



BOARD OF ZONING APPEALS

November 1, 2022

TITLE: Contractor's equipment and storage yards Special Exception with a 200 feet Variance to from a lot in a residential zone.

REQUEST: Special Exception and Variance Case 22-10

An application by K & T, LLC and South Carroll Properties, LLC, the property owner, requesting 1) approval of 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.; 2) a **Variance** to Article X: I-R Restricted Industrial Zone, Section 164-58 to allow the special exception use to be located 100 feet, in-lieu-of the required 300 feet, from a lot in a residential zone; and 3) a **Variance**, to Article XVI, Off-Street Parking and Loading, Section 164-114 A. to allow gravel parking area, in-lieu-of the required paved parking area, on Lot 21B, Resubdivision of Lot 21 West Branch Trade Center Plat (P.B. 50 PG. 164).

PROJECT INFORMATION

LOCATION: Lot 21B (SDAT# 07-155972), located southwest of the Magna Way/Old Bachmans Valley Rd. intersection, in Westminster, Maryland.

ZONE: I-R Restricted Industrial Zone

APPLICANT/REPRESENTATIVES

APPLICANT: K & T, LLC, 45 Magna Way, Westminster, MD 21157

OWNER: South Carroll Properties, LLC, 1393 Progress Way, Ste. 902, Eldersburg, MD 21784

ENGINEER: NTT Associates, Inc., 16205 Old Frederick Rd., Mt. Airy, MD 21771

ATTORNEY: Breza & Associates, LLC, 11019 McCormick Rd., Ste. 400, Hunt Valley, MD 21784

STAFF Mark A. Depo, Director of Community Planning and Development
Andrea Gerhard, Comprehensive Planner

ATTACHMENTS

1. BZA Case 22-10 Staff Report
2. Special Exception and Variance Application (Applicant Exhibit 11)

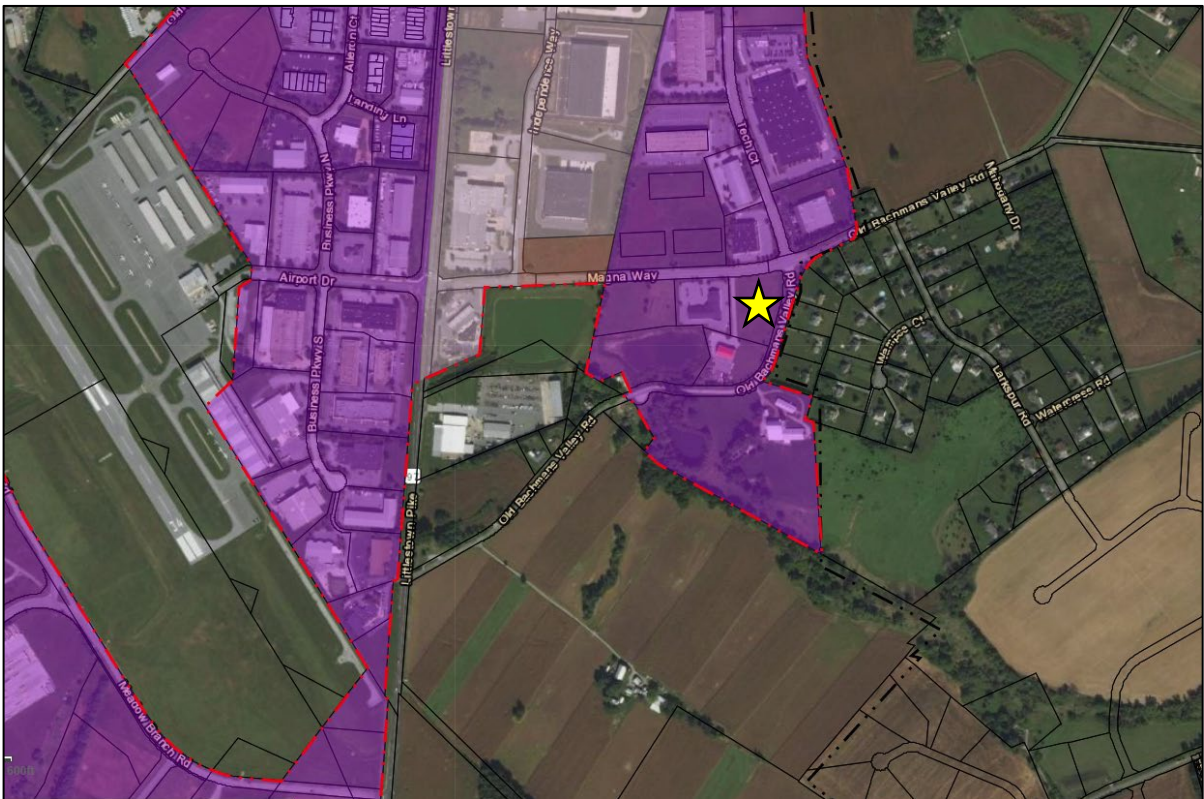
3. Applicant Prehearing Statement
4. Lot 21B Plan (Applicant Exhibit 4)
5. Lot 21B Tax Map (Applicant Exhibit 1)
6. Lot 21B Current Owner Deed (Applicant Exhibit 2)
7. Resubdivision of Lot 21 West Branch Trade Center Plat (Applicant Exhibit 3)
8. Lot 21B SDAT Information (Applicant Exhibit 5)
9. City of Westminster Zoning Map (Applicant Exhibit 6)
10. Lot 21B City of Westminster Zoning Map (Applicant Exhibit 7)
11. BZA Case 21-06, Lot 21C, Plan (Applicant Exhibit 8)
12. Applicant Expert Credentials: Richard Stouffer (Applicant Exhibit 10)
13. Lot 21B Aerial View (Applicant Exhibit 12)
14. Applicant Photos

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 southwest of the Old Bachmans Valley Road and Magna Way intersection.



★ = Site

II. BACKGROUND

On September 27, 2022, the Applicant submitted a Special Exception application to the Board to operate a “Contractor's equipment and storage yards” use, pursuant to Zoning Ordinance Section 164-54C., and an accompanying 190 feet variance requests from the 300 feet setback requirement of Zoning Ordinance Section 164-58 and a variance to the parking lot and space construction material requirement of Zoning Ordinance Section 164-114A. for the property located at Lot 21B, Resubdivision of Lot 21 West Branch Trade Center Plat (P.B. 50 PG. 164), located southwest of the Magna Way/Old Bachmans Valley Rd. intersection, in Westminster, Maryland, hereinafter referred to as the “Property”.

The Applicant intends to store Tri-County Roofing & Sheet Metal, Inc. building and roofing materials, commercial vehicles, commercial trucks, and empty roll-off dumpsters when not in use at a job site. The Applicant proposed improvements include the installation of a pervious, gravel contractor’s yard area with screening, landscaping, tree planting and minimal lighting as needed. No buildings are planned as part of BZA Case 22-10 request. The special exception and variance applications are provided as **Attachment 1** of this report.

On August 3, 2021, the Board of Zoning Appeals approved Special Exception uses “Building materials sales and storage yards which are enclosed” (Z.O. Section 164-54A.) and “Contractor's equipment and storage yards” (Z.O. Section 164-54C.) and a 216 feet variance from the 300 feet setback requirement of Section 164-58 for Tri-County Roofing & Sheet Metal, Inc. at 45 Magna Way (Lot 21C), in Westminster, Maryland, located west and adjacent to the Property.

III. REQUIRED NOTICE

On October 28, 2022, the Board Agenda and Board of Zoning Appeals Variance Case No. 22-10 application and staff report is posted on the City of Westminster website for public view. The Notice of Public Hearing for Case No. 22-10 was advertised Wednesday, October 12, 2022 and Wednesday, October 19, 2022 in the Carroll County Times. [Zoning Ordinance Section 164-166B.] The adjacent property owners and Property owner were mailed notices of the public hearing and the Property was posted stating the time, date, place, and purpose of the Case No. 22-10 hearing [Zoning Ordinance Section 164-166C.] On October 17, 2022, the Pre-Hearing Statement was forwarded to the Board via email.

As of the date of this staff report, one adjacent residential property owner called DCPD to inquire about Case 22-10, however, no written requests to the Board by any interested party requiring the Board to visit the Property have were submitted. [Zoning Ordinance Section 164-166E.]

IV. SPECIAL EXCEPTION ANALYSIS AND COMMENTS

Pursuant to Zoning Ordinance Section 164-54C. “*Contractor’s equipment and storage yards*” is Special Exception uses in the I-R Restricted Industrial Zone.

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.

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

The Applicant has stated in the provided prehearing statement – statement of purpose and justification, “The proposed use as Contractor’s Equipment and Storage Yard brings economic stability to the neighborhood by encouraging the growth of a family-owned business that has already proven its record of stewardship over the past decade. The witnesses for the Petitioner shall describe how they have maintained the adjacent building and land, and how the proposed use on Lot 21B is limited in scope and scale to fit the 2.4 +/- acre site in the I-R zone.”

- 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.

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

“The proposed use is permitted pursuant to Special Exception outlined in Section 164-54, I-R, Restricted Industrial Zone. The intensity of the proposed Special Exception use is compatible with the existing businesses in the West Branch Trade Center both in scale and frequency of use, and there is no sufficient detrimental impact on the community to deny this Application. No adverse traffic conditions are created by approving this Special Exception use. No sewer or water will be connected at this time. Fire, police, and health services will continue to have easy access to the site over the paved, straight easement from Magna Way. As noted on the construction drawings from 2007 there is a fire hydrant on the adjacent Lot 21C. The proposed use is located away from any schools or places of worship where people gather. The use is located down a private easement, set back from Magna Way and as far away from Old Bachmans Valley Road as is physically possible. Neighbors will continue to enjoy their own properties without concern about dust, noise, odors, and lighting. The Petitioner will operate within standard business hours and maintain the Property in a well organized, clean, and efficient manner that continues to limit negative impacts on the neighbors into the future. Vehicles will be kept in good condition, and no trash will be stored on the Property unless inside approved trash dumpsters which will be screened from view and emptied at regular intervals.”

Zoning Administration Comments

Zoning Administration recommends that in considering the factors above, the Board should investigate the operations of the proposed use, impact to the adjacent residential (single-family detached dwelling unit) community, and the increase in traffic along Magna Way and Old Bachman Valley Road.

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.

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

“The proposed use supports the general plan for development of the district and complies with the 2009 Comprehensive Plan. This area of land has been designated for light industrial uses of the character proposed by the Petitioner. The surrounding parcels that directly border the Property are also zoned I-R, Restricted Industrial, as shown on the Zoning Map. Any residentially zoned land is located across a public street (with a 60 foot right of way) with houses set back even further from the roadway thereby creating a buffer of vegetation and distance that is sufficient for all adjacent or nearby property owners to continue with the quiet enjoyment of their land as contemplated by the Comprehensive Plan.”

Zoning Administration Comments

Comprehensive Plan sets goals including:

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

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

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

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

“The work completed at this Property and the type of materials stored and used will not risk the health and safety of others. Roofing materials are not deemed inherently risky substances and are not explosive. Any painting will take place in the indoor facility on the adjacent Lot 21C and will comply with all OSHA requirements. No fabrication of material occurs on site.”

Zoning Administration Comments

Zoning Administration recommends that the Applicant should address the following concerns in relation to the proposed Contractor's equipment and storage yards special exception use and adjacent and existing residential and industrial development: 1) fuel, machinery, and dumpster odor and fumes impacts; 2) dust, vibration, and noise impacts from movement of stored equipment; 3) visual impacts; and 4) glare impacts.

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

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

“There is no need to change any public utilities or services at this time for the Special Exception use to operate.”

Zoning Administration Comments

Zoning Administration concurs with the Applicant as no water or sewer is being requested by the Applicant or has been allocated by the City of Westminster for the proposed Contractor's equipment and storage yards special exception use.

Zoning Administration recommends that the Applicant provide testimony regarding the proposed Contractor's equipment and storage yards special exception use: 1) storm drainage impact to Magna Way, Old Bachmans Valley Road, and the existing industrial park Lot the Property is located, and 2) increased traffic impact along Magna Way. The Board should be made aware that access to the Property from Old Bachmans Valley Road is prohibited.

- (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

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

“The proposed Special Exception use is of an intensity that was anticipated. The current uses in the general area are commercial and industrial in nature, other than the homes that are located on the opposite side of Old Bachmans Valley Road. This vacant lot is one of the last few industrial lots to be improved in the general neighborhood. This infill use keeps the commercial and industrial uses near to each other by design. Contractor’s need storage yards for equipment and materials when not on job sites. This use is consistent with the character of the general neighborhood as planned by the City.”

Zoning Administration Comments

For the purposes of the special exception review, the neighborhood consists of the immediately surrounding properties. These properties are zoned as the following:

North: Magna Way and I-R Restricted Industrial Zone in the City

South: I-R Restricted Industrial Zone in the City

East: Old Bachmans Valley Road and R-40,000 Residence District 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.

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

The proposed Special Exception use complies with the specific standards outlined in Chapter 164, Zoning and Subdivision of Land, Article X, I-R Restricted Industrial Zone,

Sections 164-55 through 59.

Zoning Administration Comments

As outlined in the Applicant's provided Prehearing Statement – Statement of Purpose and Justification and other information, it appears that all regulations specific to the I-R zoning district and the proposed Contractor's equipment and storage yards special exception use are generally met, except for Zoning Ordinance Sections 164-58 and Section 164-140. The Applicant is seeking a variance from Sections 164-58 and Section 164-140. [See Staff Report Section V. Variance Analysis and Comments, below]

Zoning Ordinance Regulations to consider:

- 1) 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. Signs for tourist homes, boardinghouses and home occupations shall not exceed two square feet in size on any one side - No additional signage is proposed (Z.O. Section 164-121D.);
- 2) Warehouse parking requirements apply - 1 parking space per 1 ½ employees on a major shift, plus 1 parking space per company vehicle and piece of mobile equipment, plus 1 parking space for visitor's use per 25 employees on the maximum shift, or 1 per 1,000 square feet of gross floor area (Z.O. Section 164-111); and
- 3) A thirty-foot-wide minimum landscaped edge shall be required along any residential district or external right-of-way, to be planted with a minimum of two-and-one-half-inch caliper trees at a minimum of 30 feet on center and a similarly landscaped earth mound at least three feet high between the parking area and any adjacent residential district or public right-of-way (Z.O. Section 164-57).

Be advised, a Site Development Plan, demonstrating compliance with the Zoning Ordinance and Board decision, must be submitted and reviewed and approved by the Planning and Zoning Commission and the Director of Community Planning and Development.

V. VARIANCE ANALYSIS, ZONING ORDINANCE SECTION 164-58 AND SECTION 164-140

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

be located five times the distance requirements specified in § 164-140. All other uses are subject to the provisions of § 164-140.

Pursuant to Zoning Ordinance Section 164-140, 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 Applicant has requested a 200 feet variance from the required 300 feet distance requirement of Zoning Ordinance Sections 164-58 and Section 164-140 to allow the proposed Contractor's equipment and storage yards special exception use to be located 100 feet from lots in a residential zone. However, the provided plan depicts a minimum of 110 feet from lots in a residential zone requiring a 190 feet variance.

Pursuant to Zoning Ordinance Section 164-114A. “Any off-street parking area, including any commercial parking lot, for more than five vehicles shall be surfaced or kept treated in such a manner as may be necessary to prevent any dust or nuisance to the neighboring property or the general public and shall be so arranged and marked as to provide for orderly and safe loading or unloading and parking and storage of self-propelled vehicles.”

The Applicant has that the storage yard area to store vehicles and to meet parking space requirements by constructed of gravel in-lieu-of the required dust-free asphalt or concrete surface.

Variance Criteria

Pursuant to Zoning Ordinance Section 164-161A.(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;

[Applicant Provided Prehearing Statement – Statement of Purpose and Justification](#)

[“The Property is bordered by three roads - two public right of ways and a common access easement. Two sides of the Property necessitate 50 ft. Building Restriction Lines from the two public right of ways. The flat lot allows for more](#)

than ample space for planting trees and other screening. In order to adequately use this Property as Restricted Industrial for which it is zoned, it is necessary to place the improvements on the site in a way that makes strict compliance with the additional distance requirements to residential lot lines impossible. This site is unusual from others in the same zone because one side is across the road from residential uses. The minimum relief possible has been requested.”

Zoning Administration Comments

Zoning Administration recommends that the Applicant provide testimony as to the exceptional or extraordinary circumstances or conditions applying 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

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

“The approval of the variances is necessary for the preservation of property rights enjoyed by others in the same zone and vicinity. This Property is located on the edge of the zone, thereby making strict compliance impossible. Without this relief, the Property would not be able to accommodate any of the Special Exception uses permitted in the Zoning Ordinance which require the 300 ft. additional distance. Neighboring lots also zoned I-R would not usually have any difficulty complying with this distance requirement. Therefore, strict compliance with the requirement would disadvantage this particular Property, which is not the intent of the Zoning Code. This uniqueness is why variance relief is available, as the ordinance cannot contemplate every situation.”

Zoning Administration Comments

Zoning Administration concurs with the Applicant in that the proposed Contractor's equipment and storage yards special exception use is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zone, as there is a similar use adjacent to the Property in the same I-R zoning district operating a same Contractor's equipment and storage yards special exception use.

Zoning Administration recommends that the Applicant provide testimony as to why the requested variance is necessary for the preservation and enjoyment of substantial property rights possessed by the adjacent residential properties.

- [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.

Applicant Provided Prehearing Statement – Statement of Purpose and Justification

“The approval of this Variance(s) will not be of substantial detriment to adjacent properties. The significant distance that remains from the Contractor’s Yard to the edge of the residential lots when combined with the distance the homes are set back from Old Bachmans Valley Road provides an adequate buffer. The 60 foot right of way for Old Bachmans Valley Road runs between the proposed uses and the residential lots. Traffic on Old Bachmans Valley Road most likely creates more noise than will be generated by the proposed use itself. The trees, vegetation, and grass fields located along both sides of Old Bachmans Valley Road will offer screening and buffering between the proposed use and the roadway. No complaints have been made to the owners of Lot 21C about any noise, odor, dust, light or similar concern. The owners of Lot 21C intend to operate the proposed yard with the same level of professionalism and organization with which they manage their existing contractor’s yard. Any gravel area will be professional designed to reduce dust and keep the area clean.”

DCPD Comments

Zoning Administration does not concur with the Applicant’s statements on trees, vegetation, and buffering. There is no existing landscaping along Old Bachmans Valley Road between the Property and the adjacent residential properties. In addition, the landscaping located on the adjacent residential properties along Old Bachmans Valley Road is very limited.

Zoning Administration recommends that the Applicant provide testimony regarding 1) screening the proposed Contractor's equipment and storage yards special exception use from the adjacent residential and industrial properties; 2) hours of operation; and 3) method of lighting the proposed Contractor's equipment and storage yards special exception use.

Zoning Administration is concerned with potential contamination with the variance request to the storage area surface construction material requirements and the type of equipment stored at the Property and recommends that any approval be subject to an environmental review and approval.

I. CONCLUSION AND ADDITIONAL CONSIDERATION

Zoning Administration recommends that the Board of Zoning Appeals carefully review and provide a finding of fact, pursuant to Section 164-161A.(3)(a)[1] to [3], to either approve,

approve with conditions, or disapprove the Applicants request associated Lot 21B, Resubdivision of Lot 21 West Branch Trade Center Plat (P.B. 50 PG. 164), as follows:

- 1) Special Exception to operate a “Contractor's equipment and storage yards” use, pursuant to Article X: I-R Restricted Industrial Zone, Section 164-54C.

If the Board approves the Special Exception to operate a “Contractor's equipment and storage yards” use and Variance to Article X: I-R Restricted Industrial Zone, Section 164-58, Zoning Administration recommends that hours of operation be limited to 8:00 a.m to 8:00 p.m. on Saturday or Sunday or on a state or federal holiday and 7:00 a.m to 8:00 p.m. on all other days, similar to and consistent with City Code Section 106-17.

- 2) 200 feet Variance from Article X: I-R Restricted Industrial Zone, Section 164-58 to allow the special exception use to be located 100 feet, in-lieu-of the required 300 feet, from a lot in a residential zone.

If the Board approves the Special Exception to operate a “Contractor's equipment and storage yards” use and Variance to Article X: I-R Restricted Industrial Zone, Section 164-58, Zoning Administration recommends that: 1) the variance be for 190 feet and in no case closer than the 50 feet setback on Lot 21B as depicted on Exhibit 4, the Applicant’s provided Lot 21B plan, and 2) a solid opaque fence be constructed around the Contractor's equipment and storage yards use and additional landscaping be provided along Magna Way and Old Bachmans Valley Road, as determined by the City of Westminster Department of Community Planning and Development, during the Site Development Plan stage.

- 3) Surface material Variance, to Article XVI, Off-Street Parking and Loading, Section 164-114A. to allow gravel parking area, in-lieu-of the required paved parking area.

If the Board approves the Special Exception to operate a “Contractor's equipment and storage yards” use and Variance to Article XVI, Off-Street Parking and Loading, Section 164-114A., Zoning Administration recommends that: 1) the required number of parking spaces must still meet Section 164-114A., and/or 2) Carroll County Department of Land & Resource Management and Planning and Zoning Commission approve the gravel surface area, subject to review of environmental impacts.