

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SE/Side Philadelphia Road near		
Rosewick Avenue	*	OFFICE OF ADMINISTRATIVE
15 th Election District		
7 th Councilmanic District	*	HEARINGS FOR
(7921 Philadelphia Road)		
	*	BALTIMORE COUNTY
Integrity Recycling, Inc.		
<i>Petitioner</i>	*	CASE NO. 2011-0206-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Special Hearing filed by Jason T. Vettori, Esquire with Gildea & Schmidt, LLC, on behalf of Integrity Recycling, Inc., the legal owner of the subject property. Petitioner requests Special Hearing relief pursuant to Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations (“BCZR.”) as follows:

- That Integrity Recycling, Inc.’s operation on site is not an open dump/junkyard as defined in Section 101.1 of the BCZR,
- That Integrity Recycling Inc.’s operation on site, a scrap metal processing facility, is a use permitted in the M.L. zone, and
- Such other and further relief as may be deemed necessary by the Zoning Commissioner for Baltimore County.

The subject property and requested relief are more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 4.

Appearing at the public hearing in support of the special hearing request were David VanMetre, Vice President of Petitioner Integrity Recycling, Inc., Kenneth James Wells with KJ Wells, Inc., the professional surveyor who prepared the site plan for the petitioner, and Jason T. Vettori, Esquire, the attorney representing the Petitioner. This request generated significant interest in the surrounding community and over twenty interested citizens appeared at the hearing.

Russell Mirabile acted as the foreperson in presenting the Protestants' case and elicited testimony from Peter and Dawn Single, Jenice Suddoth and Darlene Zeiler. For the sake of brevity, the remaining community members will not be individually named in this Order but their names are contained in the case file and are part of the record in this case. Finally, Jason Seidelman, a Baltimore County Code Inspector, appeared as an interested citizen and was called by the Protestants to testify.

This matter is currently the subject of an active violation case (Case No. 08-5476) before the Office of Administrative Hearings. A code citation was issued for allegedly operating an open dump/junkyard in violation of the BCZR, and the violation hearing was stayed pending the outcome of this Petition for Special Hearing. It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Inspections and Approvals, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested special hearing.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

The Petitioner began by calling David Reynolds, Vice President of Integrity Recycling, Inc. ("Integrity"), who provided extensive testimony regarding the nature of the business using the property. Mr. Reynolds testified the property is located on the southeast side of Philadelphia Road in the Spivey Industrial Park in the Rosedale area of Baltimore County. The Industrial park contains four businesses, also housing a concrete, pool supply and HVAC company. In addition

to other businesses on Petitioner's site, he described the considerable commercial character of the area. These included businesses to its immediate east and west, a fire department station two blocks away, and a school bus storage depot a block away from the site. Petitioner submitted a lengthy series of photographs that were marked and accepted into evidence as Petitioner's Exhibits 11A-CC. Mr. Reynolds used the photographs to describe the scrap metal recycling process, which is labor intensive and requires various pieces of heavy machinery.

According to Mr. Reynolds, Integrity purchased the property in 1995 and has been operating a scrap metal processing facility with approximately 20 employees for over 15 years. The business operates by purchasing raw materials and items containing recyclable metals that are shipped to the property at varying times via trucks and tractor trailers. After the materials arrive on site, they are unloaded, separated, identified and sorted. The items are analyzed with x-ray machines and so called "spectro analyzers" pursuant to industry standards to determine what type of metals and other materials they contain. The company belongs to the Institute of Scrap Recycling Industrials, under whose auspices the employees of Integrity are trained to efficiently and safely process the materials received. The items are then consolidated and packaged for shipment to steel mills or processing yards throughout the mid Atlantic region. Materials remain on the property for varying times, often being packaged and shipped in only a few days and other times remaining on site for several months until they are sold to a suitable buyer. No solid wastes, cars or other "demolition" debris is kept or processed by the Petitioner.

Mr. Reynolds testified that Integrity has grown over the years and cannot keep all of the materials inside of the building on the site. He asserted that without the ability to "stage" outside the building, the business could be forced to cease operations. He stated that he needed the space

to receive and process the materials; without it, the work flow would simply not be able to function.

The witness described the hours of operation as Monday through Friday 7:00 am to 4:00 pm, and Saturday 8:00 am to 12:00 noon. He added, that shifts are sometimes extended on weekdays, beginning as early as 5:00 am and ending as late as 8:00 pm.

When pressed on cross examination, he took issue with the characterization of the business as a junkyard or dumpsite by pointing out that the company pays for the materials brought in as opposed to charging people money to bring materials to the company, as would be the commercial arrangement in a dump.

In order to prevent the neighboring community from seeing the materials that are stored on the property, Integrity has constructed a fence 12 feet and in some places higher along the property line on Philadelphia Road with a large screen liner that works to block the view of the industrial park. Integrity also planted a series of trees in 2008 at the suggestion of DEPRM. The fence, screen and trees are depicted on Petitioner's Exhibits 11C-D.

Petitioner then called Kenneth Wells, who was accepted as an expert witness in the field of surveying and the regulations pertaining to development in Baltimore County. Mr. Wells testified that the subject property is irregular in shape and contains approximately 3.8 acres of land zoned M.L. and improved by a parking/staging area for containers and roll off vehicles, a concrete area for loading; a main building approximately 175 feet x 125 feet and an overhanging area of 20 to 25 feet x 125 feet.

He added additional details regarding the subject property. He described the landscaping along Philadelphia Road, including the wood line in the rear of the property. He observed that the site elevation drops approximately 18 feet as you go away from Philadelphia Road. There is a

floodplain to the right of the site, the north side of Philadelphia Road is residential, and he further described and confirmed the various commercial uses adjacent and nearby to the property. He then presented a “red line” copy of the site plan, showing alterations and improvements to the fencing surrounding the property.

The witness then turned his attention to the various statutes and definition purportedly supporting Petitioner’s case.

He pointed to the “uses permitted as of right” in an ML zone which is set forth in subsection 253.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), specifically subsections (A)(31) and (A)(56) (Petitioner’s Exhibit 12). It is his opinion that the Petitioner’s business falls under these sections and observed that the statutes contained no injunction or preclusion directing that these activities could only be carried be on indoors. Moreover, he testified that in all of his review, nothing contained in any statute precluded the all important “staging process” from being carried on outside.

He then directed his attention to the definitions contained in subsections 101.1 of the B.C.Z.R., particularly those of “junkyard” and “open dump” (Petitioner’s Exhibit 13 and 14). He pointed to the exclusion of scrap for use in manufacturing processes contained in both definitions as further indication that the Petitioner’s business was lawfully operating. It was his belief that the “manufacturing” exclusion was derived from the definition of that term contained in *Webster’s Third New International Dictionary of the English Language*, unabridged definition, (Petitioner’s Exhibit 7), which is utilized by statute when a term is not included or defined within the Code.

Finally, he pointed to excerpts from the Master Plan 2010 (Petitioner’s Exhibit 16) noting the County’s approval of and support of recycling programs as part of its commitment to sound ecological policies. As a result of the above, he believed and it was his expert opinion that

Integrity was not an open dump or a junkyard under the Code definitions; that Integrity, a scrap metal processing facility, was a use permitted in the ML zone; and that carrying out the various activities primarily “staging” outside of the actual structure on the site was legal and not in violation of the Code.

Under cross and redirect examination, the witness acknowledged that the Fire Department had been called to the property two times since 2004, when a torch operator could not completely extinguish a piece of material upon which he was working. He also agreed that 18 wheeler trucks come to the property on a varied scheduled and that traffic bringing materials to and removing packages of recycled materials from the site occurs two or three times per week.

In response to further questioning, he confirmed and maintained that all fluids are removed from items to be recycled, or they are not accepted by the company. He further stated that all items which are actually kept by Integrity are triple rinsed to remove any fluids or vestiges of fluids that may remain and that no hazmat (hazardous materials) are present on the site. He revealed that affidavits are required for items which are “flushed” of all fluids before they are received by the company. He then noted that the Maryland Department of Environmental Protection had inspected the site with negative results, that a silt fence had been constructed and that noise and air quality tests had been carried out and the company’s activities had been found to be within proper limits.

A number of nearby community residents testified. Peter Single, a resident living approximately 60 feet across Philadelphia Road from Integrity presented his testimony. He stated that it had been his original understanding that all activities of Integrity would be conducted under roof, and complained of noise, including constant crushing noises at all hours, odors from the site and the coming and going of trucks running all night. His concerns ranged from the hours of

operation of the company to the noise levels, delivery times, hazardous waste and other related perceived health dangers.

Dawn Single, adopted her husband's testimony and added that she had complained to the Baltimore County Fire Chief regarding the odors emanating from the site, which she believed were as a result of burning. Resident Jeniece Suddeth also adopted the previous testimony of Mr. and Mrs. Single and offered her own testimony that sometimes her house and windows rattle as a result of items dropped at the subject site. She also sees piles of materials from her second floor windows. She believes that Philadelphia Road should be widened to deal with the trucks and traffic deliveries and other concerns. Darlene Zeiler, another nearby resident, complained also of noises emanating from the Integrity site at all odd hours.

Jason Seidelman was the final witness at the hearing. A Code Enforcement Inspector for Baltimore County for over eight years, he testified that the subject site was a part of his regular route area. He related that upon a complaint by a citizen, he met with Mr. VanMetre about the expanding business. He found Mr. VanMetre friendly and cooperative in resolving two issues (lawn cutting and fence repair). In September, 2010 the question of whether or not the site was junkyard or open dump was raised as an issue for possible Code violation. In light of the fact that he found nothing specifically concerning this type of operation, including whether or not these activities should be carried on inside or outside, within the Code, he issued the Code violation set forth above.

The issues in this case concern determinations not specifically, clearly or directly addressed by either the Baltimore County Code or the Baltimore County Zoning Regulations. Such is often the case when new science, activities and businesses develop and are not addressed upon their inception and development by local law.

Such is the case concerning commercial recycling. We clearly recognize as a society that recycling protects natural resources and aids in the proper treatment and management of our environment. Master Plan 2010 lauds Baltimore County's ranking as No. 1 relative to recycling in the State with a 58% recycling rate as calculated in 2008 by the Maryland Department of the Environment. The Plan recognizes and calls for policies which will address the need to improve our handling and processing of recyclable materials, to reduce the degree to which these materials are wastefully discarded, to minimize the need for land filling, and to extend the useful life of our existing landfills.

Unfortunately, there are no Code provisions that specifically define the entities which are essential and needed to meet these goals, nor which set guidelines and parameters for the private sector to address the locations, and processes by which commercial recycling can exist and operate. These deficiencies in the law result in matters such as the instant case. Therefore, I will attempt to resolve the issues raised both by the Petitioner as well as the neighboring community as they relate to the existence and day to day operations of Integrity Recycling, Inc.

The definition of "junkyard" is found in Section 101.1 of the B.C.Z.R., which states:

JUNKYARD – Any land used commercially or industrially for stage or for sale of scrap metal, wastepaper, rags or other junk, and any land, except as provided for by Section 428, used for the storage of unlicensed or inoperative motor vehicles, dismantling or storage of such vehicles or parts thereof, or used machinery, regardless of whether repairs or any other type of commercial operation occurs, but excluding scrap for use in manufacturing process on the premises or waste materials resulting from such process or resulting from the construction or elimination of facilities for such processes. The term does not include unlicensed motor vehicles located at automotive service stations, service garages or new or used motor vehicle outdoor sales areas, or any vehicle stored pursuant to Section 405A. [Bill No. 135-1986]

An "open dump" is also described in Section 101.1 as:

OPEN DUMP – Any land publicly or privately owned, other than a sanitary landfill, on which there is deposit and accumulation, either temporary or permanent, of any kind of organic or inorganic refuse, including but not limited to waste materials, waste products, wastepaper, garbage, empty cans, broken glass, rags and all other kinds of organic or inorganic refuse, but excluding scrap for use in manufacturing processes on the premises, or waste materials resulting from such processes, or resulting from the construction or elimination of facilities for such processes. [Bill No. 140-1962]

Both sections include the identical exclusion – “but excluding scrap for use in manufacturing process on the premises or waste materials resulting from such process or resulting from the construction or elimination of facilities for such processes.” The term “manufacturing” is not defined in Section 101.1. Pursuant to the Code, we then look to *Webster’s Third New International Dictionary of the English Language, Unabridged* for guidance. We find definitional choices under “manufacturing” which include “to make (as raw materials) into a product suitable for use”; as well as “to make from raw materials by hand or by machines.”

“Recycling” in its modern 21st century understanding, is not defined in subsection 101.1. Webster’s noted above offers as a definition for that term “to pass again through a cycle of changes or treatment” and “to feed back continuously in a laboratory or industrial operation or process for further treatment.” The Webster’s volume utilized under the Code was published in 1986 and does not address at all modern recycling as we know it today; a process and social activity which is one of the cornerstones of modern environmental conduct.

Notwithstanding this dearth of references to modern day recycling, I find that “excluding scrap metal for use in manufacturing processes on the premises” appearing in both definitions of “junkyard” and “open dump” can and should be read, albeit in a liberal interpretation, to encompass recycling; a process by which materials already used in a product or thing are removed,

grouped and made available in some form for reuse. Therefore, a recycling operation such as Petitioner's is clearly not a "junkyard" or "open dump".

Turning to the question of whether or not the Petitioner's business is permitted in an ML zone, I refer first to the list of uses permitted as of right in that zone which appear in subsection 253.1(A) of the B.C.Z.R. I have particularly reviewed subsection (A)(31), which states:

"Metal products manufacture or processing, limited to the restricted production (See Section 253.3.) of articles made of sheet metal, light metal mesh, pipe, wire, rods, strips or other shapes or similar component parts."

and (A)(56) which reads:

"Other manufacture of articles of merchandise made from materials permitted to be used and made by processes permitted to be employed in the production activities more specifically listed above."

Though not specifically including the words "recycle" or "recycling", subsection (A)(31) which includes "processing" of items for production (which under subsection 253 includes the words "manufacture from previously prepared" materials), it does, in my determination, when read with the previously noted definition of "manufacture" permit me to extrapolate and conclude that the items received by the Petitioner, which are by process morphed (read "manufactured") into a product sold to subsequent purchasers, absent language to the contrary, is an activity permitted under subsection (A)(31).

Accordingly, I also find that, under Section (A)(56), permitting manufacture of merchandise made from and by that which is permitted previously in subsection (A), Petitioner's operation would also be allowable in the ML zone.

Having disposed of the above inquiries, I am still left with a number of problematic issues concerning the activities carried on the Petitioner at the site, especially as they impact upon the surrounding community. Testimony revealed the various activities carried out by Petitioners'

employees in connection with its recycling activities. There is nothing in the Master Plan, Code or B.C.Z.R. restricting or directing activities connected with modern commercial recycling. For instance, I can find no specific direction in the statutes as to what should occur indoors, under cover of some description, or outside. Having said that, the testimony of the surrounding residents makes clear that some restriction and limitation is necessary to address concerns regarding the public health, safety and general welfare. These considerations must be addressed if any determination made is to be granted in harmony with the spirit and intent of the County's zoning regulations.

The testimony of the neighboring residents addressed problems and concerns in a number of areas, including traffic, noise, quality of life in relation to hours of operation, air quality, and the undeniable negative aesthetic affect of Petitioner's business on the neighboring community. There was considerable concern regarding the odors and health concerns related to the items brought onto Petitioner's site. Petitioner's witnesses did reveal satisfactory Maryland Department of Environment noise and air quality test results; and presented a detailed description of the steps taken by Integrity to deal with fluids contained in or connected to items received, including a refusal in some circumstances to accept the receipt of proffered items for recycling. However, these activities must continue to be intensely monitored with results made easily available to the public.

Likewise, testimony revealed that noise generated by the process of "staging" and other related activities on the site including the ingress and egress of trucks to the site, is a prevailing and constant irritant to the surrounding community. It is also clear that certain activities, by their very nature, must be carried on outside and will generate noise thereby; the movement in and out

of material before and after recycling activities are complete are also essential to the Petitioner's business. However, the above irritants can and should be subject to reasonable restriction.

Even if ameliorative steps are taken, the normal activities of Integrity are simply not aesthetically pleasing to a neighboring community and need to be screened from view as effectively as possible, by man-made and natural means.

Considering therefore all of the testimony and evidence presented, I am persuaded to grant the special hearing relief, subject to the conditions enumerated in the Order below. I further find that the granting of the relief as set forth below can be accomplished without injury to the public health, safety, and general welfare.

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

THEREFORE, IT IS ORDERED this 23rd day of March, 2011 by this Administrative Law Judge that Petitioner's Special Hearing request from Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- That Integrity Recycling, Inc.'s operation on site is not an open dump/junkyard as defined in Section 101.1 of the B.C.Z.R.,
- That Integrity Recycling Inc.'s operation on site, a scrap metal processing and recycling facility, is a use permitted in the M.L. zone,

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The hours of operation of any activities carried on by Petitioner on the subject site located at 7921 Philadelphia Road shall be limited to 7:00 am – 5:00 pm Monday through Friday, and Saturday 10:00 am – 2:00 pm.

2. The ingress and egress of trucks to the Petitioner's site located at 7921 Philadelphia Road shall be limited to the hours of 8:00 am – 5:00 pm Monday through Friday, and the hours of 10:00 am – 2:00 pm on Saturday.
3. That testing as to soil makeup, air quality, and noise levels at Petitioner's site shall be carried out at least once every six months by the Maryland Department of the Environment or other private entity deemed qualified by MDE to do so; that the results of said tests shall be made available to the public within 15 days of its receipt by Petitioner on the Petitioner's company website. Written copies are to be made available upon request.
4. That all fence and lining screens thereof shall be immediately repaired and that the height of all fencing and lining shall be maintained at the height of 14 feet. That additional fast growth trees are to be planted along Philadelphia Road, especially as it approaches Rosewick Avenue; Petitioner shall provide a plan showing the location and detail of the proposed additional tree planting and fencing and shall submit plan to Avery Harden, Landscape Architect for Baltimore County, subject to his review and approval.
5. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

Signed
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz