

IN THE MATTER OF
THE APPLICATION OF
MARK J. FREINBERG and
CHRISTINE N. FREINBERG

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
CASE NO.: 3616

(Special Exception - LDR)

OPINION

Application of Mark J. Freinberg and Christine N. Freinberg (collectively, “Freinberg” or the “Applicant”), for a special exception to operate a home occupation business at property located at 1 Hillcrest Lane, Elkton, Maryland 21921, which is designated as Parcel 138, Tax Map 7, in the Fourth Election District of Cecil County (the “Property”), in an area presently zoned Low Density Residential (“LDR”). The property is owned by Mark J. Freinberg and Christine N. Freinberg.

This application is brought under the provisions of Article V, Part III, Section 79 and Section 54.4 Table of Permissible Uses 3.05.000 of the Ordinance, which permits a home occupation as a Special Exception in the LDR zone provided that: (1) Home occupations are in the same building as the residence, and do not change the residential character and appearance of the dwelling; (2) No type of advertisement for the home occupations shall be carried out on the property, except one (1) unlighted sign identifying the home occupation, limited to three (3) square feet in size; (3) No goods for sale or rent shall be stored on the property in a manner as to be seen from off the premises; (4) Parking is provided in accordance with Article XIV of the Ordinance; and, (5) No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference detectable outside of the dwelling unit.

Article XVII, Part II, Section 311 of the Ordinance specifies that no special exception shall be approved by the Board of Appeals after considering all facts in the case unless the following findings are made:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.

2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.

3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.

4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.

5. The use shall not adversely affect critical natural areas or areas of ecological importance.

6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 Md. 1)

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Applicant requests a special exception on the Property in order to operate a "Bunch of Blinds" franchise. Mr. Freinberg appeared before the Board and testified that he and Ms. Freinberg had purchased the Bunch of Blinds franchise rights for the area covering Perry Hall, Maryland and White Marsh, Maryland. Mr. Freinberg testified that the blinds will be delivered to the Property, and then subsequently installed at the client's home. The Property is located in the Glen Farms subdivision, which is a residential subdivision in the LDR zone. Mr. Freinberg further testified that although tractor trailers have come on the Property to deliver blinds in the past, he has since contacted his vendors and informed the vendors that delivery by tractor trailer is no longer permissible. In this respect, Mr. Freinberg testified that the tractor trailers had difficulty with ingress and egress from the subdivision, and that he has had to meet trucks outside the subdivision on several occasions to load goods into his van. According to Mr. Freinberg, tractor trailer deliveries to the Property is impractical, its not good for the subdivision, and such deliveries will no longer occur. Mr. Freinberg testified that UPS and/or Fed Ex will continue to make deliveries to the Property two (2) or three (3) times per week.

The Applicant testified that they have been in operation as Bunch of Blinds since 2009, that they have no signage on the Property and that they don't want a sign; according to the Applicant, no customers will be frequenting or visiting the Property, and they don't want customers at their home. The Applicant did testify that one (1) Bunch of

Blinds van, which is used by the Applicant, may be parked in the driveway on the Property.

No one spoke either in favor or against the application.

Clifford Houston, Cecil County Department of Planning and Zoning, testified that the Planning Commission recommended approval of the application for two (2) years.

From the evidence, the Board makes the following findings of facts pursuant to the requirements of Section 311:

1. That the special exception will not be detrimental to or endanger the public health, safety, or general welfare. The Board finds that the proposed business will be operated primarily at customers' premises. Customers will not be meeting with the Applicant at the Property, and deliveries will be made a few times per week via UPS and/or Fed Ex. As such, there will be little additional traffic to or from the Property, and the proposed home occupation will entail no signage or exterior lighting associated with the business. The proposed home occupation will not increase the need for emergency services, add motor vehicle traffic to the streets, or be discernable from the exterior of the primary dwelling.

2. That there was no evidence indicating that the use will be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor was there any evidence to demonstrate that such use will substantially diminish or impair property values in the neighborhood. The Board finds that the business conducted on the Property will consist primarily of paperwork and the receipt of periodic delivery of merchandise; customers will be served off-premises, and there will be periodic deliveries to the Property. The Applicant has voluntarily ceased the receipt of delivery by tractor trailer.

As set forth above, the Board therefore finds that the proposed home occupation will involve minimal additional traffic to and/or from the Property, and will entail no service to customers, customer parking, signage, or exterior lighting associated with the business, on the Property. The proposed home occupation will is sublime and will not be evident from the street; as such, there will be no adverse impact related to the peaceful use and enjoyment of other property in the neighborhood, nor will the home occupation, of which the “home” aspect entails the completion of paperwork and storage of merchandise within the interior of the premises, affect property values in the neighborhood.

3. That there was no evidence indicating that normal and orderly development and improvement of the surrounding properties will be impeded by the proposed use.

4. That there was no evidence indicating that the use will, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. The Board finds that the proposed home occupation will not involve a material increase in traffic, require additional water, sewer or septic, or increase the need for police or fire protection.

5. That there is no evidence that the proposed use will adversely affect critical natural areas or areas of ecological importance. The Property is not in the critical area, or critical area buffer, requires no addition or expansion to the dwelling, and the work to be performed on the Property consists of paperwork and merchandise storage that will be confined to the interior of the dwelling.

6. That the continued use will, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. That there is no evidence that the particular use proposed at the particular location proposed, will have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD. 1). As stated above, the Board finds that the proposed use will have no material increase on traffic or public services, and will not be evident from the exterior of the primary dwelling. Accordingly, the Board finds that the effect of the use here is no different than would be the effect of such use in other areas of the LDR zone.

8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. As stated above, ingress and egress by tractor trailer has been a problem for the Applicant in this subdivision, however, delivery by tractor trailer has voluntarily been stopped. There is sufficient means of ingress and egress for UPS and/or Fed Ex delivery vehicles, and there will be no material increase in traffic associated with the proposed home occupation, as the Applicants will interface with their customers in the customers' homes.

9. That the special exception is consistent with the objectives of the current Comprehensive Plan for the County. The proposed use is permitted as a special exception, with conditions, in the LDR zone. The Applicant meets all supplemental requirements under Section 79 of the Ordinance; specifically, the Board finds from the evidence and testimony set forth above that:

(a) The proposed home occupation is in the same building as the residence, and does not change the residential character and appearance of the dwelling;

(b) There will be no signage on the Property, and advertisement for the home occupation will not be carried out on the Property;

(c) No goods for sale or rent shall be stored on the property in a manner as to be seen from off the premises;

(d) There is no need for parking associated with the proposed business, as customers will not be serviced on the Property, and there is sufficient means of ingress and egress for delivery via UPS and/or Fed Ex; and,

(e) No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference detectable outside of the dwelling unit.

For the reasons stated, by unanimous vote, the Board is satisfied that the requirements of Sections 79, 54.4 sub-part 3.05.000, and 311, along with *Schultz v. Pritts*, 291 Md. 1 (1981) have been met, and the application is **APPROVED FOR SO LONG AS THE PROPERTY OWNERS OWN THE PROPERTY AND OPERATE THE BUSINESS.**

Date

10/23/12

David Willis, Chairperson

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: Sept. 2012
FILE NO. 03616

- THIS REQUEST IS FOR:
SPECIAL EXCEPTION RENEWAL
SPECIAL EXCEPTION
VARIANCE
APPEAL

RECEIVED

DATE FILED: 7-25-12
AMOUNT PD: \$250.00/CR/16
ACCEPTED BY: [Signature]

JUL 25 2012

A. APPLICANT INFORMATION

Mark J + Christine N. Freinberg
APPLICANT NAME - PLEASE PRINT CLEARLY
1 Hillcrest Lane Elkton MD 21921
ADDRESS CITY STATE ZIP CODE
Christine N. Freinberg
APPLICANT SIGNATURE
PHONE NUMBER: 410-398-1144
cell: 443-758-7978

B. PROPERTY OWNER INFORMATION

Mark J + Christine N. Freinberg
PROPERTY OWNER NAME - PLEASE PRINT CLEARLY
1 Hillcrest Lane Elkton MD 21921
ADDRESS CITY STATE ZIP CODE
Christine N. Freinberg
PROPERTY OWNER SIGNATURE
PHONE NUMBER

C. PROPERTY INFORMATION

1 Hillcrest Lane, Elkton, MD 04 005287
PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER
7 18 138 16 1.02 LDR
TAX MAP # BLOCK PARCEL LOT # #ACRES ZONE

D. PURPOSE OF APPLICATION - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

No Foot Traffic Sales Territory is
W/ Marsh / Perry Hall Blinds are kept in
garage Ups & Fed Ex make deliveries
once every 60 days - straight truck delivery

E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.

F. LAND USE DESIGNATION

Is property in the Critical Area? YES NO
If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: YES NO
Is property in the 100 year Floodplain? YES NO
Is property an Agricultural Preservation District? YES NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

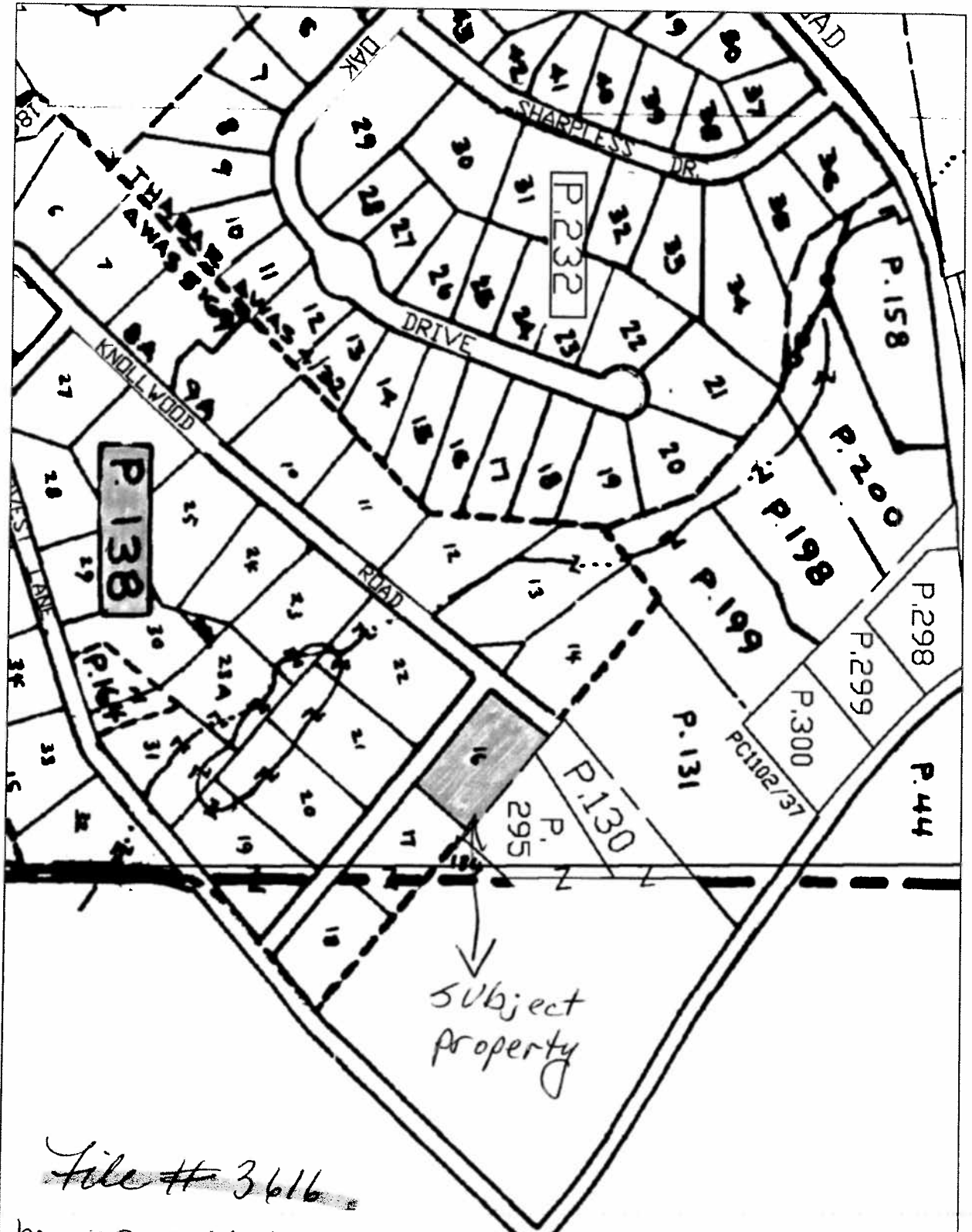
G. PROVISION OF ZONING ORDINANCE:

Sec. 79

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

Will unit be visible from the road? If yes, distance:
Will unit be visible from adjoining properties? If yes, distance:
Distance to nearest manufactured home: Size/Model/Year of Unit:
Number of units on property at present time:



File # 3616
 Mark J. + Christine M. Frimberg
 Map 7 / parcel 138
 lot # 16