MINUTES
BOARD OF ZONING APPEALS SPECIAL MEETING
THURSDAY, MARCH 2, 2023 7:00 PM
HERITAGE CONFERENCE ROOM

Meeting video can be found at the following link: https://purcellvilleva.new.swagit.com/videos/210057

PRESENT: John Payne, Board member (*(via remote participation due to medical condition*)
Marcos Salinas, Vice Chairman
Eric Zimmerman, Chairman
Tyler Marquardt, Board member
Jonathan Wright, Board member

OTHERS PRESENT: Heather Bardot, Special Counsel to Board of Zoning Appeals

STAFF: Kimberly Bandy, Deputy Town Clerk

CALL TO ORDER:
Chair Zimmerman called the meeting to order at 7:00pm. He requested the motion be made to go into Closed Session.

CLOSED SESSION:

Jonathon Wright, Board Member, moved that the Board of Zoning Appeals for the Town of Purcellville convene a closed session under the Virginia Freedom of Information Act, pursuant to Virginia Code section 2.2-3711(A)(7), for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to the December 2, 2022 Appeal of Zoning Determination 22-01, for the property identified as PIN 452-25-4468, KMG HAULING, INC. (Appellant).

Second: Board member Marquardt
(Carried: 5-0, Payne: Aye, Zimmerman: Aye, Salinas: Aye, Marquardt: Aye, Wright: Aye)

Jonathan Wright moved that the Board of Zoning Appeals for the Town of Purcellville having this day, March 2, 2023, adjourned into closed meeting for the purposes stated in the resolution authorizing such a meeting, does hereby certify that to the best of each member's knowledge: (1) only public business matters lawfully exempted from open meeting requirements under the Freedom of Information Act; and (2) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered by the Board of Zoning Appeals in the closed meeting.

Second: Board member Payne
(Carried: 5-0, Payne: Aye, Zimmerman: Aye, Salinas: Aye, Marquardt: Aye, Wright: Aye)

Adjourned into Closed Meeting at:	7:01p.m.
Adjourned out from Closed Meeting at:	7:09p.m.

ACTION:

Johnathon Wright moved that the Board of Zoning appeals wholly affirm the determination rendered by the Zoning Administrator on November 21, 2022 concerning kmG Hauling Inc, He further moved that in support of the Board of Zoning Appeals decision it adopt in full the written decision of the Board of Zoning Appeals dated March 2, 2023. *(Written decision is attached)*

Second: Board member Salinas
(Carried: 5-0, Payne: Aye, Zimmerman: Aye, Salinas: Aye, Marquardt: Aye, Wright: Aye)

ADJOURNMENT:

With no further business, Vice Chair Salinas made a motion to adjourn the meeting at 7:16PM and passed unanimously.

_____
Eric Zimmerman, Chairman

_____
Kimberly Bandy, Deputy Town Clerk

BEFORE THE BOARD OF ZONING APPEALS
FOR THE TOWN OF PURCELLVILLE, VIRGINIA

Appeal of:	
KMG HAULING, INC. Loudoun County PIN# 452-25-4468	BZA No. 22-01 (Appeal)

DECISION

This matter came before the Board of Zoning Appeals for the Town of Purcellville, Virginia ("BZA") pursuant to the appeal of KMG Hauling, Inc. ("Appellant" or "KMG"), purported contract purchaser of that certain real property known as Loudoun County PIN #452-25-4468, consisting of approximately 20.43 acres located off of Hirst Road in Purcellville, Virginia ("Property"). The appeal challenges the Zoning Administrator's ("Z.A.") Zoning Determination 22-01 dated November 21, 2022 ("Determination").[1]

Following a public hearing on February 23, 2023 ("Hearing"), where the Appellant provided additional evidence in the form of oral testimony and a PowerPoint ("KMG PowerPoint") presentation in support of its appeal, and having fully considered Appellant's Supplemental Memorandum ("Supplement")[2] submitted on March 1, 2023, for the reasons set forth below, the BZA wholly affirms the Z.A.'s Determination.

As explained in more detail below, the BZA determines as a matter of fact that KMG's intended use of the Property is as a base of operations for its waste hauling business that serves 4,000-5,000 customers throughout the greater northern Virginia area, plus Maryland, and the District of Columbia—but none in Purcellville. This proposed use involves a complex, multi-faceted garbage hauling operation that will include, among other things, a garbage truck repair and maintenance facility, garbage truck storage of at least 75 large garbage trucks, daily ingress and egress of at least 50 of the 75 trucks, an office facility,[3] and storage of garbage containers which will be delivered to customers and brought back to the Property from time to time.

---

[1] KMG initially sought a zoning determination on August 22, 2022 ("Request"). The Request was revised and resubmitted on October 26, 2022. According to KMG, the revision was submitted at the request of the Z.A. The Z.A. provided no evidence to the contrary, and the BZA adopts KMG's position as accurate.

[2] The public hearing in this matter closed on February 23, 2023, and nothing in the Virginia Code or Town Ordinance allows for submission of additional materials by KMG following the close of the public hearing. Nonetheless, the BZA has considered the Supplement in rendering its decision on the appeal.

[3] Although KMG claims that it intends to construct an office building on the Property, there is no evidence that KMG has taken any steps whatsoever to do so or to obtain permits and related documents which would be a prerequisite to constructing an office.

As the basis[4] for its Decision, the BZA makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT ("FOF")

A. Appellant's Proposed Use

1. The Property is currently vacant and consists of approximately 20.43 acres. Appeal at 1. It is undisputed by KMG and the Z.A. that the subject Property is "zoned to the CM-1 Local Service Industrial District ('CM-1') pursuant to the current Zoning Ordinance of the Town of Purcellville." Appeal at 1; *see also* Z.A. Brief at 1.

2. A map provided in Appellant's PowerPoint shows that the southwest corner of the Property borders a residential neighborhood. KMG PowerPoint at 2, 8, 17; Hr'g Tr. 13:08-13:44 (Mr. Minchew). The location of Loudoun Valley High School, across Maple Avenue to the south of the Property, is visible from the Property depictions provided by Appellant. *Id.* The southern portion of the Property is also bordered by other commercial / business uses. *Id.* The Purcellville Volunteer Fire Company is located across Maple Avenue to the East of the Property, on the corner of Hirst Road. *Id.*

3. KMG intends to move its business operations currently located at 14 Bryant Court, Sterling, Virginia 20166, which is in an area zoned for medium industrial use (PGI General Industrial), to the CM-1 District zoned Property in Purcellville, Virginia. Hr'g Tr. 36:30-36:44 (H. Garcia); 41:41-42:20 (Mr. Garcia and Mr. Minchew).

4. "KMG handles commercial waste (comprised of recyclables and trash) as well as some residential waste (comprised of recyclables and trash). KMG does not handle any medical or hazardous waste as part of its business." *Id.* "We [KMG] do everything that involves trash other than medical waste and hazardous waste." Hr'g Tr. 38:43-38:48 (H. Garcia). "The business is primarily 90% commercial." Hr'g Tr. at 15:45-15:49 (Mr. Minchew).

5. KMG operates its business "365 days a year." Hr'g Tr. at 35:00-35:45 (H. Garcia).

6. KMG has approximately 4,000-5,000 clients across Virginia, Maryland, and the District of Columbia. KMG does not serve any clients in Purcellville, Virginia. Hr'g Tr. at 36:53-37:44 (H. Garcia).

7. Appellant's stated proposed use for the Property is "for the storage of equipment and vehicles associated with their waste removal business," (Appeal at 1) however, the evidence indicates that Appellant's proposed use is more multifaceted and intense than mere storage of vehicles. The evidence establishes that Appellant intends to perform the following operations on the Property:

   a. Base of operations for Appellant's fleet of trucks and equipment. Appellant intends to use the Property as "a place where the trucks that the business owns will come after a day's work." Hr'g Tr. at 15:35-15:41 (Mr. Minchew). KMG intends to operate "seventy-five (75)" trucks and/or commercial vehicles from the Property in connection with the proposed use. Hr'g Tr. 36:22-36:30 (H. Garcia). Appellant's

[4] The BZA based its Decision solely on the information cited herein. No part of this Decision was based upon or informed by the Google Reviews referenced in Appellant's Supplement.

operations "consist of KMG's trucks, including front-load and rear-load hauling trucks, as well as pickup trucks." Request at 1. "KMG will also be storing containers associated with their business onsite." Request at 1.

b. Construction of an office building.[5] The proposed use includes a 20,000 sq. ft. office building." Hr'g Tr. at 15:26-15:31 (Mr. Minchew); Request at 1 ("The proposed facility will provide office space for employees..."; Appeal at 5 ("Appellant plans to construct a two-story office building approximately 20,000 square feet in site and anticipates that approximately 30 employees will be working daily on the premises within the office building."); KMG PowerPoint at 3.

c. Garage for Maintenance on Appellant's Vehicles. The proposed facility will include "three garage bays where employees will conduct preventative maintenance and repair solely on KMG's vehicles." Request at 1. "This work will consist of preventative maintenance for vehicles, such as replacing tires and batteries, lubrication, and oil changes." *Id.*

d. Truck Wash Water Reclamation System.[6] Appellant also intends to install a truck wash water reclamation system with which it will wash its trucks after daily operations and trips to the landfill, filter water to clarify it and separate sludge, remove petrochemicals, recycle water, and discharge other water into the sewer. KMG PowerPoint at 32; Hr'g Tr. 16:50-18:55 (Mr. Minchew).

e. No waste products will be stored on site. The BZA is satisfied that Appellant's proposed use will not include storage of waste on site.

8. Approximately 66% of Appellant's trucks would ***not*** be stored on the Property for more than 24 hours. Hr'g Tr. at 38:48-39:44 (H. Garcia). To commence hauling operations, KMG's drivers commence hauling operations at 6:00 a.m. each morning and times of return may vary. *Id.* at 35:45-36:18 (H. Garcia). Some trucks return at 10:00 a.m. or 1 or 2 p.m. in the afternoon. *Id.* Of the 75 commercial vehicles that KMG intends to operate from the Property in connection with the Proposed use, 25 are "spare" and 50 go out and actively collect trash and return then go out again in less than a 24 hour period. *Id.* Mr. Garcia testified as follows for KMG:

> MR. WRIGHT (BZA): "Needless to say, most of them [the trucks] are not stored there overnight for 24 hours?"
>
> MR. GARCIA (KMG): "No."
>
> MR. WRIGHT: "Okay."

Id. at 39:39-39:44.

9. KMG did not include any photographs of the trucks or containers that it proposes to use on the Property in connection with the Proposed use in its Request or in its Appeal.

---

[5] *See* fn 2. The BZA also finds that KMG failed to make any mention of this proposed use of the Property when asking for a zoning determination.

[6] The BZA finds that KMG failed to make any mention of this proposed use of the Property when asking for a zoning determination.

10. Accurate photographs of the trucks KMG intends to operate from the Property in connection with the Proposed use are available on KMG's website: https://www.kmghauling.com. Hr'g Tr. 45:09-46:16. (H. Garcia & Mr. Minchew). Images showing KMG's trucks that it proposes to use on the Property in connection with the proposed use are below:

https://www.kmghauling.com/services/.

11. Images showing containers and compactors that KMG proposes to use on the Property in connection with the proposed use are below:

TOTERS

REAR LOAD

FRONT LOAD

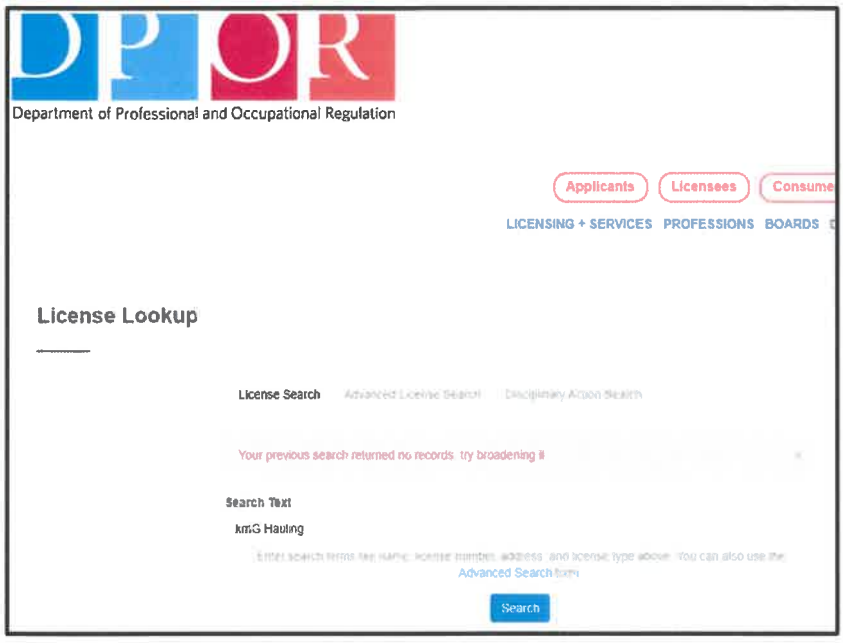
OPEN TOP ROLL-OFF

https://www.kmghauling.com/services/

12. Without objection by KMG or its counsel, KMG was shown the following image of 14 Bryant Court, Sterling, Virginia, the site of KMG's current business operations, using "street view" from Google Maps, and Mr. Garcia for KMG testified that the image accurately showed KMG's current business operations:

Google Maps, Street View[7]; Hr'g Tr. 44:10-45:09. The foregoing image demonstrates that Appellant's business includes the daily operation of trash trucks from its current business location, which Appellant intends to re-locate to the Property in Purcellville.

13. Appellant is not a licensed contractor in the Commonwealth of Virginia:



https://www.dpor.virginia.gov/licenselookup/

14. Accordingly, based on the evidence provided by Appellant, the BZA finds as a matter of fact that Appellant's proposed use for the Property is to be a base of daily operations for its trash / waste hauling business on which it intends: (1) to store a majority its fleet of vehicles on the Property for fewer than 24 hours; (2) to use the Property as the base of daily operations for its waste hauling business where no fewer than 50 trucks will ingress and egress each day; (3) to build a maintenance and repair facility with which Appellant intends to work on its fleet of 75 trucks; (4) to build a truck wash which will frequently, if not daily, wash its fleet of trucks after they return from their trash hauling operations; and (5) to build an office by which Appellant will manage its trash / waste hauling business.

15. The BZA finds that Appellant's proposed use would: (i) detract from Purcellville's small town charm; (ii) overwhelm Purcellville's services and infrastructure, in particular, road wear and congestion, and destroy Purcellville's character; (iii) cause an increase in traffic in a manner that is inefficient, unsafe, and unattractive; and (iv) detract from the Comprehensive Plan's stated goals of environmental sustainability and adopting sustainable decisions.

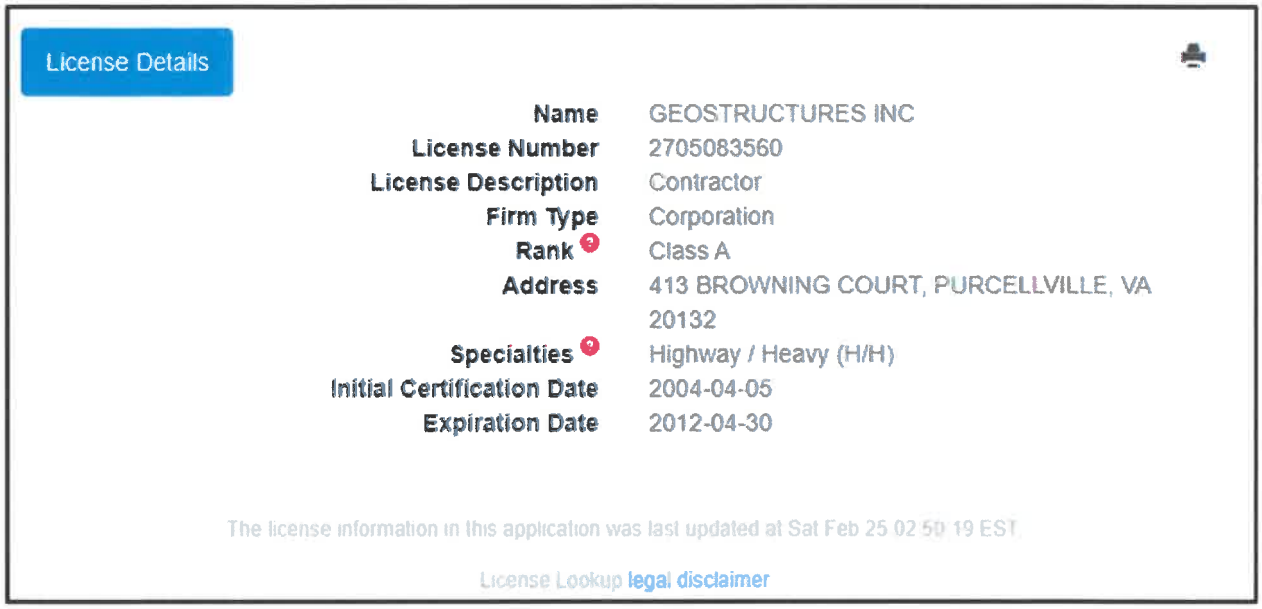
B. **Other CM-1 Uses Are Dissimilar to Appellant's Proposed Use**

16. Appellant cites to the existence of the following uses in the CM-1 District in support of its contention that Appellant's proposed use should be similarly permitted: (1) GeoStructures, Inc.; (2) Valley Energy; (3) Mason Property; and (4) Loudoun Stairs. However, each of cited uses

[7]https://www.google.com/maps.

in the CM-1 district are expressly permitted in the Use Table in Section 4.1.1 of the Ordinance. *See* KMG PowerPoint 9-31.

17. Geostructures, Inc. holds a Class A contractor's license in the Commonwealth of Virginia:



License Details

Name	GEOSTRUCTURES INC
License Number	2705083560
License Description	Contractor
Firm Type	Corporation
Rank	Class A
Address	413 BROWNING COURT, PURCELLVILLE, VA 20132
Specialties	Highway / Heavy (H/H)
Initial Certification Date	2004-04-05
Expiration Date	2012-04-30

The license information in this application was last updated at Sat Feb 25 02:50:19 EST

License Lookup legal disclaimer

https://www.dpor.virginia.gov/licenselookup/. As such, the storage of heavy equipment to the rear of Geostructures' lot would be permitted as a "Contractor's Office and Storage Area." Ordinance, Art. 4 § 1.1.

18. Appellant's photos of Valley Energy's use show propane / gas trucks purportedly stored on site for daily ingress / egress from Valley Energy's property. However, Valley Energy's use would be expressly permitted as a "petroleum, propane, and other flammable liquids, storage, distribution and sales" operation. Ordinance, Art. 4 § 1.1.

19. Appellant's photos of the Mason Property purportedly show parking of personal vehicles and business vehicles such as snow plows and on-site refueling operations. While the business on the Mason Property is not defined, unlike Appellant's proposed use, snow plow vehicles are not intended to operate daily from the Mason Property. As such, a number of CM-1 uses might be applicable including, without limitation, "outdoor storage," "outdoor storage lot," "construction / landscaping equipment and supply sales and service," "farm equipment and supply sales and service," "fuel pump, accessory," and others.

20. Appellant's photos of Loudoun Stairs' operations do not indicate any use indicating that Appellant's proposed use should be allowed. The photos of Loudoun Stairs' facility shows certain vehicles, including a trash truck marked as "Loudoun County Facility Services." However, there is no indication that Loudoun Stairs is operating a trash hauling facility out of its property. As such, a number of CM-1 uses might be applicable including, without limitation, "storage warehouse," "service / repair establishment," and "wholesale sales."

21. None of the photographs proffered by Appellant indicate a use analogous to the proposed use Appellant intends on the Property.

II. SCOPE OF THE APPEAL

Appellant's Request asserts that its proposed use is permitted as a "contractor's office and storage area" or "outdoor storage lot" under the Ordinance. Request at 2. KMG's Request also asked the Z.A. to "[c]onfirm that development of KMG's proposed use, as described herein, is a permissible-by-right use on the Subject Property and no additional zoning entitlements are necessary." *Id.* The Request did not seek determination on whether Appellant's proposed use would constitute an "office."

On November 21, 2022, the Z.A. the Determination. The Z.A. disagreed with the position put forward by KMG in its Request. The Z.A., among other things, reasoned that the definition of "Contractor's office and storage area" does not meet the definition in the Ordinance because Appellant's proposed use is not used "in the performance of any construction or land development trades." The Z.A. also found that Appellant's proposed use is not permitted because "Outdoor Storage Lot" as defined by the Ordinance is an accessory use, not a primary use. *Id.* The Z.A. also determined that KMG's proposed use was not an identified principal use under the Ordinance:

> **The use that you describe is a type of "depot" (a place for the storage of motor vehicles), which is a form of outdoor vehicle storage that is not identified as a *principal* use under the Town's zoning ordinance. While outdoor storage is permitted under the Town's zoning ordinance as an *accessory* use in some cases, it would first require the identification of a *principal* use to which the accessory use could attach. Under the facts you describe, the principal use might be *waste management* or *waste hauling*. However, there is no such principal use identified under the Town's zoning ordinance.**

Id. at 1-2.

The Z.A. also considered the purpose behind the CM-1 zoning designation and determined that Appellant's proposed use is not the type allowed in the CM-1 zoning district. Determination at 2.

KMG's Appeal framed the following issues for determination by the BZA:

i. Whether "Outdoor Storage Lot" is a Permitted Principal Use in the CM-1 District;

ii. Whether the Z.A. erred by determining that Appellant's proposed use is not permitted to be located on the property because the proposed use qualifies as an "Office."

iii. Whether the Z.A. erred by determining that Appellant's proposed use is inappropriate in the CM-1 district.

See Appeal at 2-5. The Appeal did not challenge the Z.A.'s determination with regard to "contractor's office and storage area." At the Hearing, however, and in the KMG PowerPoint, Appellant argued in favor of its proposed use being an "office" and purported to resurrect the

argument that its proposed use constitutes a "contractor's office and storage area." *See, generally,* Hearing and KMG PowerPoint.

III. JURISDICTION

The BZA has jurisdiction to hear this Appeal under the Virginia Code and the Purcellville Zoning Ordinance. Under Virginia law, the BZA has the power:

> To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.

Va. Code Ann. § 15.2-2309(1). The Ordinance grants the BZA the following powers and duties:

> To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the determination or enforcement of this ordinance.

Ord., Art. 9 § 4(1). Accordingly, the BZA has jurisdiction to determine this Appeal.

IV. CONCLUSIONS OF LAW

A. The Zoning Ordinance is Unambiguous

The provisions of the Ordinance at issue in this appeal are unambiguous, and Appellant has not made any argument that the Ordinance is ambiguous at the Hearing, in the Appeal, in the Request, or in the KMG PowerPoint.

In interpreting the Ordinance and other applicable laws and regulations, the BZA will "employ the plain and natural meaning of the words contained in the ordinance." *Capelle v. Orange County*, 607 S.E. 2d 103, 105 (Va. 2005). When ascertaining the plain meaning of an ordinance, each word's meaning must be considered in the context of the entire phrase from which it was taken. *Bell v. Commonwealth*, 22 Va. App. 93 (1996).

Article 15 of the Ordinance provides several definitions applicable to this Appeal. "Words and terms not defined herein shall be interpreted in accordance with their normal dictionary meaning and customary usage. The Zoning administrator has authority to interpret the meaning of all words and terms in this ordinance." Ord., Art. 15 § 1(5). An undefined term must be given its ordinary meaning, given the context in which it is used. *Sansom v. Bd. of Supervisors of Madison Cnty.*, 514 S.E. 2d 345 (Va. 1999). The context may be examined by considering the other language used in the ordinance. *Id.*

The BZA will "apply plain language when it is unambiguous and its application does not lead to an absurd result." *City of Charlottesville v. Payne*, 856 S.E. 2d 203, 211 (Va. 2021). Zoning

regulations, as with all other laws, must be interpreted to achieve a sensible meaning, and interpretations that produce absurd or unreasonable results must be avoided. *McFadden v. McNorton*, 69 S.E.2d 445 (Va. 1952); *Hoover v. Saunders*, 104 Va. 783 (1906). An absurd result describes "situations in which the law would be internally inconsistent or otherwise incapable of operation." *Boynton v. Kilgore*, 623 S.E.2d 922, 926 (Va. 2006). Curious, narrow, or strained interpretations also should be avoided. *Crews v. Commonwealth*, 3 Va. App. 531 (1987). Certainly, an ordinance should not be extended by interpretation beyond its intended purpose. *Higgs v. Kirkbride*, 522 S.E.2d 861 (Va. 1999). If the governing body had intended to include a provision in an ordinance, it could, and would, have done so. *Board of Zoning Appeals ex rel. County of York v. 852 L.L.C.*, 257 Va. 485, 514 S.E.2d 767 (1999).

B. "Outdoor Storage Lot"

Appellant's proposed use is not an "outdoor storage lot" because the proposed use does not meet the plain and unambiguous definition of "outdoor storage lot" set forth in Article 15, Section 2 of the Ordinance. "Outdoor storage lot" is defined as:

> ***A lot*** consisting of an unenclosed area located on an all-weather surface ***adjacent to an existing commercial or industrial use*** where equipment, merchandise, materials, and supplies are stored ***for more than 24 hours***. Outdoor storage lots are not Automobile, salvage or wrecking yards, Junk yards or automobile graveyards, or Vehicle sales storage lot, as defined in this article. Outdoor storage lots shall not be used for the storage of Inoperative motor vehicles and Junk.

Ord., Art. 15 § 2 (emphasis added). Appellant's proposed use is not an "outdoor storage lot" for several reasons.

First, the trucks and other equipment that Appellant proposes to "store" on the Property will primarily be on the Property for fewer than 24 hours. Mr. Garcia, Appellant's owner, testified that approximately 50 of the company's 75 trucks will leave each morning to perform their garbage hauling duties and return to the Property. *See* FOF ¶ 8. As such, 2/3 of the vehicles that Appellant intends to operate from the Property will depart each morning to serve the 4,000-5,000 customers that Appellant has in the D.C. Metro region, return later the same day, then depart the next day to continue the trash hauling operations. *Id.* at ¶¶ 6, 7(a), 8. On this basis alone, Appellant's proposed use does not meet the definition of "outdoor storage lot."

Second, as a completely separate basis, Appellant's proposed use does not meet the definition of "outdoor storage lot" because the "lot" must be "adjacent to an existing commercial or industrial use." Appellant's proposed use seeks to store vehicles on the lot, plus construct a building, plus perform vehicle maintenance / repair, plus install a truck wash. *See* FOF ¶¶ 7(a)-(e). Moreover, there is currently no "existing commercial or industrial use" owned by Appellant which could satisfy the definition.

C. "Contractor's Office and Storage Area"

Appellant failed to appeal the Z.A.'s Determination that its proposed use does not qualify as a "contractor's office and storage area." As such, the Z.A.'s adverse finding to Appellant stands as a "thing decided" and may not be appealed. *See Dick Kelly Enter., Virginia P'Ship, No. 11 v. City of Norfolk*, 416 S.E.2d 680, 683 (Va. 1992) ("This is "a thing decided" and is not subject to attack by the landowner as the result of its election not to appeal the August 3 decision by the zoning administrator. The landowner had the opportunity, as a matter of right, to appeal to the BZA and then to the circuit court and, in the process, to raise every challenge it now makes to the City's interpretation of its ordinances."). Accordingly, the issue of "contractor's office and storage area" is not properly before the BZA on Appeal.

To the extent, however, that Appellant's third basis for Appeal[8] could be interpreted as including a challenge to the Z.A. determination as it related to "contractor's office and storage area", the BZA, nonetheless, determines Appellant's proposed use is not a "contractor's office and storage area" because the proposed use does not meet the plain and unambiguous definition of "contractor's office and storage area" set forth in Article 15, Section 2 of the Ordinance.

"Contractor's office and storage area" is defined as:

> A facility in which ***a contractor*** conducts administrative activities, record-keeping, clerical work and other similar functions of the business in conjunction with the storage of vehicles, equipment and supplies for offsite use in the performance of ***any construction or land development trades***; does not include an Automobile, salvage or wrecking yard or Junk yard or automobile graveyard.

Ord., Art. 15 § 2 (emphasis added). The term "contractor" is not defined in the Ordinance. In such cases, the Ordinance directs that, "[w]ords and terms not defined herein shall be interpreted in accordance with their normal dictionary meaning and customary usage." Ord., Art. 15 § 1(5). The customary usage of the term "contractor" in the Commonwealth of Virginia is supplied by Virginia statute:

> "Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, ***the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property***. For purposes of this chapter, "improvement" shall include (i) remediation, cleanup, or containment of premises to remove

[8] *See* Appeal at 5 ("The Zoning Administrator erred by determining that the Appellant's proposed use does not conform to the intent of the CM-1 District.").

> contaminants or (ii) site work necessary to make certain real property usable for human occupancy according to the guidelines established pursuant to § 32.1-11.7.

Va. Code Ann. § 54.1-1100 (emphasis added). Notably, the foregoing definition does not include the term "hauling," which is the cornerstone of Appellant's operations and included in Appellant's name, KMG ***Hauling***. *See* FOF ¶ 3-7(a).

In Virginia, "contractors" must be registered with the Department of Professional Occupational Regulation ("DPOR"). Va. Code Ann. § 54.1-1103 ("No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless he has been licensed under the provisions of this chapter."). Appellant is not registered as a "contractor" with DPOR, but appears able to legally operate its business. *See* FOF ¶ 13. Thus, in addition to not meeting the statutory definition of "contractor," Appellant ostensibly agrees it is not a "contractor" since it is not registered as such with DPOR. Furthermore, DPOR does not appear to require waste hauling companies to be registered as "contractors."

The interpretation that "contractor" in this context means a person or entity involved in construction is supported by other words in the definition. When ascertaining the plain meaning of an ordinance, each word's meaning must be considered in the context of the entire phrase from which it was taken. *Bell v. Commonwealth*, 22 Va. App. 93 (1996). The words, "any construction or land development trades" in the same sentence as "contractor" indicates that the plain and unambiguous meaning of the word "contractor" as used in the definition of "contractor's office and storage area" means a person or entity involved in "construction or land development trades." Appellant's business is involved in trash and waste hauling, not construction. Accordingly, Appellant's proposed use is not a "contractor's office and storage area" as that unambiguous term is defined in the Ordinance.

D. "Office"

KMG's Request did not seek a determination from Z.A. that the proposed use qualified as an "office." Thus, the Z.A.'s Determination did not consider whether KMG's proposed use qualified as an "office" under the Ordinance. Accordingly, KMG improperly included the issue whether KMG's proposed use constitutes an "office" in its appeal and KMG's arguments are not properly before the BZA. *See* Va. Code Ann. § 15.2-2309(1) (the BZA has jurisdiction to "to hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer."); *see e.g., Ohree v. Commonwealth*, 26 Va. App. 299, 308 (1998) (appellate courts "will not consider an argument on appeal which has not been presented to the trial court.").

Notwithstanding the above, the BZA nonetheless determines Appellant's proposed use is not an "office" because the proposed use does not meet the plain and unambiguous definition of "office" set forth in Article 15, Section 2 of the Ordinance. "Office" is defined as:

> A facility in which the administrative activities, record-keeping, clerical work and other similar functions of a business, professional

> service, medical practitioner, industry, or government are conducted, and, in the case of professions such as lawyers, engineers, dentists, physicians, and the like, the facility where such professional services are rendered.

Ord., Art. 15 § 2. However, Appellant's proposed use is much more extensive than mere operation of an "office" on the Property.

Appellant proposes to: (1) store its fleet of vehicles on the Property for fewer than 24 hours; (2) use the Property as the base of daily operations for its waste hauling business where no fewer than 50 trucks will ingress and egress each day; (3) include a maintenance and repair facility with which Appellant intends to work on its fleet of 75 trucks; (4) include a truck wash which will frequently, if not daily, wash its fleet of trucks after they return from their trash hauling operations; and (5) include an office by which Appellant will manage its business. *See* FOF ¶¶ 1-14. Appellant's proposed use for the Property is not encompassed by the definition of "office." By its plain and unambiguous terms, the word "office" does not include the multitude of other uses that are the primary focus of Appellant's business—active, daily waste hauling operations.

E. No Permitted Use in the CM-1 District Encompasses Appellant's Proposed Use

A building or land in the CM-1 district "shall only be used in accordance with Article 4, Section 1: Use Regulations." Ord., Art. 4 § 10.2. The Use Table in Article 4 § 1 indicates which uses are permitted in the CM-1 District. *Id.* at § 4.1. A "'P' indicates that a use is permitted in the respective zoning district, subject to compliance with all other applicable regulations of the Zoning Ordinance." *Id.* at 4.1.1. However, "[a] blank cell (one that does not contain any of the symbols above) indicates that the listed use is not allowed in the respective zoning district."). *Id.*; *see also* Ord., Art. 3 § 7. "For the purposes of this ordinance, permitted uses are listed for the various districts. ***Unless the contrary is clear from the context of the lists or other regulations of this ordinance, uses not specifically listed are prohibited.***" Ord., Art. 3 § 7 (emphasis added).

Appellant proposes to: (1) store most of its fleet of vehicles on the Property for fewer than 24 hours; (2) use the Property as the base of daily operations for its waste hauling business where no fewer than 50 trucks will ingress and egress each day; (3) include a maintenance and repair facility with which Appellant intends to work on its fleet of 75 trucks; (4) include a truck wash which will frequently, if not daily, wash its fleet of trucks after they return from their trash hauling operations; and (5) include an office by which Appellant will manage its business. *See* FOF ¶¶ 1-14.

There is no use identified in the Use Table of the Ordinance that allows operation of a waste hauling facility in the CM-1 District, much less one with the characteristics of the use Appellant proposes. Unlike other uses which are industry specific, for example, "petroleum, propane, and other flammable liquids, storage, distribution and sales," there is no specific permitted use for a waste facility. Moreover, the daily ingress and egress of Appellant's trucks to

and from the Property suggests that Appellant intends to operate its business more like a depot[9] or fleet storage facility than an "office," "outdoor storage lot," or other use specifically identified by the Use Table.

Having reviewed the unambiguous permitted uses in the Use Table in Article 4 § 1.1 of the Ordinance, the BZA determines that there is no permitted use in the CM-1 District that would allow the proposed use that Appellant intends to operate on the Property. As such, Appellant's proposed use is not allowed by the Ordinance. Ord., Art. 3 § 7.

F. Alternatively, Even if the Ordinance Were Ambiguous, Appellant's Proposed Use Would not be Permitted

Assuming, *arguendo*, that certain terms of the Ordinance were ambiguous—which they are not—the BZA finds that Appellant's proposed use is not permitted in the CM-1 District by the Ordinance.

Language is ambiguous if it can be understood in more than one way. *Virginia-Am. Water Co. v. Prince William Service Authority*, 246 Va. 509, 436 S.E.2d 618 (1993). An ambiguity also exists when the language is difficult to comprehend, is of doubtful import, or lacks clearness and definiteness. *Brown v. Lukhard*, 229 Va. 316, 330 S.E.2d 84 (1985). The fact that parties may disagree as to the meaning of an ordinance does not necessarily mean that an ordinance is ambiguous. Michie's Jurisprudence, Statutes, p. 310.

When an ordinance is determined to be ambiguous, the language must be construed to promote the end for which it was enacted, if such an interpretation can reasonably be made from the language used. *VEPCO v. Board of County Supervisors of Prince William County*, 226 Va. 382, 309 S.E.2d 308 (1983). An ordinance should be read to give reasonable effect to the words used and to promote the ability of the enactment to remedy the mischief at which it is directed. *Jones v. Conwell*, 227 Va. 176, 314 S.E.2d 61 (1984).

To the extent that any terms of the Ordinance are deemed to be ambiguous, they must be interpreted in accordance with the intent of the Ordinance and other documents incorporated therein. *VEPCO, supra*. The Ordinance states that the purpose of the CM-1 District is:

> [T]o provide for a wide variety of ***local and farm service industrial operations***, including repair services, building supplies, and open or enclosed storage of products, supplies and equipment, but ***to restrict or prohibit those service industries which have characteristics likely to produce serious adverse effects within or beyond the limits of the district, in accordance with the purposes and goals of the comprehensive plan***. Limited manufacturing is also permitted, including open storage of products and materials. In order to

[9] A "bus depot and maintenance facility" is allowed in the CM-1 District and is defined as, "a facility for the temporary storage and maintenance of public and/or private buses…" There is no similar analogue for waste hauling vehicles in the Ordinance.

> preserve the land for industry, to reduce extraneous traffic, and avoid future conflicts between industry and other uses, retail and business service uses are limited primarily to those which will be useful to employees in the district and future residential uses are restricted.

Ord., Art. 4 § 10.1 (emphasis added). Because the regulations and districts of the Ordinance have been made "in accordance with a comprehensive plan" and because the Ordinance's definition of CM-1 District expressly incorporates "the purposes and goals of the comprehensive plan," it is appropriate for the BZA to consider the Plan of Purcellville 2030 Comprehensive Plan, adopted June 30, 2020 ("Comprehensive Plan") when evaluating the context of the Ordinance.

Among other things, the Comprehensive Plan states that it:

> [S]eeks to protect Purcellville's assets for the welfare of present and future generations. Accordingly, these assets form the foundation of Purcellville's vision for the future, namely that Purcellville will preserve and protect its unique, thriving, and diverse character by remaining a place: That is mindful of its ***historic character and rural heritage***, where residents delight in living and participating in the community, and where ***residents and visitors can be appreciative of its physical beauty and valued environment.***

Comprehensive Plan at 21 of 138 (emphasis added). The stated goals of the Comprehensive Plan include the following:

> A. Purcellville must look for future land uses and development that ***compliment rather than detract from its small town charm***;
> * * *
> C. Purcellville must manage development to ensure that development ***does not overwhelm the Town's services and infrastructure, or destroy Purcellville's character***;
> * * *
> E. Purcellville must protect and enhance its aesthetics and viability by ***striking a balance*** between serving the needs of residents and attracting the visitors whose business helps to reduce the tax burden on our residents;
> F. Purcellville and its county, state, and national agents must mitigate and ***manage increasing traffic in a way that ensures the efficiency, safety, and attractiveness*** of our streets;
> * * *
> J. The Town should ensure that any future development and growth takes place with the highest levels of ***environmental sustainability***, using our natural systems as an integral part of our community's future. The Town should compliment this by generally ***pursuing and adopting sustainable decisions.***

Id. at 22 of 138 (emphasis added). Other applicable portions of the Ordinance demonstrate that the terms of the Ordinance should be interpretated in the context of the comprehensive plan. *See* Ord., Art. 1 § 3 (Purpose of the Ordinance).[10]

In addition to not being permitted by black letter, unambiguous language of the Ordinance, Appellant's proposed use is also not permitted because it would violate the stated purpose of the CM-1 District and the Comprehensive Plan for several reasons.

First, KMG's proposed use is not intended for "local…service industrial" operations. [11] The CM-1 Local Service Industrial District is characterized by use of the word "local" both in the name of the district and in the definition: "The purpose of this district is to provide for a wide variety of ***local and farm service industrial operations***." Ord., Art. 4 § 10.1 (emphasis added). Appellant's principal, Mr. Garcia, testified that Appellant does not serve any residents or businesses of Purcellville. *See* FOF ¶ 6. Instead, Appellant has 4,000-5,000 customers scattered across Northern Virginia, Maryland, and the District of Columbia, but none in Purcellville. *Id.*

The adjective "local" is defined by Merriam-Webster dictionary as: (i) "of, relating to, or characteristic of a particular place: *not general or widespread*"; (ii) primarily serving the needs of a particular limited district."[12] Applying the common dictionary definition of "local" to KMG's proposed use, and the BZA having found that KMG's proposed use will serve northern Virginia, Maryland, and D.C., the BZA determines that KMG's proposed use is not for "local…service

---

[10] Ord., Art. 1 § 3 ("The zoning regulations and districts as herein established have been made in ***accordance with a comprehensive plan***, to promote, in accordance with present and future needs, the ***health, safety, morals, order, convenience, prosperity, and general welfare*** of the citizens of Purcellville, Virginia, and to provide for efficiency and economy in the process of development, ***for the appropriate and best use of land***, for ***convenience of access and of traffic*** and circulation of people and goods, for the appropriate use and occupancy of buildings…to encourage good civic design and arrangement, ***to facilitate the creation of a convenient, attractive and harmonious community***, to protect against destruction of or encroachment upon historic resources…by regulating and limiting or determining…the type and density of use.

They have been made with reasonable consideration, among other things, for the existing use and character of property, the comprehensive plan, to the character of the district and its peculiar suitability for particular uses, to trends of growth or change, and with a view to conserving natural resources and the value of land and buildings and encouraging the most appropriate use of land throughout the incorporated territory of Purcellville, Virginia." (emphasis added).

[11] KMG's operations are clearly not farm related, and as such, reference to farm in the definition of CM-1 is not applicable to KMG's operations and KMG has not proffered such an interpretation. To the extent such an argument is being made by KMG, it is rejected.

[12] "Local," Merriam-Webster (2023), available online at: https://www.merriam-webster.com/dictionary/local. (emphasis added).

industrial operations." Accordingly, KMG's proposed use is not permitted under the definition of CM-1 Local Service Industrial District.

Second, KMG's proposed use is also not permitted by the plain meaning of the examples provided in the definition of CM-1 Local Service Industrial District: "including repair services, building supplies, and open or enclosed storage of products, supplies and equipment..." Ord., Art. 4 § 10.1. "Repair services" is defined in the Ordinance as, "a business that repairs ***consumer*** merchandise, tools or appliances but not motorized vehicles, equipment or machinery." Ord., Art. 15 § 2. KMG's stated purpose for its repair services is to repair its own garbage trucks and other equipment involved in its trash hauling business, not for repairs of consumer merchandise as contemplated by the definition of "repair services."

The term "building supplies" is not defined in the Ordinance, therefore it is appropriate to interpret the term according to its customary usage. Ord., Art. 15 § 1(5); *see Sansom, supra*. The customary usage of building supplies involves supplies used in the construction industry. KMG's operations involve trash hauling, not providing building supplies for construction.

The term "open or enclosed storage of products, supplies and equipment" is likewise not defined in the Ordinance; however, there are specific definitions which involve storage of items in the Ordinance. The only storage definition which KMG proffers in this Appeal is "outdoor storage lot," and this definition does not encompass Appellant's proposed use for the reasons set forth above. Nevertheless, the BZA finds that Appellant's proposed use is not simply for use as storage, as that term is customarily used and in the context of the Ordinance. Ord., Art. 15 § 1(5). Rather, the BZA determines as a matter of fact that the primary use for the Property is as a base of daily operations for KMG's trash hauling business throughout Maryland, D.C., and Virginia, and not primarily as a place merely to store vehicles and equipment.

Third, the definition of the CM-1 District contains express limitations which prohibit KMG's proposed use. The CM-1 District is designed:

> [T]o ***restrict or prohibit those service industries*** which have characteristics ***likely to produce serious adverse effects within or beyond the limits of the district***, in accordance with the ***purposes and goals of the comprehensive plan***.

Ord., Art. 4 § 10.1 (emphasis added). Appellant failed to introduce any evidence demonstrating that its trash hauling operations would not have "serious adverse effects within or beyond the limits of the district" and would comply with the "purposes and goals of the comprehensive plan." Moreover, based on the information obtained at the Hearing, as described above, the BZA determined as a matter of fact that Appellant's proposed use *would* produce serious adverse effects within or beyond the limits of the district and violate the purposes and goals of the Comprehensive Plan. Among other things, Appellant failed to address how its proposed "truck wash" could accommodate 50 to 75 garbage trucks per day without a line spilling off of the premises and onto

already congested Hirst Road.[13] Appellant failed to address how adding 50 to 75 trucks to the daily traffic would impact the already congested intersection of Hirst Road and Berlin Turnpike. Appellant also failed to address how adding 50 to 75 trucks to the daily traffic might impede operations of the Purcellville Volunteer Fire Company, which uses Hirst Road as a major thoroughfare through town. Appellant failed to adequately address how it would mitigate the impacts from noise, odor, and vectors (rodents and other pests) from the daily operations of its large waste hauling business on the neighboring and nearby residential areas and schools. *See, e.g.* FOF ¶ 2.

Appellant's map shows that the South Fork Catoctin Creek runs through the upper northwest corner of the Property; a residential subdivision borders the property to the southwest; directly south are business including Catoctin Cross Fit, High Gear Truck Repair, Loudoun Stairs, Inc.; Hirst Road forms the northern border of the Property; and Maple Avenue forms the western most border of the Property.[14] *See* Request at 3. Appellant failed to introduce into the record any written evidence to address the environmental impacts of waste runoff from the waste removal vehicles, waste containers, and vehicle maintenance operations upon the surrounding area, and specifically, the South Fork Catoctin Creek which runs through the northwest corner of the Property and continues on to serve down-stream residences and land.

G. DECISION

The BZA's "decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct." Va. Code Ann. § 15.2-2309(1); *see also* Ord., Art. 9 § 4(1). "The determination of the administrative officer shall be presumed to be correct." Va. Code Ann. § 15.2-2309(1). At the hearing, "the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence." *Id.* The BZA "shall consider any applicable ordinances, laws, and regulations in making its decision." *Id.*; *see also* Ord., Art. 9 § 4(1).

In making its decision, the BZA "may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from." Va. Code Ann. § 15.2-2312; *see also* Ord., Art. 9 § 12.2. "The concurring vote of a ***majority of the membership of the board*** [BZA] shall be necessary to reverse any order, requirement, decision or determination of the administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance, or to effect any variance from the ordinance." Ord., Art. 9 § 12.2 (emphasis added).

---

[13] KMG suggested at the Hearing that the BZA should not concern itself with issues such as traffic impacts in considering an appeal of a zoning determination. However, such an issue is squarely before the BZA if it is to evaluate the Ordinance as ambiguous, which the BZA still finds that it is not.

[14] The BZA may take judicial notice of geographical facts and matters that are of common knowledge. *McClain v. Commonwealth*, 55 S.E.2d 49, 52 (Va. 1949) ("facts proved may be aided by judicial notice of geographical facts that are matters of common knowledge, or shown by maps in common use.").

For the reasons set forth above, the BZA wholly affirms the Z.A.'s determination, and specifically concludes that:

1. The Zoning Ordinance and the definitions of the uses at issue in this Appeal are unambiguous;

2. Appellant's proposed use is not encompassed with in the plain and unambiguous meaning of the definition of "outdoor storage lot";

3. Appellant failed to appeal the Z.A.'s determination concerning "contractor's office and storage area," however, even if Appellant had properly made such appeal, Appellant's proposed use is not encompassed within the plain and unambiguous meaning of the definition of "contractor's office and storage area";

4. Appellant's Request did not seek a determination from the Z.A. concerning "office," however, even if Appellant had requested such a determination, Appellant's proposed use is not encompassed within the plain and unambiguous meaning of the definition of "office";

5. No use permitted in the CM-1 District encompasses Appellant's proposed use, which is more accurately described as a waste hauling base of operations with daily ingress, egress, and storage of heavy waste hauling trucks with a maintenance facility to maintain the waste hauling truck operations with a truck wash with an office building;

6. Even if the Ordinance were ambiguous, which it is not, Appellant's proposed use violates the stated purpose of the CM-1 District and the Comprehensive Plan of the Town of Purcellville.

Accordingly, Appellant failed to meet its burden of proof to rebut the correctness of the determination of the Z.A. by a preponderance of the evidence. Va. Code Ann. § 15.2-2309(1). The Z.A.'s Determination is **WHOLLY AFFIRMED**.

This Decision is duly adopted by a proper motion and by unanimous consent of the BZA on March 2, 2023.

Chairman, Purcellville BZA