

Tax Map/Block/Parcel
No. 64-5-480
Case 5968

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Fred R. Rosen
3011 Forever Drive
Finksburg, MD 21048

ATTORNEY: Clark R. Shaffer, Esq.
73 East Main Street, Suite 1
Westminster, MD 21157

ATTORNEY: J. Brooks Leahy, Esq.
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REQUEST: A remand of an appeal of the Zoning Administrator's decision in Case ZA-1528, denying a request for a professional office as an accessory use in the conservation zoning district as stated in Section 158.071(E)(11) of the County Code.

LOCATION: The site is located at 3011 Forever Drive, Finksburg, MD 21048, on property zoned "C" Conservation District in Election District 4.

BASIS: Code of Public Local Laws and Ordinances, Section 158.071(E)(11).

HEARING HELD: October 25, 2016

FINDINGS AND CONCLUSION

On October 25, 2016, the Board of Zoning Appeals (the Board) convened to hear oral argument on a remand of an appeal of the Zoning Administrator's decision in Case ZA-1528, denying a request for a professional office as an accessory use in the conservation zoning district as stated in Section 158.071(E)(11) of the County Code. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

The procedural history of the case is that the Board first heard the case in 2014. In December, 2014, the Board approved the applicant's request and therefore allowed the applicant to conduct his business from his home in the conservation district. The Board's decision was

then appealed to the Circuit Court of Carroll County. In a Memorandum Opinion, Judge J. Barry Hughes determined that Mr. Rosen's request for the accessory use of a professional office in his home was denied. The decision of the Circuit Court was thereafter appealed to the Court of Special Appeals. In an unreported opinion, that court reversed the decision of the Circuit Court and remanded the case back to the Board of Zoning Appeals.

The Board considered the record supplied to it by the parties. In addition, a site visit was made to where Mr. Rosen's business was located. On remand the Court of Special Appeals gave the Board the questions that were required to be answered before the applicant's request could be granted.

- 1) Can Mr. Rosen's business activities in his residence be reasonably characterized as an office use?
- 2) If the answer to the first question is "yes," then the Board must decide whether Mr. Rosen's business constitutes a "profession" as the court defined that term in the opinion.
- 3) Finally, if the Board concludes that Mr. Rosen is engaged in a profession, then the Board must decide whether his business is similar in use and characteristics to offices of physicians, insurance agents, and realtors.

The evidence in the record revealed the following about Mr. Rosen's business. Mr. Fred Rosen testified as the applicant here. He is the owner of Diversified Technologies, Inc. His business is an alarm installation and security system maintenance and service business. Mr. Rosen has a Security Systems Agency license from the State of Maryland (Exhibit 3A) and a license from several counties in Maryland to operate, install, maintain, and repair low voltage security systems (Exhibit 3B-G). Carroll County does not require a license for such work. Mr. Rosen stated that he has always operated the business from his residence since 1978.

Mr. Rosen has had the business in the name of Diversified Technologies, Inc. since the 1990s. He has a copy of a zoning certificate No. 96-2468 (Exhibit 6) that allows him to have a home occupation at an address in Westminster, Maryland. At that time he did not have any employees, according to the zoning certificate. He also had an office only at this location according to the certificate. All business operations take place in the basement of the house.

He stated that the company is now licensed by Underwriters Laboratory. He only works on referrals. He does not send out advertisements. The business does offer 24 hour service and most of the time he provides this service over the weekends. The business has three vans and there is a truck in the name of the business. (In the near future one van will cease to be in use for the business.) Mr. Rosen has four employees that come to his house on a daily basis. One employee handles administrative/secretarial duties; two employees are full time technicians; another employee is a part time technician. The employees drive their personal vehicles to his house. The technicians then take company vehicles to the job sites. The deliveries for parts for the business are done by UPS trucks. No customers come to the house, and no contractors assisting the business come to the house. Mr. Rosen included the trips to his house in a typical week in Exhibit 7.

Jay Voight, the Zoning Administrator, testified to the Board. He explained the rationale for his zoning decision. Mr. Voight denied Mr. Rosen's request because he did not find that the business was a professional office as described in 158.071(G)(11). Mr. Rosen's business was not viewed like a professional office of a doctor, dentist, or lawyer to Mr. Voight. He viewed the business as more like the work of a contractor as defined by the zoning ordinance. He also stated that, in general, businesses are not allowed in the Conservation District.

Sharon Underkoffler testified in opposition to the request. She is a neighbor who has lived in her house for approximately thirteen years. She was concerned about the amount of traffic generated by the business. Because of traffic unrelated to a residence coming into the neighborhood, she was concerned about her safety. She was also concerned about her property value decreasing due to the business.

Karen Arnold testified in opposition to the request. She stated that there has been more traffic to the address since the previous owners moved out. The traffic concerns affected her desire to allow her children to play outside near the road. She did not want a business in her residential community. She was also concerned about a decrease in property values. Her husband was also a contractor. He had to commute out of the county for his business.

A number of people wrote letters in opposition to the request. Jamison Hensley was concerned about the traffic. He was also concerned about a decrease in property values. He also believed that the business goes against the zoning for the area.

John and Karen Schmiedt were also in opposition to the request. A real estate agent told them that in his 20 years of experience the existence of a business run from a home almost always negatively impacts the value of other adjacent homes. Many people will not consider buying a house with a business nearby.

Robert and Vanessa Freter also were in opposition to the request. They were concerned about the traffic and their young children. They did not want the character of the neighborhood to change with the approval of this request in a Conservation District.

There were also letters in opposition from Cameron and Janet Wilson, John and Kathy Spann, Jeff and Karen Arnold, and Sharon Underkoffler. These letters addressed similar concerns in opposition to the request.

There is a November 4, 2014 letter from Philip R. Hager to the Board. Mr. Hager wrote that the Conservation land use designation is to conserve environmental resources and to support activities associated with natural resource protection. Commercial uses or activities are discouraged in this zone. He requested that the application be denied.

Scott E. Graf, Comprehensive Planner, wrote his comments in an October 31, 2014 memorandum. He stated that the intended use was a business use and did not meet the intent of the Conservation zone.

The Board addressed the three questions it was instructed to consider by the Court of Special Appeals.

Can Mr. Rosen's business activities in his residence be reasonably characterized as an office use?

The Board found that Mr. Rosen clearly had an office in his home. The office was used as an office. However, the Board found that the office was there to support a contractor's operation as opposed to an office that stood alone as the business. Every type of business could require an office. The office that Mr. Rosen had was such an office that supported the paperwork aspects of his business. It is typical for any office to have a secretary including Mr. Rosen's office. Mr. Rosen's office was different from a typical office in that it also included a manufacturing function or element to it.

If the answer to the first question is "yes," then the Board must decide whether Mr. Rosen's business constitutes a "profession" as the court defined that term in the opinion.

The Board found that Mr. Rosen was not engaged in the type of profession as that term was defined in the Court of Special Appeals opinion. Other professions did not utilize technicians to perform a service and have utility vans as a part of the business. It was believed that Mr. Rosen's business was similar to the business of an electrician, a contractor, a plumber or an Xfinity installer. Mr. Rosen's business was believed to be much more like a trade than a profession. The situation might be different if Mr. Rosen's work was just related to consulting where his knowledge in his field was of prime importance. The use of the vans and the installation of product by the technicians is the activity that is deemed to make his business one of a contractor. In each case, a representative of the business drove a van to the client's residence, performed an installation of materials or corrected something in the home, and left upon the completion of the services. It was deemed by the Board that Mr. Rosen's activity in his business were not similar enough to a physician's office, a realtor's office, or an insurance agent's office. There was no question that clients did not come to Mr. Rosen's office or home as a part of his business. His technicians took the vans to the homes of the clients. The use of the multiple vans with their technicians is a major portion of the business. That factor made Mr. Rosen's business similar to a contractor's business and dissimilar to a physician's office, a realtor's office, or an insurance agent's office. The Board found that Mr. Rosen's business did not require specialized knowledge and often long and intensive academic preparation. The evidence was clear that Mr. Rosen had gone as far as taking some classes in college. Although the Board found that Mr. Rosen provided a professional service it did not deem him to be a profession as the term was defined in the Court of Special Appeals.

Finally, if the Board concludes that Mr. Rosen is engaged in a profession, then the Board must decide whether his business is similar in use and characteristics to offices of physicians, insurance agents, and realtors.

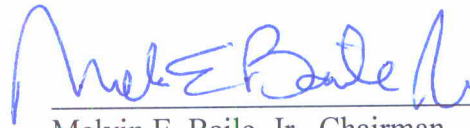
The Board determined that Mr. Rosen's business was not like the office of physicians, insurance agents, and realtors. The purpose of allowing professions in a conservation district was to limit

the amount of businesses in the district. Any business with an office would not be allowed in such a district. Only those businesses engaged in a profession would be allowed in the conservation district. The Board found that Mr. Rosen was not engaged in such a profession.

The Board was convinced that authorization of the request with regard to denying a request for a professional office as an accessory use in the conservation zoning district was not consistent with the purpose of the zoning ordinance, and not appropriate in light of the factors set forth by the Court of Special Appeals. The Board denied approval of the professional office as an accessory use requested by the applicant.

10-26-2016

Date



Melvin E. Baile, Jr., Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Land Use Article, Section 4-401 of the Annotated Code of Maryland.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.

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