

APPLICANT:
Gary & Bonnie Greene

REQUEST: Special exception and variance to operate a motor vehicle repair shop in an existing garage located 6 feet from the side lot line; 317 North Earlton Road, Havre de Grace

HEARING DATE: February 11, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5391

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Gary and Bonnie Greene

LOCATION: 317 North Earlton Road, Havre de Grace
Tax Map: 44 / Grid: 2C / Parcel: 67
Second Election District

ZONING: AG / Agricultural

REQUEST: Special exception pursuant to Section 267-53D(3) of the Harford County Code, to allow a motor vehicle repair shop, and a variance pursuant to Section 267-34C, Table II, to allow a motor vehicle repair shop in an existing detached garage within the required 40 foot side yard setback (6 feet existing) in an Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicants first testified Gary H. Greene, who identified his property as consisting of approximately 4.89 acres located on North Earlton Road. The property is improved by an existing dwelling, a 24 foot by 24 foot vinyl-sided garage to its south side, and an approximately 30 foot x 40 foot metal garage located about 6 -1/2 feet off the southern property line. The subject property is somewhat triangular in shape, is located approximately 700 feet from Earlton Road and is accessed by a 25-foot wide driveway.

Mr. Greene wishes a special exception to allow his use of the 30 foot by 40 foot metal garage as a motor vehicle repair shop. He also needs a variance to the 40 foot required setback as the building is approximately 6-1/2 feet from the property line. Mr. Greene explained that the metal garage was originally, and legally, erected at that location because he needed to maintain a distance from his 20,000 square foot waste disposal area. Originally, the metal garage was used by him for personal uses.

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Mr. Greene explained that he formerly worked in the automobile repair business and, because of health problems, was forced to retire. He has now started a small automobile repair business in the 30 foot by 40 foot metal garage to occupy his time. He has no employees and his hours are generally 8:00 a.m. to 5:00 p.m. weekdays. He has no outdoor lighting around the garage and, in fact, seldom ever works after dusk. At most, he would store 10 to 12 quarts of oil on the site, with all waste oil taken to a recycling center. He may also store, on occasion, some anti-freeze.

Mr. Greene states that he works on, at most, 8 to 12 vehicles per month, and would have no more than 4 vehicles parked on his property, other than his personal vehicles. Mr. Greene identified the proposed parking area for the vehicles on which he will be working. That parking area is located generally at the end of his lane, directly adjacent to the 30 foot by 40 foot metal garage, and is shown on his site plan.

Mr. Greene testified he had spoken to most if not all of his adjoining neighbors. None of those neighbors expressed opposition to his use. Mr. Greene introduced a number of letters from his adjoining neighbors indicating their lack of opposition to and support for the proposed special exception and variances. Mr. Greene explained that no adjoining neighbor would be able to see the garage because of the existing vegetation in the area. Mr. Greene believes that the proposed requests, if granted, would have no adverse impact on any adjoining property or neighbor.

Next for the Applicants testified Lee Cunningham, offered and admitted as an expert in planning, zoning, land use, and transportation issues. Mr. Cunningham offered a report, dated January 2004, in support of the requested application. Mr. Cunningham testified that the proposed garage building is approximately 760 feet from Earlton Road and about 300 feet from the nearest adjoining residence. The nearest occupied residence is about 450 feet away. Mr. Cunningham testified that Mr. Greene would meet all required conditions of the motor vehicle repair shop special exception. Mr. Cunningham further testified that the property is unique given its elongated shape, its unusually long panhandle driveway, and its isolation from other residences.

Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune gave the recommendation of the Department that the requested special exception and variance should be granted. The property is an elongated triangle with an unusually long road. The garage, although situated close to its property line, has no impact on any adjoining property, and is, indeed, not visible from any adjoining residence. The property is heavily wooded, as is the adjoining lot to its south. The variance, if granted, would have no adverse impact.

There was no testimony or evidence submitted in opposition to the requests.

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APPLICABLE LAW:

The Applicants are requesting a special exception to Section 267-53D(3) of the Harford County Code, which states:

Motor vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:

- (a) A buffer yard at least 10 feet wide shall be provided along any adjacent road right-of-way or adjacent residential lot.*
- (b) The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.*
- (c) Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires and equipment shall be prohibited.*
- (d) The operator of the shop shall maintain a log of all vehicles repaired. For each vehicle, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of Section 267-39C(7)(f) that each vehicle has been stored on the property for 90 days.*
- (e) The rental or storage of trailers, boats and trucks shall be prohibited.*
- (f) Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.*
- (g) Materials, textures, colors and designs of fences, walls, and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5 feet wide shall be provided also and shall include trees and shrubs that are at least 2 feet high when planted and that may be expected to form a year-round dense screen within 3 years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening, and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.*

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- (h) *The fumes, odors and noise from the vehicle-related work shall be minimized.*
- (i) *A minimum parcel area of 1 acre shall be required.*
- (j) *In the AG District, the use shall be operated by the resident of the property.”*

Section 267-39C(7) of the Harford County Code states:

Specific regulations. The following uses are permitted in each business district, subject to the additional requirements below:

- (7) *Motor vehicle filling or service stations and repair shops, in the B2 and B3 Districts, provided that:*
 - (a) *Pumps shall be at least twenty-five (25) feet from all road rights-of-way.*
 - (b) *All portions of the lot used for storage or service of motor vehicles shall be paved with a hard surface.*
 - (c) *No obstructions which limit visibility at intersections or driveways shall be permitted.*
 - (d) *Lighting shall be designed and controlled so that any light shall be shaded, shielded or directed so that the light intensity or brightness shall not adversely affect the operation of vehicles or reflect into residential buildings.*
 - (e) *No motor vehicle filling or service station driveway shall be located less than four hundred (400) feet from the property line of any public or private institutional use, including schools, houses of worship, hospitals, parks or playgrounds.*
 - (f) *Vehicles, except those vehicles used in the operation of the business, may not be stored on the property for more than ninety (90) days.”*

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Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

The Applicants must further meet the requirements of Section 267-9I, Limitations, Guides and Standards.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

While the proposed use is nothing more than a small, almost “backyard” repair business, the Applicant must nevertheless meet the fairly detailed requirements of the Motor Vehicle Repair Shop special exception found at Section 267-53D(3). Those requirements are made even more detailed by the inclusion of the requirements Section 267-39C(7), which are the special exception requirements for service stations and repair shops in a B2 and B3 Districts.

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The Applicants have shown compliance with the requirements of Section 267-53D(3) as follows:

- (a) *A buffer yard at least 10 feet wide shall be provided along any adjacent road right-of-way or adjacent residential lot.*

The Applicant's proposed use is not next to any adjacent road right-of-way or adjacent residential lot, as that is defined by the Harford County Code.

- (b) *The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.*

The Applicant can meet the requirements of Section 267-39C(7) following.

- (c) *Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires and equipment shall be prohibited.*

There will be no outdoor storage of tires or equipment. The Applicant will be allowed to store four (4) vehicles in total on the site, two (2) within the garage, and two (2) outdoors for a period of no more than thirty (30) days.

- (d) *The operator of the shop shall maintain a log of all vehicles repaired. For each vehicles, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of Section 267-39(c)(f) that each vehicle has been stored on the property for 90 days.*

The Applicant is able to comply with this condition.

- (e) *The rental or storage of trailers, boats and trucks shall be prohibited.*

The Applicant will not be renting or storing trailers, boats and trucks.

- (f) *Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.*

The outdoor storage area in which two (2) vehicles will be stored on a temporary basis is fully screened from adjacent properties and is indicated in the site plan submitted in the file.

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- (g) *Materials, textures, colors and designs of fences, walls, and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5 feet wide shall be provided also and shall include trees and shrubs that are at least 2 feet high when planted and that may be expected to form a year-round dense screen within 3 years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening, and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.*

This section is not applicable. The improvements on the property are not visible from adjacent residential uses or from roads. According to the Staff Report the existing garage is neutral and blends with the neighborhood. The building is not out of character with the neighborhood given the number of large lots in the area.

- (h) *The fumes, odors and noise from the vehicle-related work shall be minimized.*

The Applicant is able to comply with this requirement.

- (i) *A minimum parcel area of 1 acre shall be required.*

The Applicant's property meets this requirement.

- (j) *In the AG District, the use shall be operated by the resident of the property.*

The Applicant meets this requirement.

Section 267-39C(7) requirements are:

- (a) *The pump shall be at least twenty-five (25 feet from all rights-of-way.*

This is not applicable.

- (b) *All portions of the lot used for storage or service of motor vehicles shall be paved with a hard surface.*

This requirement has been met.

- (c) *No obstructions which limit visibility at intersections or driveways shall be permitted.*

There will be no obstructions to the visibility from the existing driveway. There will be no sign allowed.

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- (d) *No lighting shall be designed and controlled so that any light shall be shaded, shielded or directed so that the light intensity or brightness shall not adversely affect the operation of vehicles or reflect into residential buildings.*

The Applicant will have no outdoor illumination and his hours of operation should seldom, if ever, run past dusk.

- (e) *No motor vehicle filling or service station driveway shall be located less than four hundred (400) feet from the property line of any public or private institutional use, including schools, houses or worship, hospitals, parks or playgrounds.*

This is not an applicable provision.

- (f) *Vehicles, except those vehicles used in the operation of the business, may not be stored on the property for more than ninety (90) days.*

No vehicles will be stored for more than ninety (90) days.

Accordingly, it is found that the Applicant fully complies with the special exception standards applicable to his proposed use.

The Applicant further requests a variance to the 40 foot side yard setback requirement. The Applicant has produced testimony that his property is different from others in the neighborhood due to the elongated shape of his lot, its distance from Earlton Road, and its relative isolation from other residential units in the neighborhood. The Applicant's testimony further was that the garage was originally constructed for the Applicant's own use, and complied with all applicable zoning requirements at that time.

There is also testimony that the garage is located at its present location because the other improvements on site, including the location of the septic reserve area, which forced the garage to be located close to the southern property line of the property.

These unique features combine to cause the Applicant to suffer a practical difficulty due to the imposition of the setback requirements unless the variance is granted. It would appear, indeed, due to the other improvements on the property and the location of the septic reserve area, that it would be impractical for the Applicant to move his garage to any location outside of the 40 foot setback requirement. Accordingly, the Applicant has shown a practical difficulty resulting from unique circumstance sufficient to find justification for the variance.

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The Applicant also meets all requirements of Section 267-9I, Limitations, Guides, and Standards Section of the Code.

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.*

The Applicants request will have no adverse impact on the surrounding neighborhood.

(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.*

The will be no adverse impact on any of these required considerations.

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

The Applicants use would have no impact on growth of this rural residential neighborhood.

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

The proposed use would have no impact on these considerations.

(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.*

There is adequate local fire and police protection available.

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

The proposal is consistent with accepted planning principals.

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

The only identified such facility in the neighborhood is the Tabernacle Faith Church which adjoins the property to its front. There was no evidence presented, and no finding is made, of any adverse impact on the church.

- (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 proposal is consistent with the County Master Plan.

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

There were no identified environmental impacts.

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

This section is not applicable.

Furthermore, given the highly limited scope of the proposed operation and for the reasons outlined above, it is accordingly found that the special exception, if granted, would have no greater impact at the proposed location than at any other within its zone.

CONCLUSION:

For the above reasons it is recommended that the requested special exception and variance be granted, subject to the following conditions:

1. The Applicants' use be reviewed and approved by the Development Advisory Board.
2. The Applicants maintain all existing screening.
3. The use is for the Applicants' personal use only and the approved variance and special exception shall cease at such time as the Applicants' use of that property for a motor vehicle repair shop ceases.
4. No work shall take place before 8:00 a.m. or after 8:00 p.m. or dusk, whichever first occurs.
5. All work shall take place within the garage.
6. There shall be no outdoor illumination.
7. No signage of any type shall be allowed.

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8. No more than 4 customer cars in total shall be permitted on site, with 2 in the garage and no more than 2 parked outdoors.
9. Vehicles shall not be stored for more than 30 days.
10. There shall be no outdoor storage of tires, oil, lubricants, equipment, or parts of any nature.
11. The Applicant shall maintain a log of all vehicle repairs as required by Section 267-53D(3)(d).
12. The Applicants shall obtain all necessary permits and inspections for the repair facility.

Date MARCH 5, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner