

BOARD OF APPEALS CASE NO. 4997

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BEFORE THE

APPLICANT: Albert J. Bierman, Jr.

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ZONING HEARING EXAMINER

REQUEST: Special Exception to locate a sawmill in the Agricultural District; 3440 Dorothy Avenue, Joppa

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/5/00 & 4/12/00

HEARING DATES: May 24, June 22, July 12 and August 10, 2000

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Record: 4/7/00 & 4/14/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Albert J. Bierman, Jr., is requesting a special exception pursuant to Harford County Code, Section 267-53E(2) to establish a sawmill in an Agricultural District.

The subject parcel is located at 3440 Dorothy Avenue, Joppa, in the First Election District. It is more particularly identified as Parcel 85, in Grid 3B, on Tax Map 61. The parcel contains approximately 152.77 acres, all of which is zoned AG Agricultural. The property is owned by Albert J. Bierman, Jr., who resides at 1116 Hengemihle Avenue, Essex, Maryland. The parcel is currently unoccupied.'

The hearing on this matter took place over the course of four evenings, over a four month period. Briefs were submitted by attorneys for both the Applicant and People's Counsel. Many witnesses testified and a demonstration of the proposed portable sawmill was conducted in the parking lot behind the hearing room.

Mr. Arthur Leonard, a professional civil engineer and land planning expert, testified on behalf of the Applicant and noted that he was involved in the design and preparation of a concept plan for the subject parcel, identified as Petitioner's Exhibit No. 3. Mr. Leonard described the property as approximately 140 acres in size, with the predominant land use being agricultural. A sand and gravel operation is located on the northern boundary of the property. The southern and eastern boundaries of the property are bordered by residential streets. Mr. Leonard suggested that there would be a designated route for vehicle access to the site which would go from Mountain Road, turning east on Singer Road, then south on Clayton, west on Heim Lane, then south on Dorothy Avenue, turning west into the proposed site.

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Although there is an alternative access route, along Shirley Avenue to the south, Mr. Leonard testified that the Applicant would have a policy that no vehicles would use Shirley Avenue for access to the site due to the fact that Shirley Avenue is primarily a residential street. Mr. Leonard indicated that the proposed use for the property is that of a small scale sawmill operation, utilizing a portable sawmill, not a high volume operation. He noted that the proposed site for the sawmill would be a cleared area approximately 220 feet by 400 feet, which would be located about 800 feet from the closest residence. The sawmill would be housed in a pole barn, and a large open storage area would lie adjacent to the pole barn. He designed a storm water management facility along the access drive and construction of an earthen berm along Dorothy Avenue. In addition, Mr. Leonard noted that he was told that the Applicant's son planned to build a residence on the property. He stated that Natural Resource District and wetland buffers would be maintained, although the storm water management facility might disturb the buffer, but only as permitted by law. On cross-examination, Mr. Leonard indicated that the proposed sawmill would be located approximately 140 feet from a stream, and 50 feet from the NRD buffer. Although the parcel is heavily wooded, there are no trees between the proposed sawmill site and the proposed berm which would serve as a sight and sound buffer for the residences on Dorothy Avenue. In addition, Mr. Leonard noted that the sawmill site is higher in elevation than at least two of the residential lots on Dorothy Avenue, as well as many of those on Shirley Avenue. Mr. Leonard indicated that no noise studies had yet been conducted to determine how much of a buffer would be needed, but he noted that landscaping experts would be designing the berm with that in mind.

Mr. Roger Bennett, 59 Scarlett Oak Trail, Delta, Pennsylvania, testified that he is employed by King Pallet of Essex, Maryland, a company owned by the Applicant, Mr. Bierman. Mr. Bennett is the preventive maintenance person for the company, responsible for setting up, operating and training others to operate the equipment used in the business of recycling pallets. Mr. Bennett described the pallet business and indicated that the proposed sawmill operation, if approved, would serve only the pallet business owned by the Applicant. Mr. Bennett was qualified as a timber marking expert with knowledge of sawmill operations.

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Mr. Bennett testified that the operation would utilize a portable sawmill, a 42 horsepower super hydraulic bandsaw, specifically a model LT-40 as shown in the “Wood-Mizer” catalog, marked and admitted as Petitioner’s Exhibit No. 4. According to Mr. Bennett, the sawmill can be loaded onto a pickup truck for transport, it can be operated by two people, and it should generate no more noise than a farm tractor. Petitioner’s Exhibit 5, a specification sheet for the sawmill, lists the noise levels at 87 decibels when the motor is idling, and 98 decibels while sawing under a full load, although Mr. Bennett indicated it could go to 112 decibels if the log is dry and the blade dull. The decibel levels listed on the spec sheet are based upon the operator’s position (about 20 feet from the sawmill). Mr. Bennett testified that with two people operating the mill at maximum speed, they would be able to produce one truckload of product (wood boards) every two days. He stated that once a full load is produced, it would be loaded onto a sixteen foot flatbed truck and a sixteen foot single axle dump truck and transported away from the site. According to Mr. Bennett, there would be a maximum of three trucks per week coming and going from the site, with hours of operation on site limited to 8 a.m. to 4 p.m., Monday through Friday. There would be no retail sales conducted on site, and no product for sale to farmers or others besides King Pallet. Nor would there be any assembly of pallets done on site. This work would be performed at the business’ Essex location.

It was Mr. Bennett’s testimony that the residents along Dorothy or Shirley Avenues would not be able to hear the saw at all, although he hadn’t done any actual measurements of the noise levels from any distance.

On cross-examination, Mr. Bennett testified that, in addition to the sawmill itself, there would be workers in the woods on the site cutting timber with chain saws. In terms of equipment, in addition to the sawmill, there would be a skid loader, one truck, one employee’s automobile, and some cans of oil, as well as a diesel can in the operator’s truck. This would be in addition to the dump truck and the flatbed truck already mentioned. According to Mr. Bennett, there would be no other equipment on site. The sawmill would operate from 8 to 4, Monday through Friday, approximately one week per month, as well as some holidays.

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Mr. Bennett also testified that the residue or waste from the operation includes firewood (small slats of wood) and very fine sawdust. The slats are used to stack the lumber to dry and the sawdust would be used by farmers for bedding of animals and the like. However, Mr. Bennett indicated that they do not intend to sell either the firewood or the sawdust, rather they would give it away or store it on site. Mr. Bennett also stated that they may need to bring some timber material in from off site to process, although 75 percent of the timber would be from the site itself. Any material that would be brought in, according to Mr. Bennett, would be transported by him personally or another company employee in a single axle truck. Mr. Bennett testified that there are 60 to 70 acres of timber on the site which can be harvested. A truckload consists of approximately 3400 board feet, which translates into about 4 skid loads. On the truck, the load is eight feet wide, not quite sixteen feet long and 49 inches high above the bed.

Mr. Lee Cunningham, 9151 Rumsey Road, Columbia, Maryland, testified as Applicant's expert in land use and transportation planning. Mr. Cunningham had visited the proposed site for the sawmill and noted that the predominant zoning in the area is agricultural, with some single family residential uses in the area. He indicated that the closest single family home is along Shirley Avenue, to the east of Dorothy, just south of the entrance to the site, approximately 800 feet from the proposed sawmill. It was Mr. Cunningham's opinion that the proposed special exception use is in accord with the county's Master Plan, provided that certain proposed conditions were placed upon the use which would limit it to a low-intensity or low density operation. Mr. Cunningham opined that the proposed sawmill would not constitute a nuisance based upon the fact that it is a use consistent with other uses permitted in the Agricultural District. In order to insure that the sawmill is compatible with other uses in the area, namely the residential neighborhood, Mr. Cunningham proposed that certain conditions or restrictions be placed upon the sawmill if the special exception is approved.

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These conditions, as outlined in Mr. Cunningham's report, marked and admitted as Petitioner's Exhibit No. 6, include: the facility would be a two-man operation, with two employees required to be on-site while the sawmill is operating; hours of operation would be limited to six days a week, excluding Sundays; delivery of timber or other raw material to the site would be limited to three deliveries per week, twelve per month; hours of delivery would be limited to off-peak traffic times, so as not to interfere with school bus and commuter traffic; no retail sales of finished lumber would be permitted; and, there would be a specified route for vehicles to and from the site via Clayton Road, to Heim Lane, to Dorothy Avenue, so as to minimize the impact on adjacent residential lots along Shirley Avenue.

Mr. Cunningham also testified that he believed that the State Department of the Environment has promulgated noise standards for residential areas. According to the witness, those standards would limit the noise levels at the property line in a residential area to 55 decibels. It was Mr. Cunningham's testimony that, based upon the proposed construction of a berm at the southeastern end of the site, the noise level of the sawmill while operating at full throttle, would be between 50 and 53 decibels at the property line. He further testified that the roads along the proposed access route had sufficient capacity for all vehicles, including semi-trailers, which would frequent the site. He indicated that he believed that the site could be accessed safely and efficiently by the kinds of vehicles that would use the site. If the proposed conditions were implemented, Mr. Cunningham stated that he did not believe that the operation of the proposed sawmill would have a greater impact at the proposed location than in other locations in the agricultural zone.

Upon cross-examination, Mr. Cunningham indicated that he would recommend that no homes be built on the subject property if the proposed sawmill is approved because of the increased level of noise which would impact those homes, provided there was no way to further lower the noise from the sawmill. In addition, the witness noted that, based upon the proposed conditions, there could be up to three deliveries by a semi-tractor trailers with a 50 foot wheelbase (known as WB 50's) to the site per week, with up to twelve deliveries per month.

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He also noted that it was possible for lumber or logs to extend beyond the length of the tractor trailer and for such vehicles to arrive or depart the site fully loaded. In addition, Mr. Cunningham agreed that if the lumber material from the sawmill were stockpiled, it would be possible for up to 20 loads of material to be taken off the site on any given day. Mr. Cunningham indicated that he had not examined the construction of the roads to determine if they were capable of handling such loads. Mr. Cunningham also agreed that he would recommend further limitations on the hours of operation in order to avoid disturbances to the nearby residents in the evenings and on weekends. When asked how such limitations would be enforced, Mr. Cunningham indicated there are issues involved in enforcement, but that he believed that if the proposed conditions were violated, neighbors would complain to the Department of Planning and Zoning. If the Applicant did not correct the situation, and the sawmill became a nuisance to the neighborhood, the special exception approval could be revoked.

Mr. Anthony McClune, Manager, Division of Land Use Planning for the Department of Planning & Zoning, was next to testify regarding the Department's recommendation and Staff Report. According to Mr. McClune, the subject property lies to the rear of an existing residential neighborhood that includes single-family dwellings on relatively small lots. The parcel is accessed by way of Clayton Road, described as a narrow paved county road, and three minor subdivision roads, namely Dorothy and Shirley Avenues, and Heim Lane. Those roads are 16 to 18 feet wide, composed of tar and chip. Mr. McClune stated that the Department recommended against approval of the special exception because it has concluded that the noise and activity of the sawmill on this particular parcel would have a greater negative impact on the surrounding areas than it would in other agricultural districts around the county. This conclusion was based upon the fact that the roadways are narrow and designed for local residential traffic, not heavy trucks, and the nearby homes are located on small, residential lots, with the houses situated close to the roadway. The property can only be accessed through this older, well-established residential neighborhood, whose residents would be negatively impacted by the proposed operation.

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It is the Department's opinion that the proposed use is not compatible with the surrounding areas. The Department believes that the business will generate noise and dust which is incompatible with the existing neighborhood, and therefore inconsistent with the county Master Plan. Therefore the Department recommends denial of the Applicant's request. Mr. McClune also noted that the Department was concerned that the proposed conditions would be unenforceable, in that the Department cannot be expected to be present on-site to count vehicles, determine times of delivery, inspect truck sizes and the like. He stated that the route proposed by the Applicant passes by several residential lots along Heim Lane. Even though there are not as many residents on Heim as there are on Shirley Avenue, the residents of Heim would be adversely affected by the truck traffic and the sawmill operation. Mr. McClune noted that the situation in this area is different from many other rural areas in the county where new residential construction has been located near or adjacent to agricultural zones. Newer residential neighborhoods in rural areas typically utilize two acre lots or larger, allowing houses to be built further back from the roadway, with less impact from traffic than is the case in an older community like the one in question, where homes are located very close to the road. Accordingly, Mr. McClune testified, the impact from truck traffic is greater in the proposed location than in other rural areas of the county.

On cross-examination, Mr. McClune was asked if the Applicant could operate the sawmill without a special exception if it were being used in conjunction with a Forest Harvest Permit, which allows for the cutting of timber. According to Mr. McClune, that activity would be prohibited because the suggested permit does not allow for the altering of the raw wood product to another type of product. Mr. McClune indicated that when the trees are cut on-site to form slats for pallets, stacked and then loaded for delivery, as part of an ongoing, rather than a temporary timber-cutting operation, then the product has been altered to form another type of product for which a special exception is needed. Mr. McClune further indicated that even if the Applicant were to agree to all conditions noted at hearing, this would not change the Department's recommendation against approval of the special exception.

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Mr. McClune stated that he believes this neighborhood is somewhat unique, given the small lot areas and the location of homes close to the road. Even with the proposed restrictions, it is his and the Department's opinion that the impact of the proposed use in this area would be greater here than elsewhere in the agricultural district.

Ms. Cheryl Banigan, Chief of Traffic and Transportation Planning for the Harford County Department of Public Works testified on behalf of that department. Ms. Banigan testified that DPW had concerns about the structural integrity of the roads in the area of the proposed use, the designated access route to the site and potential conflicts with school bus traffic. According to Ms. Banigan, her department would request that a structural evaluation be performed on Dorothy, Heim, Shirley, Clayton and Singer roads based upon the estimated loads of the trucks that would be going in and out of the proposed site. A primary concern is that it would be difficult to control or restrict truck traffic to a designated route to avoid the residential Shirley Avenue. The only way to so restrict the route from the site would be to prohibit right turns out of the access drive. Ms. Banigan did not believe this could be done effectively, short of posting a sheriff at the end of the drive. Ms. Banigan went on to testify that she did not believe that a WB50 tractor trailer could physically navigate a right turn exiting the subject property (due to the large turning radius that was needed), but that single axle trucks, dump trucks and the like would not be physically limited from making a right turn out of the property and traveling over to Shirley Avenue. While a sign could be posted to prohibit same, Ms. Banigan testified that it would be very difficult to enforce this limitation. Ms. Banigan further testified that although the Department could post weight restrictions on the Shirley Avenue, the signage would indicate that no trucks would be allowed over 3/4 ton, except local deliveries. The trucks to the proposed site would be considered a local delivery, so they would have no way to enforce a prohibition against trucks on Shirley Avenue. Regarding traffic conflicts, Ms. Banigan noted that school buses operate between 2:15 and 4:30 p.m., hours which would be considered off-peak and approved for truck deliveries. However, the roads in question are only 16 feet wide, while a school bus and a WB50 tractor trailer are each 8 and a half feet wide, preventing both vehicles from occupying the roadway at the same time.

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Ms. Banigan indicated that the property owner would need to have boring samples done on the roads to determine if they were capable of withstanding the proposed loads. The Department of Public Works would review these samples to determine if additional paving was needed and would ask the property owner to pay for the paving, if necessary. Ms. Banigan noted that the roads in question were paved initially to accommodate residential traffic, not heavy commercial traffic. While Ms. Banigan stated that it is unusual for the department to request road core samples when other commercial uses are proposed in the county, she noted that typically such uses are not accessed via residential roads with tar and chip surfaces. While tar and chip is similar to asphalt, Ms. Banigan noted that it does not have the structural integrity of asphalt.

Ms. Dorothy Jones, 3447 Dorothy Avenue, testified in opposition to the request. Ms. Jones lives in the closest residence to the proposed sawmill and can see the field in which the sawmill would be located from her home when the leaves have fallen off of the trees. Ms. Jones has lived on Dorothy Avenue for thirty years. She indicated that this is a neighborhood of older homes with older roads, no sidewalks, no formal playgrounds. Children play in the street and people still ride horses in the streets in the area as well. She testified that this is a quiet residential neighborhood, with no real commercial activity on the road other than that associated with residential areas, like UPS deliveries. It was her testimony that the sawmill machine itself was not necessarily the problem, rather the problems come from the chain saws used and from the traffic and vehicles that will be used to haul the material. She believes that the amount of noise generated by the trucks and the chain saws will be disruptive to the neighborhood.

Ms. Linda Fancher, 1706 Shirley Avenue, also testified in opposition to the request. Her home is located at the intersection of Shirley and Dorothy Avenues. She has lived there for 20 years. According to Ms. Fancher, she has been awakened by trucks going to the proposed site to remove mulch that had been on the site. Ms. Fancher testified that her whole house rattles when the trucks go by. The trucks going to the site did not come down Heim Lane to Dorothy, but rather drove down Shirley Avenue.

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She is concerned that other trucks will ignore a designated route and come down Shirley Avenue instead. She also indicated that the trucks removing the mulch came in and out of the site on a Saturday, all day long, not ending until approximately 6 p.m. They also returned on Sunday and Monday mornings. Ms. Fancher can see the proposed site of the sawmill from her home and she also has concerns about dust and the impact the operation and the truck traffic will have on her elderly parents who live next door. She is concerned that she will not be able to enjoy her deck if truck traffic is present and the sawmill is in operation. She indicated that her house is only about one car's length plus about two feet from Shirley Avenue, about 25 feet. Several photos of the roadways and the site taken by Ms. Fancher were marked and admitted as Protestant's Exhibits Nos. 1 through 8. Ms. Fancher also testified during rebuttal that school buses come into the neighborhood between 11:45 a.m. and 12:45 p.m. to transport kindergarten students who attend school only half day, in addition to the times one would expect at the start and end of a normal school day. This would increase the likelihood of a problem with trucks and school buses trying to occupy the roads at the same time.

Ms. Karina Jackson, 1601 Shirley Avenue, testified in opposition to the request. She expressed concerns about contradictions in the testimony of Applicant's witnesses regarding proposed hours and days of operation (first 8 to 4 was proposed, then 6 to 6, first Monday through Friday proposed, then Monday through Saturday); regarding whether trees would be harvested onsite or brought in on trucks; regarding initial proposal of a 16 foot flatbed truck and dump truck and then later proposing tractor trailers and WB 50's. There were also discrepancies pointed out by Ms. Jackson in the proposed designated route. First it was stated that the route would be Singer to Clayton to Heim to Dorothy, then it became Route 7 to Clayton to Heim to Dorothy. Then the previous witness indicated trucks to the site had used Shirley Avenue. Ms. Jackson was concerned that the noise and the traffic would harm the neighborhood and create safety problems as well. She noted that there are no shoulders on any of the roads and that a school bus and a commercial vehicle would not have room to pass each other.

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Mr. Steve Jackson, 1601 Shirley Avenue, testified in opposition to the request. While he echoed the concerns expressed by his neighbors, he also noted that when the dump trucks came to the site to remove the mulch, he was able to hear the engine running and the loader being operated on the proposed site from the front of his home.

Four other residents from the area testified and forty other residents stood at the hearing in opposition to the request for the reasons previously noted by witnesses, namely noise from the operation and from truck traffic, concerns about safety due to the narrow roads, the residential nature of the area, potential pollution to streams and groundwater, and loss of enjoyment of their homes and neighborhood.

Mr. David Jarinko, the Noise Control and Acoustic Specialist for the Maryland Department of the Environment, was qualified and testified as an expert in noise measurement, with experience in noise abatement. Although he was called as a witness by People's Counsel for the protestants, the witness himself indicated that MDE did not have an official position regarding the case other than to note that if the sawmill was approved, it would have to meet the State limits for intruding noise as measured at a residential property. Mr. Jarinko indicated that he was appearing at the request of People's Counsel to provide technical information and clarification relating to acoustic issues and noise control-related matters. Mr. Jarinko noted that his job involves evaluating, assessing, offering assistance, and training statewide to citizens, jurisdictions, departments, including police departments, with regard to noise control and acoustic issues. He is the only individual at MDE in this position. In addition, Mr. Jarinko developed a Vehicle Noise Program for the Maryland State Police which involves instructing police officers in the proper use of noise measurement devices. Mr. Jarinko also investigates noise complaints, takes sound measurement readings and has been involved in recommending sound abatement measures. Mr. Jarinko is involved in the enforcement of state noise levels, which are measured based upon specific sound level limits. The impact of noise on people, according to Mr. Jarinko, is subjective and there are no specific standards set forth by the state based upon impact. Mr. Jarinko testified that he visited the proposed site on two occasions, and took sound measurements at several locations in the area. He noted that the site is somewhat isolated and located in a rural residential area, with limited vehicular traffic. At the

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time of his visit, there was a reasonably low background level of noise. The readings which he took in the area registered sound with decibel levels in the low 30's and 40's, which he indicated were consistent with levels in a rural residential area. Background noise levels go up as one moves into a more urbanized area, due to increased amounts of traffic and people. According to Mr. Jarinko, he has investigated noise levels at other sawmills around the state and found that nearby residents found the noise levels from the sawmill objectionable, though the levels did not exceed the state standards at the time the noise was measured. Mr. Jarinko indicated that manufacturer's decibel levels for sawmills may be correct as listed on a spec sheet, but that when a log is cut, the sound level shifts from that of the engine and engine noise is actually masked to a degree by a high-pitched, ragged, metallic-type sound, a whine, similar to that of a dirt bike, that people tend to find annoying and objectionable. This sound is detectable, according to Mr. Jarinko, over a wide area, although he noted that if the levels do not exceed the state standards, there is nothing the department can do in terms of enforcement. He noted that enclosing the sawmill inside a structure would help with abatement of noise, but this tends to be expensive and would make it difficult to get materials in and out. Placement of berms will not eliminate detectability and are not as effective as enclosing the machine. He noted that the state noise limit is 65 decibels, so that other sawmills that have generated 50 to 60 decibels at the property line have not exceeded the state limits at that line, although the noise was sufficient to cause neighbors to complain.

Following Mr. Jarinko, counsel for the Applicant called several witnesses in rebuttal. Mr. Leonard added testimony that he would now revise the proposed location of the earthen berm on the property so that it would be placed closer to the pole barn containing the sawmill. This would further reduce visibility of the structure from the surrounding neighbors. He indicated that he was not sure what effect, if any, the relocation of the berm would have on noise levels. Mr. Cunningham returned to testify that he disagreed with the testimony of Ms. Banigan regarding the ability to restrict turns out of the proposed site to only left turns. Mr. Cunningham opined that the driveway access could be constructed in such a way that it would not provide the needed turning radius for large trucks to make a right turn out of the drive, thus preventing large truck traffic from exiting towards Shirley Avenue.

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Mr. Cunningham also testified that he was familiar with other jurisdictions that had limited delivery hours at certain service stations so as to avoid having large trucks interfere with normal residential activity during certain times of the day. Mr. Cunningham noted that he believed that the conditions recommended by himself and the Applicant were necessary in order for the proposed use to be compatible with the area and in compliance with the Harford County Code. If those conditions were violated, it was his testimony that the special exception approval should be revoked.

The final witness to testify in rebuttal for the Applicant was Dr. Ira Kolman, who was qualified as a sound expert, audiologist and expert environmental noise consultant. Dr. Kolman indicated that he had visited the proposed site to evaluate the amount of noise present at what he termed "noise sensitive receptors", meaning those areas containing houses, as well as a nearby church. At the time that Dr. Kolman visited the site, the portable sawmill was located on the property. He took measurements at the property lines of six receiving properties, both while the sawmill was in operation and while it was inactive. Dr. Kolman testified that for all of his readings, both while the saw was in operation and while it was not, the sound level never exceeded 44 decibels. He concurred that the state standard for noise level is 65 decibels during the day, but noted that it drops to 55 decibels during the night. Based upon his readings, Dr. Kolman opined that the residents in the area would not hear any of the sound produced by the sawmill and thus it would not be a nuisance in the neighborhood. He also noted that, while he was conducting his tests, a pickup truck with a bad muffler drove by and that sound level was measured at 72 decibels, although it wasn't right in front of him at the time he took the measurement. Crickets in the area measured 50 decibels and a flock of birds flying over measured 58 decibels. Dr. Kolman did indicate that he was aware that tractor-trailers can generate noise at levels which exceed the state standard of 65 decibels, and that those sounds can get very high based upon speed and the number of vehicles. The state has erected noise barrier walls on the beltway because of noise levels from traffic that approached 80 to 90 decibels.

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CONCLUSION:

The Applicant is requesting a Special Exception to operate a sawmill in an Agricultural District. Section 267-53E(2) of the Harford County Code allows for such a use in an Agricultural District, as follows:

“Sawmills. These uses may be granted in the AG and B3 Districts, provided that:

- (a) A minimum parcel area of ten (10) acres is required.
- (b) Noise shall not become a nuisance to the neighborhood.”

In addition to the Code requirements for the specific proposed use, there are several other factors set forth by the Code and by Maryland case law which must be considered before approval can be given to a special exception request. These factors include: compatibility with other uses permitted within the particular zoning district [Section 267-51]; preservation of harmony with adjacent uses [Section 267-52(A)]; no adverse effect upon the public health, safety and welfare [Section 267-9(l)]; no creation of dangerous traffic conditions or jeopardy to people’s lives or property within the neighborhood [Section 267-9(l)]; and, no adverse effects above and beyond those inherently associated with such a use irrespective of its location within the zone. [See, Schultz v Pritts, 291 Md.1, 432 A.2d 1319 (1981)]. Specifically, Section 267-9(l) of the Code provides:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, *the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood.* The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

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- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
- (10) The preservation of cultural and historic landmarks.” (Emphasis added)**

With these considerations in mind, based upon the evidence and testimony presented at hearing as outlined above, the Hearing Examiner makes the following findings:

- A. The proposed site for the sawmill, while zoned agricultural, is located immediately adjacent to a rural residential neighborhood which contains relatively small lots with older homes set within 25 to forty feet of the roadway.**

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- B. The roads in the area, namely those necessary to travel to access the proposed site (including Dorothy Avenue, Heim Lane, Clayton Road and potentially Shirley Avenue), are narrow (16-18 feet wide), composed of tar and chip, and designed primarily for residential traffic. It would be difficult, if not impossible, for a regular school bus and a semi-tractor-trailer to pass each other on any of these roads.**
- C. The proposed sawmill operation would generate commercial-type truck traffic (including single axle dump trucks, flatbeds, and tractor-trailers with a wheel base of up to 50 feet long) carrying loads of timber and/or wood boards which could exceed the length of the truck bed. The Applicant has proposed limiting the number of truck deliveries of timber to a maximum of three per week, twelve per month. The sawmill itself, if operated by two men, can generate one full truckload of product every two days. Witnesses for the Applicant have proposed limiting the hours of operation to either Monday through Friday, 8 a.m. to 4 p.m., with occasional Saturdays or holidays, or Monday through Saturday, 6 a.m. to 6 p.m., to allow truck deliveries to be limited to “off-peak” traffic hours and non-school bus times.**
- D. In order for the proposed sawmill to be even potentially compatible with the adjacent residential neighborhood and with the considerations set forth in the Code and the Master Plan, numerous, enforceable conditions would have to be placed upon the operation, including, but not limited to: restrictions on the allowable route for truck traffic; restrictions on the hours of operation; restrictions on the hours for truck deliveries; construction of berms or other sound-reducing landscaping; design of driveway and/or signage to limit turn possibilities out of the site; limitations on the model of sawmill utilized, number of employees working at any given time, number and size of vehicles allowed to be utilized for the operation; construction of enclosures for the equipment; prohibition of retail sales; prohibition of production of other product; proper disposal or use of waste products; and, construction of an appropriate and safe storm water management facility.**

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- E. The portable sawmill itself, based upon the model proposed by the Applicant, may or may not generate sufficient noise to cause disturbance and/or constitute a nuisance to the residents in the immediate area.**
- F. Studies (core sample analysis) would need to be performed on the roadways traversed by the proposed truck traffic to determine whether sufficient paving is in place to handle the heavy loads generated by the proposed use.**
- G. Truck traffic from the proposed use, consisting of at least some tractor-trailers with a fifty foot wheel base, fully loaded, would create noise and vibration which would adversely affect neighboring residents.**

The findings noted above must be examined in light of the considerations outlined by the Maryland Court of Appeals in the Schultz case, cited above. The Court held that:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use 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 facts 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 the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. *If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide.* But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). *These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.*” (Emphasis added) 291 MD. At 11-12, 432 A.2d at 1325.

As noted previously, the Schultz Court further held that the test for determining the existence of a sufficient “adverse effect” to justify a denial of a request is “...whether there are

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facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” Id. at 15, 432 A.2d at 1327.

Based upon the findings outlined above, taken together with all of the testimony and evidence presented at hearing, the Hearing Examiner concludes that the Applicant’s request does not meet the standards and requirements of the Harford County Code or the legal tests as defined by the courts for a special exception to be approved as proposed. While it appears that the Applicant’s proposed sawmill operation would not be as intense a use as another type of sawmill might be, the fact remains that the proposed site, located immediately adjacent to an older, residential neighborhood, presents problems with adverse impacts that are greater at that location than they would be at other locations within the agricultural district. The presence of that neighborhood, with its narrow, residential country roads and homes built close to the street, amplifies the impact of noise from the sawmill operation and the truck traffic associated with it. While it is commendable that the Applicant has proposed numerous conditions in an attempt to meet the requisite standards, the Hearing Examiner finds that it is unlikely that such restrictive conditions would be effective or enforceable. The facts suggest that the operation is simply not compatible with the adjacent residential uses and thus is not in keeping with the orderly growth of the neighborhood and community and the purpose of the Master Plan, nor would it appear to be consistent with generally accepted planning principles and practices.

Accordingly, the Hearing Examiner respectfully recommends that the Applicant’s request be denied.

Date DECEMBER 7, 2000

Valerie H. Twanmoh
Zoning Hearing Examiner