

BOARD OF APPEALS CASE NO. 4712

BEFORE THE

APPLICANTS: Mr. & Mrs. Jeffrey Huesman

ZONING HEARING EXAMINER

REQUEST: Special Exception to conduct a lawn service in the AG District; 3849 West Chapel Road, Aberdeen

OF HARFORD COUNTY

HEARING DATE: July 23, 1997

Hearing Advertised

Aegis: 5/21/97 & 5/28/97

Record: 5/23/97 & 5/30/97

ZONING HEARING EXAMINER'S DECISION

The Applicants, Mr. and Mrs. Jeffrey Huesman, appeared before the Hearing Examiner requesting a Special Exception to Section 267-53(H)(1) of the Harford County Code, to allow construction services for a lawn care business in an Agricultural District.

The subject parcel is located at 3849 West Chapel Road in the Second Election District. The parcel is identified as Parcel No. 131, in Grid 3-E, on Tax Map 43. The parcel contains 5.88 acres, more or less, all of which is zoned Agricultural.

Mrs. Jeffrey Huesman appeared and testified that the subject property is improved by a single-family dwelling and a shed. The witness said that her husband uses the shed to sharpen blades and perform maintenance on equipment. Mrs. Huesman said that the Applicant has operated a lawn care business for approximately 10 years and the business has been operated from the subject parcel on West Chapel Road for approximately 3 years. The witness said that the business owns 2 riding mowers, 5 Gravelly walk-behind mowers, a front-end loader, and miscellaneous hand tools. The Applicant also stores 3 business vehicles on the parcel. The vehicles are a Ford pick-up truck, a Ford van, and a Ford stake-body. The Applicant said that the business currently has 2 employees, 1 full-time and 1 part-time, as well as a part-time secretary. The Applicant said that it would be costly to rent commercial property to operate the business and she felt that, due to the amount of acreage which the Applicant owns, the operation of the business from the parcel is feasible. The Applicant said that her husband plans to down-size the business and may dispose of one of the vehicles and will also install whatever type screening the Department of Planning and Zoning recommends.

Case No. 4712 - Mr. & Mrs. Jeffrey Huesman

Mr. Jeff Huesman appeared and testified that he has been in the lawn care business for approximately 10 years and that the business currently operates a Ford F250 pick-up truck, a Ford F350 van with a 15 foot enclosed box, and a Ford F350 stake body with a 12 foot bed. The Applicant said that he also has a low-boy trailer, which he uses to transport the front-end loader. The Applicant said the business generally operates from March 15 to December 20 and that the number of employees fluctuates and that he currently has 2 full-time employees and in the spring he had 2 full-time employees and 1 part-time employee, as well as a part-time secretary.

Several area residents appeared and cross-examined the Applicants and also testified in opposition to the request. The residents expressed concern and opposed the operation of the business in a residential area and indicated that even if the vehicles are screened, it would not satisfy the problem. The area residents also complained about noise, traffic, the view of the vehicles from their parcel, the location of the vehicles on the Applicants' parcel, and diminished property values due to the operation of the business.

The Staff Report of the Department of Planning and Zoning recommends conditional approval.

CONCLUSION:

The Applicants are requesting a Special Exception to Section 267-53(H)(1) of the Harford County Code, which provides:

“Construction services and supplies. These uses may be granted in the AG and VB District, provided that a buffer yard 10 feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.”

The Code also requires the Applicants to offer testimony with respect to Section 267-9(I), which sets forth “Limitations, Guides and Standards” for approval of a Special Exception.

Case No. 4712 - Mr. & Mrs. Jeffrey Huesman

Under Maryland law, the Special Exception use is part of the comprehensive zoning plan, sharing the presumption, that, as such, it is in the interest of the general welfare and therefore, valid. A special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstances negating the presumption. The duties given the board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in a particular case is in harmony with the general purpose and intent of the plan. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). The appropriate standard to be used in determining whether a requested special exception use should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location would have any adverse affect above and beyond those inherently associated with such a special exception use, irrespective of its location within the zoning district. See Schultz at 432 A.2d 1327.

The Applicants have the burden of showing that they can meet the requirements of Section 267-53(H)(1) and Section 267-9(I), as well as the burden of showing that the particular use proposed at the particular location would not have an adverse affect above and beyond those inherently associated with such a Special Exception use, irrespective of its location within the zoning district.

The Applicants have failed to introduce any evidence that the request would comply with the requirements set forth in Section 267-9(I), nor have they introduced any evidence that there are facts and circumstances that show that the particular use proposed on the subject parcel would not have an adverse affect above and beyond those inherently associated with a Special Exception use, irrespective of its location in the zone.

The area residents who appeared and cross-examined the Applicants and testified in opposition to the request have introduced evidence of what they perceive to be an adverse impact. In any event, the Applicants have failed to meet their burden of showing compliance with the Code, as well as with the requirements set forth in Schultz v. Pritts, supra.

Case No. 4712 - Mr. & Mrs. Jeffrey Huesman

Therefore, it is the recommendation of the Hearing Examiner that the Applicants' request to operate a lawn service business as construction services and supplies in an Agricultural District be denied.

Date AUGUST 1, 1997



L. A. Hinderhofer
Zoning Hearing Examiner