn's manufacturing of cabinets and other wood pieces out of the woodshop in his house is incompatible with the R.C.2 Agricultural Zone and does not foster the conditions favorable to the continued agricultural use of the County's productive agricultural areas. Therefore, the legislative statement of findings and the purposes of section 1A01, read in conjunction with the language of section 1A01.2.B.9.d

of the B.C.Z.R., further indicate that Appellant Kahn's manufacturing of wood products is not an accessory use permitted as of right under section 1A01.2.B.9 of the B.C.Z.R.

As discussed above, interpretation of the R.C.2 Agricultural zoning regulation is clear from a reading of the regulation's plain language. However, as the rules of statutory interpretation allow, examination of the context of the regulation and the overall regulatory scheme can serve to support an interpretation based on a regulation's plain language. *See Harrod*, 423 Md. at 33. Here, as the Board of Appeals stated in its Opinion, within the B.C.Z.R., "the County Council has set forth a number of zones where the manufacturing of cabinets, such as that performed by Mr. Kahn, can be performed as a matter of right." (Op. at 8.) As such, the fact that Appellant Kahn's use is not an accessory use permitted as of right in the R.C.2 Agricultural Zone does not preclude him from conducting the business of Kahn-Struction Company, Ltd. elsewhere in Baltimore County.

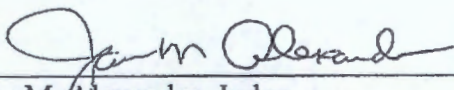
For the reasons expressed above, this Court determines that the issue before the Board of Appeals was fairly debatable and that there is substantial evidence in the record to support the Board of Appeals' decision denying Appellants' Petition for Special Hearing pursuant to section 500.7 of the B.C.Z.R. requesting approval to manufacture cabinets and other wood products out of the basement of their house as an accessory use permitted as of right in the R.C.2 Agricultural Zone. An examination of the legislative intent, expressly stated in the declaration of findings and the regulation purposes, coupled with the evidence and testimony presented at the hearing before the Board of Appeals, provided the Board with substantial evidence to interpret and apply the B.C.Z.R. in the manner in which it did, determining that Appellant Kahn is not an artist and his

woodshop is not a studio within the meaning of section 1A01.2.B.9.d of the B.C.Z.R. Examining the Board of Appeals' decision to deny Appellants' Petition for Special Hearing and giving its interpretation and application of the B.C.Z.R. the appropriate deference, while respecting the expertise of the Board in zoning matters, this Court holds that the Board of Appeals decision is not premised upon an erroneous conclusion of law.

CONCLUSION

Based upon the foregoing reasoning, the decision of the Board of Appeals of Baltimore County is AFFIRMED, it is so

ORDERED, this 11th day of April, 2013.



Jan M. Alexander, Judge
Third Judicial Circuit, Baltimore County

3/12/12

RECEIVED

MAR 12 2012

BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY
Julie L. Ensor
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

03/12/12

Case Number: 03-C-11-001706 AA OTH
Date Filed: 02/23/2011
Status: Open/Active
Judge Assigned: To Be Assigned,
Location :
CTS Start : 02/23/11 Target : 08/21/12

In the Matter of Russ Kahn, et al

CASE HISTORY

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	10173SPH
Case Folder ID	C11001706V01

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET 001	Kahn, Russ			02/28/11
		Party ID: 1616690		
	Mail: 14255 Longnecker Road Glyndon, MD 21136	02/28/11		02/28/11 OLL
	Attorney: 0006860 Borgerding, Francis X 409 Washington Ave Suite 600 Towson, MD 21204 (410)296-6820	Appear: 02/23/2011		02/28/11
PET 002	Kahn, Brenda			02/28/11
		Party ID: 1616696		

Mail: 14255 Longnecker Road
Glyndon, MD 21136

02/28/11

02/28/11 OLL

Attorney: 0006860 Borgerding, Francis X
409 Washington Ave
Suite 600
Towson, MD 21204
(410)296-6820

Appear: 02/23/2011

02/28/11

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
----------	----------------------------	--------------	---------------------------	---------

RES 001 Baltimore County Maryland

03/15/11

Party ID: 1622940

Capacity : Respondant

Attorney: 0804268 Demilio, Carole S
Deputy Peoples Counsel
Old Courthouse Room 47
400 Washington Avenue
Towson, MD 21204
(410)887-2188

Appear: 03/15/2011

03/15/11

ADA 001 Board Of Appeals For Baltimore County

02/28/11

Party ID: 1616739

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
08/02/11	09:30A	NDOC	Civil Non-Jury Trial	Y	TBA	01 /01	JMO AED
	Postponed/Reset		06/21/11 Y				
09/14/11	09:30A	CR16	Civil Non-Jury Trial	Y	JMA	01 /01	06/21/11 MK
	Held/Concluded		09/14/11 E J.Alexander	Y			
Stenographer(s): Court Smart							

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	02/28/11	

DOCUMENT TRACKING

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00001000 Petition for Judicial Review Filed by PET001-Kahn, PET002-Kahn	02/23/11	02/28/11	PET001	TBA		OLL OLL
00001001 Response to Petition for Judicial Review	03/03/11	03/15/11	RES001	TBA		LAC LAC
00002000 Certificate of Compliance	03/14/11	03/24/11	ADA001	TBA		KAS
00003000 Transcript of Record from Adm Agency*	05/03/11	05/03/11	ADA001	TBA		CMS CMS
00004000 Notice of Transcript of Record Sent	05/03/11	05/03/11	ADA001	TBA	05/03/11	CMS
00005000 Notice of Transcript of Record Sent	05/03/11	05/03/11	PET001	TBA	05/03/11	CMS
00006000 Notice of Transcript of Record Sent	05/03/11	05/03/11	PET002	TBA	05/03/11	CMS
00007000 Notice of Transcript of Record Sent	05/03/11	05/03/11	RES001	TBA	05/03/11	CMS
00008000 Scheduling Order	06/03/11	06/03/11	000	TBA	06/03/11	JMO
00009000 Memorandum Filed by PET001-Kahn, PET002-Kahn	06/01/11	06/08/11	PET001	TBA	06/08/11	SAP
00010000 Hearing Notice	06/21/11	06/21/11	000	TBA	06/21/11	MK
00011000 Memorandum of People's Counsel For Baltimore County	06/29/11	07/07/11	000	TBA	07/07/11	NF
00012000 Open Court Proceeding September 14, 2011. Hon. Jan Marshall Alexander. Hearing had. Order to be filed.	09/14/11	09/14/11	000	JMA		JLO

TICKLE

Code Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS 1st Answer Tickle	OPEN	03/03/11	0	no	no	DANS	D	1	001
1YRT One Year Tickle (Jud	OPEN	02/23/12	365	no	no	DAAA	D	1	000
SLTR Set List For Trial	CANCEL	03/03/11	0	yes	no	1ANS	T	1	001
SLTR Set List For Trial	CANCEL	05/03/11	0	yes	no	DTRA	D	3	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By

Offered By: ADA 001 Board Of Appeals For Baltimor								
000		B	BOX 748/CBA TRANSC					B

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 06/03/11 Order Date : 06/03/11
Start Date : 06/03/11 Remove Date:

Milestone	Scheduled	Target	Actual	Status

Motions to Dismiss under MD. Rule 2-322(		06/18/11		OPEN
All Motions (excluding Motions in Limine		06/23/11		OPEN
TRIAL DATE is	09/14/11	09/01/11	09/14/11	REACHED

ACCOUNTING SUMMARYNON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct Desc	Oblig	Payment	Total MOP	Balance
-----	-----	-----	-----	-----	-----	-----
02/23/11	201100004166/CPW	1102 CF-Civil Fil	.00	80.00	-80.00 CK	-80.00
02/23/11	201100004166/CPW	1500 Appearance F	.00	10.00	-10.00 CK	-90.00
02/23/11	201100004166/CPW	1265 MLSC	.00	55.00	-55.00 CK	-145.00
02/28/11		1102 CF-Civil Fil	80.00	.00	80.00	-65.00
02/28/11		1265 MLSC	55.00	.00	55.00	-10.00
02/28/11		1500 Appearance F	10.00	.00	10.00	.00

5/3/11
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
RUSS AND BRENDA KAHN

CIVIL ACTION
NO: 03-C-11-001706

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING - ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
RUSS AND BRENDA KAHN - LEGAL OWNER/*
PETITIONERS
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE SE/S LONGNECKER ROAD
2920' NE OF PINEY GROVE ROAD
(14225 LONGNECKER ROAD)

4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 10-173-SPH

* * * * *

**PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits, Approvals and Inspections (formerly the Department of Permits and Development Management) and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
(FORMERLY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT)
OF BALTIMORE COUNTY**

RECEIVED AND FILED
2011 MAY -3 AM 9:56
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

No. 10-173-SPH

December 11, 2009	Petition for Special Hearing filed by Russ and Brenda Kahn, requesting to allow a carpentry business to operate from the basement of the residence of the owners.
December 23, 2009	Entry of Appearance filed by People's Counsel for Baltimore County.
January 16, 2010	Certificate of Posting.
January 21, 2010	Certificate of Publication in newspaper
January 25, 2010	ZAC Comments.
March 15, 2010	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Special Hearing was DENIED.
April 13, 2010	Notice of Appeal filed by Russ and Brenda Kahn, Legal Owners/Petitioners.
October 26, 2010	Board convened for hearing, and concluded this matter. Appearance of Francis X. Borgerding, Jr., Esquire as Counsel for Petitioner on the Record. Counsel for Petitioner opted to put Closing Argument verbally on the record.

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Site Plat of subject property
- 2 – Diagram of Distances prepared by Petitioner
- 3 – Aerial photograph with distances prepared by Petitioner
- 4 – Topographical Map with Petitioner's highlights
- 5 – USGS Gradient Map
- 6 – Plans of Kahn House
- 7 – Photograph of shop area
- 8 – Photograph of Mrs. Kahn's closet
- 9 a – Photograph of electrical boxes (before)
- 9 b – Computer diagram for design
- 9 c – Photograph of finished wall with doors for access to electrical boxes (after)
- 10 a – Before photograph with washer and dryer
- 10 b – After photograph of kitchen
- 11 a – Before photograph of ceiling and railing

- 11 b – After photograph of ceiling and railing
- 12 a – Before photograph of Billiard Room
- 12 b – After photograph of Billiard Room
- 13 a – Photograph of Kahn Kitchen
- 13 b – Photograph of Kahn Kitchen
- 14 a-f – Kahn Kitchen Plans
- 15 a – Photograph of Flatbed truck
- 15 b – Photograph of Intersection of Piney Grove Road
- 15 c – Photograph of mailboxes
- 15 d – Photograph of road
- 16 a-d – Documents outlining by dates, deliveries made to Kahn home
- 17 – BCZR §1A01.2B(9)d, R.C.2 (Agricultural) Zone Use Regulations (highlighted section on second page)
- 18 a – Webster's Dictionary Definition of "Artist"
- 18 b – Webster's Dictionary Definition of "Artist"
- 19 – Webster's Dictionary Definition of "Studio"
- 20 – Zoning Commissioner's Policy Manual Section 101 – Home Occupation
- 21 – Curriculum Vitae of Michell J. Kellman, Director of Zoning Services for Daft, McCune & Walker, Inc.
- 22 – BCZR §502.1 Special Exception requirements
- 23 – Curriculum Vitae of Michaela Robinson, Interior Designer
- 24 a – Photograph of Kahn Headboard
- 24 b – Photograph of Kahn Bookshelf
- 24 c – Photograph of Kahn Closed shelf
- 25 – People's Counsel's Memorandum in the Matter of Neil Kravitz, in Case No: 96-089-SPH
- 26 – Opinion and Order of Board of Appeals in the Matter of Neil Kravitz, in Case No: 96-089-SPH
- 27 a – Photograph of Kravtiz box truck
- 27 b – Photograph of Kravtiz box truck
- 28 – Video cassette
- 29 – Excerpt of transcript from prior Kahn hearing before the Board in Case No: 08-425-SPHA

People's Counsel Exhibit No.

- 1 – SDAT Real Property Data Search on subject property
- 2 – Zoning Map of subject property
- 3 – (CD) Slide Show of photographs presented by Neil Kravitz

December 2, 2010 Memorandum of People's Counsel for Baltimore County filed by Peter M. Zimmerman, Esquire and Carole S. Demilio, Esquire.

January 6, 2011 Board convened for Public deliberation.

January 25, 2011 Final Majority Opinion and Order issued by the Board in which the Petition for Special Hearing relief was DENIED with attached Concurring Opinion of Board Member Robert Witt.

February 23, 2011 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Francis X. Borgerding, Jr., Esquire on behalf of Russ and Brenda Kahn, Legal Owners/Petitioners.

March 3, 2011 Response to Petition for Judicial Review filed by People's Counsel for Baltimore County.

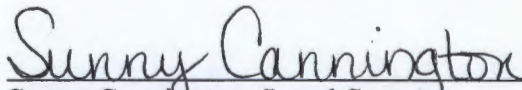
March 14, 2011 Copy of Petition for Judicial Review filed by Francis X. Borgerding, Jr., Esquire retrieved from the Circuit Court for Baltimore County by the Board of Appeals.

March 14, 2011 Certificate of Compliance sent to all parties and interested persons.

May 3, 2011 Transcript of testimony filed.

May 3, 2011 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.


Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: Francis X. Borgerding, Jr., Esquire
Russell and Brenda Kahn
Neil Kravitz
David Kirby, Code Enforcement
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Richard Deurer & Nancy Baldwin
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Judge
Director/Office of Planning
Michael Field, County Attorney, Office of Law

5/5/11

CIRCUIT COURT FOR BALTIMORE COUNTY
Julie L. Ensor
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-11-001706 AA
Administrative Agency : 10173SPH
C I V I L

In the Matter of Russ Kahn, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 3rd day of May, 2011.

Julie Ensor
Julie L. Ensor
Clerk of the Circuit Court, per CUS

Date issued: 05/03/11

TO: BOARD OF APPEALS FOR BALTIMORE COUNTY

105 W Chesapeake Ave
Towson, MD 21204

RECEIVED

MAY - 5 2011

BALTIMORE COUNTY
BOARD OF APPEALS

3/14/11
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
RUSS AND BRENDA KAHN

CIVIL ACTION
NO: 03-C-11-001706

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING - ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
RUSS AND BRENDA KAHN - LEGAL OWNER/
PETITIONERS
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE SE/S LONGNECKER ROAD
2920' NE OF PINEY GROVE ROAD
(14225 LONGNECKER ROAD)

4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 10-173-SPH

* * * * *

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Francis X. Borgerding, Jr., Esquire
409 Washington Avenue, Ste 600
Towson, MD 21204

Russell and Brenda Kahn
14225 Longnecker Road
Glyndon, MD 21071

Richard Deurer
Nancy Baldwin
14219 Longnecker Road
Reisterstown, MD 21136

Neil Kravitz
14207 Longnecker Road
Boring, MD 21020

RECEIVED AND FILED

2011 MAR 14 PM 12:33

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

David Kirby, Code Enforcement Inspector
Office of Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

Lawrence M. Stahl, Managing Judge
Office of Administrative Hearings
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

Office of Planning
The Jefferson Building, Suite 101
105 W. Chesapeake Avenue
Towson, MD 21204

Arnold Jablon, Director
Office of Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

Nancy C. West, Assistant County Attorney
Office of Law
400 Washington Avenue
Towson, MD 21204

Michael Field, County Attorney
Office of Law
400 Washington Avenue
Towson, MD 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 14th day of March, 2011, a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Sunny Cannington
Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 14, 2011

Francis X. Borgerding, Jr., Esquire
409 Washington Avenue, Suite 600
Towson, MD 21204

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-11-001706
In the Matter of: Russ and Brenda Kahn
Board of Appeals Case No.: 10-173-SPH

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on February 23, 2011 by Francis X. Borgerding, Jr., Esquire on behalf of Russ and Brenda Kahn in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review within 60 days. Francis X. Borgerding, Jr., Esquire on behalf of Russ and Brenda Kahn, having taken the appeal, are responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

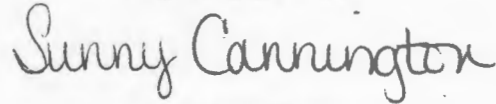
The Court Reporter that must be contacted to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-837-3027
HEARING DATE: October 26, 2010

This office has also notified Ms. Peatt that a transcript on the above matter is due for filing in the Circuit Court. A copy of the Petition for Judicial Review has been provided to the Court Reporter which will enable her to contact the responsible parties.

A copy of the Certificate of Compliance has been enclosed for your convenience.

Very truly yours,



Sunny Cannington
Legal Secretary

Duplicate Original
Enclosure

cc: Russell and Brenda Kahn
Richard Deurer
Nancy Baldwin
Neil Kravitz
David Kirby, Code Enforcement
Lawrence M. Stahl, Managing Administrative Judge
Arnold Jablon, Director/PAI
Director/Office of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

3/2/11

PETITION OF **Russ Kahn and Brenda Kahn**
FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE CASE OF **Russ Kahn and Brenda Kahn**,
LEGAL OWNERS FOR A PETITION FOR
SPECIAL HEARING
14225 Longnecker Road; SE/S
Longnecker Road, 2920' NE of Piney Grove Road
4th Election District, 3rd Councilmanic District

Case No. 10-173-SPH
Before the County Board of Appeals

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*
* Case No. 03-C-11-001706

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by RUSSELL KAHN and BRENDA KAHN and states that the office intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED

MAR - 3 2011

**BALTIMORE COUNTY
BOARD OF APPEALS**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March, 2011, a copy of the foregoing Response to Petition for Judicial Review was mailed to Francis X. Borgerding, Jr., 409 Washington Avenue, Suite 600, Towson, Maryland 21204 and County Board of Appeals, 105 West Chesapeake Avenue, Suite 203, Towson, Maryland 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

2/23/11
PETITION OF RUSS KAHN and
BRENDA KAHN
14255 Longnecker Road
Glyndon, Maryland 21136

FOR JUDICIAL REVIEW OF THE
DECISION OF THE BOARD OF
APPEALS FOR BALTIMORE COUNTY

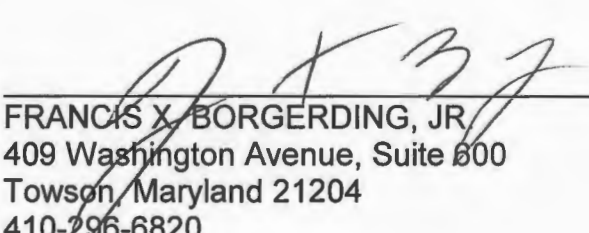
IN THE CASE OF PETITION FOR
SPECIAL HEARING
14225 Longnecker Road; SE/S
Longnecker Road, 2920' NE of
Piney Grove Road 4th Election & 3rd
Councilmanic Districts
Legal Owner(s); Russ Brenda Kahn
Case No.: 10-173-SPH

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*
* Civil Action No.

* * * * *

PETITION FOR JUDICIAL REVIEW

Petitioners, Russ Kahn and Brenda Kahn, parties to the agency proceeding, by their attorney, Francis X. Borgerding, Jr., pursuant to Maryland Rule 7-202, herein request judicial review of the Decision of the County Board of Appeals of Baltimore County in case number 10-173-SPH dated January 25, 2011, a copy of which is attached hereto and incorporated herein.



FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 800
Towson, Maryland 21204
410-296-6820

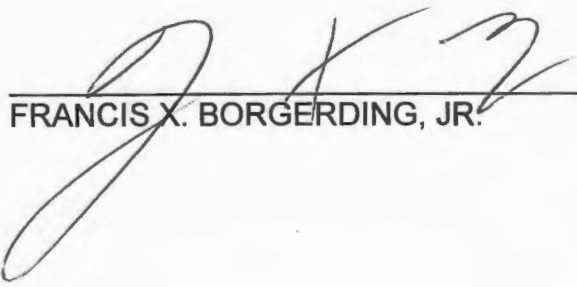
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FEB 24 2011
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of February, 2011, a copy of the foregoing was mailed, postage prepaid, to:

County Board of Appeals of
Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204



FRANCIS X. BORGERDING, JR.

1/25/11

RE: PETITION FOR SPECIAL HEARING
14225 Longnecker Road; SE/S Longnecker
Road, 2920' NE of Piney Grove Road
4th Election & 3rd Councilmanic Districts
Legal Owner(s): Russ & Brenda Kahn
Petitioner(s)

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO.: 10-173-SPH

* * * * *

OPINION

This matter comes before the Board on an appeal from the decision of the Deputy Zoning Commissioner on a Petition for a Special Hearing filed by the Petitioners, Russ and Brenda Kahn. The Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a request to allow a cabinetry business to operate from the basement of their residence on 14225 Longnecker Road. A hearing was held before the Board on October 26, 2010. Petitioners were represented by Francis X. Borgerding, Jr., Esquire. People's Counsel, Carole S. Demilio appeared in opposition to the Petition as well as the Protestants, Richard Deurer, Nancy Baldwin and Neil Kravitz, adjacent property owners, who were unrepresented. Hearing the matter was Chairman Lawrence Stahl, and members Maureen Murphy and Robert Witt. After the hearing, Chairman Stahl left the Board to become an Administrative Law Judge for Baltimore County. Prior to the Public Deliberation on January 6, 2011, Board member Lawrence Wescott was designated as the third member to deliberate the case. Mr. Wescott listened to the taped recording of the hearing and reviewed all of the documents submitted into evidence during the hearing and participated in the deliberation of this matter.

At the close of the hearing, Counsel for the Petitioner presented oral argument. People's Counsel was allowed to file a brief which was due December 3, 2010.

Background

The subject property owned by Petitioners is a rectangular shaped piece consisting of approximately 5.938 acres zoned RC.2. The property is located in a wooded area northeast of the intersection of Longnecker Road and Piney Grove Road, with Hanover Pike (Rt. 30) to the west and Butler Road to the east. It is a rural area north of Reisterstown in Baltimore County. Petitioners live off of a private road which extends from Longnecker Road through Petitioners' property and serves several other properties located in the wooded area. The Petitioners purchased the property in 2003 and the property is presently improved with a two-story single family dwelling which is under construction. The Petitioner, Mr. Kahn, indicated that he constructed and is presently continuing with the construction of the home, and is doing all of the work himself. He purchased the lot with the idea to build his custom home and operate his high-end cabinetry business with a workshop to be located in the basement.

At the time of the hearing before the Board, Mr. Kahn was still working on his home. Periodically he received deliveries of plywood and lumber which he used in the construction of his house. In addition, Mr. Kahn had established his workshop in the basement of the home where he engaged in his specialty cabinet business. He also received deliveries to the site of lumber and plywood for his business.

On August 12, 2009, Mr. Kahn was issued a Correction Notice by a Baltimore County Code Inspector, for an alleged illegal business being conducted in his home. Thereafter, the Inspector issued a Citation for the alleged illegal business in the home and as a result of the Correction Notice and Citation, Mr. and Mrs. Kahn filed the Petition for Special Hearing.

Mr. Kahn contends that he meets the requirements of Section 1A01.2.B.9.d of the Baltimore County Zoning Regulations as an artist; and that the custom woodwork which he

designs and installs is of such an artistic nature that it will be considered unique, and could be considered a "collector's item".

In support of his position, Mr. Kahn testified that he employed one (1) individual and that all of the work was performed in his basement. Kahn stated that the entire house totaled 9,035 square feet. He stated that his basement totaled 3,000 square feet, but the shop only took up 2,008 square feet or 22 % of the total square footage of the house. No lumber or material was kept outside and there was no sign on his property indicating his business. He indicated that he operated the business under the title of The Kahn-struction Company, Ltd. He stated that the outside world would not know that he was operating this business in his home, except for the occasional delivery to him and deliveries from his place. He stated that he used a rental truck to make deliveries of his finished product.

Mr. Kahn stated that he does receive a delivery of lumber from O'Shea Lumber Company on twenty (20) foot trucks and also deliveries by tractor-trailer which stop at his mailbox at the top of the road. He receives from one (1) to twenty (20) sheets of plywood at a time from the tractor trailer. He then brings his own pick-up truck with a trailer, from his house to the mailbox where he puts several sheets of plywood at a time on the trailer and takes them back to his home. He receives plywood deliveries every 4 to 5 weeks and has kept track of the number of deliveries that he had made and the number of deliveries that he had received from 2008 through 2010. The largest number of deliveries were from May 1, 2008 to May 22, 2009, in which he received seventeen (17) deliveries in twelve (12) months.

On cross examination, Mr. Kahn stated that he was a graduate of Towson University and completed a B.A. in 1986. He stated that he had started a second Bachelor Degree in Elementary Education but did not complete it. He admitted that he had no formal training as an artist or art

student. He did take several courses in architecture at the University of Maryland and a drafting course while attending high school. Mr. Kahn stated that he markets directly to interior designers by direct mail. He has postcards of previous work that he has performed which he shows to potential customers. Mr. Kahn generally meets with an interior designer at the designer's office or at the client's home and shows them photographs of his previous work. The designers then tell him what the customer would like and they discuss the ideas for constructing the pieces, which will meet the customers satisfaction. Mr. Kahn designs the pieces which he will then construct and takes them to the customer's home where he will install the pieces.

In addition, Mr. Kahn submitted photos showing the areas both before and after he had completed the design work and the construction of various cabinets, stairways, etc. He also presented a photograph of his workshop in the basement of his home, where he has wood working machines and equipment, which he utilizes in the construction of his various cabinets and other decorative pieces.

In further support of his position, the Petitioner presented Mitchell J. Kellman of Daft McCune Walker, Inc., who was qualified as an expert in zoning, planning and the zoning regulations for Baltimore County. Mr. Kellman indicated that he had conducted an investigation approximately one (1) month ago and he visited the site and talked to Mr. Kahn about his work and reviewed the work which Mr. Kahn had performed. In Kellman's opinion, Mr. Kahn qualifies as an artist. He stated that Mr. Kahn's shop took up twenty- two percent (22%) of the total floor area of the residence, therefore coming within the twenty-five percent (25%) allowed under Section 1A01.2.B.9d. Kahn employed only one (1) employee as required by Section 1A01.2.B.9d. Mr. Kellman also felt that Mr. Kahn's business met all the requirements of Section 502.1 of the Baltimore County Zoning Regulations. He also compared the use by Mr. Kahn with

the uses permitted for physicians and dentists and indicated the he felt that physicians and dentists would utilize more parking and more trips back and forth on the road, then would Mr. Kahn in pursuit of his occupation.

Petitioners also presented Michaela Robinson, as an expert in Interior Design. She has a Bachelor of Arts from Vanderbilt University and a Master of Fine Arts from George Washington University. Ms. Robinson has been an Interior Designer for sixteen (16) years.

Ms. Robinson will work with a client to come up with a concept to renovate a room which is unattractive or to construct some types of furniture or cabinets to hide unattractive video or CD players or other types of equipment. She then contacts Mr. Kahn to have him design or create the woodwork, which she envisions will meet her clients goals.

Ms. Robinson cited several instances of Mr. Kahn's work which she considered to be artistic. She stated he has worked with her over nine (9) years and has created a number of custom pieces. Several pictures of items which Mr. Kahn had created, such as a headboard, a cabinet for CD players, and other items were presented in evidence. She stated that Mr. Kahn has created several pieces of furniture and did an office suite for an attorney in which he made a desk and other items.

In opposition, People's Counsel presented one of Mr. Kahn's neighbors, Mr. Neal Kravitz, who lives on Longnecker Road. He lives on the same right-of-way that Mr. Kahn utilizes. Mr. Kravitz presented a number of pictures showing the tractor-trailer truck being unloaded and also a Budget Rental car or truck being loaded and driven out of the Kahn residence. Mr. Kravitz stated that he lived on a dairy farm and that the area was an agricultural area. He feels that Mr. Kahn is manufacturing in a rural area and that large trucks coming in and out could have an adverse affect on the aquifer for the wells in the area. On cross-examination, Mr. Kravitz

admitted that he has a truck that he utilizes in going to gun shows where he sells ammunition. He states that he is a consultant in firearms for the Police Department and has worked out of his house. His truck goes in and out once a month.

People's Counsel also presented Richard Deurur, who also lives on the same right-of-way as Mr. Kahn and Mr. Kravitz. Mr. Deurur has been to Mr. Kahn's home and seen his operation and feels that he is doing manufacturing in a rural zone. His concern is the safety issue with respect to the trucks going in and out of the area.

Decision

Section 1A01.2.B.9 states:

Uses permitted as of right. The following uses only are permitted as of right in all R.C.

2 zones:

9. Accessory uses or structures, including, but not limited to, the following:

*** "d. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee."

Since the term 'artist' is not defined in the Baltimore County Zoning Regulations, the Petitioner submits that the definition as set forth in Webster's Third New International Dictionary Unabridged, must be utilized in determining whether or not Mr. Kahn qualifies as an artist under the BCZR and that this is required by Section 101.1 of the BCZR, which states:

"For the purposes of these regulations, certain terms and words are defined below.

Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged."

Webster's definition of 'artist' states:

"*artiste* artist, artisan, learned man, *artista* student or master of the liberal arts, **1a**: one who professes and practices an art in which conception and execution are governed by imagination and taste **b**: a person skilled in one of the fine arts; *esp* : painter **2a**: a performer of music in public (as a singer, pianist, or conductor) **b**: a theatrical performer <a dramatic>; *broadly* : a usu. adept or skillful public performer or entertainer <a trapeze> : **ARTISTE 3a** *obs* : one skilled or versed in learned arts – used esp. of philosophers, savants, physicians or surgeons, astrologers, or alchemists **b. archaic** : one skilled in some technical or mechanical art or trade (as a cobbler, miner, surveyor, or seaman) : **ARTISAN 4**: one who is adept esp. at deception, fraud, artifice, or stratagem : one who is expert esp. at something dubious or reprehensible <with load dice>, <a short-weight in the coal business> **5**: one whose vocation involves drawing, painting, designing, or layout work <landscape>"

In making its determination, the Board must look at all of the wording in the Baltimore County Zoning Regulations. Specifically, the Board finds that the words in Section 9d. "or other professional persons" defines a type of individual that the County Council was contemplating in its drafting of this regulation. The definition of a professional as set forth in Webster's Third New International Dictionary of the English Language Unabridged is as follows:

"**a** : of, relating to, or characteristic of a profession; or **b** : engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency characterized by or conforming to the technical or ethical standards of a profession or an occupation manifesting fine artistry or workmanship based on sound knowledge and conscientious reflecting the results of education, training and experience."

It is the opinion of the Board, that Mr. Kahn's workshop does not qualify as an artist's studio. It contains all types of woodworking equipment and it is utilized by him to construct cabinets and other pieces which he has designed for his customers. In addition, Mr. Kahn has

had no formal training as an artist. He may be considered a skilled tradesman or an artisan, but he doesn't qualify as a "professional" as the work is commonly interpreted. He does not create any type of artistic product such as a landscape painting or sculpture.

In the brief submitted by People's Counsel, she cites various zones in the BCZR where cabinetry can be manufactured. The Manufacturing Restricted (M.R.) zone permits by right the "Manufacturing, compounding, electroplating, assembling, machining or other comparable light processing or treatment of articles of merchandise from the following previously prepared materials:... canvas...glass...precious or semiprecious metals or stones...wood...". The stated use defined in the M.R. zone is incorporated by reference in three other manufacturing zones – M.L.R., M.L. and M.H. The Manufacturing Light (M.L.) zone also specifically permits by right as an industrial use in §253.1A.54 "Wood products manufacture or processes-restricted production." "Restricted production" is defined in BCZR §253.3 as the "assembly, manufacture or compounding of articles of merchandise from previously prepared materials, or the machining, ... or other comparable light processing or treatment of such articles;...".

The Business Major and Business Roadside zones (B.M. and B.R.) also permit by right "Carpentry. . . shops" and the Service Employment zone permits a "contractor's office" as defined in BCZR Section 101.

Therefore, the County Council has set forth a number of zones where the manufacturing of cabinets, such as that performed by Mr. Kahn, can be performed as a matter of right. The Board does not mean to denigrate in any way the work which Mr. Kahn performs. However, Mr. Kahn has not been trained in any of the professions which are listed in Section 9.d. The product which he produces is not a work of art, as produced by a painter or sculpter. Therefore, the Board finds that Mr. Kahn is actually performing a manufacturing operation in his basement

woodshop and the majority finds that the Petitioner does not qualify as an artist under Section 1A01.2B.9.d.

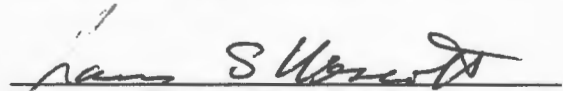
ORDER

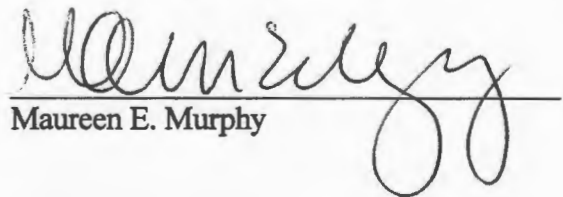
THEREFORE, IT IS THIS 25th day of January, 2011 by the
Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing from §500.7 of the Baltimore County Zoning Regulations requesting approval to allow a cabinetry business to operate from the basement of the residence of the Petitioners, in case number 10-173-SPH, be and the same is hereby **DENIED**.

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*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence Wescott, Panel Chair


Maureen E. Murphy

1/25/11

RE: PETITION FOR SPECIAL HEARING
14225 Longnecker Road; SE/S Longnecker
Road, 2920' NE of Piney Grove Road
4th Election & 3rd Councilmanic Districts
Legal Owner(s): Russ & Brenda Kahn
Petitioner(s)

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO.: 10-173-SPH

* * * * *

CONCURRING OPINION

This matter came before the Board on an appeal from the decision of the Deputy Zoning Commissioner dated March 15, 2010 denying Petitioner's request for a Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a custom cabinetry business, known as The Kahn-struction Company, Ltd., to operate from the basement of the Petitioner's residence located at 14225 Longnecker Road, in the 4th Election District and 3rd Councilmanic District in Baltimore County. The property is zoned RC 2.

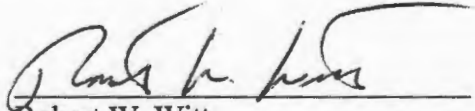
A public *de novo* hearing was held by the Board on October 26, 2010 and a Public Deliberation was held on January 6, 2011. At the hearing the Petitioners argued that The Kahn-struction Company, Ltd. met the definition of artist as required by the BCZR Section 1A01.2.B.9.d and Section 101.1, and was permitted by right to operate from the basement of their residence.

Board members Lawrence S. Wescott, Panel Chairman, and Maureen E. Murphy concluded that The Kahn-struction Company, Ltd. did not meet the definition of artist as required by BCZR Section 1A01.2.B.9.d and Section 101.1 and is operating as a manufacturer of custom cabinets. The members denied Petitioner's request for Special Hearing relief pursuant to BCZR 500.7 to operate The Kahn-struction Company, Ltd. from their residence.

It is my opinion that the design and drawing of custom cabinets, as presented by the exhibits and testimony at the hearing, can be defined as artistry using the broad definition of artist in the Webster's dictionary designated by the BCZR and therefore be permitted as a right in the RC 2 zone. I would grant the request for Special Hearing to operate that function of the business from the residence. However, I concur with Mr. Wescott and Ms. Murphy that, in addition to the design and drawing function, The Kahn-struction Company, Ltd., is operating a manufacturing facility for custom cabinets in the basement of the residence. Manufacturing is not permitted in an RC 2 zone.

Therefore, I join Mr. Wescott and Ms. Murphy and deny the Petitioner's request for Special Hearing to operate The Kahn-struction Company, Ltd. from the basement of their residence on the basis that they are operating as a manufacturer.

For the reasons stated, this Board member concurs with the other members of the Board's panel and finds that Mr. Kahn is performing a manufacturing operation in his basement woodshop as set forth in the Majority Opinion and Order.


Robert W. Witt

DATE: 1/25/11



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

January 25, 2011

Francis X. Borgerding, Jr., Esquire
Mercantile-Towson Building
409 Washington Ave., Suite 600
Towson, MD 21204

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Russ & Brenda Kahn – Legal Owners/Petitioners*
Case No.: 10-173-SPH

Dear Counsel:

Enclosed please find a copy of the final Majority Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter. Also enclosed is a copy of Mr. Witt's Concurring Opinion

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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** 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,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Russell and Brenda Kahn
Nancy Baldwin
David Kirby, Code Enforcement
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Richard Deurer
Neil Kravitz
Lawrence M. Stahl, Managing Administrative Judge
Director/Office of Planning
Michael Field, County Attorney, Office of Law

12/2/10

RE: PETITION FOR SPECIAL HEARING * BEFORE THE COUNTY
14225 Longnecker Road; SE/S Longnecker *
Road, 2920' NE of Piney Grove Road * BOARD OF APPEALS
4th Election & 3rd Councilmanic Districts *
Legal Owner(s): Russ & Brenda Kahn * FOR
Petitioner(s) * BALTIMORE COUNTY
* 10-173-SPH

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BALTIMORE COUNTY
BOARD OF APPEALS

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

Petitioner filed a Petition for Special Hearing to determine if custom cabinet making is included in the term "artist", under BCZR § 1A01.2B.9. which permits certain accessory uses by right in the R.C. 2 zone in paragraph d:

"9. Accessory uses or structures, including, but not limited to, the following:

Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee."

The Court of Special Appeals described a zoning special hearing case in 2005:

"A request for special hearing is, in legal effect, a request for a declaratory judgment." Antwerpen v. Baltimore County, 163 Md. App. 194, 209 (2005).

The instant case requires a legal interpretation (statutory construction) of the applicable regulations in BCZR; a legal interpretation requires review of the language in the statute, its history, interpretations in comparable cases, and the intended meaning.

Judge Battaglia provided a clear and concise summary of statutory construction principles in People's Insurance Counsel Division, et al. v. Allstate Insurance Company, et al. 408 Md. 336, 351 (2009), where the Court of Appeals, in its review of an order of the Insurance Commissioner, reversed the Circuit Court for Baltimore City:

"In statutory interpretation, our primary goal is always "to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a

particular provision, be it statutory, constitutional or part of the Rules. . . . We begin our analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that " 'no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.' " . . . If the language of the statute is clear and unambiguous, we need not look beyond the statute's provisions, and our analysis ends." (citations omitted).

Petitioner Kahn here asks the CBA to decide the matter devoid of any zoning context – instead he relies strictly on the lay definition of artist *vis a vis* his and his witnesses' self-serving opinions of the quality of his work. This approach usurps the authority of the CBA, who must interpret the zoning regulations and use the dictionary terms as an aid in its decision, not as the sole authority. Clearly, anyone who makes a product or provides a service could claim the creative element makes them an "artist." If the Petition is granted here, the door would be open to locate other occupations and businesses in the residential zone, such as upholsterer, masseuse, lamp and lighting designer, hairstylist, nail salon to name a few. It would present a dilemma for the Board of Appeals in other zoning cases where the producers of custom products and services would claim to be an artist in order to operate in the home. If such operations were included in the term "artist" the result would undermine the basis core of comprehensive zoning - the separation of uses such residential, commercial and manufacturing. Furthermore, to grant the relief here is also problematic for the CBA because the effect is actually a rezoning of the site where the property owner seeks to operate as an artist and where the zone permits an artist's studio. Rezoning is generally a legislative function under the comprehensive map process every four years, unless a specific site seeks rezoning by the CBA under the strict statutory standards of mistake or error or change in neighborhood. **"Rezoning by comprehensive plan is a legislative function and cannot be delegated except upon express authority."** Bd. Of County Commissioners for Prince George's Co. v. Edmonds, 240 Md. 680 (1965).

It may be helpful here to briefly review the general law on comprehensive zoning. In the well-respected zoning treatise (formerly Anderson's American Law of Zoning)

American Law of Zoning 5th Edition, the author, Patricia Salkin, discusses the legislative history of zoning in § 1:18:

“Comprehensive zoning consists of the division of a municipality’s entire territory into districts, and the imposition of restrictions upon the use of land within these districts. . . . Zoning is a ‘legislative act representing a legislative judgment as to how the land within the City should be utilized and where the lines of demarcation between the several use zones should be drawn.’ ” (citations omitted). *Id.* 1-32,1-33.

“ . . . the first comprehensive zoning ordinance was adopted by the city of New York in 1916. . . . During the early 1920’s the United States Department of Commerce encouraged the spread of comprehensive zoning by publishing a model state enabling act, and by 1926, when the first zoning ordinance reached the Supreme Court of the United States, zoning was commonplace in large cities, and not uncommon in smaller communities.. . . zoning regulations encompass the whole community, making provisions for all legal uses; they avoid the hazard of discrimination by the breadth of their application. Zoning regulations, unlike police restrictions of the narrower scope, are not designed to remedy a single evil, but are calculated to achieve a broader purpose. They are, or can be, tailored to fit a comprehensive plan which in turn is designed to serve the health, safety, morals, and welfare of a whole community.” *Id.* § 1:19, p. 1-35.

The existence of a professional office within a residence actually predates comprehensive zoning. The physician, dentist, attorney, architect, artist, and musician were traditionally seen as providing convenient services for the residential community in which they were located. Following adoption of zoning ordinances, these types of home offices were allowed to continue in order to serve the community, but on a limited scale and highly restricted. *Id.* § 19:15. The home office exception has been strictly applied. For instance, professional status and the right to maintain a home studio did not entitle an artist to establish a school or teach classes of unlimited size. *Id.* §19:26. An expansive definition of the term “artist” has also been routinely rejected by the courts. In American Law of Zoning, the author describes at p. 19-44:

“The operator of a beauty salon contended that she was entitled to maintain her establishment in a residential district under an ordinance which permitted home occupations “such as the office of a physician, dentist or artist.” She said that she was an artist in the practice of her profession. The court summarily disagreed. . . . A New York court held that a board of appeals was not unreasonable in construing the term “photographic studio” to exclude a studio which prepared negatives to be

used in commercial printing. Conducting art counseling sessions was said by an Illinois court to be not incidental to a residential use. . . . Where the operation of a "store" was prohibited, an interior decorator could not maintain samples, engage an employee, and interview customers." (citations omitted) (emphasis supplied).

To be sure, American Law of Zoning refers to an isolated 1941 case where a homeowner was permitted to color neon signs in his home and install them off premises. The author states this represents **"an extreme application of the term "artist,"** suggesting the historical use of the term "artist" describes the studio of a professional person engaged in the fine arts, not the more peripheral commercial or industrial occupations such as signmaking or the workshop or office of an interior decorator. *Id.* 19-45.

Clearly, the type of product primarily produced by Mr. Kahn here as seen in his photographs – kitchen cabinets affixed to the buyer's residence – is not the traditional fine art studio traditionally referred to in zoning as the studio of one who produces paintings and sculpture. In fact, Mr. Kahn's occupation is more aptly described in BCZR as a use permitted in seven manufacturing and business zones. Even Mr. Mitch Kellman, Petitioner's expert in zoning and planning agreed that the use could be located elsewhere.

In BCZR, the Manufacturing Restricted (M.R.) zone permits by right the **"Manufacturing, compounding, electroplating, assembling, machining or other comparable light processing or treatment of articles of merchandise from the following previously prepared materials: . . . canvas . . . glass . . . precious or semiprecious metals or stones. . . wood . . ."** (emphasis supplied). This stated use defined in the M.R. zone is incorporated by reference in three other manufacturing zones - M.L.R., M.L. and M.H. The M.L. ("Manufacturing Light") zone also specifically permits by right as an industrial use in § 253.1 A. 54. **"Wood products manufacture or processing-restricted production."** "Restricted production" is defined in BCZR § 253.3 as the **"assembly, manufacture or compounding of articles of merchandise from previously prepared materials, or the machining, . . . or other comparable light processing or treatment of such articles; . . ."**

In addition, the Business Major and Business Roadside zones (B.M. and B.R.) permit by right **"Carpentry. . . shops."** Also the Service Employment zone permits a **"contractor's office"** defined in BCZR 101 as **"A room or group of rooms for conducting the business affairs of a building trade."** and also permits a **"contractor's shop"** defined as **"Establishments for trades involved in the installation and servicing of items whose use is related to the construction, improvement or maintenance of buildings or landscaping of grounds."**

These specific descriptions must be considered to ascertain the meaning of the Regulations and the intent of the County Council in establishing such uses in particular areas. Here, Mr. Kahn's operation is deemed to be manufacturing or a commercial enterprise. **"Specific terms of statute covering a given subject matter prevail over general language of same or another statute which might otherwise prove controlling."** *Geramifar v. Geramifar*, 113 Md.App. 495.

If the Regulations restrict a use to specific zones, a property owner cannot distort the overall zoning plan for personal convenience.

The Court of Appeals addressed this in St. Clair v. Colonial Pipeline, 235 Md. 578, 202 A.2d 376 (1964), where a pipeline company sought conditional use approval of an aboveground petroleum products storage facility in an agricultural district. The administrative agency approved the facility as a type of "public utility structures and properties" permitted in the zone. In reversing, the Court of Appeals noted that aboveground storage of petroleum products was separately listed as a permitted use in the M-2 zone but not in the site's agricultural zone. The Court rejected overreaching by the property owner where the regulations clearly identified the permitted uses in each zone:

"The zoning ordinance does not specify the type of buildings classifiable as 'public utility structures,' but whatever the term was intended to embrace, it clearly does not include above ground petroleum storage facilities, and we so hold." 202 A.2d at 379.

Similarly, the Court of Appeals reversed the Board of Appeals and refused to approve a sawmill, a permitted use in a separate industrial zone, as an accessory use to the broad definition of "Processing of dairy products and farm products, riding stables,

kennels . .” permitted in the agricultural zone. Smith v. Miller, 249 Md. 390, 239 A.2d 900, (1968). The Court reversed the Board’s decision, and described the faulty reasoning and illogic of the Board’s approval of the use:

“The logic adopted by the Board is simple; timber is a farm product; a sawmill processes it; therefore, Mr. Miller is entitled to build a sawmill in an agricultural district.” 239 A.2d at 902.

The Court recognized the overall statutory scheme and the intent of the zoning classification. In writing for the Court, Judge Singley observed that approval “ . . . **would open the county’s agricultural district to any industrial development remotely connected with the processing of dairy and farm products without limitation. . .**” *Id.*

Thus, Mr. Kahn’s reliance on the definition of “artist” in Webster’s Dictionary as the sole criteria is misplaced; the CBA must also consider the rules of statutory construction, including the history of traditional professions as conditional uses in residential zones, the overall statutory scheme in BCZR, the existence of an exact description of Petitioner’s operation as a manufacturing and commercial use, and the relegation of that use to the manufacturing and commercial zones. A statute must be construed so as to **“ascertain and carry out the intent of the legislature.”** Montgomery Co. v. Buckman, 333 Md. 516, 523 (1994). **“Courts have duty when construing a statute to restrict meaning of general words, whenever it is found necessary to do so, in order to carry out legislative intention.”** State v. Gharji, 346 Md. 101 (1997).

Other facts in the instant case also support the commercial nature of the Petitioner’s business. Mr. Kahn is required to maintain a home improvement license for his company, which is a requirement for contractors, not artists. It is noteworthy that Mr. Kahn designated himself as a “contractor/salesman” on the license for the “Kahn-struction Company”, which supports the BCZR description of the activity here as a manufacturing/commercial use. In addition, Mr. Kahn admitted the construction of cabinets etc. requires the use of commercial equipment and chemicals far beyond the type of tools generally found in a home. The typical products here become fixtures in the

homes of his customers, akin to the type of work of home remodelers, painters, and contractors, not traditional, portable paintings and sculptures.

It appears Mr. Kahn seeks zoning relief here as a convenience and to gain an economic advantage. Neither is the basis to approve a zoning petition. Every business owner would want such an accommodation. If the Petitioner's preference were the sole criteria, coupled with Petitioner's self-serving evaluation of his work, neighbors would have no protection or assurance against commercial and manufacturing intrusion into the residential zones.

As we have seen, the professional office was permitted on a limited basis for traditional occupations as an accommodation to the community. Mr. Kahn serves customers elsewhere, not in his neighborhood. Baltimore County has likewise restricted the professional office use. Mr. Kellman and Petitioner have pointed out and relied on the zoning regulation that permits the offices of professionals, including an artist's studio, in the R.C. 2 zone as an accessory use to the principal residential use of the dwelling. Therefore, his occupation must be related to the residential use of the site by definition. But Petitioner admits the company is his sole employment and occupation, more like a full time occupation than something accessory to the residential use of the site or to promote agriculture, a primary purpose of the R.C. 2 zone. BCZR 1A01.1.B.

Petitioner's expert witness, Mr. Kellman never addressed the accessory requirement. The definition of accessory use is found in BCZR 101:

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; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use."

Accessory uses are permitted only to support the primary use – in this case the principal residence. The use of the word “*incident*” means accessory uses are a common and pervasive complement to the residential use and must “*serve a principal use or structure*”. But they are not equal to the principal residence because they must be “*subordinate*”.

The words “customary” and “incidental” used in the definition of accessory in BCZR §101 are terms of art in zoning law. The Maryland Court of Appeals focused on a second-story addition of business space, 12 feet X 22 feet, in Dampman v. City of Baltimore, 231 Md. 280 (1963). There the Court held that it was not “incidental.” It was a “major” addition, not “appertaining, subordinate, or casual.”

In Young, Kenneth Anderson’s American Law of Zoning, 4th Edition (“Young.”) § 9.28, the author refers to the definition in a 1969 Connecticut case in footnote 12, page 200:

“To determine whether a use of land is permitted as an accessory use, it is not enough to determine whether that use is incidental to the main use; the use must be habitually, commonly, and by long practice established as a reasonable use. Factors to consider are: size of lot in question; nature of the primary use; use made of adjacent lots; economic structure of the area; and actual incidents of similar use in the area.” (citation omitted).

The definition of accessory uses is also referred to in a 1974 Colorado case in Young, *supra* footnote 94, page 197:

“An accessory or incidental use is a use customarily incident to the principal use, and so necessary or commonly to be expected in conjunction therewith that it cannot be supposed the ordinance was intended to prevent it.” (citation omitted)

* * * * *

“The storage of construction vehicles in a garage is unlawful in a district where residential garages are permitted but commercial uses are proscribed.” Id. footnote 2, page 199.

There is nothing about Kahn-struction Company, Ltd that is “customarily incidental to” the residence or that “serves” the use of the structure as a residence. The fact that Petitioner is remodeling his own home is a cover for and distraction to the fact that his job is to manufacture cabinets and other wood products for other residences. He

should not be permitted to operate his business under the guise that it is akin to a small hobby workshop. His business is not a traditional use found on residential sites, such as a shed, garage, swimming pool, all of which enhance the residential use. The business here actually detracts from the space available for residential use; the manufacturing operation is not an improvement for next homeowner at this site, like a shed or swimming pool.

Moreover, even if the use were a legitimate professional office, it does not comply with the area restrictions in the statute. Kahn-struction Company occupies 3200 sq. ft for manufacturing the products in the basement of the home. Mr. Kahn testified on direct examination that the total square footage of his house is 9035 sq. feet. He testified the basement is the same size as the first floor, or 3200 sq. feet. The second floor and loft area are 2400 sq. feet and 165 sq. feet, respectively. Using these figures from Mr. Kahn's testimony, the basement work area is over 35%. $(3200 \text{ sq. ft. (basement)} \div 9035 \text{ (total sq. ft of house)}) = 35.4\%$. In addition, Petitioner stated he maintains an office on another floor for Kahn-struction Company, which adds to the square footage of his operation.

BCZR limits the professional office to 25% of the square footage of the residence. The size of Kahn-struction Co. Ltd not only exceeds the area permitted by BCZR, it illustrates that the use is a principal use, not accessory to the residential use of the site.

Contrary to Petitioner's claim, the CBA is not restricted to the dictionary definition of artist. Nor is the denial of the use here a referendum on the quality of work performed by Mr. Kahn in his business. The CBA must consider the limited and historic use of professional offices in the home, including the traditional concept of artist, as well as the ability of Mr. Kahn to operate his business in the manufacturing and business zones where the use is clearly provided. Petitioner deliberately complicates the case here in order to provide an economic advantage, to the detriment of the neighborhood. Common sense and prudence are called for and must prevail.

In Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990), the Court wrote:

"Thus, we have said that a statute must be construed in context, because the meaning of the 'plainest language may be governed by the context in which it appears.'... In this regard, words in a statute must be read in a way that advances

the legislative policy involved. ... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. ... Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent."

Judge Cathell emphasized a guiding principle of statutory construction in Marzullo, supra at 190-191:

"Furthermore, there are certain instances where it is appropriate to consider other factors when interpreting a statute, . . . They include the fact that we do not set aside common experience and common sense when construing statutes."

POSTSCRIPT

The focus of Petitioner's case throughout the hearing was that Petitioner is a type of "artist" which is permitted as an accessory use in the R.C. 2 zone. Petitioner did not seek relief under any other provision of the statute, nor under any other statute. For this reason, our office did not address any other the other "professionals" in the statute, nor focus on any other language. Even so, we maintain the position that Petitioner here is not a professional as that term is used for home offices in BCZR. It would be inconsistent with the statutory scheme to expand the term "professional" or "artist" to his occupation when there is no evidence that the County Council intended the terms to include cabinet making and manufacturing.

"Under the doctrine of *ejusdem generis*, when general words in a statute follow the designation of particular things, classes, or subjects, general words will usually be construed to include only those things, classes, or subjects in the same general natures as those specifically mentioned." Linkus v. Md. St. Bd. Of Heating, etc., 114 Md.App. 262, 278 (1997).

"The term 'similar professional person' does not include a consulting firm and lobbyist ... " Keefe Co. v. District of Columbia Board of Zoning-Adjustment, 409 A.2d 624 (1979).

The Court of Special Appeals refused to expand the term professional in Levinson v. Montgomery County; 95 Md. App. 307 (1993). The homeowner was an ophthalmologist who moved his medical practice and optical dispensary from an office zone to the basement of his home. The appellate Court ruled the statute permitting a professional home office for a doctor or health practitioner did not include the doctor's sale of

eyeglasses and contact lenses. The technical expertise to fit eyeglasses and contact lenses did not fit the definition of "professional."

The courts have rejected insurance brokers, real estate brokers and even accountants as professionals permitted to maintain a home office. Salkin, Patricia American Law of Zoning 5th Edition, §19:21-19:23. Similarly, the CBA here in other cases has refused to expand "professional" to include real estate brokers (Case 00-184-X) and tax return preparers, (Case 06-009-XA).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2010, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to Frank Borgerding, Esquire, 409 Washington Avenue, Suite 600, Towson, Maryland 21204, Attorney for Petitioner(s).

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
for Baltimore County



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

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JUN - 3 2010

June 3, 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**

Russ & Brenda Kahn
14225 Longnecker Road
Glyndon, MD 21071

Dear Mr. & Mrs. Kahn:

RE: Case: 2010-0173-SPH, 14225 Longnecker Road

Please be advised that your appeal of the above-referenced case was received in this office on April 13, 2010. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco
Director

TK:kl

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Richard Deurer & Nancy Baldwin, 14219 Longnecker Rd., Reisterstown 21136
Neil Kravitz, 14207 Longnecker Road, Boring 21020
Code Enforcement

APPEAL

Petition for Special Hearing
14225 Longnecker Road
S/e side of Longnecker Rd., 2920' +/- n/e of Piney Grove Rd.
4th Election District – 3rd Councilmanic District
Legal Owners: Russ & Brenda Kahn
Case No.: 2010-0173-SPH

Petition for Special Hearing (December 11, 2009)

Zoning Description of Property

Notice of Zoning Hearing (January 12, 2010)

Certification of Publication (The Jeffersonian – January 21, 2010)

Certificate of Posting (January 16, 2010) by Linda O'Keefe

Entry of Appearance by People's Counsel (December 23, 2009)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet – None

Citizen(s) Sign-In Sheet – One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit

1-14 As shown on attached Exhibit Sheet

Protestants' Exhibits:

1-3 Photographs

Miscellaneous (Not Marked as Exhibit)

1. Active Violation Case Documents from Code Enforcement

Deputy Zoning Commissioner's Order (DENIED – March 15, 2010)

Notice of Appeal received on April 13, 2010 by Mr. & Mrs. Kahn

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
See attached cover letter

date sent June 3, 2010,kl

APPEAL

Petition for Special Hearing
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S/e side of Longnecker Rd., 2920' +/- n/e of Piney Grove Rd.
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Timothy Kotroco, Director of PDM
See attached cover letter

date sent June 3, 2010, kll

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JUN - 3 2010

BALTIMORE COUNTY
BOARD OF APPEALS

Address List

Petitioner:

Russell and Brenda Kahn
14225 Longnecker Road
Glyndon, MD 21071

Interested persons:

Richard Deurer
Nancy Baldwin
14219 Longnecker Road
Reisterstown, MD 21136

Neil Kravitz
14207 Longnecker Road
Boring, MD 21020

Interoffice:

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney

Russ & Brenda Kahn
14225 Longnecker Road
Glyndon, Maryland 21071

Russ & Brenda Kahn
14225 Longnecker Road
Reisterstown, Maryland 21136

April 12th, 2010

Deputy Zoning Commissioner for Baltimore County
Jefferson Building
105 West Chesapeake Avenue
Suite 103
Towson, Maryland 21204

Re: Request an Appeal Hearing on a Decision

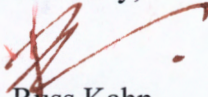
Sir:

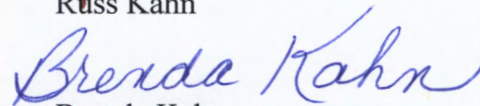
We would like to request that an appeal hearing be arranged on the following decision:

Petition for Special Hearing
Case No. 2010-0173-SPH
Property: 14225 Longnecker Road
(decision attached)

Fee for such hearing request is attached.

Sincerely,


Russ Kahn


Brenda Kahn

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APR 13 2010

RCP# 52062 \$3.25.00 APPEAL FEE.

3/15/10

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SE side of Longnecker Road; 2920 feet		
NE of Piney Grove Road	*	DEPUTY ZONING
4 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(14225 Longnecker Road)		
	*	FOR BALTIMORE COUNTY
Russ and Brenda Kahn	*	CASE NO. 2010-0173-SPH
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal property owners, Russ and Brenda Kahn. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a request to allow a cabinetry business to operate from the basement of the residence of the homeowners. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief were Petitioners Russ and Brenda Kahn. Appearing as Protestants opposed to the relief were Richard Deurer and Nancy Baldwin of 14219 Longnecker Road and Neil S. Kravitz of 14207 Longnecker Road in Reisterstown. There were no other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular-shaped and consists of approximately 5.938 acres, more or less, zoned R.C.2. The property is located in a wooded area northeast of the intersection of Longnecker Road and Piney Grove Road, with Hanover Pike (Route 30) to the west and Butler Road to the east, in a rural area north of Reisterstown in Baltimore County. As shown on the site plan, Petitioners' road is a private road extending from Longnecker Road that serves Petitioners' and several other properties located in the wooded area. Petitioners purchased the property in 2003 and the property is presently

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Date 3.15.10

By pm

improved with a two-story single-family dwelling built in 2006. Mr. Kahn indicated he purchased the lot with a vision to build his custom home and operate his high-end cabinetry business in a workshop to be located in the basement. He built his home in 2006 -- though it is not yet completely finished -- and began operating his business there in January 2007. He indicated he was unaware of any prohibition on doing so. He also maintained that neighbors were aware of his desire to run his cabinetry business from his home when he moved in.

Apparently, there have been ongoing difficulties between Petitioners and their neighbors for some time. Petitioners attempted to obtain special hearing and variance relief related to a potential subdivision of their property several years ago, which was opposed by several neighbors, including the Protestants that opposed the instant request for zoning relief. Mr. Kahn indicated that following an appeals hearing related to the subdivision request in August 2009, he was made aware of a complaint made to the County regarding his business being run out of his home. A Baltimore County Code Inspections and Enforcement Correction Notice (Case No. CO 0062671) was issued by Code Inspector David Kirby on August 12, 2009 for an alleged illegal business in the home. Thereafter, on October 21, 2009, Mr. Kirby issued a Citation for the alleged illegal business in the home. Photographs were taken showing a large, commercial-style workshop in Petitioners' basement. As a result of the Correction Notice and Citation, Petitioners filed the instant Petition for Special Hearing.

Mr. Kahn believes his use of the property to operate a cabinetry business is permissible in the R.C.2 Zone. He offered several theories under Section 1A01.2 of the B.C.Z.R. that his business should be allowed to continue. First, under Section 1A01.2.B.9.c of the B.C.Z.R., Mr. Kahn contends his business qualifies as a "home occupation" accessory use as that term is defined in the B.C.Z.R. Section 101 of the B.C.Z.R. defines a home occupation as:

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By [Signature]

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; and in connection with which no commodity is 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.

Mr. Kahn also submitted a copy of the Section 101 of the Zoning Commissioner's Policy Manual ("Z.C.P.M."), which interprets the various clauses in the definition of home occupation. Of particular interest to Mr. Kahn is the reference to "... 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." The Z.C.P.M indicates that this statement is included to limit the type of equipment used in a home occupation. It also indicates that although a sewing machine or *circular saw* (emphasis added) qualifies as "domestic" does not permit its unlimited use. It must be secondary, minor and associated with the principal dwelling use. Mr. Kahn felt it was instructive that the interpretation included a circular saw, which is one of the tools used in his cabinetry business.

He also believes his business is permitted under Section 1A01.2.B.9.d of the B.C.Z.R. This section permits the following by right in the R.C.2 Zone:

Offices or studios of physicians, dentists, lawyers, architects, engineers, *artists* (emphasis added), musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee.

Mr. Kahn submitted an article from the "Wikipedia, the free encyclopedia" Website pertaining to the term "artist," which was marked and accepted into evidence as Petitioners' Exhibit 2. He briefly discussed the highlights of the article, which indicate that the definition of an "artist" is

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Date 3.15.10

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By pm

wide-ranging and covers a broad spectrum of activities related to creating art, practicing the arts, and/or demonstrating an art. It derives definitions from the ancient Greeks and the Middle Ages to include "a follower of a pursuit in which skill comes by study or practice;" a "creative person;" "someone able to do a work better than others, so the skilled excellency was underlined, rather than the activity field." The present day concept of an artist may include "a person who expresses themselves through a medium." It "describes those who create within the context of 'high culture' in the context of drawing, painting, sculpting, acting, dancing, writing, filmmaking, photography and music -- people who use imagination, talent, or skill to create works that may be judged to have an aesthetic value." The article also provides a fairly exhaustive list of examples of "art" and "artists," but does not include carpentry or woodworking.

Mr. Kahn also sought to support his argument that he is an artist by differentiating himself from "manufacturing" and submitted another article from "Wikipedia, the free encyclopedia" Website pertaining to that subject, which was marked and accepted into evidence as Petitioners' Exhibit 3. He stressed that unlike the custom products he creates, manufacturing is a more standardized process and is most commonly applied to industrial production in which raw materials are transformed into finished goods on a large scale. Conversely, Mr. Kahn individually makes his products by hand to the unique specifications of his particular customer. Examples of his custom products were submitted as postcard advertisements that were marked and accepted into evidence as Petitioners' Exhibits 4A through 4E. Each of these postcards contain a photograph depicting his work, including a bed frame, kitchen cabinetry, a decorative closet, an entertainment unit, and a library bookcase. Obviously, Mr. Kahn's woodwork is impressive, but the questions remain as to whether his expertise qualifies him as an "artist" and whether his woodshop would qualify as an "office or studio" under Section 1A01.2.B.9.c of the B.C.Z.R.

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Date 3.15.10

By JB

As a practical matter, Mr. Kahn also believes his operating of a cabinetry business from his home will have no detrimental impacts, visual or otherwise, on the community and in particular his neighbors. Several documents were submitted in support of this contention. The first was a site plan, marked and accepted into evidence as Petitioners' Exhibit 5, which shows Petitioners' property and the nearby properties, with the distances in feet between the properties labeled on the plan. The second was an aerial photograph, marked and accepted into evidence as Petitioners' Exhibit 6, which also shows the distances between the properties. The third and fourth documents were topographical maps showing the larger area (including the subject property and surrounding properties) between Hanover Pike and Butler Road, as well as a more detailed area of Petitioners' property, which were marked and accepted into evidence as Petitioners' Exhibits 7 and 8, respectively. These maps show the steep grades that Mr. Kahn believes supports his contention that his property sits relatively low in a valley, which acts as a visual buffer and also a sound barrier from other nearby properties. This is also shown on photographs of the property that were marked and accepted into evidence as Petitioners' Exhibits 9A through 9G.

Notwithstanding the above, Mr. Kahn indicates that his business is fully contained in the dwelling, with no exterior signage and no other exterior evidence of his business. He also indicated that delivery of fine woods and plywood materials for his business occurs approximately only once every three weeks. In short, Mr. Kahn contends that he is an artist and should be permitted to operate his cabinetry business as an office or studio from his home, and he also does not believe there can be any prohibition on the woodshop contained in his home or deliveries of materials to the home because he continues to work on his home, which is not complete as shown in the aforementioned photographs that were accepted into evidence as Petitioners' Exhibits 9D through 9F.

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Date 3.15.10

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By [Signature]

Testifying in opposition to Petitioners' requested relief were Mr. Kravitz and Mr. Deurer, and Ms. Baldwin. These neighbors believe that it goes contrary to the zoning and the rural character of the area for Petitioners to be permitted to operate a woodworking and cabinetry business from the home. It entails the use of substantial woodworking machines and, most importantly, involves frequent deliveries of lumber materials to the subject property. The deliveries customarily involve the use of a large flatbed truck as depicted in the photographs, which were collectively marked and accepted into evidence as Protestants' Exhibit 1. These photographs show a flatbed delivery truck traveling on the private road from Longnecker Road. Protestants maintain that this private road is not designed for commercial use and its use in this manner presents traffic and safety issues for the other neighborhood residents. The photographs also showed a box-type truck (Budget Rent-a-Car) on Petitioners' property and leaving the property, which is apparently utilized to make deliveries of their finished cabinetry products. In sum, the Protestants are opposed to Petitioners' request and do not believe the cabinetry business qualifies as an artist studio or office according to the Zoning Regulations. Hence it should not be permitted in the R.C.2 Zone.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated January 6, 2010 which indicates that it opposes the request to allow a cabinetry business to operate from the basement of a residence located on the subject property. This request would have significant land use implications and would be inconsistent with the purposes of the property's zoning classification. According to Section 1A01.2 of the B.C.Z.R., the preferred use in an R.C.2 Zone is agriculture with permitted agricultural ancillary uses, such as a farmer's roadside stand and produce stand. Allowing a business of this type to operate in the community would undermine the land use and intent of the R.C.2 zoning classification. Despite the residential development over the years, this

ORDER RECEIVED FOR FILING

Date 3-15-10

6

By PJ

area is still predominantly agricultural in nature and is not in close proximity to any commercial corridor.

Petitioners have made novel and interesting arguments in support of their request to operate a cabinetry business from the basement of their residence. Petitioners contend that Mr. Kahn's business qualifies as a "home occupation" under Sections 1A01.2.B.9.c and 101 of the B.C.Z.R., or that he is an "artist" as that term is used in Section 1A01.2.B.9.d of the B.C.Z.R. and that his workshop constitutes a permitted office or studio.

Although it is clear that Mr. Kahn put a great deal of thought and effort into his presentation, unfortunately I cannot reach the same conclusion he does as to his vocation. Based on the definition of "home occupation" contained in Section 101 of the B.C.Z.R. and interpreted in the Z.C.P.M., Mr. Kahn's cabinetry business is not a home occupation that would be permitted under Section 1A01.2.B.9.c of the B.C.Z.R. In my view, Petitioners' business is not incidental to the main use of the building for a dwelling. In addition, as shown in the photograph of Petitioners' workshop, the mechanical woodworking equipment in the shop goes beyond what would be permissible in a home occupation.

As to the contention that Mr. Kahn's business is that of an art studio or office, that is rejected as well. While it is possible that an "artist" can refer to many different fields of endeavor, it is my responsibility in this context to review the regulation at issue and interpret it as to its intended and most consistent ordinary meaning. I do not interpret the wording of Section 1A01.2.B.9.d of the B.C.Z.R. that permits "[o]ffices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons ..." as broadly as Petitioners would prefer. Petitioners' cabinetry business is not a complementary and relatively innocuous use as compared with the "other professional persons" listed in that section, including physicians, dentists, lawyers, architects, engineers, artists, and musicians that can easily be contained within

ORDER RECEIVED FOR FILING

Date 3.15.10

7

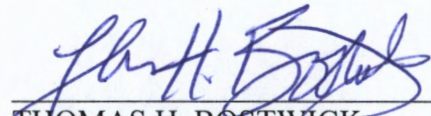
By ms

the home. In my judgment, Mr. Kahn's impressive woodworking skills do not cast him as an "artist" and his woodshop is not an "office or studio" within the meaning of that section. I am also troubled by the extent of deliveries that come to Petitioners' home and do not believe the consistent commercial traffic is in keeping with the purposes of this agricultural zoning classification. In my view, the business would be detrimental to the rural / residential character of this community.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's request for special hearing should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 15th day of March, 2010, that Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a request to allow a cabinetry business to operate from the basement of the residence of the homeowners be and is hereby **DENIED**.

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


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

ORDER RECEIVED FOR FILING

Date 3.15.10

By ph



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

March 15, 2010

RUSS AND BRENDA KAHN
14225 LONGNECKER ROAD
GLYNDON MD 21071

RUSS AND BRENDA KAHN
14225 LONGNECKER ROAD
REISTERSTOWN MD 21136

Re: Petition for Special Hearing
Case No. 2010-0173-SPH
Property: 14225 Longnecker Road

Dear Mr. and Mrs. Kahn:

Enclosed please find the decision 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 from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Sincerely,

A handwritten signature in cursive script, appearing to read "Th. H. Bostwick".

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

Enclosure

c: Richard Deurer and Nancy Baldwin, 14219 Longnecker Road, Reisterstown MD 21136
Neil S. Kravitz, 14207 Longnecker Road, Boring MD 21020
David Kirby, Baltimore County Code Enforcement Officer
Christina Moscati, Baltimore County Code Enforcement

12/11/09
2010-0173-SPH

Note to File: I advised Petitioner, Mr. Kahn, of the option of filing the pending matter as a "Home Occupation", but he chose to file the petition as submitted.

JCM



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 4225 Longmeade Rd Reisterstown 21136
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 Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

*a request to allow a customary business to operate from the
basement of the residence of the owners.*

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.

Contract Purchaser/Lessee:

Name - Type or Print _____

Signature _____

Address _____ Telephone No. _____

City _____ State _____ Zip Code _____

Attorney For Petitioner:

Name - Type or Print _____

Signature _____

Company _____

Address _____ Telephone No. _____

City _____ State _____ Zip Code _____

Legal Owner(s):

Ross Kahn

Name - Type or Print _____

Signature _____

Name - Type or Print _____

Signature _____

4225 Longmeade Road 410 429-9040
Address Telephone No.

Reisterstown MD 21136
City State Zip Code

Representative to be Contacted:

Name _____

Address _____

City _____

State _____

Zip Code _____

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 2010-0173-SPH

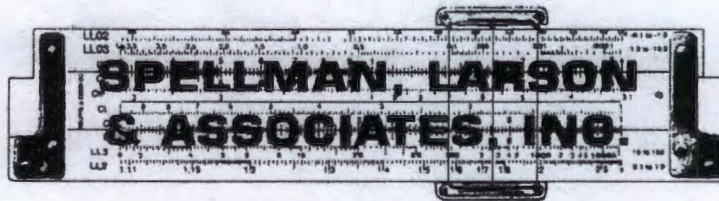
Reviewed By Jen Date 12-11-09

REV 9/15/98

ORDER RECEIVED FOR FILING

Date 3-15-10

By pm



ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
TOWSON, MARYLAND 21204
TEL (410) 823-3535 / FAX (410) 825-5215

**LEGAL DESCRIPTION TO ACCOMPANY PETITION
FOR SPECIAL HEARING
KAHN PROPERTY
14223&14225 LONGNECKER ROAD**

BEGINNING for the same at the intersection of Piney Grove Road and Longnecker Road and running along the centerline of Longnecker Road 390' more or less to the center line of a private 16.5' right of way thence 2920.00 feet more or less from the center line of Longnecker Road to the place of beginning of the subject property thence running along the center line of the 16.5' private right of way for lines of division along firstly the center line of the 16.5' private right of way north 49 degrees 53 minutes 30 seconds east 120.67 feet north 31 degrees 53 minutes 30 seconds east 189.12 feet north 40 degrees 06 minutes 00 seconds east 337.02 feet north 47 degrees 34 minutes 00 seconds east 29.05 feet to a point in the center line of the said 16.5' private right of way thence for lines of division south 42 degrees 49 minutes 40 seconds east 445.18 feet thence south 54 degrees 12 minutes 30 seconds west 86.63 feet thence south 47 degrees 30 minutes 20 seconds west 576.03 feet thence north 43 degrees 35 minutes 00 seconds west 334.00 feet to the place of beginning.

Said property being known as 14223&14225 Longnecker Road.

Containing 5.94 acres of land more or less.

Located in 4th Election District 3rd Councilmanic District



DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (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

0173

Petitioner:

Russ Kahn

Address or Location:

14225 Longmeadow Road Pikesville MD 21136

PLEASE FORWARD ADVERTISING BILL TO

Name:

Address:

SAME

Telephone Number:

410 429-5040

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: # 2010-0173-SPH

14225 Longnecker Road

S/east side of Longnecker Road, 2920 feet +/- n/east of Piney Grove Road

4th Election District — 3rd Councilmanic District

Legal Owner(s): Russ & Brenda Kahn

Special Hearing: request to allow a cabinetry business to operate from the basement of the home owner.

Hearing: Friday, February 5, 2010 at 9:00 a.m. in Room 106, Jefferson Building, 111 West Chesapeake 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.

J 01/273 Jan. 21

227270

CERTIFICATE OF PUBLICATION

1/21, 2010

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 1/21, 2010.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATHHEWS

DATE: 1/17/10

Case Number: 2010-0173-SPH

Petitioner / Developer: MR. & MRS. KAHN

Date of Hearing (Closing): FEBRUARY 5, 2010

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
14225 LONGNECKER ROAD

The sign(s) were posted on: JANUARY 16, 2010



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 - 666 - 5366
(Telephone Number of Sign Poster)

TO: PATUXENT PUBLISHING COMPANY
Thursday, January 21, 2010 Issue - Jeffersonian

Please forward billing to:

Russ Kahn
14225 Longnecker Road
Reisterstown, MD 21136

410-429-5040

NOTICE OF ZONING HEARING

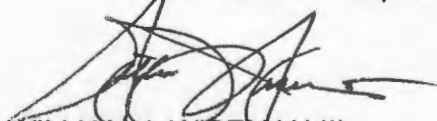
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2010-0173-SPH

14225 Longnecker Road
S/east side of Longnecker Road, 2920 feet +/- n/east of Piney Grove Road
4th Election District – 3rd Councilmanic District
Legal Owners: Russ & Brenda Kahn

Special Hearing request to allow a cabinetry business to operate from the basement of the home owners.

Hearing: Friday, February 5, 2010 at 9:00 a.m. in Room 106, County Office Building,
111 West Chesapeake 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.



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management
January 12, 2010

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: 2010-0173-SPH

14225 Longnecker Road

S/east side of Longnecker Road, 2920 feet +/- n/east of Piney Grove Road

4th Election District – 3rd Councilmanic District

Legal Owners: Russ & Brenda Kahn

Special Hearing request to allow a cabinetry business to operate from the basement of the home owners.

Hearing: Friday, February 5, 2010 at 9:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Mr. & Mrs. Kahn, 14225 Longnecker Road, Reisterstown 21136

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, JANUARY 21, 2010.**
- (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.



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

PP
10/26/10

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

June 10, 2010

NOTICE OF ASSIGNMENT

CASE #: 10-173-SPH

IN THE MATTER OF: Russ and Brenda Kahn
Legal Owner/Petitioner
14225 Longnecker Road, Glyndon

RE: Findings of Fact and Conclusion of Law issued March 15, 2010 by the Deputy Zoning Commissioner that the Petitioner for Special Hearing to allow and approve a cabinetry business to operate from the basement of the residence of the homeowners . filed pursuant to Section 500.7 of the BCZR was denied.

ASSIGNED FOR: WEDNESDAY, JULY 28, 2010 at 10: 00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Theresa R. Shelton
Administrator

c: Petitioner/Property Owner/Appellant

: Russ and Brenda Kahn

Richard Deurer
Nancy Baldwin
Neil Kravitz

Peter Max Zimmerman
People's Counsel for Baltimore County
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney

Russ A. Kahn
Brenda L. Kahn
14225 Longnecker Road
Glyndon, Maryland 21071

June 16th, 2010

County Board of Appeals of Baltimore County
Jefferson Building
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: CASE NO. 10-173-SPH
ATTN: Theresa Shelton

Ms. Shelton:

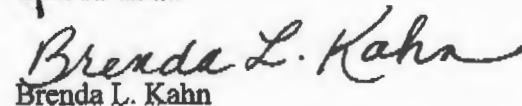
We request a postponement of the currently assigned date of Wednesday, July 28th, 2010 for the case noted above.

We will out of town on that date.

We trust that you will contact by mail with the approval or disapproval of our request.

Sincerely,


Russ A. Kahn


Brenda L. Kahn

RECEIVED
JUN 21 2010
BALTIMORE COUNTY
BOARD OF APPEALS

Cc:
County Attorney for Baltimore County 410 296-0931
People's Counsel for Baltimore County 410 823-4236



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 22, 2010

Russell and Brenda Kahn
14225 Longnecker Road
Glyndon, MD 21071

RE: IN THE MATTER OF: Russ and Brenda Kahn
Legal Owners/Petitioners
14225 Longnecker Road, Glyndon
Case No.: 10-173-SPH

Dear Mr. and Mrs. Kahn:

This will acknowledge receipt of your correspondence dated June 16, 2010, received in this office via facsimile, in which a continuance has been requested of the July 28, 2010 hearing in the subject matter. The continuance is granted.

The Board sits on Tuesday, Wednesday and Thursday of each week. The docket is currently scheduled through the middle of August 2010. This matter has been re-assigned to Tuesday, October 26, 2010.

Enclosed is the Notice of Postponement and Re-Assignment.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,

A handwritten signature in black ink, appearing to read "Theresa R. Shelton".

Theresa R. Shelton
Administrator

Enclosure

c(w/Encl.): People's Counsel for Baltimore County



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

June 22, 2010

NOTICE OF POSTPONEMENT AND REASSIGNMENT

CASE #: 10-173-SPH IN THE MATTER OF: Russ and Brenda Kahn
Legal Owners/Petitioners
14225 Longnecker Road, Glyndon

RE: Findings of Fact and Conclusion of Law issued March 15, 2010 by the Deputy Zoning Commissioner that the Petitioner for Special Hearing to allow and approve a cabinetry business to operate from the basement of the residence of the homeowners . filed pursuant to Section 500.7 of the BCZR was denied.

which had been assigned to 7/28/10 has been postponed by mutual agreement; and has been re-assigned as follows:

ASSIGNED FOR: TUESDAY, OCTOBER 26, 2010 at 10: 00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Theresa R. Shelton
Administrator

c: Petitioner/Property Owner/Appellant : Russ and Brenda Kahn

Richard Deurer
Nancy Baldwin
Neil Kravitz

Peter Max Zimmerman
People's Counsel for Baltimore County
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

October 28, 2010

NOTICE OF DELIBERATION

CASE #: 10-173-SPH

IN THE MATTER OF: Russ and Brenda Kahn
Legal Owner/Petitioner
14225 Longnecker Road, Glyndon

RE: Findings of Fact and Conclusion of Law issued March 15, 2010 by the Deputy Zoning Commissioner that the Petitioner for Special Hearing to allow and approve a cabinetry business to operate from the basement of the residence of the homeowners . filed pursuant to Section 500.7 of the BCZR was denied.

Having concluded this matter on 10/26/10 a public deliberation has been scheduled for the following:

DATE AND TIME : THURSDAY, JANUARY 6, 2011 at 9:30 a.m.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs (People's Counsel only) are due on
Friday, December 3, 2010 no later than 4:30 p.m.

(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Theresa R. Shelton
Administrator

C: Counsel for Petitioner/Property Owner/Appellant : Francis X. Borgerding, Jr., Esquire
Petitioner/Property Owner/Appellant : Russ and Brenda Kahn

Richard Deurer
Nancy Baldwin
Neil Kravitz

Peter Max Zimmerman
People's Counsel for Baltimore County
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
Nancy C. West, Assistant County Attorney
John Beverungen, County Attorney



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

January 25, 2010

Mr. & Mrs. Kahn
14225 Longnecker Rd.
Reisterstown, MD 21136

Dear: Mr. & Mrs. Kahn

RE: Case Number 2010-0173-SPH , 14225 Longnecker Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on December 11, 2009. This letter is not an approval, but only a **NOTIFICATION**.

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

WCR:lnw

Enclosures

c: People's Counsel

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

FROM: Dennis A. Kennedy, ^{DAK}Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For January 4, 2010
Item Nos. 2010-0166, 173, 177, 178,
180 and 181

DATE: January 5, 2010

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

DAK:CEN:cab

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-01052010 -NO COMMENTS.doc

TB 2/5
9am

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: January 6, 2010

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: 14225 Longnecker Road

RECEIVED

INFORMATION:

Item Number: 10-173

JAN 06 2010

Petitioner: Russ & Brenda Kahn

ZONING COMMISSIONER

Zoning: RC 2

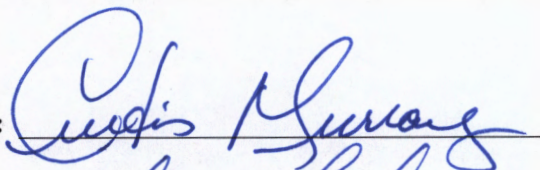
Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

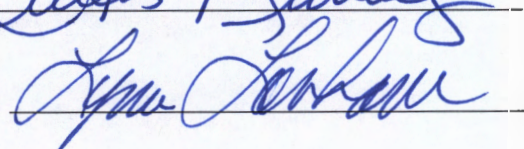
The Office of Planning opposes the special hearing request to allow a cabinetry business to operate from the basement of the residence located on the subject property. This request would have significant land use implications and would be inconsistent with the purposes of the property's zoning classification. According to Section 1A01.2 of the BCZR, the preferred use in an RC 2 zone is agriculture with permitted agricultural ancillary uses, such as a farmer's roadside stand and produce stand. Allowing a business of this type to operate in the community would undermine the land use and intent of the RC 2 zoning classification. Despite the residential development over the years, this area is still predominantly agricultural in nature and is not in close proximity to any commercial corridor.

For further information concerning the matters stated here in, please contact Jessie Bialek at 410-887-3480.

Prepared by:



Division Chief:
AFK/LL: CM





BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

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

December 23, 2009

ATTENTION: Zoning Review Planners

Distribution Meeting Of: December 21, 2009

Item Numbers: 0166, 0173

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.

3. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor



Beverley K. Swaim-Staley, Secretary
Neil J. Pedersen, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: Jan. 4, 2010

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

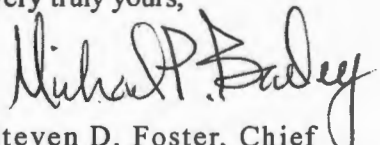
RE: Baltimore County
Item No. 2010-0173-SPH
14225 LONGNECK RD
KAHN PROPERTY
SPECIAL HEARING

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. 2010-0173-SPH.

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

Very truly yours,


For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/mb

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.sha.maryland.gov

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 14225 Longnecker Road; SE/S Longnecker *
 Road, 2920' NE of Piney Grove Road * ZONING COMMISSIONER
 4th Election & 3rd Councilmanic Districts *
 Legal Owner(s): Russ & Brenda Kahn * FOR
 Petitioner(s) * BALTIMORE COUNTY
 * 10-173-SPH

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party 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 and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
 Deputy People's Counsel
 Jefferson Building, Room 204
 105 West Chesapeake Avenue
 Towson, MD 21204
 (410) 887-2188

RECEIVED

DEC 23 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 2009, a copy of the foregoing Entry of Appearance was mailed to Russ & Brenda Kahn, 14225 Longnecker Road, Reisterstown, MD 21136, Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

DIVISION OF CODE INSPECTIONS AND ENFORCEMENT

ACTIVE VIOLATION CASE DOCUMENTS

CO-0062671
14225 Longnecker Rd

BALTIMORE COUNTY MARYLAND
INTER-OFFICE CORRESPONDENCE

DATE: December 22, 2009

TO: W. Carl Richards, Jr.

FROM: Meghan Ferguson, Chief
Division of Code Inspections & Enforcement

SUBJECT: Item No: 2010-0173-SPH
Legal Owner/Petitioner: Russ and Brenda Kahn
Contract Purchaser:
Property Address: 14225 Longnecker Rd
Location Description: South east side of Longnecker Road; 2920 feet +/-
north east of Piney Grove Road.

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s) regarding the hearing date: **David W. Kirby**

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

Case No: CO-0062671
Correction Notices
Citation
Photographs

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Christina Moscati in Room 213 in order that the appropriate action may be taken relative to the violation case.

MF/cm
C:David W. Kirby, Code Enforcement Officer



CODE INSPECTIONS AND ENFORCEMENT CORRECTION NOTICE

CASE NUMBER CO 0062671	PROPERTY TAX ID 1600003966	DATE ISSUED 8/12/09
NAME(S): RUSSEL A. KATH Brenda Kath		
MAILING ADDRESS 14225 LONGNECKER ROAD		
CITY Glyndon	STATE MD	ZIP CODE 21136
VIOLATION ADDRESS Same		
CITY BALTIMORE	STATE MARYLAND	ZIP CODE

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

RESIDENTIAL ZONE CLASSIFICATION

- ☐ DR1 ☐ DR2 ☐ DR3.5 ☐ DR5.5 ☐ DR10.5 ☐ DR16
☐ RC2(1A01) ☐ RC4(1A03) ☐ RC20 & 50 (1A05) ☐ RC6(1A07)
☐ RC3(1A02) ☐ RC5(1A04) ☐ RCC (1A06) ☐ RC7 (1A08)
☐ OTHER: _____

NON-RESIDENTIAL CLASSIFICATION

- ☐ BL (230) ☐ BR (236) ☐ BM (233)
☐ MR (240) ☐ ML (253) ☐ MH (256)
☐ OTHER: _____

BALTIMORE COUNTY ZONING REGULATIONS (B.C.Z.R.)

AUTHORITY TO ENFORCE ZONING REGULATIONS: 32-3-102; 32-3-602; 32-3-603; 32-4-114

- | | |
|---|--|
| ☐ 101; 102.1: Definitions; general use | ☐ 415A: License/ remove untagged recreation vehicle |
| ☐ 1B01.1: DR Zones-use regulations | ☐ 415A: Improperly parked recreation vehicle |
| ☐ 428: License/ Remove all untagged/ inoperative or damaged/ disabled motor vehicle(s) | ☐ 415A: One recreational vehicle per property |
| ☐ 1B01.1D: Remove open dump/ junk yard | ☐ 410: Illegal Class II trucking facility |
| ☐ 431: Remove commercial vehicle(s) | ☐ 400: Illegal accessory structure placement. |
| ☐ 101; 102.1: Remove contractors equip. storage yard | ☐ 1B02.1; 270; 421.1: Illegal kennel. Limit 3 dogs |
| ☐ 101; 102.1; ZCPM: Cease service garage activities | ☐ 102.5: Residential site line violation /obstruction |
| ☐ 402: Illegal conversion of dwelling | ☐ 408B: Illegal rooming/ boarding house |
| ☒ 101; 102.1; ZCPM: Illegal home occupation | ☐ BCC: 32-3-102; 500.9 BCZR; ZCPM:
Violation of commercial site plan and/or zoning order |

BALTIMORE COUNTY CODE (B.C.C)

- | | |
|--|--|
| ☐ 13-7-112: Cease all nuisance activity | ☐ 35-2-301: Obtain building/ fence/ sign permit |
| ☐ 13-7-115: County to abate nuisance & lien costs | ☐ 18-2-601: Remove all obstruction(s) at street, alley, road |
| ☐ 13-7-310: Remove all trash & debris from property | ☐ 13-7-310(2): Remove bird seed / other food for rats |
| ☐ 13-7-312: Remove accumulations of debris, materials, etc | ☐ 32-3-102: Violation of development plan/ site plan |
| ☐ 13-7-201(2): Cease stagnant pool water | ☐ IBC 115; BCBC 115: Remove/ Repair unsafe structure board and secure all openings to premise |
| ☐ 12-3-106: Remove animal feces daily | ☐ 13-7-401; 13-7-402; 13-7-403: Cut & remove all tall grass and weeds to three (3) inches in height |
| ☐ 35-5-208(a)(c): Seal exterior openings from rodents & pests | |
| ☐ 13-4-201(b)(d): Store garbage in containers w/tight lids | |

OWNER OCCUPIED HOUSING (B.C.C)

- | | |
|---|--|
| ☐ 35-5-302(a)(1): Unsanitary conditions. | ☐ 35-5-302(a)(2): Store all garbage in trash cans |
| ☐ 35-5-302(a)(3): Cease _____ infestation from prop. | ☐ 35-5-302(b)(1): Repair exterior structure |
| ☐ 35-5-302(b)(1)(2): Repair decorative trim, cornices, etc | ☐ 35-5-302(b)(1)(3): Repair exterior extensions |
| ☐ 35-5-302(b)(1)(4): Repair chimney & similar extentions | ☐ 35-5-302(b)(1)(5): Repair metal/wood surfaces |
| ☐ 35-5-302(b)(1)(6): Repair defective door(s) / window(s) | ☐ 35-5-302(b)(1)(7): Repair defective fence |

INVESTMENT PROPERTY (B.C.C)

- | | |
|--|---|
| ☐ 35-2-404(a)(1)(i): Remove hazardous or unsafe condition | ☐ 35-2-404(a)(1)(ii): Repair ext. walls / vertical members |
| ☐ 35-2-404(a)(1)(iii): Repair roof or horizontal members | ☐ 35-2-404(a)(1)(iv): Repair exterior chimney |
| ☐ 35-2-404(a)(1)(v): Repair ext. plaster or masonry | ☐ 35-2-404(a)(1)(vi): Waterproof walls/ roof /foundations |
| ☐ 35-2-404(a)(1)(vii): Repair exterior construction (see below) | ☐ 35-2-404(a)(1)(2): Remove trash, rubbish, & debris |
| ☐ 35-2-404(a)(1)(3): Repair /remove defective exterior sign(s) | ☐ 35-2-404(a)(4)(i)(ii): Board & secure. Material to match building color of structure |

OTHER VIOLATIONS OR REMARKS:

ILLEGAL BUSINESS IN HOME.

☒ NOTICE POSTED AND MAILED

POTENTIAL FINE: ☒ \$200 ☐ \$500 ☐ \$1000 per day, per violation and to be placed as a lien upon your tax bill.

COMPLIANCE DATE:

9/15/09

INSPECTOR NAME:

DAVID W. KIRBY

PRINT NAME (Rev 9/05)

AGENCY

PHOTOGRAPHIC RECORD

Facility No.: FA 020/096 Record No.: CO 0062671
Date of Photograph(s): 6/12/09 14225 LOMBRECKER RD



I HEREBY CERTIFY that I took 3 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

Dave Kirby
(Enforcement Officer)

Facility No.

Date of Photo

210



I HEREBY CERTIFY that I took 3 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

Dave Kirby
(Enforcement Officer)

Facility No.

Date of Photo

210



I HEREBY CERTIFY that I took 3 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

Dave Kirby
(Enforcement Officer)



CODE ENFORCEMENT & INSPECTIONS CITATION

CASE NUMBER CO 0062671	PROPERTY TAX ID 1600003966	ZONE RC2
NAME(S): RUSSEL A. KATHN BRENDA KATHN		
MAILING ADDRESS: 14225 LONGNECKER RD		
CITY Reisterstown	STATE MD	ZIP CODE 21136
VIOLATION ADDRESS: SAME		
CITY	STATE MARYLAND	ZIP CODE
VIOLATION DATES: 8/12/09 Thru 11/18/09		

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

101; 102.1; ZCPM

ILLEGAL Business from Home
IN A RC ZONE.

Pursuant to Section 1-2-217, Baltimore County Code, civil penalty has been assessed, as a result of the violation(s) cited herein, in the amount indicated:

\$ 5000.00

A quasi-judicial hearing has been pre-scheduled in room 116, 111 W. Chesapeake Ave, Towson, Maryland, 21204, for:

DATE: 11/18/09

TIME: 9:00 A.M. / P.M.

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are true and correct to the best of my knowledge, information, and belief.

Inspector Printed Name: DAVID W. KILBY

INSPECTOR SIGNATURE: *David W. Kilby* Date: 10/21/09
PRINT NAME AGENCY

PHOTOGRAPHIC RECORD

Facility No.: FA 0201096 Record No.: CO 0062671

Date of Photograph(s): 11/06/09 14225 Lorincker Road



11/01/2008



11/01/2008



11/01/2008



11/01/2008



11/01/2008



11/01/2008

I HEREBY CERTIFY that I took 6 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

11/06/09

Dave Kirby
(Enforcement Officer)

Facility No.: _

Date of Photo: _

11/06/09



I HEREBY CERTIFY that I took 6 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

Dave Kirby
(Enforcement Officer)

Facility No.:

Date of Photo

1



I HEREBY CERTIFY that I took 6 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

11/06/09

Dave Kirby
(Enforcement Officer)

Facility No.:

Date of Photo

1



I HEREBY CERTIFY that I took 6 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

11/06/09

Dave Kirby
(Enforcement Officer)

Facility No.:

Date of Photo

1



I HEREBY CERTIFY that I took 6 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

11/06/09

Dave Kirby
(Enforcement Officer)

Facility No.:

Date of Photo

2



I HEREBY CERTIFY that I took 6 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

11/06/09

Dave Kirby
(Enforcement Officer)

Patricia Zook - 14225 Longnecker Road

From: Patricia Zook
To: Kirby, David
Date: 1/28/2010 12:24 PM
Subject: 14225 Longnecker Road
CC: Bostwick, Thomas

Good afternoon -

The case file for 2010-0173-SPH (CO-0062671) was just brought to our yesterday. In reviewing the active violation case documents, there is a note to let you know when the petition is scheduled for a hearing. Below is the hearing information:

CASE NUMBER: 2010-0173-SPH

14225 Longnecker Road

Location: SE side of Longnecker Road; 2920 feet NE of Piney Grove Road.

4th Election District, 3rd Councilmanic District

Legal owner: Russ and Brenda Kahn

SPECIAL HEARING A request to allow a cabinetry business to operate from the basement of the homeowners.

Hearing: Friday, 02/05/2010 at 9:00 AM, Room 106, County Office Building, 111 West Chesapeake Avenue, Towson MD

I was not sure if the Zoning Review Office had informed you of the upcoming hearing date.

Patti Zook
Baltimore County
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson MD 21204

410-887-3868

pzook@baltimorecountymd.gov

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Russ and Brenda Kahn 10-173-SPH

DATE: January 6, 2011

BOARD/PANEL: Lawrence Wescott, substituting for Lawrence Stahl
Maureen Murphy
Robert Witt

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Hearing to determine whether the Petitioner qualifies as an artist under the BCZR to operate a cabinetry business from the basement of the residence.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

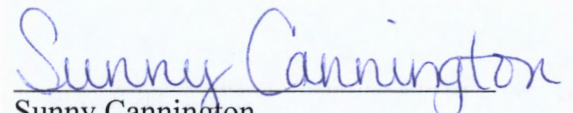
- The Board first discussed that Panel member Lawrence Stahl has left the Board to assume another position within the County. Lawrence Wescott, has been appointed to replace Mr. Stahl on this panel. Mr. Wescott reviewed the hearing transcript, evidence and testimony and is qualified to make a decision in this matter.
- The Board determined that the issue in this matter is the definition of the term "artist" which is not explicitly defined in the BCZR.
- The Board discussed that the Petitioner is a craftsman not an artist. The Board determined that it was not the intent of the County Council when writing the BCZR to allow cabinetmakers in the RC Zone where the subject property is located. The Board agreed that the Petitioner is a talented individual and the majority determined that the Petitioner does not qualify as an artist under the spirit and intent of the BCZR, nor under the dictionary definition. However, one panel member feels that the Petitioner may be an artist but due to the spirit and intent of the BCZR, the manufacture of the cabinets should not take place in the Petitioner's home.
- The Board also discussed the definition of "professional person" under the BCZR and the dictionary. The Board majority determined that the Petitioner also does not qualify as a "professional person". One panel member again disagreed about the narrow scope of this definition.
- The Board determined that the County Council, in writing the BCZR, allowed for craftsman such as the Petitioner to operate their crafts in other zones.

DECISION BY BOARD MEMBERS: The Board majority agreed that the Petitioner does not qualify as an artist and therefore cannot operate the cabinetmaking business out of his home.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Petition for Special Hearing.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,


Sunny Cannington

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 2010-6173-5A
DATE 2-5-10

PETITIONER'S SIGN-IN SHEET

[illegible]

CASE NAME _____
CASE NUMBER 2010-0173-59H
DATE 2-5-10

[illegible]

PDM # 040426

2200024688

Lot # 2

PDM # 040427

0419007131

2300000006

14217

2300000005

Lot # 1

1600003965

0402001784

0423001980

14219

14213

0407059840

14211

1600003964

NW 21-I

4 ED

032A3

3 CD

RC 2

1600003966

14225

← SITE

19710253

0423000675

0402002631

PDM # 040483

2200023313

Lot #00001

NW 20-I

OFFICIAL ZONING MAP

032B3

1900006333

2100008222

Case No.: 2010-0173-SPH

Exhibit Sheet

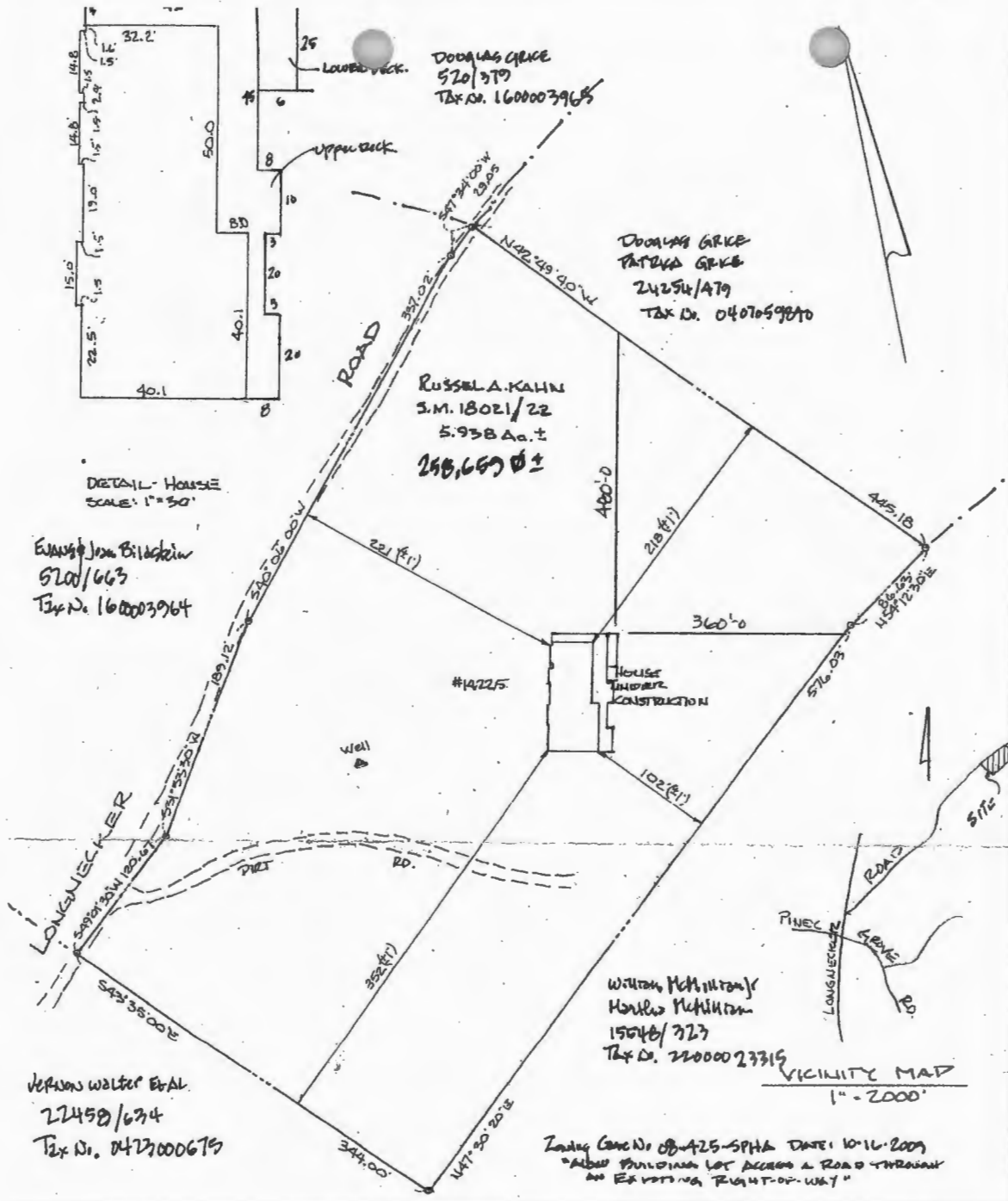
Petitioner/Developer

Protestant

No. 1	Site Plan	Photography
No. 2	Wikipedia online article pertaining to "Artist"	photography
No. 3	Wikipedia online article pertaining to "manufacturing"	photography
No. 4	postcard brochures of Pet's products	
No. 5	Map showing distances to other neighbors	
No. 6	Aerial photo showing the distances to neighbors	
No. 7	topographical map showing grade around Pet's property	
No. 8	closer detail of topographical map showing grade of Pet's prop.	
No. 9 A-G	Photos	
No. 10	Certification of title (Mark Parker)	
No. 11	Opinion on 08-425-SPH/A	
No. 12	Receipt of Supplies 2008-2009	

No. 13 Receipt 2009-2010

No. 14 Receipt of debris 2009-2010



This is to certify that the improvements shown hereon are located in reference to the property lines as monumented based on the information CONTAINED IN THE DEED TO RUSSELL A. KAHN, DATED FEBRUARY 4, 2003 AND recorded in the Land Records of BALTIMORE County, MARYLAND IN LIBER S.M. 18021 FOLIO 027 ETC. This is not a boundary survey nor is it intended as verification of property lines.

RAW TO A COMPANY SPECIAL HEARING

LOCATION SURVEY

#14225 LONGNECKER ROAD

4TH ELECTION DIST. 3RD COUNCILMANIC DIST.

BALTIMORE COUNTY MARYLAND

DATE: OCTOBER 21, 2003

ZONED RC-2

SCALE: 1" = 100'

FLOOD INSURANCE RATE MAP (FIRM) NAME FIRM TITLE "C" (MAYNARD, FORD & CO.)

PERMITS WELL/SEPTIC NOT CHECKED BY CRITICAL NOT HAZARDOUS



PREPARED BY:

**A. L. SNYDER
SURVEYOR, INC.**
13111 HANOVER PIKE
HAMPSTEAD, MD. 210
410-235-7744

PETITIONER'S

EXHIBIT NO.

Artist

From Wikipedia, the free encyclopedia

The definition of an **artist** is wide-ranging and covers a broad spectrum of activities to do with creating art, practicing the arts and/or demonstrating an art. The common usage in both everyday speech and academic discourse is a practitioner in the visual arts only. The term is often used in the entertainment business, especially in a business context, for musicians and other performers (less often for actors). "Artiste" (the French for artist) is a variant used in English only in this context. Use of the term to describe writers, for example, is certainly valid, but less common, and mostly restricted to contexts like criticism.

Contents

- 1 Dictionary definitions
- 2 History of the term
- 3 The present day concept of an 'artist'
- 4 Examples of art and artists
- 5 See also
- 6 Notes
- 7 References

PETITIONER' S

EXHIBIT NO. 2

Dictionary definitions

Wiktionary defines the noun 'artist' (Singular: artist; Plural: artists) as follows:

1. A person who creates art.
2. A person who creates art as an occupation.
3. A person who is skilled at some activity.

The Oxford English Dictionary defines the older broad meanings of the term "artist,"

- A learned person or Master of Arts (now rather obsolete)
- One who pursues a practical science, traditionally medicine,

Manufacturing

From Wikipedia, the free encyclopedia

Manufacturing is the use of machines, tools and labor to make things for use or sale. The term may refer to a range of human activity, from handicraft to high tech, but is most commonly applied to industrial production, in which raw materials are transformed into finished goods on a large scale. Such finished goods may be used for manufacturing other, more complex products, such as household appliances or automobiles, or sold to wholesalers, who in turn sell them to retailers, who then sell them to end users - the "consumers".

Manufacturing takes turns under all types of economic systems. In a free market economy, manufacturing is usually directed toward the mass production of products for sale to consumers at a profit. In a collectivist economy, manufacturing is more frequently directed by the state to supply a centrally planned economy. In free market economies, manufacturing occurs under some degree of government regulation.

Modern manufacturing includes all intermediate processes



Part of a series of articles on Industry



Manufacturing methods

Batch production • Job production

Continuous production

Improvement methods

LM • TPM • QRM

TOC • Six Sigma • RCM

Information & communication

ISA-88 • ISA-95 • ERP

SAP • IEC 62264 • B2MML

Process control

PETITIONER' S

EXHIBIT NO.

3

2/4/2010

THE KAHN-STRUCTION COMPANY, LTD

14225 Longnecker Road
Glyndon, Maryland 21071



RUSS A. KAHN
President

Office: 410 429-5040
Cell: 410 419-5603
Fax: 410 429-5130

CUSTOM CABINETRY - MEASURED DRAWINGS



MASTER BEDSTEAD
Alexandria, Virginia

PETITIONER'S

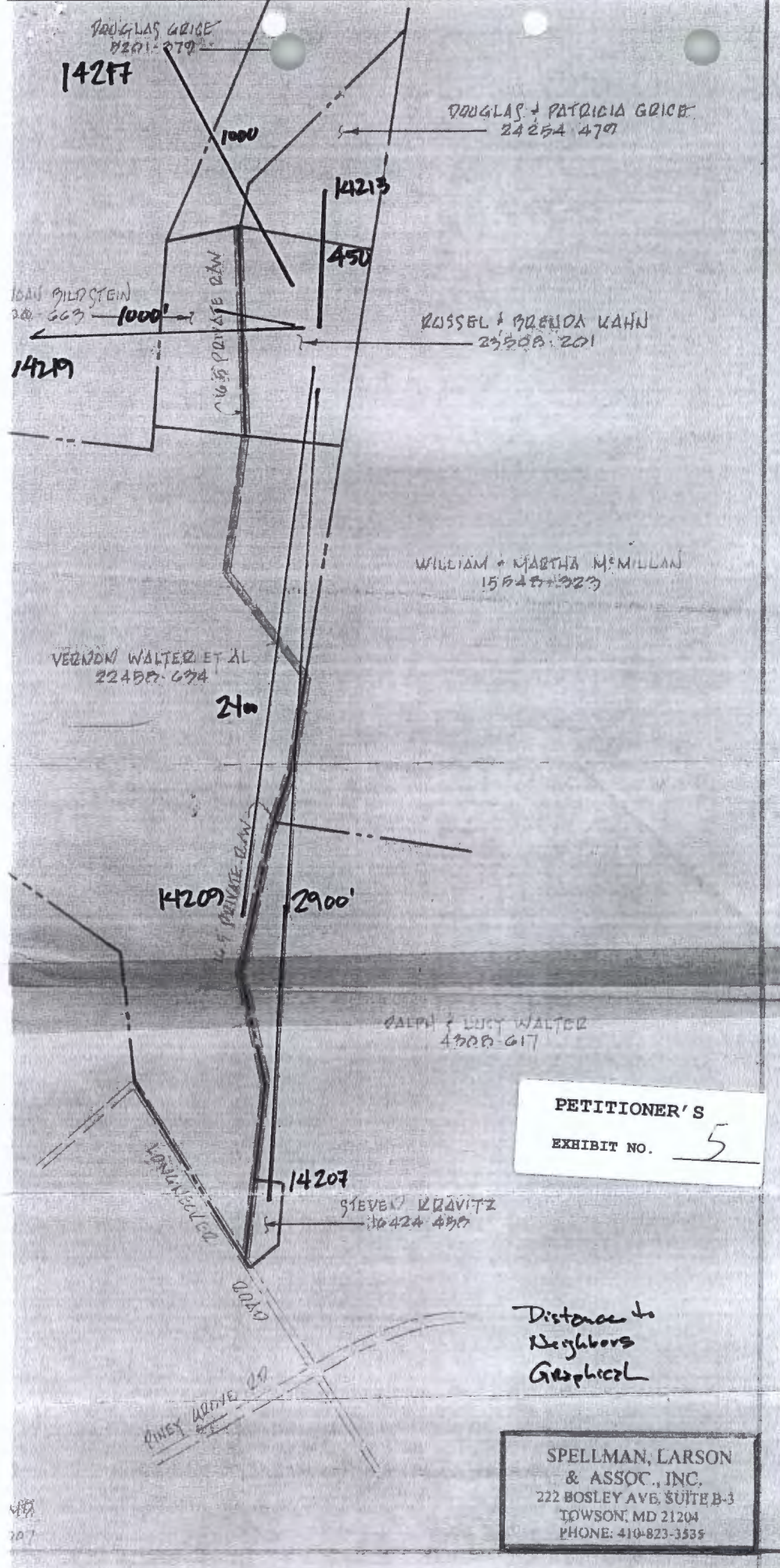
EXHIBIT NO.

4A-E

Interior Designer: Michaela Robinson Interiors
Cabinetry Design: Russ A. Kahn
Cabinetry Built by: The Kahn-Struction Company

NATIONALLY PUBLISHED - RECOGNIZED BY LOCAL MEDIA - AWARD WINNING

Member of the Architectural Woodwork Institute
Maryland Home Improvement Commission License Number 47356
WWW.Kahn-Companies.Com



PETITIONER'S

EXHIBIT NO. 5

Distances to
Neighbors
Graphical

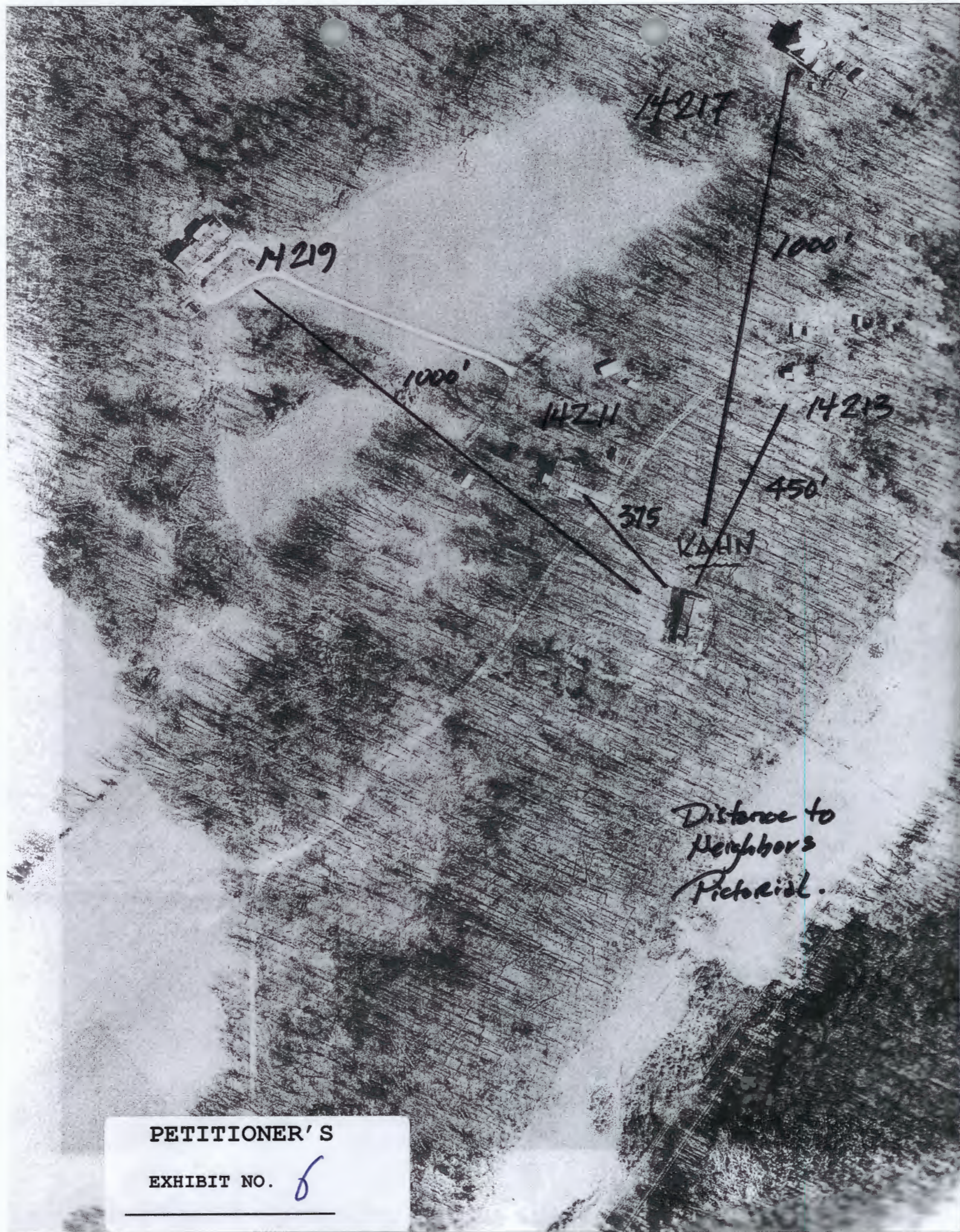
SPELLMAN, LARSON

& ASSOC., INC.

222 BOSLEY AVE, SUITE B-3

TOWSON, MD 21204

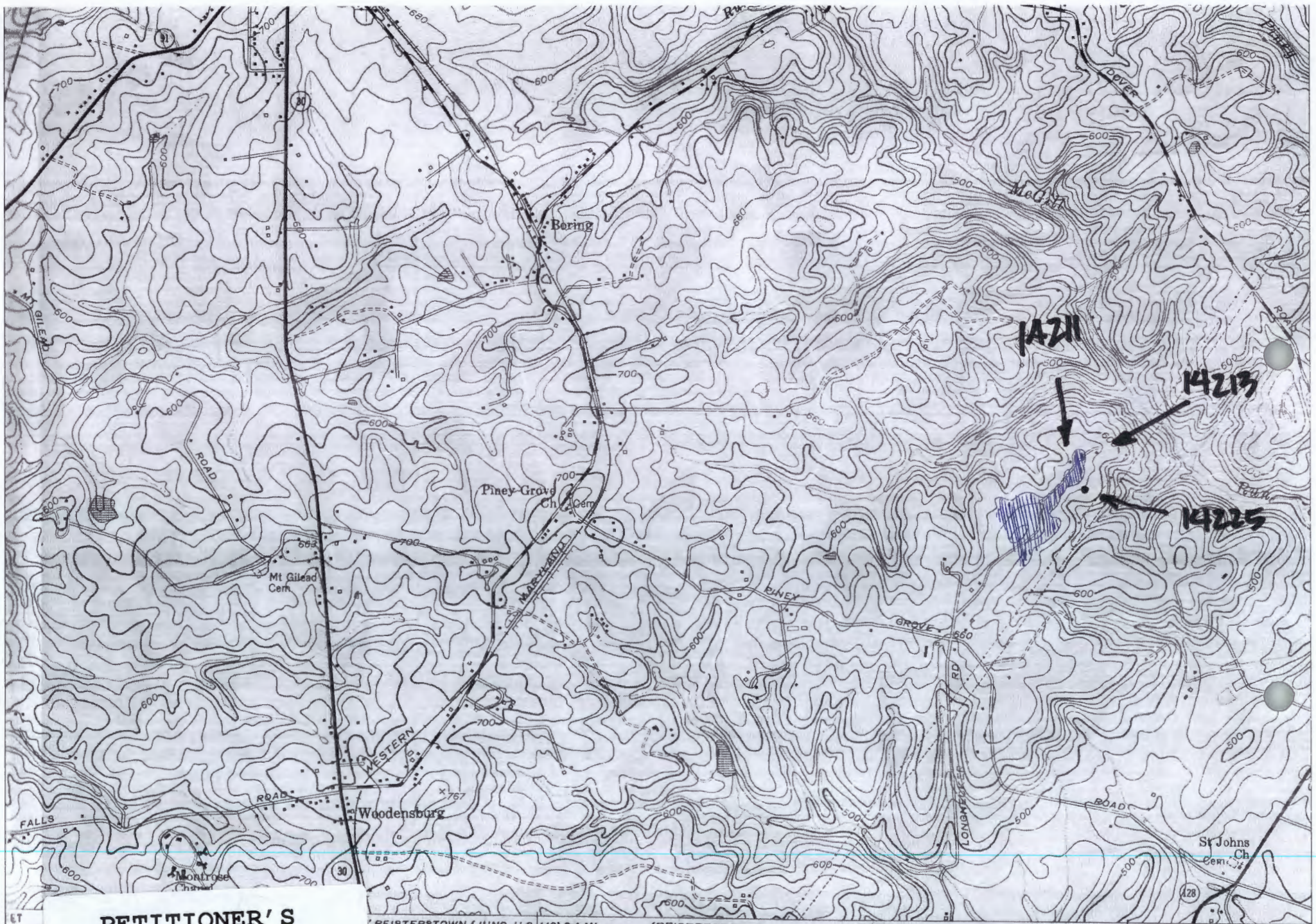
PHONE: 410-823-3535



Distance to
Neighbors
Pictorial.

PETITIONER'S

EXHIBIT NO. 6



PETITIONER'S

EXHIBIT NO. 7

REISTERSTOWN (JUNC. U.S. 140) 2.4 MI.
BALTIMORE 11 MI.

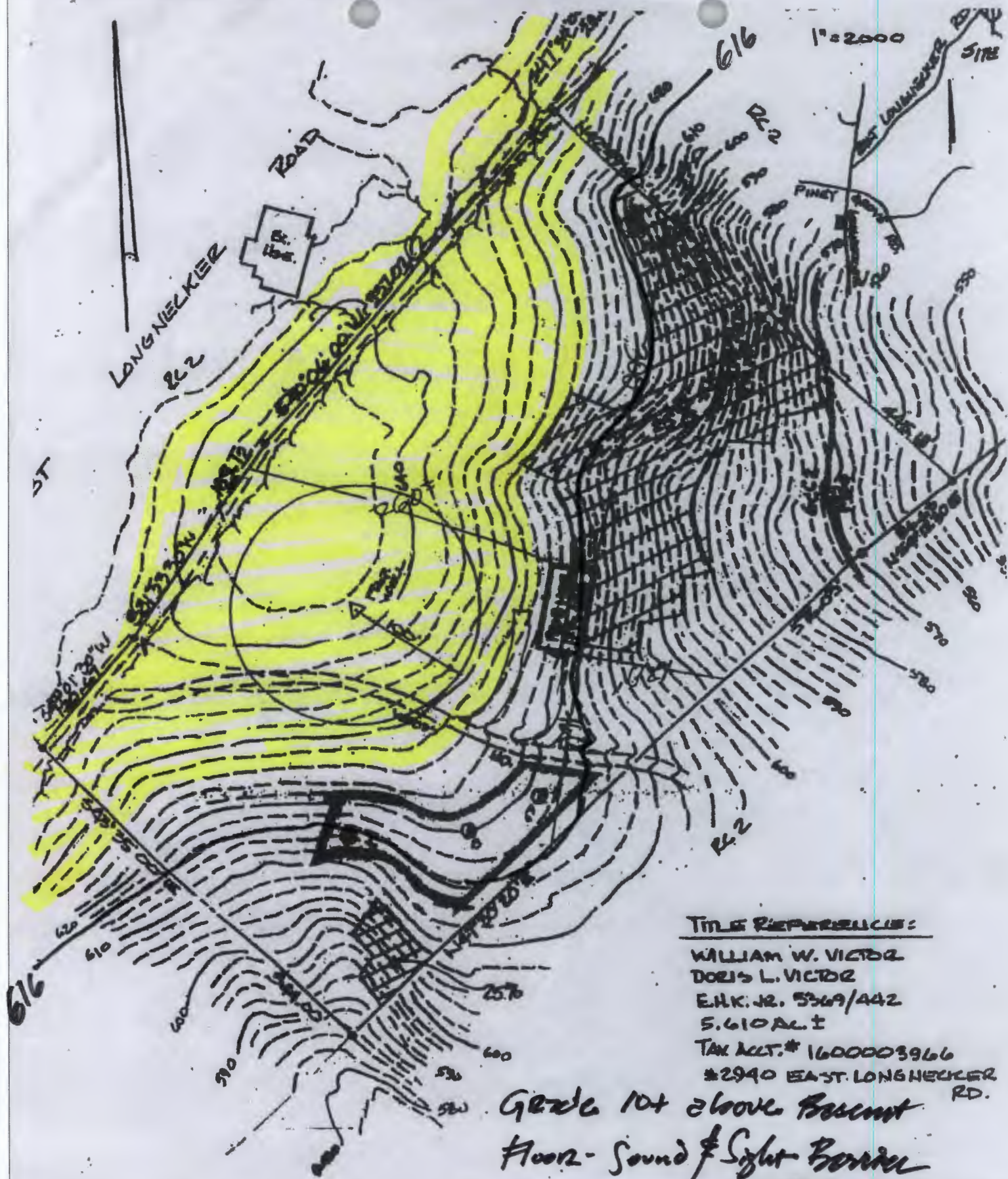
(REISTERSTOWN)
5662 IV NE

20' Contours

SCALE 1:24 000

Grade as Sound & Sight Barrier

1 MILE



TITLE REFERENCES:

WILLIAM W. VICTOR

DORIS L. VICTOR

E.H.K. JR. 5369/442

5.610 AC ±

TAX ACCT. # 1600003966

#2940 EAST LONGNECKER RD.

Grade 10' above Basecut
Floor - Sound & Sight Barrier

Basecut Floor at 616'

PETITIONER'S

EXHIBIT NO. 8



PETITIONER'S

EXHIBIT NO. 9A-6



Photo 2



Photo 3



Photo 4

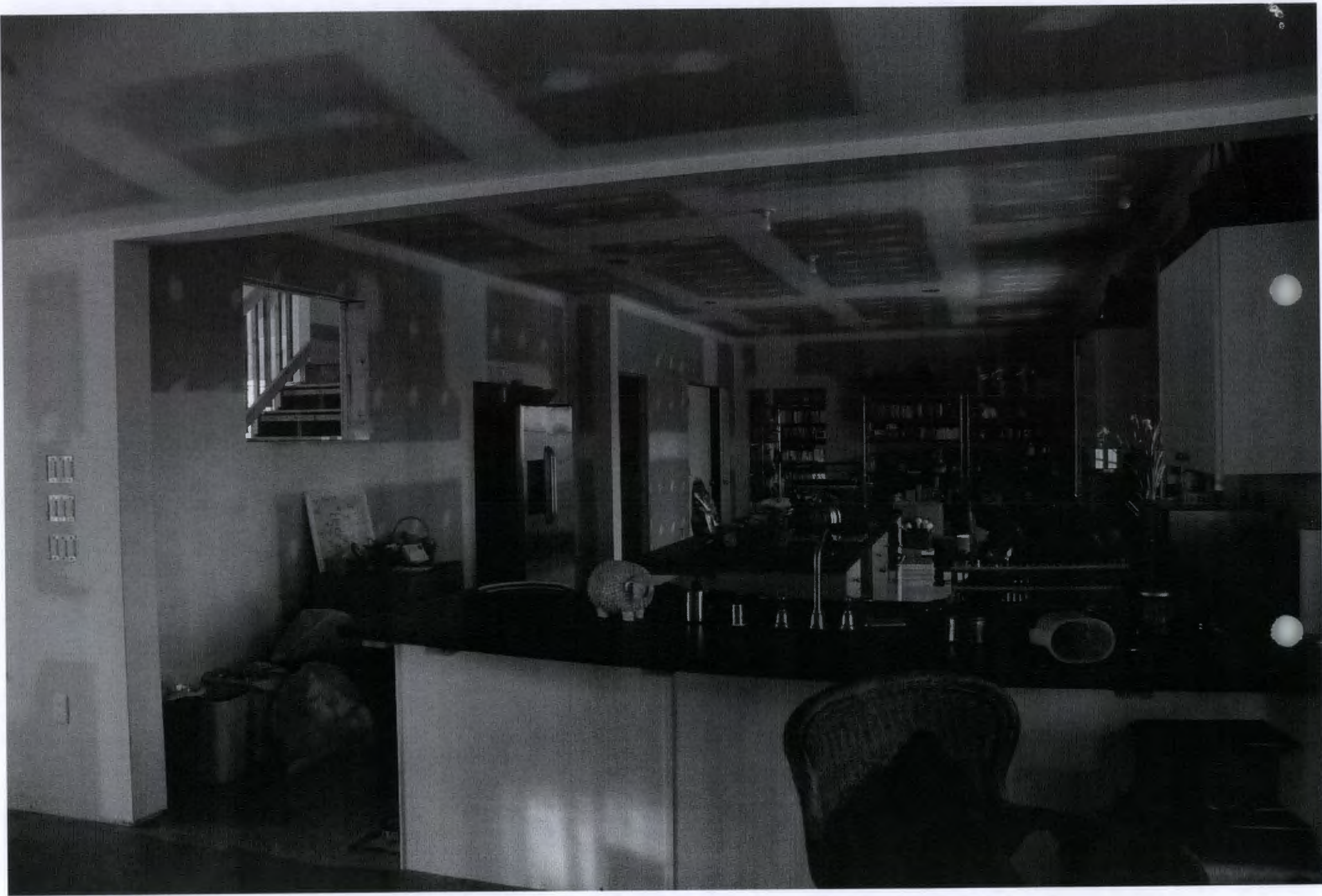


photo 5



Photo 6

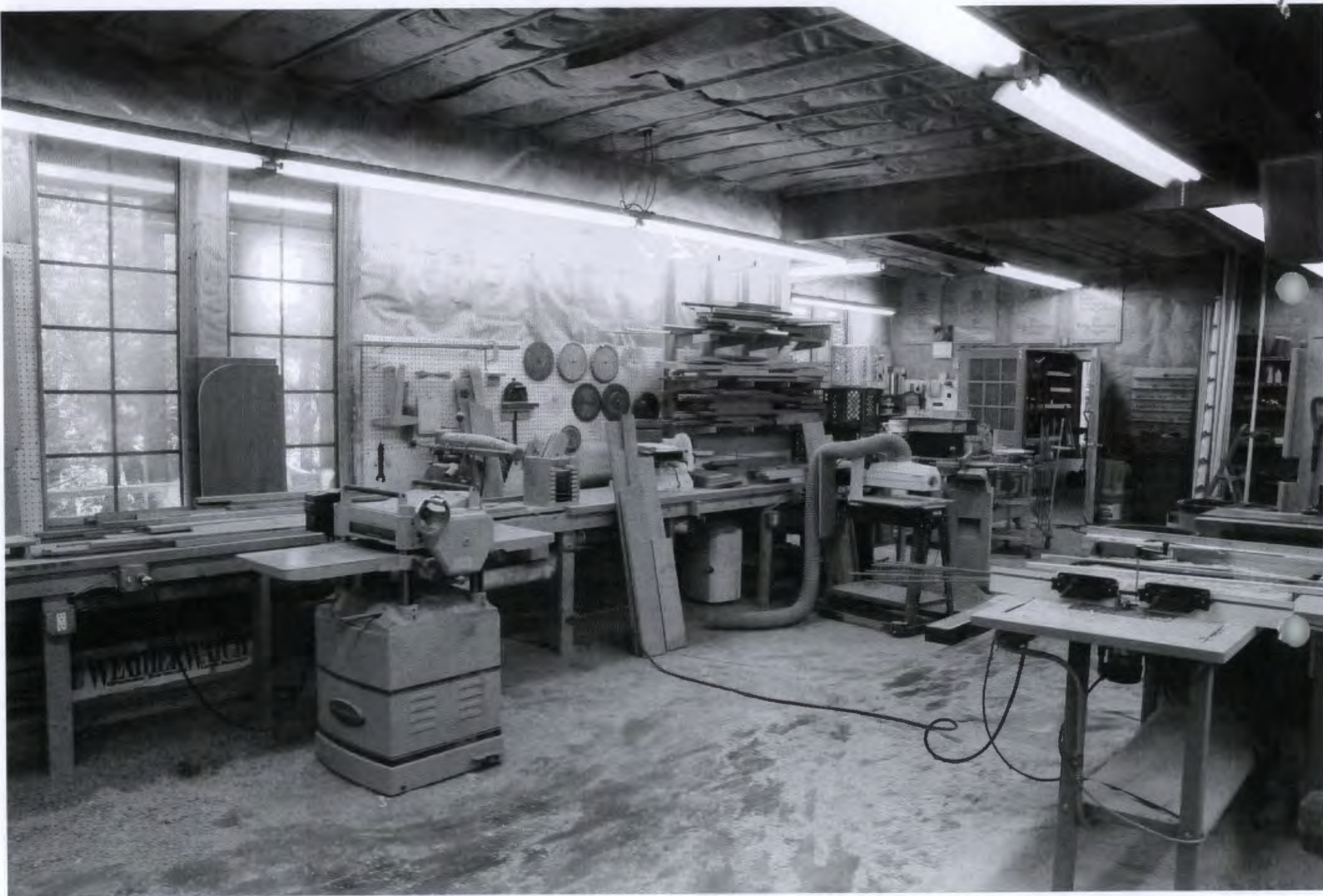


Photo 7

**DANEKER, MCINTIRE, SCHUMM, PRINCE,
GOLDSTEIN, MANNING & WIDMANN, P.C.**

**Attorneys At Law
Suite 2450
1 N. Charles Street
Baltimore, Maryland 21201-3740
(410) 649-4747
Facsimile (410) 649-4758**

**Mark J. Daneker
Direct Dial (410) 649-4753**

**Certification of Title Attorney Pertaining to Right-Of-Way
Servicing 14225 Longnecker Road, Baltimore County, Maryland**

I hereby certify that I am an attorney admitted to practice in the State of Maryland in 1969. I am authorized to practice in all courts of the State of Maryland as well as the United States District Court for Maryland, the Fourth Circuit Court of Appeals, and the United States Supreme Court. I have been a licensed title insurance agent in the State of Maryland for over 30 years. I have performed more than 1000 title examinations over the last 40 years. I have been the attorney of record on numerous occasions in matters pertaining to defects or alleged defects in the title to various properties. I have appeared as an expert witness on title matters in the District Court of Maryland and in the Circuit Court for Baltimore City.

I have examined the chain of title to the property known as 14225 Longnecker Road, Baltimore County, Maryland, consisting of 5.938 acres of land, more or less, presently titled to Russel A. Khan and Brenda Kahn by virtue of a deed dated January 31, 2006 and recorded in the Land Records of Baltimore County in Liber 23508, Folio 201. I have determined that this property has the benefit of a 16.5 foot wide right-of-way established by an Agreement of Right of Way dated February 19, 1910 between Clara E. Walter and Frederick Hundermark and others, including John D. Osborn and Elizabeth J. Osborn, which is recorded in Liber WPC No. 359, folio 52. This Right of Way is commonly referred to as Longnecker Road and connects this property to Piney Grove Road. The chain of title of this property descends directly through various owners from John D. Osborn and Elizabeth J. Osborn. It is significant to note that this Right of Way Agreement specifically states, at page 55, that it is "to be used in common by all the parties hereto, or their heirs and assigns, forever". Each deed in the chain of title includes language assigning the right to use this Right of Way to the grantees.

I have further determined that the Osborn's property consisted of 28 acres. After their death, the property was deeded to their daughter, Bessie A. Osborn in 1934 with the exception of 2.5 acres that had been deeded to Susquehanna Transmission Co. in 1930. The remaining 25.5 acres passed through several owners until 1965 when it was conveyed to C. David Rohde. Beginning in 1968 Mr Rohde subdivided the property by deed descriptions into several parcels, one of which is presently the Kahn property known as 14225 Longnecker Road. At least two others constituted the properties presently known as 14213 Longnecker Road, presently owned by Douglas and Patricia Grice, and 14211 Longnecker Road, presently owned by Evans and Joan Bildstein. Each of those subdivided properties was granted the right to use the Right of Way in question. These deeds document that the use of this Right of Way has not been

PETITIONER' S

EXHIBIT NO.

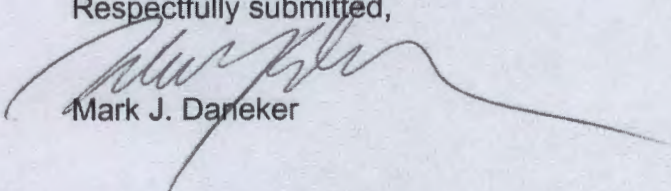
10

deemed by the holders to be restricted so as to prevent subdivision of the original parcels.

I have further examined Maryland case law to determine whether there is any legal authority dealing with a subdivision of properties relying upon a right of way to access the public road. The case of George P. Mahoney, Jr. v. Devonshire, Inc. 86 Md App 624 (1991, cert denied 323 Md 3) is directly on point and coincidentally dealt with another subdivision located on another portion of the same Longnecker Road. The Court of Special Appeals upheld the trial court's decision that the property in question there could be subdivided into six lots, each of which would be entitled to use of the right-of-way. The Court stated, at page 638, "Further, it was not erroneous to permit the increased use of the roadway. It was foreseeable that the property of appellees would be subdivided and the right-of-way required to bear an increased burden of use." The Court further cited, with approval, language in the Restatement of Property Section 488 (1944) stating that easements may be apportioned when the dominant tenement (that is, the property having the benefit of use of the easement) is subdivided. In the Mahoney case, at page 632, the Court cited the Restatement of Property as follows: "Except as limited by the terms of its transfer or by the manner or terms of the creation of the easement appurtenant, those who succeed to the possession of the each of the parts into which a dominant tenement may be subdivided thereby succeed to the privileges of use of the servient tenement authorized by the easement."

It is clear from examination of the original Agreement of Right of Way itself and the subsequent deeds in the chain of title, that there is no such restriction on subdivision or limitation on use of the easement. Accordingly, the Kahns have the right under Maryland law to assign the right to use the Right-of-Way to any property that they might subdivide from their existing parcel.

Respectfully submitted,


Mark J. Daneker

June 4, 2009

Mark J. Daneker, Esq.
Daneker, McIntire, Schumm, Prince,
Goldstein, Manning & Widmann, P.C.
One North Charles Street - Suite 2450
Baltimore, Maryland 21201

IN THE MATTER OF
RUSSELL AND BRENDA KAHN – LEGAL
OWNER/PETITIONER
PETITION FOR SPECIAL HEARING AND
VARIANCE ON THE PROPERTY LOCATED
ON THE E/S LONGNECKER ROAD, 390' N
OF PINEY GROVE ROAD
(14223 AND 14225 LONGNECKER ROAD)

4th Election District
3rd Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 08-425-SPHA
*

* * * * *

OPINION

This matter comes before the Board of Appeals for Baltimore County on appeal of an order of the Zoning Commissioner dated October 28, 2008 in which the Petitioners request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") and Section 32-4-409(c) of the Baltimore County Code ("BCC") to allow a building lot access to a road through an existing right-of-way was denied; and Petitioner's request for Variance from Section 32-4-409(e)(2) of the Baltimore County Code to approve access to the subject property by way of a private use-in-common right-of-way of 3,810' in lieu of the maximum 1,000' was denied. A public de novo hearing was held by the Board on June 10, 2009. Petitioners Russell and Brenda Kahn, were represented by Francis X. Borgerding, Jr., Esquire. Protestants were represented by J. Carroll Holzer, Esquire. Messer's Borgerding and Holzer agreed to submit Post-Hearing Memoranda to the Board in lieu of closing arguments. A public deliberation was held by the Board on August 12, 2009.

Background

The subject property is a rectangular shaped parcel consisting of 5.98 acres, zoned R.C.2, and located at 14225 Longnecker Road in the 4th Election District and the 3rd Councilmanic

PETITIONER' S

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Mr. Daneker was accepted as an expert title attorney and described the investigation he did with regard to the titling of the right-of-way. His title certification with regard to the right-of-way was entered as Petitioner's Exhibit 4. He concluded that the Petitioners had the right of use of the right-of-way and the right to assign the use of the right-of-way to any property they may subdivide. A copy of the original document that granted the right-of-way was entered as Petitioner's Exhibit 5 and the chain of title with regard to the right-of-way stemming to the Kahn's was entered as Petitioner's Exhibit 6 and 7. Mr. Daneker also entered as Petitioner's Exhibit 8 a copy of the Maryland case of Mahoney v. Devonshire, 86 Md. App. 624 (1991), which supports his testimony that a land owner who benefits from a right-of-way may subdivide his property with the use of the right-of-way extending to the subdivided lot.

Mitchell Kellman testified on behalf of the Petitioners and was accepted by the Board as an expert in planning, zoning and development regulations. He testified, in his opinion, Section 32.4-409(c) of the Baltimore County Code applies as the case before the Board involves a right-of-way not a panhandle. He explained that a panhandle would be an access strip held in-fee as an extension of a lot as opposed to a right-of-way, which is not owned by the lot owner. He testified the impact of adding one additional house adjacent to the right-of-way would have a "very minimal impact" and that whatever condition exists on the right-of-way, he did not believe that adding an average of 10 daily trips, as established by Baltimore County on average for one additional lot, through the right-of-way would impact the right-of-way.

Mr. Kellman concluded that the Special Hearing relief should be granted because of the testimony of Mr. Daneker, the title attorney, that the right-of-way existed since 1910, the additional lot is permitted by the BCZR and that it would not burden the existing right-of-way,

the Kahn's want to contribute to the paving of the right-of-way, and it is not a panhandle because it does not have in-fee ownership.

On cross-examination of Mr. Holzer, Mr. Kellman testified that the recommendations of the Baltimore County Office of Planning (Petitioner's Exhibit 12) and Baltimore County Fire Department comments (Petitioner's Exhibit 13) would have to be met in the future in the subdivision process. When asked by Mr. Holzer on cross-examination, if Mr. Kahn was operating a business out of his home, he testified that he did not know.

Russell Kahn, Petitioner, testified that he and his wife have lived at 14225 Longnecker Road for 6 ½ years and works out of his house in the cabinetry business. He is presently improving his kitchen. He testified that he would comply with the Zoning Committee's recommendations presented as Petitioner's Exhibit 11 to include: a paved driveway, a 30x70 turn around at the end of the driveway, 14% grade on the driveway, and placement of trash and a mailbox at Longnecker Road.

The first witness for the Protestants was George W. Mahoney, Jr., who lives at 13634 Longnecker Road. He testified he has driven the right-of-way and that its condition is not very good because of potholes and the egress and ingress due to its width. On cross-examination by Mr. Borgerding, he testified he does not live off of the right-of-way and opposed it in a 1991 case. He said he has not been approached to help pave the right-of-way.

Mr. Richard Deurer testified he moved to the area 13 years ago and appeared at the Zoning Commissioner's hearing. He filmed the right-of-way and the tape was played at the Board hearing. He testified the road is bad and is used more than it was meant to be. He is concerned about a precedent being set for other properties to develop. He said he moved there not to develop but for the beauty of the area. He said there are more deer than people. He said

paving the right-of-way would be bad. On cross-examination by Mr. Borgerding, Mr. Deurer testified that he is happy with the present condition of the right-of-way and does not want it paved. He testified that two homes had been added to the right-of-way since he moved there.

Mr. Neal S. Kravitz testified for the Protestants. Mr. Kravitz lives at the end of the right-of-way at Longnecker Road. He testified his well is 8' from the road and he is concerned about traffic. He declines to participate in paving the right-of-way. He also appeared at the Zoning Commissioner's hearing. On cross-examination by Mr. Borgerding, he testified that he works out of his home and gets deliveries in his business. He has 4 vehicles and does not want to pave the right-of-way. He testified he received a variance in 1975 to operate his business.

Ms. Joan Bildstein also testified for the Protestants. She testified she has lived there for 38 years. She also appeared at the Zoning Commissioner's hearing. Her concerns are that the area is turning into a development. She can subdivide her property also. Adding another home would add more trouble. She is concerned about safety and fire trucks having difficulty. On cross-examination by Mr. Borgerding she testified she doesn't want this road paved because of the cost and her husband's health. She doesn't want the subject lot subdivided. She is happy with the status quo.

Ms. Nancy Baldwin testified for the Protestants and said the County's 1,000-foot limit for panhandles makes sense. She is concerned about safety. She testified there is no land use agreement for the right-of-way. On cross-examination by Mr. Borgerding, she testified that she does not want the right-of-way paved.

Michelle Engelskirch testified for the Protestants. She is a personal trainer. She testified she is not for paving and has been run off the road by Mr. Kahn's people.

Protestants last witness was Mr. David Flowers. Mr. Flowers testified he is a Private Consultant and processes urban planning. He was employed by Baltimore County for 31 years in the Zoning Office, Planning Office and Permits and Development Management. He was accepted as an expert witness in urban planning. He testified he was retained one year ago and visited the site 3 times. He did not attend the Zoning Commissioner's hearing. He testified his impression of the right-of-way is that it is very narrow, consists of dirt and stone, can accommodate 1 car and has numerous turns. He testified that he agrees with Mr. Kellman's testimony that the right-of-way is not a panhandle and the Petition for variance is immaterial. On cross-examination by Mr. Borgerding, Mr. Flowers testified that the property is not in an urban area. He testified there are existing problems on the right-of-way but cannot recommend anything. He said paving will not solve the problem.

On rebuttal, Mr. Borgerding called Mr. Kahn. Mr. Kahn testified that he has contributed to repairs to the right-of-way over the six years.

This concluded the testimony and exhibits. Messer's Borgerding and Holzer agreed to submit post-hearing memoranda.

Decision

After reviewing the testimony, exhibits and post-hearing memoranda, the Board concluded that the driveway to Longnecker Road is not a panhandle driveway but is a right-of-way. This conclusion is supported by Section 32.4-409(b), which requires the owners of adjacent properties to panhandle driveways to have an in-fee ownership of the driveway. None of the adjacent owners in the area have an in-fee ownership of a portion of the driveway. Also the uncontested testimony of Mr. Daneker confirms that the driveway is in fact a right-of-way and the new lot has the right of access to the right-of-way. The uncontested testimony of Mr.

Larson, also confirms that the Petitioner has a right to subdivide their R.C. 2 zoned lot into one additional lot. The testimony of the Protestants centered almost exclusively on the condition of the right-of-way and the impact the new lot would have on it. They testified that it is in lousy shape now and difficult to maneuver and adding an additional lot would only make a bad situation worse. Their testimony indicated that they are not willing to improve the right-of-way such as paving, however, the testimony of the Petitioners indicates they are willing to participate in any improvements. The Board agrees with Mr. Kellman that adding an average of 10 daily trips as established by Baltimore County on average for one additional lot, will not have a detrimental impact on the right-of-way. The Board determined that any traffic conditions would be addressed during the development process for the new lot and therefore are not an issue in the current matter. The Board therefore unanimously agreed that the Petition request for Special Hearing relief to allow a building lot access to Longnecker Road through an existing right-of-way is granted and Petitioner's request for a Variance in the alternative to allow the panhandle driveway is denied as moot.

ORDER

THEREFORE, IT IS THIS 16th day of October, 2009 by the
County Board of Appeals of Baltimore County

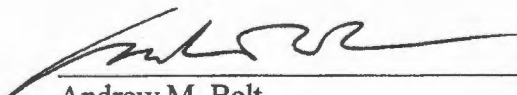
ORDERED that Petitioners request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") and Section 32-4-409(c) of the Baltimore County Code ("BCC") to allow a building lot access to a road through an existing right-of-way, be and the same is hereby GRANTED; and it is furthered

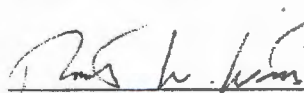
ORDERED that Petitioner's request for Variance from Section 32-4-409(e)(2) of the Baltimore County Code to approve access to the subject property by way of a private use-in-common right-of-way of 3,810' in lieu of the maximum 1,000', be and the same is hereby **DISMISSED AS MOOT**.

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*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Wendell H. Grier, Panel Chair


Andrew M. Belt


Robert W. Witt

2008 - 2009

Receipt of Supplies Via Straight Truck

Since 5-5-08

5-22-08

7-15-08

7-30-08

9-11-08

17 times in 12 months (52 weeks)

10-6-08

6-31-08

11-11-08

11-20-08

12-01-08

12-023-08

1-7-09

1-23-09

2-15-09

3-17-09

5-1-09

5-22-09

5-22-09

PETITIONER'S

EXHIBIT NO.

12

2009 - 2010

Receipt of Supplier Via Straight Truck

Business.

9-23-09	Phys — Delivery to Mail Boxes.
9-25-09	Solids
11-16-09	Phys — Delivery to Mail Boxes
11-16-09	Solids
1-6-10	Solids

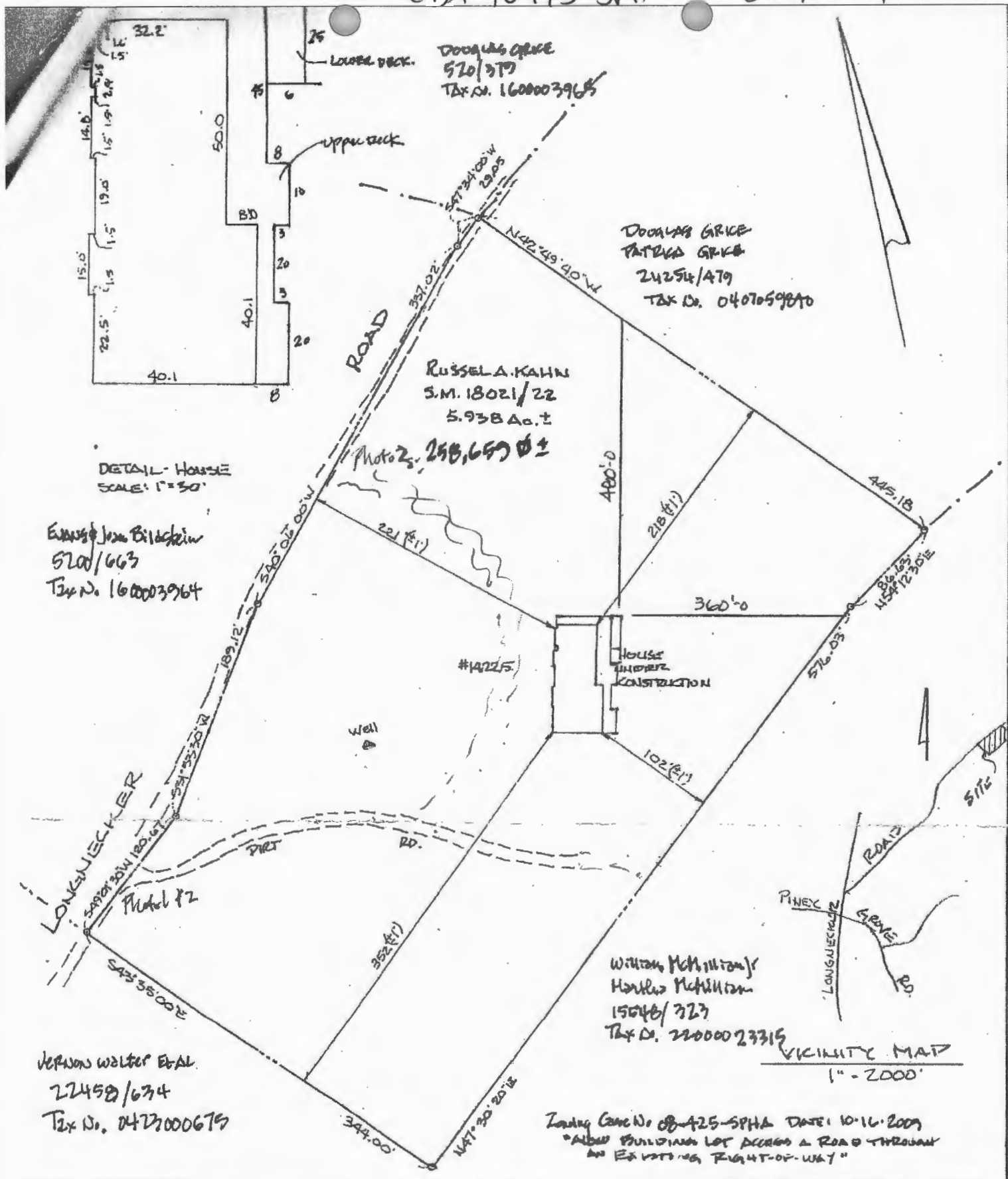
Delivery out.

12-14-09	(approx).	16'-0 Box Truck.
1-28-10		16'-0 Box Truck.

PETITIONER'S

EXHIBIT NO.

13



This is to certify that the improvements shown hereon are located in reference to the property lines as monumented based on the information CONTAINED IN THE DEED TO RUSSEL A. KAHN, DATED FEBRUARY 4, 2003, AND

recorded in the Land Records of BALTIMORE
County, MARYLAND IN LIBERTY S.M. 18021 FOLIO 022 ETC.

This is not a boundary survey nor is it intended as verification of



2009-2010

Receipt of Deliveries for Home Construction

6-17-09 Plywood

7-20-09 Sinks

10-19-09 ACQ Lumber

12-21-09 Flooring Delivery (Attempted)

1-4-10 Flooring Delivery

10-21-09 Delivery to Kevin in Fox Tech, Personal.

PETITIONER'S

EXHIBIT NO.

14

Case No.: 2010-0173-SPH

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	Site Plan	Photographs
No. 2	Wikipedia online article pertaining to "Artist"	photographs
No. 3	Wikipedia online article pertaining to "manufacturing"	photographs
No. 4	postcard brochures of Pet's products	
No. 5	Map showing distances to other neighbors	
No. 6	Aerial photo showing the distances to neighbors	
No. 7	topographical map showing grade around Pet's property	
No. 8	closer detail of topographical map showing grade of Pet's prop.	
No. 9 A-G	Photos	
No. 10	Certification of title (Mark Darcher)	
No. 11	Opinion on or 425-1711	
No. 12	Receipt of Supplies 2008-2009	

No. 13 Receipt 2009-2010

KALW
1073 SP4
2/2010

Photo's



BASF

CD-R
RECORDABLE
ENREGISTRABLE

COMPACT
disc
Recordable



80
1x-16x
80 MIN/700 MB

KALW
1073 SP4
2/2010

PROTESTANT' S

EXHIBIT NO. _____



7/2009

Case No: 10-173-SPT Case Name: Russ and Brenda Kahn

Exhibit List

Tuesday

Party: Petitioners Russ Brenda Kahn Date: 10/26/10

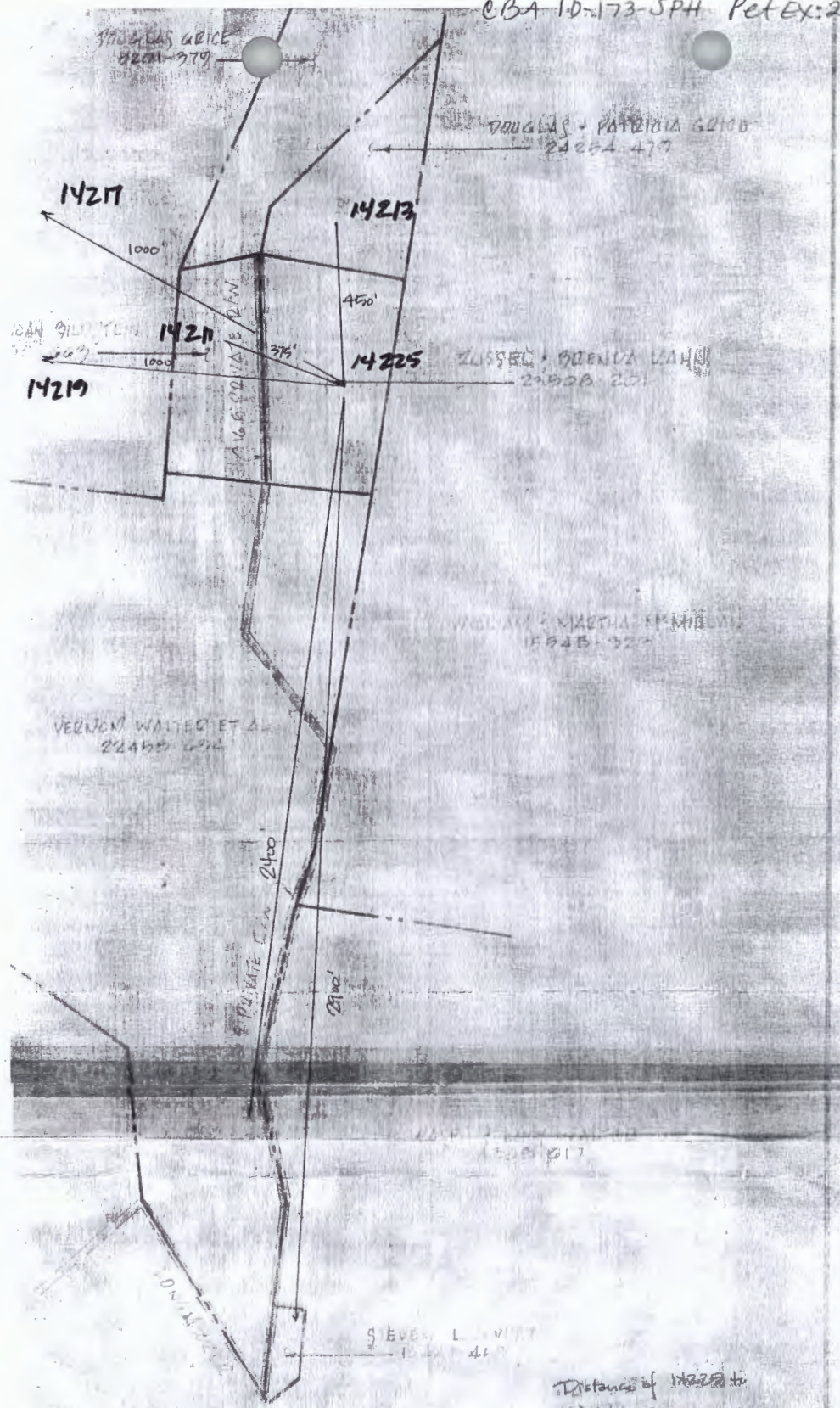
Exhibit No:	Description:
✓ 1	Site Plat of Kahn Property
✓ 2	Diagram of Distances by Pet.
✓ 3	Aerial View with Distances by Pet.
✓ 4	Togo Map with Pet's Highlights
✓ 5	USGS Gradient Map.
✓ 6	Plans of Kahn House
✓ 7	Photo of Shop
✓ 8	Photo of Mrs Kahn's Closet
✓ 9A	Photos Petit House (Ducts)
✓ 9B	Diagram compute
✓ 9C	Finished Product.
✓ 10A	Before Photo
✓ 10B	After Kitchen Photo.
✓ 11A	Schoenbourne Ceiling Before Photo.
12B	VERIFIED BY <u>tro</u> DATE: <u>10/28/10</u>

Case No: 10-173-SP4 Case Name: Russ and Brenda Kahn

Exhibit List

Party: Petitioners Date: 10/26/10

Exhibit No:	Description:
✓ 11B	Schoenbourn After Ceiling Photo
✓ 12A	Before Photo - Billard Room
✓ 12B	Open Photo - Billard Room
✓ 13A	Photo of Kahn Kitchen
✓ 13B	Photo of Kahn Kitchen
✓ 14A	PH Kahn Kitchen Plans
✓ B	↓
✓ C	
✓ D	
✓ E	
✓ F	
✓ 15A	Photo Flat Bed Truck
✓ B	^{photo} PH Intersection Piney G
✓ C	Photo of mailboxes
	VERIFIED BY <u>trw</u> DATE: <u>10/28/10</u>



Distance of 14228 to
Neighboring
Geophysical

7x5
SPILLMAN, LARSON
& ASSOC., INC.
1001 E. AVE. SUTHER
BOWEN, MD 204
PHONE 410-623-3311



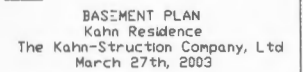
CBA 10-173-SR H Pea Ex. 5



REISTERSTOWN 3.8
4730'
345
(REISTERSTOWN)
5662 IV NE
50' REISTERSTOWN (UNC. U.S. 140) 2.4 MI.
BALTIMORE 11 MI.
342
341
1 MI
1 X 1

Loi. Grants
Grades or Ground & Sight Brown

Per Ex: 6



CBA 10-173-SPH Pet Ex: 7

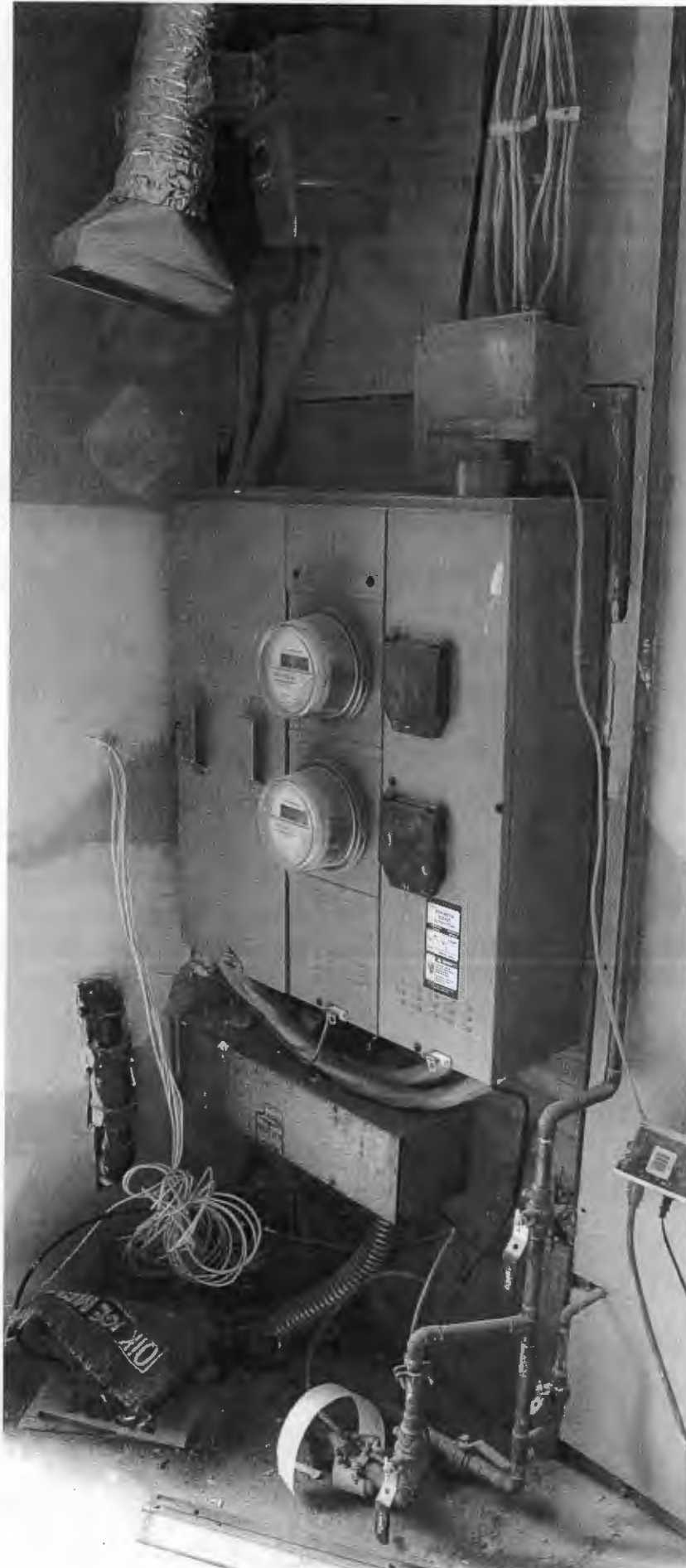


C1

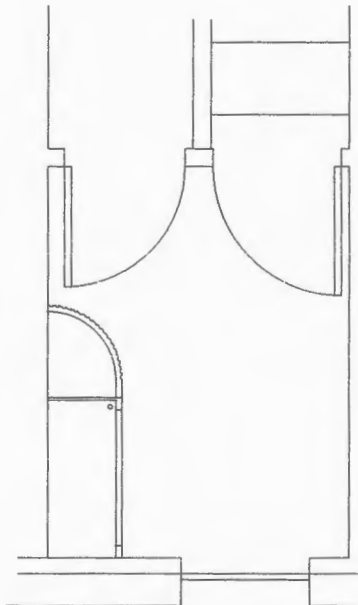
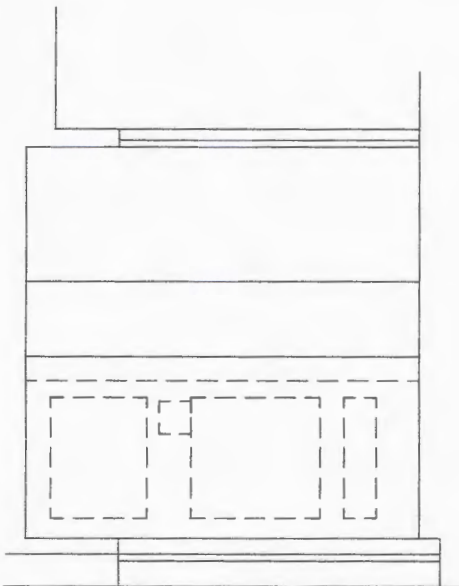
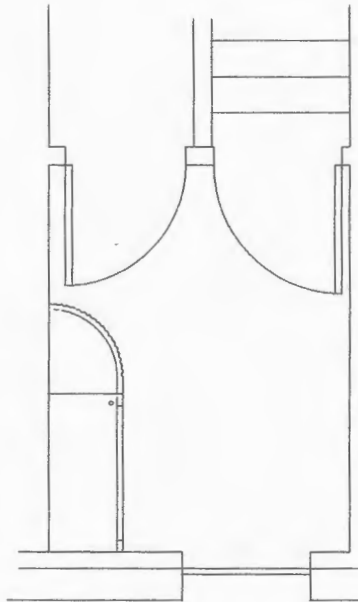
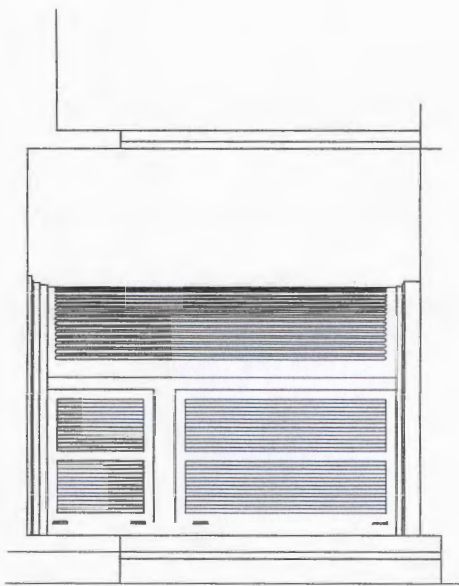
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Completed MB Closet



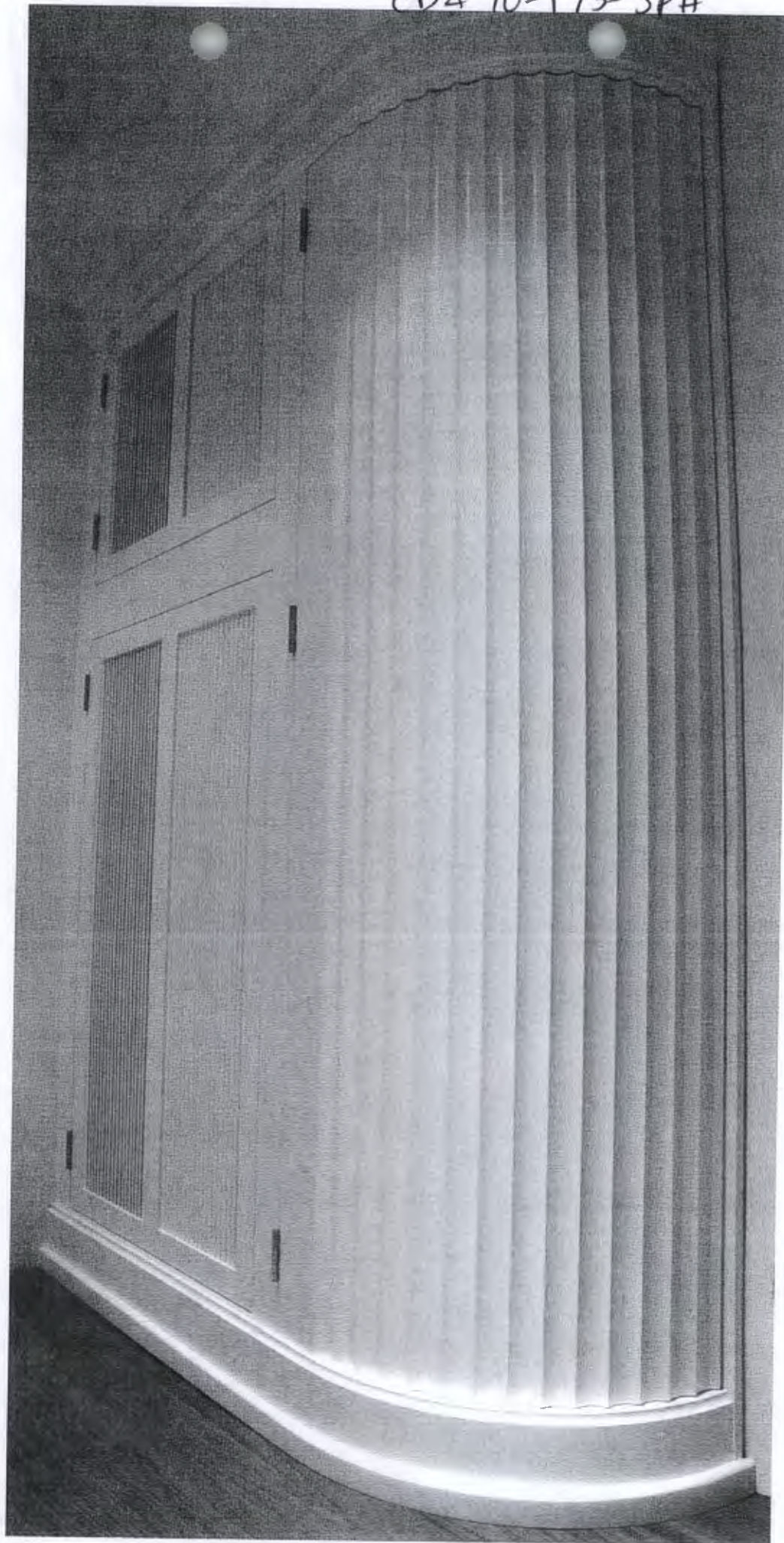
Petit
Before



Plan

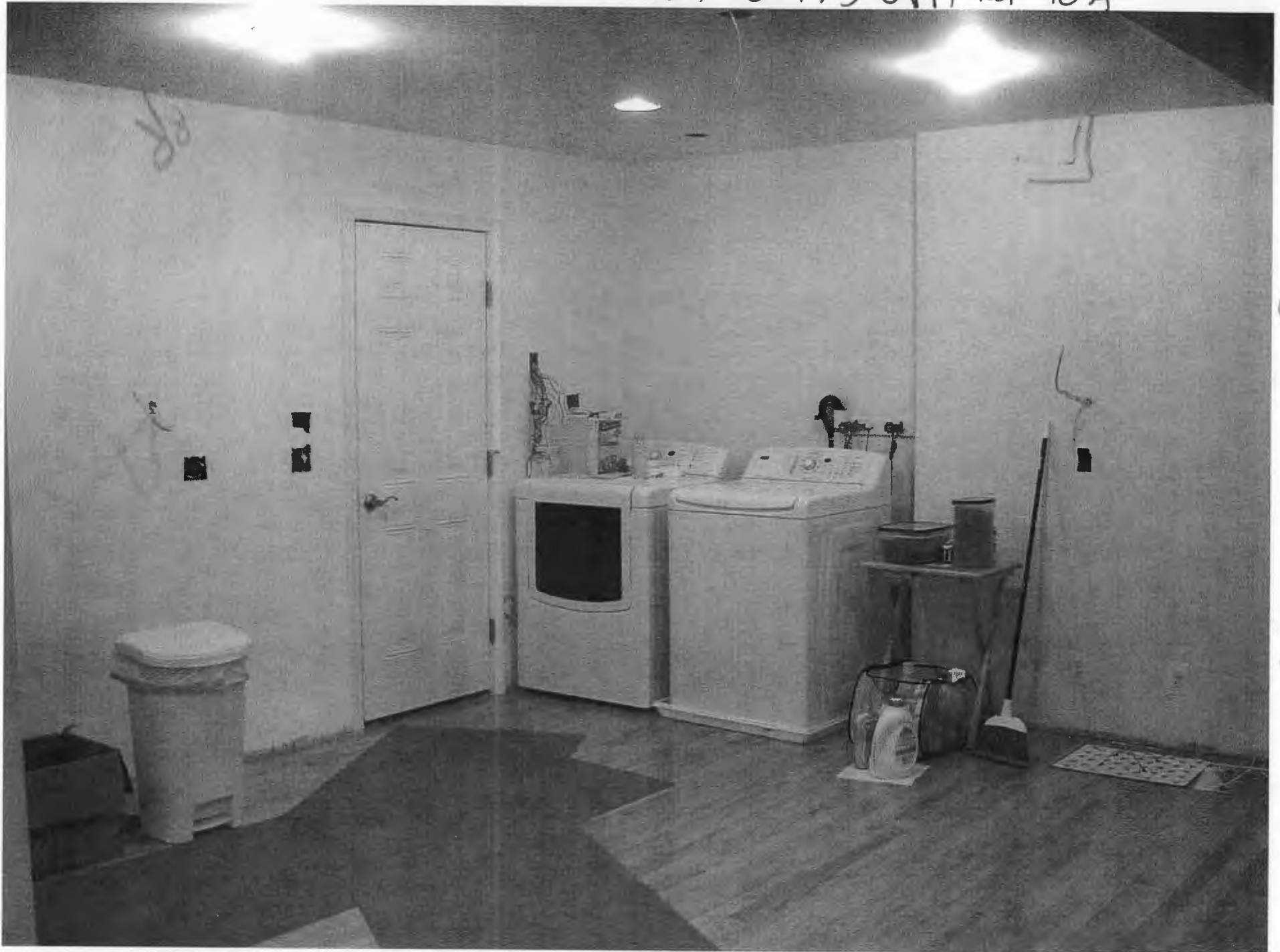
CA4 10-173-SPH

9C



Completed

CBA 10-173 S PH Ret 10A



Brooks Before

CBA 10-173 SPH Pet 10B.



Completed

CBA 10-173-SPH Art Ex: 11A



Schoubrone Ceiling Before

CBA 10-173-SPH Pet Ex. 11B



Completed



CBA 10-173-SPH Det Ex: 12 A



CBA 10-173-SPH Pet Ex: 123 Completed

EBA 10-173-SPH 13A



A-1

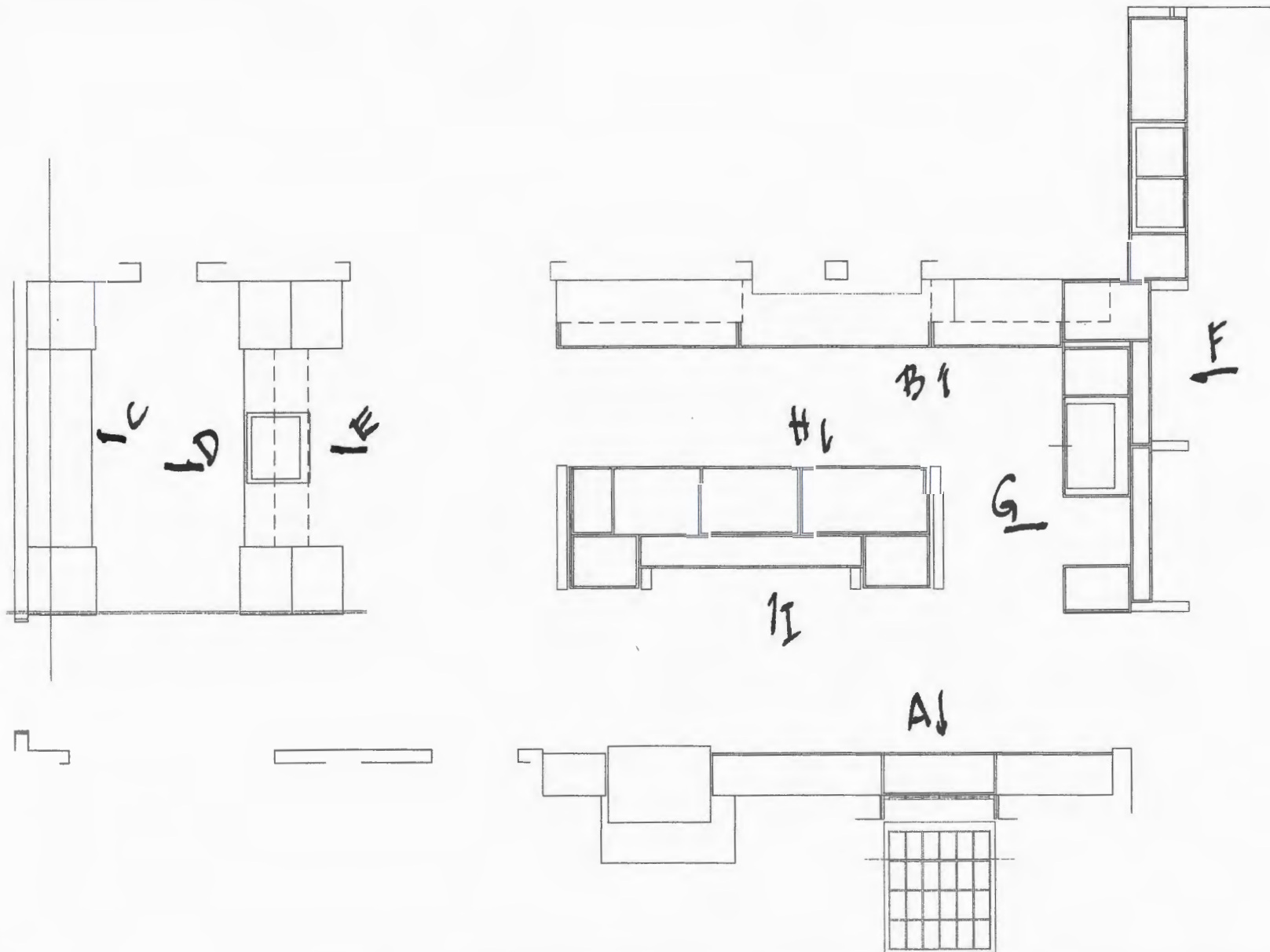
CBA 10-173 SPH 13 B



A-2

CBA-10-173-SP14

Ref 14A.



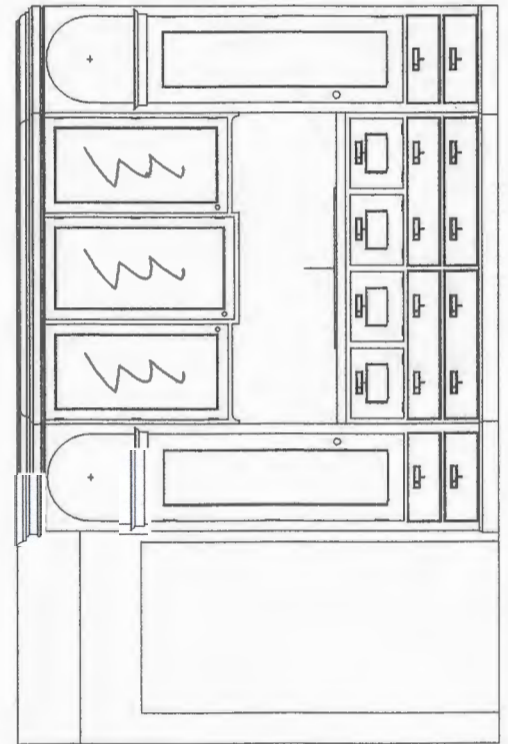
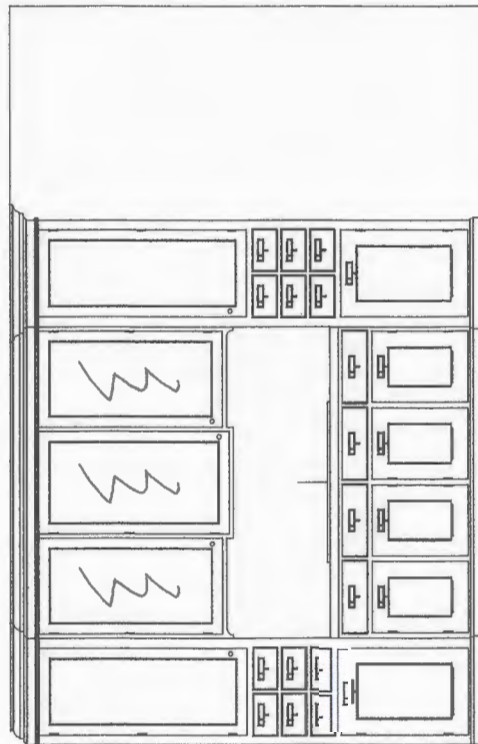
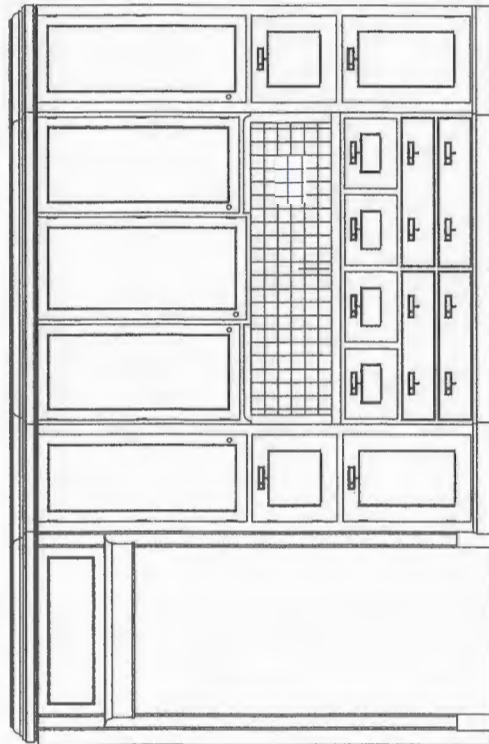
PLAN

CBA-10-173 SPH Pet 14B

✓

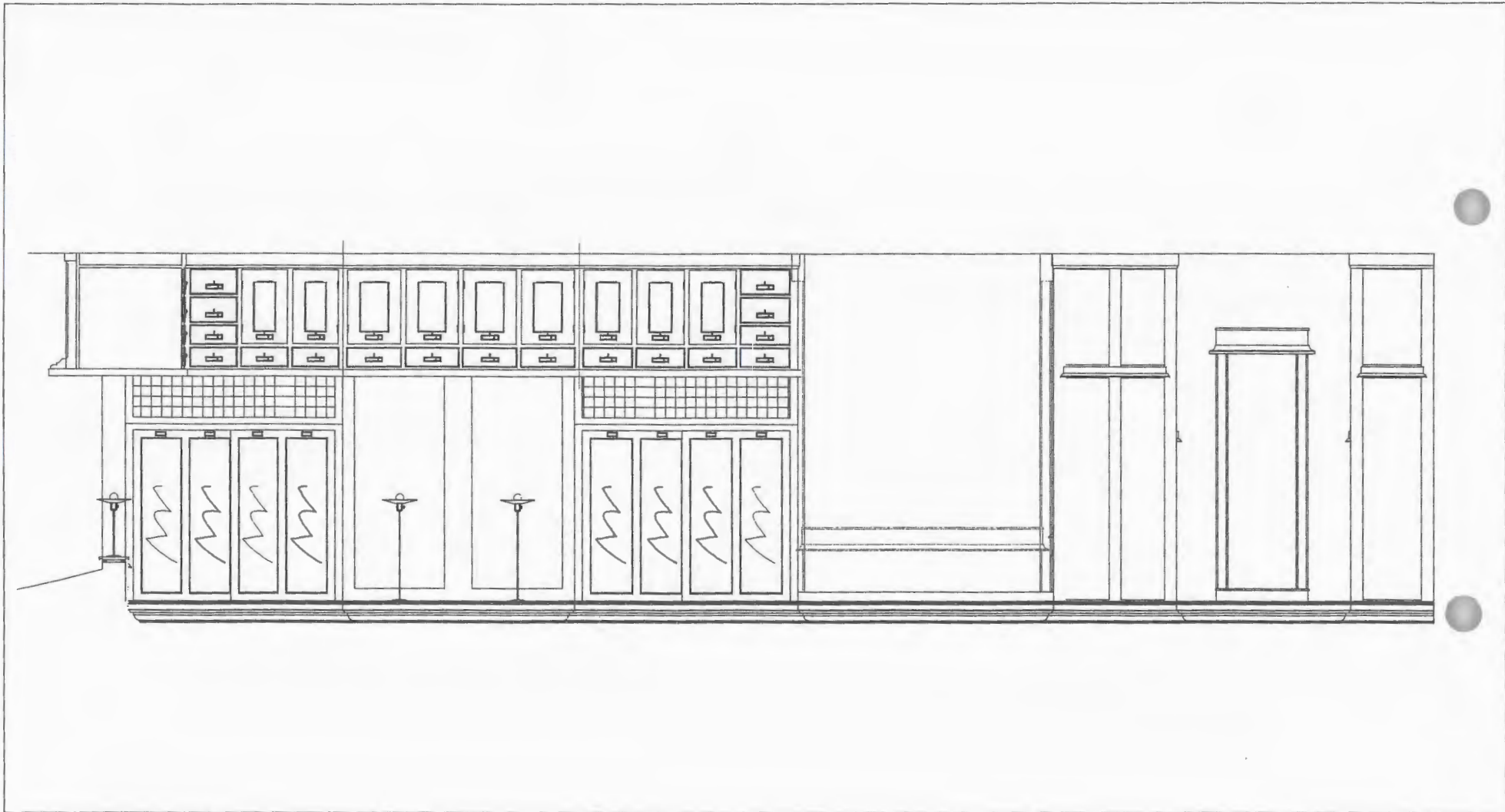
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CBA-10-173-SP14 P. 14C

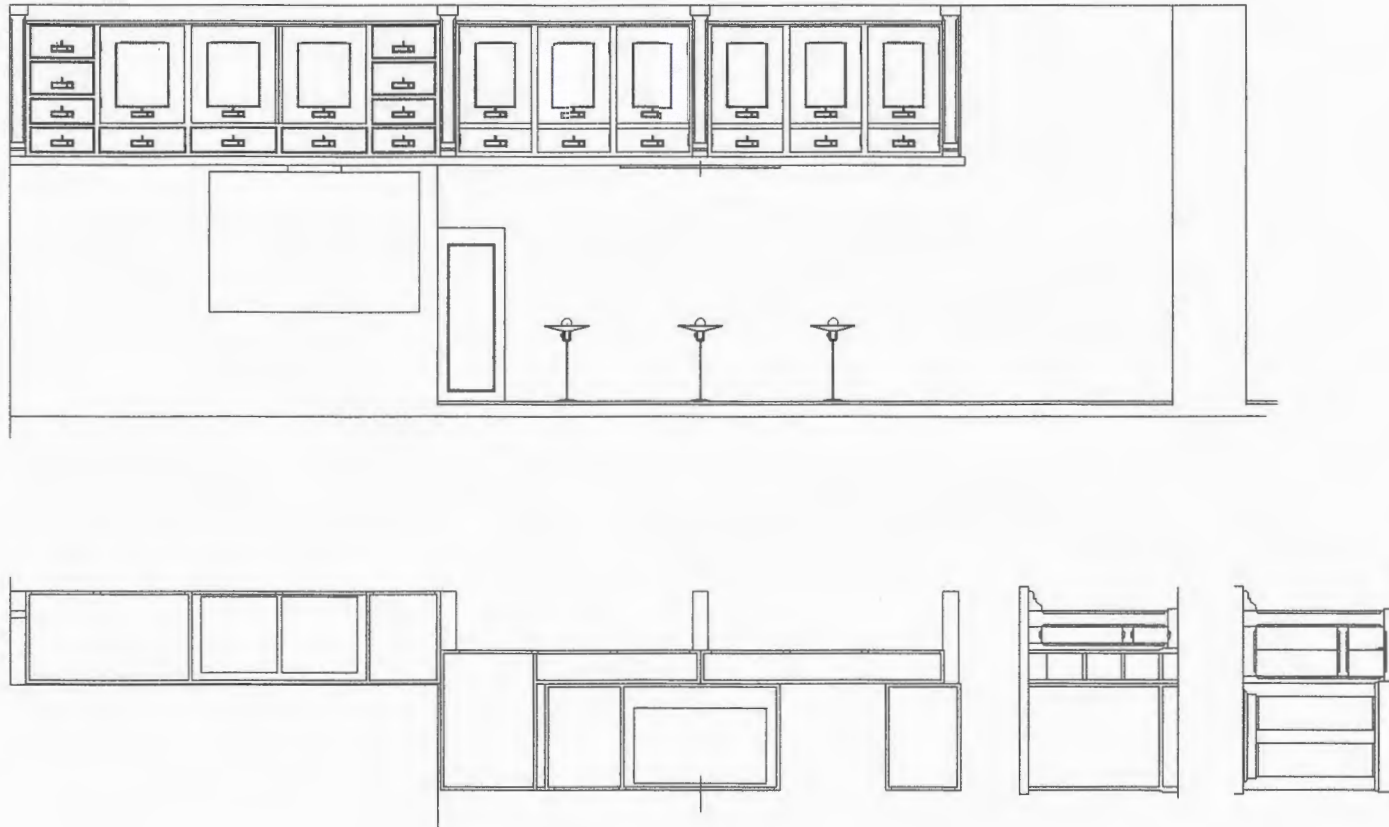
VIEW B



View F

CBA-10-173-SPH

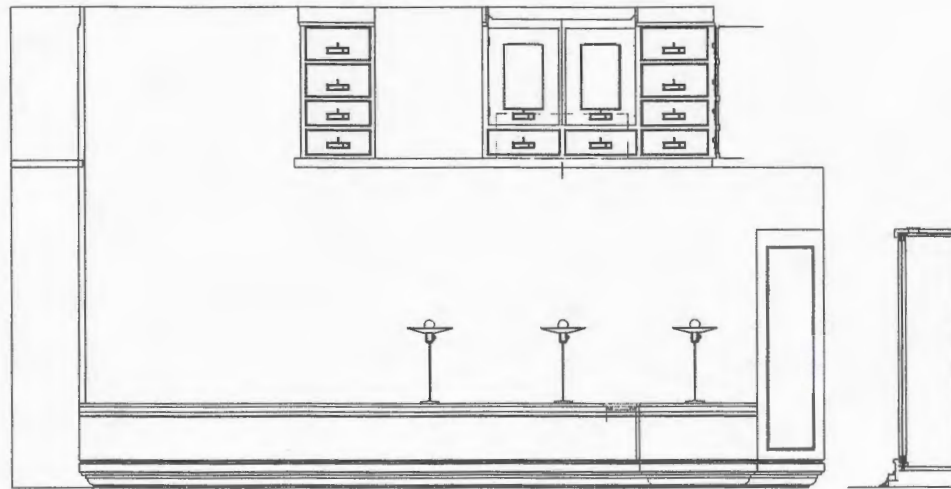
Per 14D



CBA 10-173-SPI4

Pet 14E

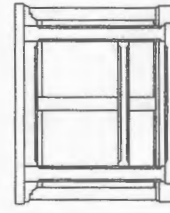
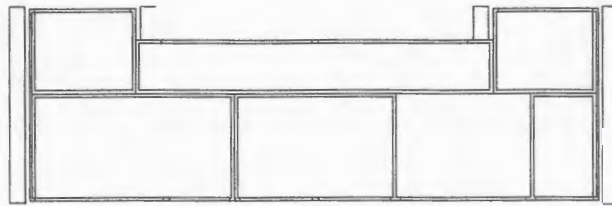
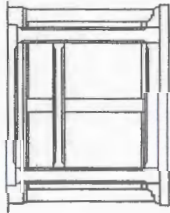
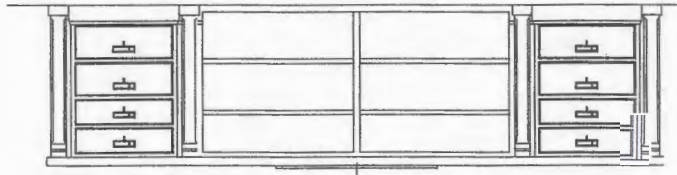
9 map



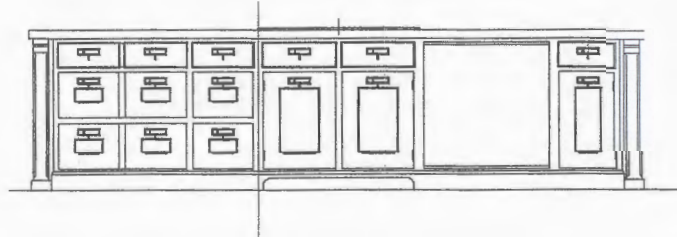
CBA-10-173-SPH

Ret. 14 F

I



H



0 BA 10-1735 PH Pet 154



20' Box

CBA-10-173 SPH Pet 15B



CBA-10-173 SPH Pet 15C



E-2

CBA-10-173 SP1+

Pet 15D.



E-3

2008-2009

Receipt of Supplies Via Starlight Truck

Since 5.5.08

5.22.08

7.15.08

7.30.08

9.11.08

17 times in 12 months (52 weeks)

10.6.08

6.31.08

11.11.08

11.20.08

12.01.08

12.03.08

1.7.09

1.23.09

2.15.09

3.17.09

5.1.09

5.22.09

5.22.09

Delivery 2008-2009

CBA-10-1-3
2009-2010 SPH Pet 16B

Receipt of Supplier Via Straight Truck.

Business.

9-23-09	Phys — Delivery to Mail Boxes.
9-25-09	Solids
11-16-09	Phys — Delivery to Mail Boxes
11-16-09	Solids
1-6-10	Solids

Delivery out.

12-14-09	(approx).	16'-0 Box Truck.
1-28-10		16'-0 Box Truck.

Delivery 2009-2010

CB4 - 10-13

Pet 16 C

SPH

2010

Receipt of Supplies Via Straight Truck.

Business.

April	12 th	Delivery to Mail Boxes
April	14 th	Solids
May	4 th	Solids
May	10 th	Delivery to Mail Boxes
May	27 th	Solids
June	16 th	Solids
July	29 th	Solids
Oct	8 th	Solids

Delivery

Jan 28	16' Box Truck
April 16 th	16' Box Truck
April 20 th	16' Box Truck
Aug 5 th	16' Box truck
Sept. 22 nd	24' Box Truck.

2009-2010

Receipt of Deliveries for House Construction

6-17-09 Plywood

7-20-09 Siding

10-19-09 ACB Lumber

12-21-09 Flooring Delivery (Attempted)

1-4-10 Flooring Delivery

5-19-10 Brick Delivery

10-21-09 Delivery to Kevin in Fox Tech, Personal.

B Home Delivery

Section 1A01
R.C.2 (Agricultural) Zone

1A01.1 General provisions.

A. Legislative statement of findings.

1. Declaration of findings. It is found:

- a. That Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;
- b. That the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry;
- c. That scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land;
- d. That continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area;
- e. That heretofore Baltimore County has been unable to effectively stem the tide of new residential subdivisions in productive agricultural areas of Baltimore County;
- f. That Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the bay's biotic life; and
- g. That Baltimore County possesses numerous areas which are highly suitable for urban development, including residential subdivisions which are not located in areas of productive agricultural land.

- B. Purposes. The R.C.2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

1A01.2 Use regulations.

- A. Preferred use permitted as of right. Agricultural operations, when conducted in accordance with good and reasonable husbandry practices, shall be afforded preferential treatment over and above all other permitted uses in R.C.2 Zones.
- B. Uses permitted as of right.³ The following uses only are permitted as of right in all R.C.2 Zones: [Bill No. 178-1979]
 1. Dwellings, one-family detached. [Bill No. 178-1979]

³ Editor's Note: "Churches and schools for agriculture training," originally included in this section by Bill No. 98-1975, were moved to Section 1A01.2.C by Bill No. 178-1979.

the aspirations of the artist as the producer of beautiful things, and AESTHETIC the appreciative attitude of one who views with enjoyment the resulting product or situation (we have no word

nder) (to read the great books... with intelligent appreciation is one of the last achievements... of a life—O.W.Holmes ¶1935) **b** : favorable or suited for study or contemplation (within these ~ walls) **3 a** : diligent in purpose : of earnest intent (if we were more ~ to write prose in purpose : of earnest aloud with pleasure —A.T.Quiller-Couch) **b** : marked by and evincing purposefulness or diligence (a ~ effort) **c** : marked by avoid representing the human figure realistically ~ was made to Murray **c** : deliberately planned : STUDIED (drove into the club with ~ calm... for the natives must not suspect that they were agitated —E.M.Forster)

studious \ˈstʊdi-əs\ *ME* *studious* [*fr. studious* + *-il* -yl] : in a studious ~ studied manner (towed his finger... and ~ copied letter by letter —Edward Boppe) (real issues are kept ~ away from public notice —Christopher Hollis)

studiousness \-nəs\ *ES* : the quality or state of being studious

studite \ˈstʊdiːt\ *dit* *n* -s *usu cap* [Studius, 5th cent. A.D., Rom. official + *-ite*] : a Studite monk of the Eastern Orthodox Church

studium \ˈstʊdi-əm\ *adj, usu cap* : of or relating to a monastery founded at Constantinople in the 5th century A.D. by a Roman official named Studius and reorganized by St. Theodore; also : relating to the rule codified in this monastery by St. Theodore

studium generale \ˈstʊdi-əm dʒen-ə-rə-lē\ *st* [ˈstʊdi-əm dʒen-ə-rə-lē] *ML* : universal studying place : a place or institute of studies where people from all parts of the world may come to study any subject; *esp* : a medieval university

stud link *n* : a link of a stud chain; *also* : the tracing member of such a link

stud \stʊd\ *adj, n, Austral* : one owning or supervising a stud of sheep

studmate \ˈstʊd-met\ *vt* : to breed (poultry) by mating selected pairs —compare FLOCK-MATE, PEN-MATE

stud poker *n* [stud + poker] **1** : poker in which each player is dealt his first card face down and his other four cards face up with a round of betting taking place after each of the last four rounds **2** : a variant (as seven-card stud) of stud poker

stud rivet *n* : SCREW RIVET

stud *pl* of *stud*, *pres 3d sing* of *stud*

stud welding *n* : a method of welding a stud to a plate or flat surface by the combined use of heat and pressure

stud wheel *n* : a wheel journaled on a stud

studwork \ˈstʊd-wɜrk\ *n* : work supported, strengthened, held together, or ornamented by studs (walls... of ~ with lath and plaster —Fiske Kimball)

study \ˈstʊdi\ *di* *n* -es [ME *studie*, *fr. OF studie*, *estudie* state of perplexity or reverie, application of the mind to the acquisition of knowledge, study, *fr. L* *studium* eagerness, application of the mind to the acquisition of knowledge, study; akin to *studere* to be eager, be diligent, study, *prob. to L* *tendere* to beat ~ more at STINT] **1** : a state of absorbed contemplation, perplexity, or reverie : ABSTRACTION (paused and ~ appeared to be in a deep ~ —Alexander MacDonald) (the long silences that meant I was lost in ~ —Eve Langley) **2 a** : the application of the mental faculties to the acquisition of knowledge (is in your own power greatly to improve... by ~, observation, and reflection —Earl of Chesterfield) (hours of ~ and careful thought —Bruce Payne) (years of ~ in school and college) **b** : a branch of study of the mind in a particular field or of a specific subject matter (scholarship ~... which illuminates the ~ of the family —Lynn White) (taking up the ~ of history) (enter upon the ~ of law) **c** (1) : a careful examination or analysis of a phenomenon, development, or question *usu. within a limited area of investigation* (plunged into the ~ of latex —Clarence Woodbury) (*studies* have been made of individual cases and of groups of adolescents —H.R. Douglas) —often used with *under* (further reductions are under ~ —D.Eisenschower) (2) : a paper or monograph in which such a study is published (*studies* on the steel industry) (*the ablest ~ on the iron and steel industry —Current Blog*) (*publishes studies and reports*) **3 a** : a building or room furnished *esp. with books* and devoted to study or literary pursuits (set out my typewriter in the ~... to write —Worth T. Hedden) **b obs** : the books contained in such a study or in a collection **c obs** : a place of learning : UNIVERSITY, STUDIUM GENERALE **d** : the lower level of the inner stage of an Elizabethan playhouse often used to represent an indoor scene (*the ~ was an expression of delicacy and refinement*) (*he consciously resented effort*) **PURPOSE, ENDEAVOR** (a continuance of those favors which it will ever be my ~ to deserve —W.S.Gilbert) (it has been the ~ of my life to avoid those weaknesses —Jane Austen) **5 a** : an organized branch or department of learning : SUBJECT (what are your favorite *studies* —G.B.Shaw) (was... on the faculty of graduate *studies* —Edna Yost) **b** : the activity or work of a student (the curriculum for graduate ~ —E.B.Nyquist) (returning to his *studies* after vacation) **c** : something that is the object of a student's study or motivation (*a part wonderfully conceived, his every word and every gesture a careful ~ —Marcia Davenport*) (about the use of making this sugar... I said I made it my ~ —H.D.Thoreau) **d** : something attracting close attention or examination *usu. by reason of contrast or conflict* (it was quite a ~ to watch the faces round the table —in the struggle between good manners and amusement —Rachel Henning) (*a ~ in conflicting emotions* —T.B.Costain) (the whole show was ~ in tolerant condescension —David Driscoll) **6** : one that commemorizes something (as a part in a play) *usu. as an object of a qualifying adjective* (is not considered a fast ~ but once he had had a ~ and a ~ —H.C.Schönberg) **7 a** : an artistic production in any of the fine arts intended as a preliminary outline or *esp. as an experimental expression or interpretation of specific features or characteristics* (a number of his drawings were *studies* of beggars, clowns, cripples, and street musicians —Current Blog) (*a ~ in tunes, all of them beautiful and separate* —Leonard Bernstein) (whether dancing in dramatic roles... or *studies* in pure dance —Current Blog) **b** : a literary work serving as an experimental or *esp. as an exploratory analysis or portrayal of a carefully observed feature of human motivation* (*a particularly successful ~ of the type of grievance-ridden, unhappy ~ misfit —R.P.Fleming*) (*a topical ~ of a life in wartime services canteen* —Leslie Rees) (*a brilliantly intuitive ~ of war and the emotions of men in combat —Time*) **8** : a musical composition *usu. devoted entirely to a special problem of instrumental technique* : FRUITFUL

study \ˈstʊdi\ *vb* -ed/-ing/-es [ME *studien*, *fr. OF estudier*, *ML* *studiare*, *fr. L* *studium*, *n.*, study] **1 a** : to apply the mind to the acquisition of knowledge through reading and reflection, observation, and experiment (might have studied through the literature to the mind of that century —T.S.Eliot) **b** : to undertake formal study of a subject or course (studied at Manual Arts high school —Lillian de Tagle) (studied with the faculty of law at the university —Current Blog) (studied under him at the university —Current Blog) **2 dial a** : to consider deeply : MEDITATE, REFLECT *usu. used with about* (looking at the oil in the bottle and selling it and tasting it, and ~ing about what it meant —H.H.Martin) **b** : to deliberate something with oneself : DEBATE (studied digging a bare big toe into the dirt and *studied* at the wall —F.B.Gipps) (to ~ on whether I ought to sell —Jean Stafford) **3** : to consider something as one's aim : ENDEAVOR (I studied to appear calm... so as to draw him on to say more —W.H.Hudson ¶1922) (appears to be ~ to repress these things in his poetry —David Daiches) ~ *vt* **1 a** : to read

SECTION 101 - HOME OCCUPATION

"ANY USE CONDUCTED ENTIRELY WITHIN A DWELLING..."

- (1) This statement is interpreted to mean that the use must be within the dwelling and cannot be within a detached garage or elsewhere in the yard area of the property in question.

"WHICH IS INCIDENTAL TO THE MAIN USE OF A BUILDING FOR DWELLING PURPOSES..."

- (2) This statement is interpreted based upon the common definition of the word "incidental"; i.e., that a "home occupation" is a use that happens as a result of and in connection with the principal use as a dwelling. The use must therefore be of a domestic nature.

Uses that easily fall within this definition would be a person who takes in ironing or washing of clothes, sewing or dress making, and/or cooking. Other more modern day uses such as computers used to keep track of home finances and related matters can be considered as domestic equipment. As a home occupation use, the computer must be used in a manner that is secondary or minor and can be associated in some way with the normal domestic functions of the dwelling.

"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..."

- (3) Section 413.1.A clearly indicates that an accessory use of a dwelling for a home occupation is permitted a 1 square foot sign. Any other exterior evidence that indicates that dwelling is being utilized for purposes other than a dwelling is not permitted. Such evidence would include noise, odors, or deliveries via trucks or heavy pedestrian traffic, or other vehicular traffic that is obviously generated by uses other than those normally associated with the dwelling.

"AND IN CONNECTION WITH WHICH, NO COMMODITY IS KEPT FOR SALE ON THE PREMISES..."

- (4) This statement clearly indicates that a person can, for instance, make dresses for customers. However, they cannot make and stock dresses for sales display on the premises.

"NOT MORE THAN ONE PERSON IS EMPLOYED ON THE PREMISES OTHER THAN DOMESTIC SERVANTS OR MEMBERS OF THE IMMEDIATE FAMILY..."

- (5) This statement does not clearly indicate that members of the immediate family and domestic servants must reside on the premises; however, based upon the interpretation above, i.e., a home occupation is something that happens as a result of and in connection with a dwelling. It becomes clear that other than the one employee, all other persons engaged in the home occupation must reside on the premises.

"AND NO MECHANICAL EQUIPMENT IS USED EXCEPT SUCH AS MAY BE USED FOR DOMESTIC PURPOSES..."

- (6) This statement further solidifies the dictionary interpretation of incidental. This requirement is intended to limit the type of equipment used in a home occupation. However, the fact that a sewing machine or circular saw qualifies as domestic does not permit its unlimited use, i.e., the home occupation must be secondary, minor and associated with the principal dwelling use.
- (7) Specifically excluded from a home occupation because they appear as Special Exception uses under Section 1B01.1.C.9B are:
- Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25 percent of the total floor area of such residence; and does not involve the employment of more than one non-resident professional associate nor two other non-resident employees. (Bill No. 105, 1982.)

(8) INTERPRETATION:

This determination may be subject to a Special Hearing at the discretion of the Zoning Commissioner on a case by case basis.

- (9) The following are the zones where home occupations are allowed by Special Exception:

<u>Zone</u>	<u>Section</u>
R.C.-2	1A01.2.B.7.c
R.C.-3	1A02.2.A.10.c
R.C.-4	1A03.3.A.6.c
R.C.-5	1A04.2.A.11.c
R.C.-20 & 50	1A05.2.B.4
D.R.'s	1B01.1.A.14.d
R.A.E.-1	200.2.A.3.5.1
R.A.E.-2	201.2.A.5.1



MITCHELL J. KELLMAN
DIRECTOR OF ZONING SERVICES

EDUCATION

Towson University, BA, Geography and Environmental Planning, Urban Planning
Towson University, Masters, Geography and Environmental Planning, Urban Planning

PROFESSIONAL SUMMARY

Mr. Kellman has over 13 years of experience working in zoning administration and subdivision regulation for the public sector; 9 of those years were with the Baltimore County Office of Planning and Zoning. His responsibilities included review, approval and signatory powers on behalf of the Director of Final Development Plans and Record Plats. He represented the Zoning Office on the County Development Review Committee, a body reviewing the procedural compliance of all development submissions. Review of petitions and site plans filed for zoning hearing approvals were within his authority.

Additionally, he supervised county review staff, met with professionals and public on development project matters, and made determinations regarding developments and their compliance with county regulations

In working for DMW, he has extensive experience in testifying before the Baltimore County Zoning Commissioner, Hearing Officer, and Board of Appeals. He also regularly represents the company at the Baltimore County Development Review Committee meetings.

PARTIAL LIST OF PROJECTS

Charlestown Retirement Community, Baltimore County, MD
GBMC, Baltimore County, MD
Goucher College, Baltimore County, MD
Hopewell Pointe, Baltimore County, MD
Notre Dame Preparatory School, Baltimore County, MD
Oakcrest Village Retirement Community, Baltimore County, MD
Sheppard and Enoch Pratt Hospital, Baltimore County, MD
Waterview, Baltimore County, MD

PROFESSIONAL EXPERIENCE

Daft McCune Walker, Inc., Towson, MD: 2000-Present
Baltimore County Office of Permits and Development Management,
Development Control, 1988-2000

business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

502.1 Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air; [Bill No. 45-1982]
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor [Bill No. 45-1982]
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations. [Bill No. 45-1982]

502.2 In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning Commissioner, or Board of Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County,¹⁸ stipulating the conditions, restrictions or regulations governing such special exception, the same to be recorded among the land records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such special exception. When so recorded, said agreement shall govern the exercise of the special exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.

502.3 A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning

¹⁸ Editor's Note: Under Section 1107 of the Baltimore County Charter, the County Council and County Executive have succeeded "to all powers heretofore vested in the county commissioners by the constitution and laws of this state."



Michaela Robinson Interior Designer

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Profile

Interior Designer with 16 years of experience, skilled in residential, commercial and hospitality design.

Experience

OWNER, MICHAELADESIGN; ALEXANDRIA VA - 2000-2010

Residential Design Practice, serving clients across Metropolitan Washington in a variety of design genres and projects. Services include, space planning, project coordination, color consultation, finish selection, custom upholstery, cabinetry, window treatments, rugs and accessories.

ASSOCIATE, ADAMSTEIN & DEMETRIOU; WASHINGTON DC - 1998-2000

Hospitality Architecture Practice specializing in boutique restaurant design. Skills include project coordination, concept development, detail design, finish and furniture selection.

DESIGN CONSULTANT, AUSTIN KUESTER INCORPORATED; ALEXANDRIA VA 1996-1998

Hospitality and Food Service Design Practice. Responsibilities include project coordination, concept development, space planning, detail design, finish and furniture selection.

SENIOR CONSULTANT, ANDERSEN CONSULTING; WASHINGTON DC 1992-1995

Change Management Services Practice. Skills include project management, work flow development, job design, business practice reengineering.

Education

George Washington University, Washington DC - MFA Interior Design 1996 (Awards: Most Outstanding Graduate Student in Interior Design, Academic Excellence in Interior Design)

Vanderbilt University, Nashville TN - BA Psychology 1991 (Honors in Psychology, Summa Cum Laude, Phi Beta Kappa)

Studio and Art Coursework

Design Theory, Drawing Studio, Drafting Studio, History of American Art, History of European Art, History of Decorative Arts



EBA 10-173-SPH

Pet Ex. 24 A



CBA- 10-1735PH Pet Ex. 24 B



CBA 10-173-SPH Pet Ex: 24C

CBA10-1735PH

Pet 25

5/20/96

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 14207 Longnecker Road, E/S Long- * COUNTY BOARD OF APPEALS
 necker Road, 400' N of c/l Piney * FOR BALTIMORE COUNTY
 Grove Road, 4th Election Dist., *
 3rd Councilmanic *
 NEIL STEVEN KRAVITZ * CASE NUMBER: 96-89-SPH
 Petitioner *
 * * * * *

PEOPLE'S COUNSEL'S MEMORANDUMSTATEMENT OF THE CASE

This case comes before the Board as a Petition for Special Hearing to determine whether the sale of firearms and the manufacture of ammunition on residentially zoned property is a home occupation.

The Petitioner was notified by the Baltimore County Police Department that provisions of the federal Violent Crime Control and Law Enforcement Act of 1994 required applicants for a federal firearms license to comply with all local laws, such as fire and zoning regulations. (18 USCS § 923 Licensing (d)(1)(F)(i) - Exhibit A). Desirous of renewing his firearms license, the Petitioner requested zoning relief.

The matter was scheduled for hearing before the Zoning Commissioner for Baltimore County. As is its practice, the Office of People's Counsel entered its appearance. (Exhibit B). In addition, People's Counsel sent a letter to the Zoning Commissioner and attorney for Petitioner setting forth its position (Exhibit C). People's Counsel did not attend the hearing.

LEAH L. COHEN

5-30-96

CBA-10-173

SPH

Pet 26

8/16/96

IN THE MATTER OF THE
THE APPLICATION OF
NEIL S. KRAVITZ
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE EAST
SIDE LONGNECKER ROAD, 400' N
OF THE C/L OF PINEY GROVE RD
(14207 LONGNECKER ROAD)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 96-112-SPH

OPINION

This case comes to the County Board of Appeals based on an appeal from the Zoning Commissioner's Order of October 17, 1995, in which a Petition for Special Hearing to approve a firearms license in a residential zone as a home occupation was denied. A public hearing was held by the Board on Thursday, May 2, 1996 at 10:00 a.m. Jay Fred Cohen, Esquire, represented the Petitioner/Appellant. Carol S. Demilio, Deputy People's Counsel, represented the Office of People's Counsel for Baltimore County.

Mr. Herbert Malmud testified on behalf of the Appellant. He is a licensed Maryland surveyor, and prepared the survey and zoning plat (Appellant's Exhibit 5). Mr. Malmud stated that the subject property was essentially in an isolated rural area of Baltimore County in proximity to Glyndon. He testified that the property consisted of 0.5 acre on which there were two attached buildings. The nearest residence was about 200 ft. to 300 ft. away from Appellant's property.

On cross-examination, Mr. Malmud indicated that he had been licensed for 25 years, and had visited the site on two separate occasions; that the closest farm building was probably about 100 ft. (more or less) away, and that the two buildings on the subject property were separate and unconnected by passageway. He stated that he had never been inside either building and did not know the

8-16-96

D-6

Case No 10-173-SPH

Pet Ex: 27A



B-1

Case No 10-173-SPH Pet Ex. 27B



B2

1 IN THE MATTER OF: * BEFORE THE
2 RUSSEL KAHN AND BRENDA KAHN * COUNTY BOARD OF APPEALS
3 14223 and 14225 Longnecker Road * OF
4 * BALTIMORE COUNTY
5 * Case No. 08-25-SPHA
6 * June 10, 2009

7 * * * * *

8 The above-entitled matter came on for hearing
9 before the County Board of Appeals of Baltimore County at
10 Hearing Room #2, Second Floor, Jefferson Building, 105 W.
11 Chesapeake Avenue, Towson, Maryland 21204, at 10 a.m.,
12 June 10, 2009.

13 * * * * *

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21 Reported by: C.E. Peatt

Case No: 10-173-SPH Case Name: Russ and Brenda Kahn

Exhibit List

Exhibit List

Party: Protestants . PC Date: Tuesday 10/26/10

[illegible]

Maryland Department of Assessments and Taxation
Real Property Data Search (vw3.1)
BALTIMORE COUNTY

Account Identifier:

District - 04 Account Number - 1600003966

Owner Information

Owner Name: KAHN RUSSEL A **Use:** RESIDENTIAL
KAHN BRENDA **Principal Residence:** YES
Mailing Address: 14225 LONGNECKER RD **Deed Reference:** 1) /23508/ 201
GLYNDON MD 21136-4845 2)

Location & Structure Information

Premises Address **Legal Description**
14225 LONGNECKER RD 5.845 AC
REAR 3150 FT NES PINEY
2940FT E LONGNECKER RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area
32	20	102						1

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	Cour
2006	5,600 SF	5.85 AC	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT WOOD SHINGLE	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2010	07/01/2010	07/01/2011
Land	173,100	173,100		
Improvements:	675,620	467,100		
Total:	848,720	640,200	640,200	640,200
Preferential Land:	0	0	0	0

Transfer Information

Seller:	Type:	Date:	Price:
KAHN RUSSEL A	NOT ARMS-LENGTH	03/10/2006	
		Deed1: /23508/ 201	Deed2:
VICTOR WILLIAM W	UNIMPROVED ARMS-LENGTH	05/19/2003	
		Deed1: /18021/ 21	Deed2:
VONGUNTEN SAMUEL W	IMPROVED ARMS-LENGTH	06/22/1973	
		Deed1: / 5369/ 442	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2010	07/01/2011
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *



Plan Sheet: 03243

No. 10:
This zoning depicted in this application incorporates the actions associated with 2008 Comprehensive Zoning Map Process, zoning changes associated with an adopted Community Plan and Baltimore County Board of Appeals actions through December 31, 2008.

Legend

-  Buildings
-  Streams
-  Vegetation
-  Zoning
-  Roads
-  Rail Lines

Baltimore County Office of Planning and Zoning Official Zoning Map

031B2	031C2	032A2	032B2	032C2
031B3	031C3	032A3	032B3	032C3
039B1	039C1	040A1	040B1	040C1

Scale

1" = 200'

0 100 200 400 Feet



Data Sources:
Planometric Data - Baltimore County
CITGIS Services Unit
1:2400, from 1995/98 photography
Zoning - Baltimore County Office of Planning
1:2400, 2008



PROTESTANT'S

EXHIBIT NO.

3

 **BASF**

D-R
RECORDABLE
ENREGISTRABLE

COMPACT
disc
Recordable



80
1x-16x
80 MIN/700 MB

Kahn
Photo's + Docs

DOUGLAS GRICE
24254-479

14217

1000

DOUGLAS + PATRICIA GRICE
24254-479

14213

450

JOAN BILGORE
24254-479

1000'

RUSSEL + GRENDA WAHN
23503-201

14219

WILLIAM + MARTHA McMILLAN
15848-323

VERNON WALTER ETAL
22450-479

24

14209

2900'

PDM # 040426

2200024688

Lot # 2

1900006333

PDM # 040427

2300000006

14217

2300000005

Lot # 1

032B3

0419007131

1600003965

0402001784

14219

0423001980

14213

0407059840

NW 21-I

14211

1600003964

4 ED

032A3

RC 2

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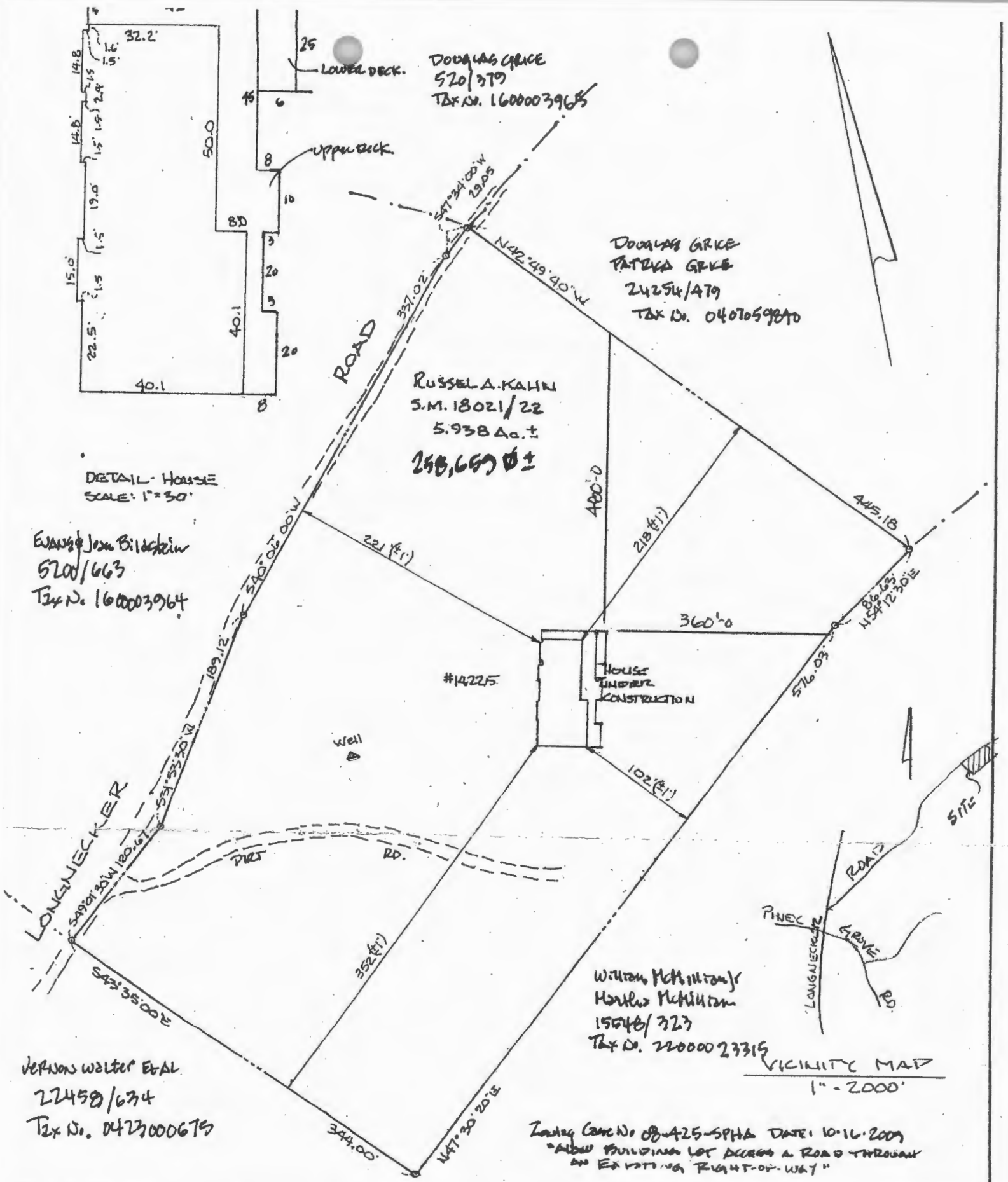
PDM # 040483

2200023313

Lot #00001

NW 20-I

OFFICIAL ZONING MAP



This is to certify that the improvements shown hereon are located in reference to the property lines as monumented based on the information CONTAINED IN THE DEED TO RUSSEL A. KAHN, DATED FEBRUARY 4, 2003 AND recorded in the Land Records of BALTIMORE County, MARYLAND IN LIBER S.M. 18021 FOLIO 022 ETC.



