

IN RE: **PETITION FOR SPECIAL HEARING** * BEFORE THE
(**11019 Gateview Road**) *
8th Election District * OFFICE OF
3rd Councilmanic District *
Karole & James Riffin * ADMINISTRATIVE HEARINGS
Petitioners * FOR BALTIMORE COUNTY
* **Case No. 2014-0094-SPH**

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ORDER ON MOTION FOR RECONSIDERATION

Now pending is Petitioner’s motion for reconsideration (and Memorandum of Law in support thereof), which will be denied as explained below.

The Petitioner correctly notes that the undersigned mistakenly identified a portion of the property as being zoned RC 5, rather than RC 6. In the end, it is a distinction without a difference, since the pertinent use regulations are similar for both zones.

The Petitioner emphasizes the testimony he presented at the hearing as well as the affidavits of 15 adjacent neighbors, none of whom objected to the Petitioner’s use of the property and storage of vehicles and equipment thereon. Petitioner notes that no contrary evidence was presented, and he argues that as a result the Administrative Law Judge (ALJ) is required by law to find in his favor.

While in an ordinary case one might expect that Baltimore County would present evidence which contradicts that presented by Petitioner, this is not an ordinary case. Here, the Petitioner and the County entered into a settlement agreement (contained in the case file) which provides that attorneys for the County will not “appear at the hearing” but would instead “allow the Riffins to make their case to the ALJ.” So that explains why the County did not participate in the hearing.

But more importantly, it is Petitioner's burden to prove by a preponderance of the evidence that he is entitled to the relief sought. Calvert County v. Howlin Realty Inc., 364 Md. 301 (2001). It is not the County's burden to prove that the Petitioner is not entitled to the relief sought, and in this regard, I simply do not believe the Petitioner sustained his burden of proof in this case. No new evidence or facts were presented in the motion for reconsideration which would alter that conclusion.

The only relevant testimony presented at the hearing was that of Petitioner, which is recounted at pages 2-3 of the motion. Four exhibits were presented: a map showing the zoning of the property, two sets of black and white photos depicting the single family dwelling on the property and the areas around the dwelling that were entered by the inspector, and the fifteen (15) affidavits from neighbors mentioned earlier. What was not presented was any evidence to corroborate Petitioner's testimony concerning the historical and present uses of the property and the equipment and vehicles thereon. There were no photographs of the property itself or any of the equipment and vehicles at issue in the case. No receipts, tax returns, or documents of any sort were presented which would substantiate Petitioner's claims, including that the property is used for "commercial agriculture" and the "railroad equipment" (not just the caboose) is used for "recreational purposes" and to "entertain children."

An ALJ, like any fact finder, is entitled to make credibility determinations and factual findings, and I simply do not believe the Petitioner has satisfied his burden to prove that the vehicles and railroad equipment can be lawfully kept at the premises under the B.C.Z.R. While it is true Petitioner testified he uses the vehicles for commercial agricultural purposes and the railroad equipment as a "recreational amenity," saying something is so does not make it so.

The Petitioner is correct that both the DR and RC 6 zones permit (as "accessory uses")

“swimming pools, tennis courts” and other recreational amenities. In construing a statute, the doctrine of *ejusdem generis* dictates that a general statutory term followed by a list of particulars is to be interpreted narrowly to “include only those things or persons of the same class or general nature as those specifically mentioned.” In re Wallace W., 333 Md. 186, 190 (1993). In this regard, railroad equipment is clearly not of the same class or nature as swimming pools and tennis courts.

This conclusion is also buttressed by the B.C.Z.R.’s definition of “accessory” uses, which contains a requirement that the use (or structure) be “customarily incident . . . to and serve a principal use or structure.” B.C.Z.R. §101.1. Again, railroad equipment (unlike a swimming pool) is not customarily found or used in service of a single family dwelling, which is the “principal use” of Petitioner’s property. In addition, the Petitioner failed to provide testimony or exhibits which would tend to establish that such railroad equipment was customarily used or found in residential settings.

The remaining arguments in the Motion are the same or very similar to those Petitioner made at the public hearing. To that extent, they are not the proper subject of a motion for reconsideration. Howlin Realty Inc., 364 Md. at 325 (agency “may reconsider an action previously taken and come to a different conclusion upon a showing that . . . some new or different factual situation exists that justifies the different conclusion”).

WHEREFORE, IT IS ORDERED this 25th day of February, 2014, that the Motion for Reconsideration filed by Petitioner, be and is hereby DENIED.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln