

IN THE MATTER OF	*	BEFORE THE
ROSEBANK AVENUE GROUP, LLC, LEGAL		
OWNERS AND NICHOLAS AND IRIS MAGGIO *		BOARD OF APPEALS
PETITIONERS FOR SPECIAL HEARING		
ON THE PROPERTY LOCATED AT	*	OF
8209 ROSEBANK AVENUE		
	*	BALTIMORE COUNTY
15 TH ELECTION DISTRICT		
7 TH COUNCIL DISTRICT	*	Case No.: 21-184-SPH
* * * * *		

**OPINION ON REMAND OF THE
APPELLATE COURT OF MARYLAND**

This matter comes before the Board of Appeals for Baltimore County (the “Board”) on remand by the Appellate Court of Maryland in an Unreported Opinion (No. 1620, September Term, 2023), directing the Circuit Court for Baltimore County to remand the matter to the Board of Appeals to fully articulate and clarify its analysis, and to provide its rationale underlying the Board’s January 4, 2023 Opinion regarding the existence and legitimacy of a service garage at 8209 Rosebank Avenue (the “Property”). The Board determined that there was no service garage operating at the Property.

BACKGROUND

The Appeal was filed by Nicholas and Iris Maggio, who reside at 8203 Rosebank Avenue, adjoining the Property.

The Board convened a virtual public deliberation on December 11, 2024, in response to the Court’s instruction.

The Property is a 1.34± Acre parcel zoned ML – Manufacturing, Light, and is improved by a building that is partitioned into three separate bays. Petitioners’ home, which is zoned DR 3.5 (Density Residential), adjoins the subject property on Rosebank Avenue, and is flanked on two sides by industrially zoned land. Entrances to the building face the Petitioners’ side yard.

In the matter of: Rosebank Avenue Group, LLC, Legal Owners
Nicholas and Iris Maggio, Petitioners
Case No.: 21-184-SPH

The front third of the building is occupied by an electrical contracting company, and the rear third of the building is occupied by Roche Racing Engines, a company that performs highly specialized machining on race car engines, which have been pulled from cars and delivered to the Property via trailers.

The middle portion of the building is used by Ernie McNew, but not for a business purpose. Mr. McNew maintains the space to store and work on personal vehicles for himself and his friends. Mr. McNew testified that he and his friends are car enthusiasts, and that he receives no payment or remuneration for any of the activities in the building.

The businesses that flank his space are undisputed as uses permitted in the zone, and as such, involve commercial comings and goings.

DISCUSSION

At the Board's original deliberation on November 10, 2022, it discussed at length the definition of "service garage" contained in the Baltimore County Zoning Regulations ("BCZR") §101. Board members struggled with the fact that the definition is poorly written, but concluded that as a matter of statutory interpretation, every word must be given effect, including the word "remuneration".

At that time the Board determined, as we do again now, that there was no evidence of any money changing hands for the vehicles brought to the property. In fact, the property owner testified expressly to the contrary, i.e. that the space was used for his hobby and shared with his friends. He further testified that he works over 60 hours a week at the Port of Baltimore. This testimony was un-contradicted. There was no evidence that a business is currently being conducted on this part of the Property – no signs or advertising – though such activities may have occurred in the past.

**In the matter of: Rosebank Avenue Group, LLC, Legal Owners
Nicholas and Iris Maggio, Petitioners
Case No.: 21-184-SPH**

The Board reasoned that the definition requires remuneration, and applying the undisputed facts, a service garage use does not exist. If the County Council intended that the use exist whether or not money changed hands, the County Council would have included language to that effect in the adopting the definition.

In the 2024 deliberation, the Board further discussed the testimony of the Appellants' expert witness, W. Carl Richards, but rejected his interpretation of the Zoning Commissioner's Policy Manual, which does not address that remuneration is a necessary element for the service garage use to exist. The Board held that the definition in the BCZR should prevail over the Zoning Commissioner's Policy Manual. The Board also recognized, as did the Appellate Court, that its decisions do not set precedent and may differ significantly based on the facts of each case.

In so doing, the Board recognized the fact that the subject property is zoned Manufacturing Light (ML), while Appellants' property is zoned residentially (Density Residential – D.R. 3.5). Appellants' property lies between a long existing industrial building, populated with uses permitted in the zone, and an active railroad line. The ML zone and uses existing on Rosebank Avenue are not limited to the Property and pre-existed Appellants' purchase of their home by at least thirty years.

Like any purchaser, prior to purchasing, the Appellants could have investigated the zoning and uses that were existent, all of which were sufficient to put Appellants on inquiry notice.

**ANALYSIS OF CBA-20-021,
THE MATTER OF TATYANA PRASOL AND VLADIMIR BESSER**

The Board opinion *in the Matter of: Tatyana Prasol and Vladimir Besser*, Case No. CBA 20-021 is distinguishable. That case involved adjoining residential properties sharing the

In the matter of: Rosebank Avenue Group, LLC, Legal Owners
Nicholas and Iris Maggio, Petitioners
Case No.: 21-184-SPH

same residential zoning. A diligent buyer of a residence surrounded by residential uses and zoning has a reasonable expectation that the use of the adjoining property will comply with the BCZR.

In the instant case, the existence of the ML zone – in fact the whole mixed use nature of the street and the area, does not invite or always comport with a serene residential subdivision, nor should they. The ML uses are permitted and operate legally. There was no evidence that the Property was in violation of any Baltimore County or State of Maryland regulations, despite numerous complaints and inspections over several years. The Board reasoned that permitted uses in industrial zones should be able to continue so long as they operate in compliance with applicable law.

Similarly, Baltimore County has an interest in protecting residential neighborhoods from deterioration. Many code violation cases before the Administrative Law Judge and the Board of Appeals involve automotive activities including storage of inoperable vehicles on residential property. Relocating those vehicles and activities to appropriately zoned sites is one way to achieve compliance. The Board believes the Property offers a more desirable and compliant location than a residential yard.

In Case number CBA-20-021, there was evidence of a vehicle being offered for sale, thus seeking remuneration. In the instant case, there was no evidence of sales activity or of any non-permitted activity. The Board believes these cases are distinguishable on the facts.

CONCLUSION

In summary, the Board reasoned that remuneration is a required element of a service garage use and that the legislature could have provided otherwise if it so intended. Further, the Board reasoned that the Appellants were on notice of the industrial nature and activities on the

In the matter of: Rosebank Avenue Group, LLC, Legal Owners
Nicholas and Iris Maggio, Petitioners
Case No.: 21-184-SPH

Property at the time they acquired their home, and they were on inquiry notice to investigate those uses. Lastly, the Board reasoned that an industrially zoned property is an appropriate location for automotive activities as a hobby or pastime, and using an industrial property in such a manner is in keeping with the spirit and intent of the BCZR to the extent such uses do not occur on residential properties.

ORDER

THEREFORE, IT IS THIS 15th day of January, 2025, by the Board of Appeals for Baltimore County,

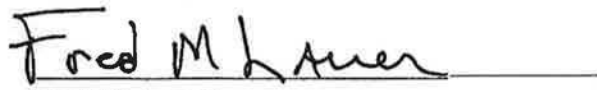
ORDERED, that for the reasons stated herein, the Board of Appeals **AFFIRMS** its January 4, 2023 Opinion.

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*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Deborah Dopkin, Panel Chair


Sharonne R. Bonardi


Fred M. Lauer



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 15, 2025

G. Macy Nelson, Esquire
Grant Amadeus Giel, Esquire
Law Office of G. Macy Nelson, LLC
600 Washington Avenue, Suite 202
Towson, Maryland 21204

Angela and Brian Roche
Rosebank Avenue Group, LLC
8209-D Rosebank Avenue
Baltimore, Maryland 21222

RE: In the Matter of: *Rosebank Avenue Group, LLC – Legal Owner*
Nicholas and Iris Maggio – Petitioners
Case No.: 21-184-SPH

Dear Messrs. Nelson, Giel and Roche:

Enclosed please find a copy of the Opinion on Remand of the Appellate Court of Maryland issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Executive Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Office of People's Counsel
Maureen E. Murphy, Chief Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law

Nicholas and Iris Maggio
Stephen Hughes/Rosebank Avenue Group, LLC
Ernie McNew/Rosebank Avenue Group, LLC