



County of Fairfax, Virginia

MEMORANDUM

DATE: October 10, 2008

TO: John F. Ribble, III, Chairman
Members, Board of Zoning Appeals

FROM: Douglas W. Hansen, Senior Assistant to the Zoning Administrator

SUBJECT: **Request for Reconsideration**

REFERENCE: Appeal A 2008-SU-016 (James G. Miller, Trustee for James G. Miller Revocable Trust, J. G. Miller, Inc., and Atlantic Construction Fabrics)
Appeal A 2008-SU-017 (Atlantic Construction Fabrics, Inc.)
3720 Stonecroft Boulevard
Fairwood Estates, Tract 13
Tax Map: 33-2 ((2)) 13

On July 15, 2008, the Board of Zoning Appeals (BZA) upheld in part the determination set forth in a Notice of Violation (NOV) dated March 11, 2008, that the referenced appellants are allowing the operation of a contractor's offices and shops, the erection of a trailer and accessory storage structures, and outdoor storage on property in the I-3 District, where such uses are not permitted and without site plan approval, Building Permit approval, nor a valid Non-Residential Use Permit (Non-RUP), all in violation of Zoning Ordinance provisions. A copy of the original staff report dated July 8, 2008, is provided as Attachment A. Specifically, the BZA upheld all the elements of the NOV with the exception of the definition of a contractor's offices and shops as it applies to the activities and uses taking place on the subject property. It is staff's understanding that the reason for overturning this portion of the Zoning Administrator's determination is because the definition of a contractor's offices and shops, in pertinent part, refers to establishments for the installation and servicing of such items as air conditioners, electrical equipment, flooring, heating, painting, plumbing, roofing, tiling and ventilating, and the appellants' businesses do not directly correspond to this description. In a memorandum from the Zoning Administrator to the BZA on July 18, 2008, a reconsideration was requested as it is the Zoning Administrator's position that the use determination of the subject property for a contractor's offices and shops as outlined in the NOV is correct. A copy of the memorandum is provided as Attachment B. The BZA granted this request for reconsideration, and a public hearing was scheduled for September 30, 2008, and rescheduled to October 21, 2008, at the appellants' request.

The purpose of this memorandum is to offer a description of the appellants' use of the property as it relates to the applicability of the definition of contractor's offices and shops, which has, in the past, been consistently applied to various uses, not just those specifically listed in the definition.

The appellants, James G. Miller, Inc., and Atlantic Construction Fabrics, Inc. are suppliers and installers of construction equipment, and both appellants have offices, supplies and equipment related to their businesses on the premises. Questions were asked of the appellants at the July 15, 2008 public hearing which resulted in responses that support staff's position. Specifically, the appellants were asked how various structures on the subject property were being used. Clearly, the former farmhouse and certain trailers on the subject property are being used by James G. Miller, Inc. as offices; that is not disputed. Also, the Quonset-style hut on the property is being used by James G. Miller, Inc. as a shop to service (lubricate) the contractor's equipment. In addition, James G. Miller, Inc. stores construction equipment on site, stores materials for their building, highway, and sewage projects, and has an additional garage for storage on the subject property. Also, it was established at the public hearing that Atlantic Construction Fabrics, Inc. has an office trailer on the subject property, and a large storage yard for materials that they provide to off-site customers. These are not conditions indicative of merely an "office" use. In fact, the area of storage of materials and equipment encompasses a much larger area of the property than the offices themselves. Staff believes that the combination of the offices, shop and storage of materials and equipment by the appellants constitutes a contractor's offices and shops. This position is supported by interpretations presented by staff to the BZA on September 30, 2008 (Sagres Construction Appeal A 2008-LE-038 and Appeal A 2008-LE-039). The staff report for this appeal noted that the Zoning Administrator's interpretations related to contractor's offices and shops had a common theme; most of the interpretations were for contractor's businesses that are not specifically mentioned in the Zoning Ordinance definition of contractor's offices and shops. The exceptions included landscape contractors and lawn maintenance contractors, which are contained in the definition.

The Zoning Administrator's interpretations included the following types of contractors:

- Sewer pipe video inspection contractor
- Fire and smoke restoration contractor
- Pool construction contractor
- Deck installation contractor
- Vehicle security installation contractor
- Cable TV contractor
- Lawn care/tree service contractor
- Aluminum forms contractor
- Commercial restaurant interior remodeling contractor
- Exterminating contractor

It is noted that the contractor's offices and shops definition in pertinent part states "establishments for the installation and servicing of such items as..." By using the words "such items as," the definition is providing examples of the types of uses and is not considered exhaustive. Additionally, Par. 1 of Sect. 2-302 of the Zoning Ordinance, Permitted Uses, states, "In the event there is not a particular use listed in the Ordinance that corresponds with the use in question, then it shall be interpreted that *the use in the Ordinance having the most similar characteristics as the use in question shall govern* (emphasis added)." Where uncertainties continue to exist, the Zoning Ordinance stipulates that questions shall be directed to the Zoning Administrator in conformance with the provisions of Sect. 18-103, Questions of Interpretation, which states in pertinent part, "The Zoning Administrator shall administer and interpret the Zoning Ordinance. Every question involving the interpretation of any provision of this Ordinance shall be presented to the Zoning Administrator for decision." Clearly, there has been a longstanding and consistently broader interpretation by the Zoning Administrator that the definition of a contractor's offices and shops include a variety of contractor's businesses and not just those contained in the Zoning Ordinance definition. The Zoning Administrator has determined that the appellants' operations have characteristics most similar to a contractor's offices and shops, which are not permitted in the I-3 District. It is noted that staff did not find any court cases related to zoning violations for similar contractor's offices and shops, as similar violations were cleared before they proceeded to litigation. In a public hearing held on September 30, 2008, in Appeal A 2008-LE-038 and Appeal A 2008-LE-039, Sagres Construction, the BZA upheld the Zoning Administrator's determination of a storage yard use, but not for a contractor's offices and shops since it could not be substantiated at the time of the public hearing that offices were currently located on the property, which is clearly not the case with respect to this appeal.

In conclusion, it is the Zoning Administrator's position that the appellants are operating businesses most closely corresponding to the Zoning Ordinance designation of a contractor's offices and shops. Given that the Zoning Ordinance grants the Zoning Administrator the authority to assign a designation when a category is not specifically provided, we would respectfully request that the BZA uphold the Zoning Administrator's interpretation and determination in this matter.

/dwh

Attachments A: Staff Report (A-2008-SU-016/A-2008-SU-017)

B: Request for Consideration Memorandum, Eileen M. McLane

cc: Michael R. Frey, Supervisor, Sully District
Eileen M. McLane, Zoning Administrator
Mavis E. Stanfield, Deputy Zoning Administrator for Appeals
Michael R. Congleton, Senior Deputy Zoning Administrator
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Joseph F. Jackson, Counsel for the Appellant
Thomas DiLoreto, Executive Vice President, Atlantic Construction Fabrics, Inc.