



## BOARD OF ZONING APPEALS

August 3, 2021

**TITLE:** Building materials sales and storage yards which are enclosed and Contractor's equipment and storage yards. Variance to allow the use to be located 84 feet from a lot in a residential zone.

**REQUEST: Special Exception and Variance Case 21-06**

An application by Tri-County Roofing & Sheet Metal, Inc., and K & T, LLC the property owner, requesting approval of a **special exception** to operate a **"Building materials sales and storage yards which are enclosed"** use, pursuant to Zoning Ordinance Article X: I-R Restricted Industrial Zone, Section 164-54A. and a Special Exception to operate a **"Contractor's equipment and storage yards"** use, pursuant to Article X: I-R Restricted Industrial Zone, Section 164-54C. and a **Variance** to Section 164-58 to allow the special exception **use to be located 84 feet from a lot in a residential zone**, to be located at 45 Magna Way, in Westminster, Maryland.

**PROJECT INFORMATION:**

**LOCATION:** 45 Magna Way, Westminster, Maryland (SDAT# 07-155980), located 600 feet south west of the Old Bachmans Valley Road and Magna Way intersection.

**ZONE:** I-R Restricted Industrial Zone

**APPLICANT/REPRESENTATIVES:**

**APPLICANT:** Tri-County Roofing & Sheet Metal, Inc.,

**OWNER:** K & T, LLC

**ENGINEER:** None

**ATTORNEY:** Scott Breza, Esq

**STAFF:** Andrew R. Gray, Comprehensive Planner  
Mark A. Depo, Director of Community Planning and Development

**ATTACHMENTS:**

1. Special Exception and Variance Application
2. SDAT real property search information

## STAFF REPORT

Article XXII of the City Zoning Ordinance (Zoning Ordinance) requires the City of Westminster Board of Zoning Appeals (Board) to hear and decide special exceptions as such exceptions are authorized by the Zoning Ordinance and in specific cases such variances from the terms of this chapter as are necessary to avoid arbitrariness and so that the spirit of this chapter shall be observed and substantial justice done. The Board is hereby empowered to add the specific provisions that it may deem necessary to protect adjacent properties, the general neighborhood and the residents and workers therein, including provisions such as special setbacks, landscaping, parking, lighting restrictions, limited business hours and other restrictions. The Board may also specify a time limit for the implementation of a special exception. [Zoning Ordinance Section 164-171.A.]

### I. PROPERTY INFORMATION

The Property is zoned I-R Restricted Industrial. The Maryland State Department of Assessments and Taxation (SDAT) records indicate the Property is owned by K & T LLC. The Property is located 600 feet southwest of the Old Bachmans Valley Road and Magna Way intersection.



★ = Site

## II. BACKGROUND

On June 29, 2021, the Applicant submitted a Special Exception application to the Board for a “Building materials sales and storage yards which are enclosed” and a “Contractor's equipment and storage yards” use, pursuant to Zoning Ordinance Sections 164-54A. and Section 164-54C., respectively, and an accompanying Variance application requesting a variance at the property located at 45 Magna Way (SDAT# 07-155980), hereinafter referred to as the “Property”. The special exception and variance applications are provided as Attachment 1 of this report.

## III. REQUIRED NOTICE

Due to the requirement of Section 164-166F.: *“The Board shall refer all petitions for special exceptions to the Commission for its report and recommendation. Thereafter, the Commission may, in its discretion, issue a report and recommendation.”* Due to this staff report needing to be submitted to the Commission for them to have an opportunity to make a report and recommendation, the required notice will be highlighted in a supplemental staff report.

## IV. SPECIAL EXCEPTION ANALYSIS AND COMMENTS

Pursuant to Zoning Ordinance Section 164-54A. *“Building materials sales and storage yards which are enclosed”* and Section 164-54C. *“Contractor's equipment and storage yards”* are Special Exception uses in the I-R Restricted Industrial Zone. Site Development Plan T-06-046S, Expert Tree and Stump Removal, was approved on October 3, 2007. Due to a property verification request by the Applicant submitted on March 29, 2021, it was discovered that the necessary special exception approvals for T-06-046S did not occur. The Applicant is essentially requesting to make an already approved and operating business legal, under the Zoning Ordinance.

### **Special Exception Criteria**

Pursuant to Zoning Ordinance Section 164-169, Criteria for determination, “In the exercise of its responsibilities under this chapter, the Board shall study the specific property involved, as well as the neighborhood, shall consider all testimony and data submitted and shall hear any person desiring to speak for or against the appeal or petition.”

- A. In making its determination, the Board may consider whether the appeal or petition would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions or would jeopardize the lives or property of people living in the neighborhood.
- B. In deciding such matters, the Board may consider the following factors, together with other relevant factors:

- (1) The number of people residing or working in the immediate area concerned.
- (2) The orderly growth of a community.
- (3) Traffic conditions and facilities.
- (4) The effect of such use upon the peaceful enjoyment of people in their homes.
- (5) The conservation of property values.
- (6) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (7) The most appropriate use of land and structure.
- (8) Prior decisions of the courts regarding such matters.
- (9) The purpose of the regulations as set forth in this chapter.
- (10) The type and kind of structures in the vicinity where public gatherings may be held, such as schools, places of worship and the like.
- (11) Facilities for sewers, water, schools, transportation and other services and the ability of the City to supply such services.
- (12) Limitations of fire-fighting equipment and the means of access for fire, police and health services.
- (13) The preservation of cultural and historical landmarks.
- (14) Traffic conditions, including facilities for pedestrians, such as sidewalks, safety zones, parking facilities available and the safe access of cars to highways or roads.
- (15) The contribution, if any, that such proposed use, building or addition would make toward the deterioration of areas and neighborhoods.

### **Conditions for Grant of Special Exceptions**

Pursuant to Section 164-161A.(2), the Board of Zoning Appeals is empowered “to hear and decide special exceptions as such exceptions are authorized by this chapter.” Pursuant to Section 164-170A., “The Board may grant a special exception when it finds from a preponderance of the evidence of record that:”

- (1) The proposed use does not adversely affect the general plan for the physical development of the district, as may be embodied in this chapter and in any Master Plan or portion thereof adopted by the Commission.

Information will need to be provided by the applicant to address this standard.

The *2009 Comprehensive Plan* sets goals including:

Goal E2, Objective 3: Support the retention and expansion of existing businesses, while exploring opportunities for new business development.

The special exceptions and variance will allow an already operating use, with an approved site plan from both the City and County, to legally operate, would support this objective.

(2) The proposed use at the selected location will not:

(a) Adversely affect the health and safety of residents or workers in the area;

Information will need to be provided by the applicant to address this standard.

The applicant should discuss any noise pollution that may be associated with this use in relation to the existing residential properties located across Old Bachmans Valley Road in unincorporated Carroll County.

(b) Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or

This is an existing use. The City understands that the Water and Sewer usage will not increase. The Applicant is requesting special exceptions and a variance to make the existing use legal.

(c) Be detrimental to the use or development of adjacent properties or the general neighborhood or change the character of the general neighborhood in which the use is proposed, considering the service required, at the time of the application, the population, density, character and number of similar uses; and

The Applicant is requesting special exceptions and a variance to make the existing use legal.

The special exception uses are proposed on Property in the I-R Restricted Industrial Zone. For the purposes of the special exception review, the neighborhood would consist of the immediately surrounding properties. These properties are zoned as the following:

North: I-R Restricted Industrial Zone in the City

South: I-R Restricted Industrial Zone in the City and R-40,000 in the County

East: I-R Restricted Industrial Zone in the City and R-40,000 in the County

West: I-R Restricted Industrial Zone in the City

(3) The standards set forth for each particular use for which a special exception may be granted have been met.

There are no specific requirements set forth for the particular use.

## **Additional Zoning Ordinance Regulations:**

### Parking Requirements:

Pursuant to Zoning Ordinance Section 164-171B., the proposal must meet the City's parking requirements contained in Article XVI.

Parking has been addressed in the Construction Plans for Expert Tree and Stump Removal (T-06-046S), as approved on October 3, 2007.

### Signage Requirements:

Pursuant to Zoning Ordinance Section 164-121D. On-Premises business signs "Signs for special exception uses shall be in accordance with the pertinent provisions of this article and approved by the Board of Appeals upon the granting of a special exception. Such signs may be freestanding or attached to a building but shall not exceed 32 square feet in size, except as to signs provided by § 164-120C. Lighting for such signs shall not cause glare onto neighboring residential properties or uses and shall be approved upon consideration of the character of the neighborhood in which the special exemption is located..."

No signage is being proposed with this special exception request.

### Distance Requirements:

Any uses of buildings subject to compliance with this section shall be located at least 100 feet from any other lot in a residential zone or in any other zone which contains a dwelling, school, place of worship or institution for human care.

The distance requirement will be discussed in the "Variance Analysis" below:

## **V. VARIANCE ANALYSIS AND COMMENTS**

Pursuant to Zoning Ordinance Section 164-58, *"All special exception uses except those provided in § 164-54A must be located three times the distance requirements specified in § 164-140;..."*

"Contractor's equipment and storage yards" is listed under Section 164-54C. and is subject to being located three times the distance requirements of 100 feet, as stipulated in Section 164-140. This distance would be 300 feet. The Applicant is proposing 84 feet.

## **Variance Criteria**

Pursuant to Section 164-161 A.(3), the Board of Zoning Appeals is empowered “to authorize upon appeal in specific cases such variances from the terms of this chapter as are necessary to avoid arbitrariness and so that the spirit of this chapter shall be observed and substantial justice done.”

(a) Such variances shall be authorized by the Board only upon a finding by the Board that:

- [1] There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or classes of uses in the same zone;
- [2] Such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zone and in the same vicinity; and
- [3] The authorizing of such variance will not be of substantial detriment to adjacent properties and will not materially impair the purpose of this chapter or the public interest.

## **V. CONCLUSION AND ADDITIONAL CONSIDERATION**

Pursuant to Zoning Ordinance Section 164-170B., *“The applicant for a special exception shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.”*

Zoning Administration recommends that the Board of Zoning Appeals carefully review the Special Exception and Variance request and approve the Applicant’s request.