

BOARD OF APPEALS CASE NO. 5048

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BEFORE THE

APPLICANT: Mark DiBastiani

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ZONING HEARING EXAMINER

REQUEST: Special Exception to permit construction services in an Agricultural District; 3011 Church Lane, White Hall

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/19/00 & 4/26/00

HEARING DATE: August 21, 2000

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Record: 4/21/00 & 4/28/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Mark E. DiBastiani is requesting a special exception pursuant to Section 267-53H(1) of the Harford County Code to allow construction services in an AG/Agricultural zone.

The subject parcel is located at 3011 Church Lane, White Hall, Maryland 21161 and is more particularly identified on Tax Map 7, Grid 2F, Parcel 6. The subject parcel consists of 7.5 acres more or less, is zoned AG/Agricultural and is entirely within the Fourth Election District.

The Applicant, Mark DiBastiani appeared and testified that he is the owner of the subject parcel and that he operates a residential construction and landscaping business from the property. His property is located approximately 2.5 mile Northwest of Norrisville in an agricultural area of the County. The Applicant's property consists of 7.5 acres. In addition to the Applicant's own residence, he has a trailer on the property where he operates the office component of the business as well as various pieces of equipment (identified on Attachment 11 of Staff Report dated May 30, 2000). One truck and one other heavy piece of equipment are diesel fuel operated. The Applicant stated that these sound much like farm equipment commonly heard in the surrounding area. There are 10 employees total and 2-3 work at the site daily. The remainder arrive at the site around 6:00 a.m. and depart as crews in the company vehicles returning around 6:00 p.m. each weekday. Saturdays are also worked, as needed, from 6:00 a.m. to mid afternoon.

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The Applicant stated that none of the operation is visible from any other property. The land due West of his is owned by the Applicant's brother. To the West and South is property of BG & E. To the East and South of the subject parcel is farmland.

The Applicant does not believe his operation has any impact at all on other properties or property owners in the area and did not think his special exception, if granted, would have any impacts at his location than at any other location where similar construction and landscaping operations occur. There are some above ground fuel tanks located at the site but, with few exceptions, the equipment is stored inside.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning (Department). Mr. McClune testified that his Department had thoroughly investigated the Applicant's request and recommended approval subject to two conditions. He confirmed that the use conformed with the Harford County Master Plan and that uses such as that proposed were consistent with the Harford County Land Use Plan. Mr. McClune stated that, in his opinion, this use at this location, would have no impacts greater than impacts expected with this type of use regardless of where it was located. The witness stated that the Applicant met the technical requirements of the Code in that the property had sufficient acreage and the use was completely screened from the view of adjacent properties.

There were no persons who appeared in opposition to the Applicant's request.

CONCLUSION:

The Applicant is seeking a Special Exception pursuant to Section 267-53H(1) of the Harford County Code to allow construction services in an AG/Agricultural District. The general requirements for special exception uses is set forth in Harford County Code Section 267-52 which provides:

- A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.

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- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.**

The specific requirements of Section 267-53H(1) are as follows:

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

In addition to the Code requirements set forth above, the Maryland Court of Appeals, in Schultz v. Pritts, 291 Md 11, 497 A2d. 1325, has set forth specific criteria for evaluating a special exception use request. This decision states the applicable standards for judicial review of the grant or denial of a special exception use as follows:

“...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.

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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 the 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 in original) 291 Md. at 11-12, 432 A.2d at 1325.

The Court of Appeals established the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are 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.” 291 Md. at 15, 432 A.2d at 1327.

See also *Deen v. Baltimore Gas & Elec. Co.*, 240 Md. 317, 214 A.2d 146 (1965).

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Section 267-91:

The Department of Planning and Zoning, as part of its investigation and subsequent recommendation of approval of the Applicant's request, evaluated this use in light of the Limitations, Guides and Standards set forth in Harford County Code Section 267-9I and has found as follows:

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

This area of the County is rural with no major residential developments. Many of the area's farms are participating in the State or County's agricultural preservation programs. Pickup trucks, large farm trucks, tractor-trailers, tractors and other large pieces of farm equipment are common in the community. Several of the County roads in this area of the County are dirt or gravel such as the subject portion of the Church Lane.

(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to road; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The equipment owned and operated by the Applicant and his employees are pickup trucks and vans except for the flat bed truck. The storage area sits back from the road behind a wooded area.

(3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The proposal is a use that is permitted in the Agricultural District with Board approval. The use should not adversely impact the neighborhood. There is no reason to believe that should the use be approved, the proposal will have any adverse fiscal impacts on the County.

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- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The trucks, trailers and other equipment owned by the Applicant should have no more impact on the area than the farm machinery commonly used in the area. The properties immediately adjoining are either family owned or belong to the Baltimore Gas and Electric Company. With the elevation of the property, the location of the storage and the existing trees, the use should not adversely impact the neighborhood.

- (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.*

Police protection will be provided by the County's local Sheriffs Department and the Maryland State Police. Fire protection will primarily be from the Norrisville and Jarrettsville Voluntary Fire Departments. Water and sewer will be provided by a private on-site well and septic system. Presently the sewage is handled by a spot-a-pot (see site photographs, Attachment 8A-D). The Applicant will be required during site plan review of the project to meet Health Department requirements. Trash collection will be handled by a private hauler.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is recognized by the Code as a use that is compatible with other uses in the Agricultural District, provided certain requirements can be met. This report has discussed those requirements and demonstrated that the Applicant either meets or exceeds the criteria.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

There are churches and schools in the overall community; however, they will not be impacted by the proposed use.

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- (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.*

The proposed use is recognized as a use that can co-exist with other uses in the Agricultural District.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreational and open space.*

The lot was approved by the County and recorded containing a Forest Retention area covering much of the 7.5± acres. It appears from the site inspection that the front portion of the property has been cleared in violation of the approval. The Applicant will be required to submit a forest stand delineation and forest conservation plan at the time of site plan review. Further, the grading which has occurred must meet all County requirements. These issues will be addressed during site plan review through the Development Advisory Committee (DAC).

- (10) *The preservation of cultural and historic landmarks.*

Not applicable to the request.”

The Hearing Examiner concludes that the proposed use at the proposed location will not have any impacts above and beyond those normally associated with such a use regardless of its location within the AG zone. The parcel meets all of the specific requirements of Section 267-53H(1) and, applying the principles laid down in Schultz, the Hearing Examiner recommends approval of the special exception, subject to the following conditions:

1. The Applicant obtain any and all permits and inspections.
2. Fuels be properly stored in permitted facilities.
3. The special exception is not transferable and shall cease if the Applicant ceases to own the subject property.

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4. The permitted use extends to the equipment and uses described by the Applicant with this request and does not include additional equipment (replacement equipment is permitted).
5. The Applicant shall prepare a detailed site plan for submittal to and approval by the Development Advisory Committee (DAC).

Date SEPTEMBER 6, 2000

**William F. Casey
Zoning Hearing Examiner**