

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

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**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

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:

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

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.

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.

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

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

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 15<sup>th</sup> 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.

\_\_\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz