

APPLICANTS:
Eugene Van Pelt and Ashley Van Pelt

REQUEST: A special exception to allow commercial vehicles and equipment storage and construction services in the AG District

HEARING DATE: September 21, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5496

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Eugene Van Pelt

CO-APPLICANT: Ashley Van Pelt

LOCATION: 3254 Fallston Road, Fallston
Tax Map: 38 / Grid: 3F / Parcel: 116
Fourth (4th) Election District

ZONING: AG / Agricultural

REQUEST: Special exceptions, pursuant to Sections 267-53D(1) and 267-53H(1) of the Harford County Code, to allow commercial vehicle and equipment storage and construction services in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Ashley Van Pelt, Co-Applicant, testified that she, her husband and two children live on the property which is the subject of this zoning appeal. The property, as described in the application, is two acres in size, zoned agricultural, and is improved by a residence and detached garage.

The Applicants purchased the subject property in July 2004. Prior to purchasing the property, the Applicant, Ashley Van Pelt, began to operate a company known as Native Terrain Restoration Services, Inc. She is President of this company, which provides environmental planting and landscaping services. Mrs. Van Pelt suggested that the realtor who assisted she and her husband in purchasing the subject property knew of her business and knew that the Applicant planned to operate the business from the subject property. The realtor at no time indicated that Mrs. Van Pelt's business could not be operated from the property.

The file indicates that, by letter dated January 5, 2005, after the Applicants had purchased the property and began to operate their business from there, the Applicants were notified by the Department of Planning and Zoning that the use then being made by them of the property constituted a construction services business, and that commercial vehicles were also being parked on-site. That letter advised the Applicants that special exception approval was necessary.

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According to Mrs. Van Pelt, she was unaware that this agriculturally zoned property was not approved for her landscaping business.

Mrs. Van Pelt's business has four employees, including Mrs. Van Pelt and her husband, although only one employee comes onto the site on a daily basis. No retail services are provided on-site; no customers come on-site. An office has been constructed by the Applicants under the deck of the home.

As a result of the zoning violation notice of January 5, 2005, the Applicants requested the present special exceptions, which would allow them to continue to conduct their landscape business and to park commercial vehicles on their property.¹

Mrs. Van Pelt described the house on the property as being located approximately 165 feet back from the MD Route 152 right-of-way line. The driveway enters the property in approximately the middle of the parcel from Route 152. Mrs. Van Pelt described the Applicants' plan to erect a pole barn, having dimensions of approximately 30 feet by 50 feet with two bay doors, and 12-1/2 feet high, on the rear part of the lot, generally located behind the garage and the residence. This is most clearly shown on the Applicants' site plan attached to the Staff Report as Applicants' Exhibit No. 8. The pole barn, which will itself be located about 245 feet back from the front property line and approximately 95 to 100 feet back from the rear property line, will be used to store part of their landscaping equipment. The rear lot line and the rear side lot lines will be planted with a vegetative screening, again shown on site plan marked as Applicants' Exhibit No. 8. A privacy fence will extend along the north side yard lot line in the vicinity of the garage to help screen the garage and plants that may be stored outside of the garage from adjoining neighbors.

The topography of the property is relatively flat, sloping slightly up from MD Route 152. The property gradually slopes down behind the house to the rear property line. The pole barn will be a white painted structure, with a green roof. It should be somewhat visible from MD Route 152.

Occasionally the Applicants will store plantings on-site. They expect to receive approximately four tractor-trailer shipments of plant stock per year. These plants are not used immediately, and some on-site storage is necessary. The Applicants plan to store this material on the MD Route 152 side of the detached garage.

The Applicants do not plan to remove any of the existing shrubbery or foliage in the front (MD Route 152 side) of their house, and in fact intend to greatly expand the plantings around the house, again as shown on their site plan.

¹ The present application, however, was not filed until June 2, 2005.

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As previously noted, a privacy fence will be installed along the side of the garage, and cedar trees and evergreen plantings will be installed along the side yard lot line to the rear of the property and along the rear lot line of the property. Dogwoods and other plantings will be installed along the rear property line, which should grow 8 to 10 feet in size.

The Applicants propose no additional lighting on the property.

The Applicants are agreeable with all conditions recommended by the Harford County Department of Planning and Zoning. The Applicants have further entered into an agreement with Louis and Helen Foudos. By that agreement (see Applicants' Exhibit No. 5), the Applicants have agreed to abide by certain conditions. They request these conditions be made a part of approval, if granted. Those conditions are as follows:

1. The Applicants shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee ("DAC"). The site plan shall include all landscaping and any outside security lighting;
2. The Applicants shall direct all outside security lighting onto the subject property so as not to impact any adjacent property;
3. The approval of this special exception is for the Applicants only and shall be void when the property is sold;
4. All vehicles and equipment shall be stored within the proposed pole building;
5. The Applicants shall not conduct any retail sales or services on the subject property;
6. There shall not be more than six commercial deliveries per month related to the operation of the Applicants' business on the subject property, excluding deliveries from Federal Express, UPS, and other similar type deliveries;
7. There shall be no storage of plant and/or landscaping material used in connection with the Applicants' business in the area between MD Route 152 and the front of the porch on the existing residence.

The Applicants state that there are no residents to the right, or north side of their property, and therefore there should be little if any impact on any individual or property on the north side of their property. There is no residence directly to the rear of their property, with the area to both the rear and north being, at the present time at least, unimproved farm land. A residential structure exists to the south side. A new residential structure has been built in a general southwesterly direction, on what had been vacant farm land.

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In response to a question from a neighbor, Mrs. Van Pelt indicated her business had lost its lease in Perry Hall, and she and her husband were required to move their business. It would be cost prohibitive to move the business to a commercial business.

In response to another question from a different neighbor, Mrs. Van Pelt stated that she knew the property was zoned agricultural when it was purchased; however, she believed that her business was an allowable one in an agricultural district. She acknowledged that the residential property to the south side is occupied by a family with three children.

Mrs. Van Pelt described the vehicle which is the subject of the zoning violation notice as a stake body truck, with a 16 foot bed. It is larger than a pick-up truck. Mrs. Van Pelt is prohibited from using the existing garage to park her vehicles as it is closer than allowed by Code to the existing, northerly, property line. She wishes to construct a pole barn, for business purposes only, to store equipment and her vehicle. Mrs. Van Pelt does not wish to limit her business vehicles to only the stake body truck. She hopes the business will be successful. In addition to the stake body vehicle Mrs. Van Pelt has a skid loader and a trailer on the property. Mrs. Van Pelt expects business deliveries of materials from four to five times per year. She does not want any more deliveries than absolutely necessary. She has no desire to maintain the inventory merchandise on her property. Mrs. Van Pelt intends to live on the subject property with her family.

In response to additional questioning, Mrs. Van Pelt gave a more complete description of the number and type of vehicles which are stored on the property and which are used in the business. She described those business vehicles as follows:

1. Chevrolet Suburban;
2. Stake body truck (already discussed);
3. Skid loader (already discussed);
4. Chevrolet Pick-up truck;
5. Trailer (already discussed).²

In addition, the family owns, and uses for family purposes only, a GMC Yukon.

Mrs. Van Pelt agreed that at one time landscaping material was stored on the front part of her property in the general vicinity of the MD Route 152 right-of-way. She believed that the material should not have been stored there, and will agree not to do so again.

² Mrs. Van Pelt implied that certain of these vehicles are not considered commercial vehicles, and therefore should not be considered in this opinion. The vehicles, even if they are not defined as “commercial vehicles” by the applicable Code definitions, nevertheless are employed in the business which is the subject of this special exception. Those vehicles, which Mrs. Van Pelt identified as being employed in the business, represent as much of a potential adverse impact on the neighborhood as does the stake body truck which Mrs. Van Pelt initially, and erroneously, identified as being her only business vehicle. Accordingly, all vehicles identified as being used in the business will be considered in this opinion.

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Mrs. Van Pelt described a normal delivery as being approximately 120 trees on a tractor-trailer. The trees will be stored, when and as necessary, in an area generally designated as being on the Route 152 side of the garage, as shown in blue ink on Applicants' Exhibit No. 8. Excess material will be stored next to the pole barn in the vicinity of the privacy fence.

The Applicant further testified that some minor mechanical work is done on the property on the business vehicles.

Photographs in the file, taken by the Harford County Department of Planning and Zoning, indicate a tank of some nature located on the property. When asked about this, the Applicant identified that as a storage vessel for water. The only fuel stored on the property is in 5 gallon containers, and is in a certified fuel cabinet.

Next testified Dennis Sigler for the Harford County Department of Planning and Zoning. Mr. Sigler explained the application as one for special exceptions to allow commercial vehicle and equipment storage, and for construction services and suppliers in an agricultural district. According to Mr. Sigler the requests meet all statutory conditions. The property is zoned agricultural. The vehicles must be stored entirely within an enclosed building or fully screened from adjacent residential lots or public roads. Mr. Sigler stated that the Applicants meet this requirement and, in fact, the proposed screening is in excess of that which is required. Mr. Sigler understands that there will be no sales from the property, or service of any type of equipment. The property meets the minimum lot size requirements of two acres. A buffer yard of 10 feet is proposed to be constructed and maintained around the storage and parking areas. Mr. Sigler observes that the use will not be easily seen from Route 152 due to the location of the buildings on-site and the screening proposed to be constructed by the Applicants.

Mr. Sigler, as does the Department's Staff Report, concludes that the proposed special exceptions should be granted, with conditions.

Mr. Sigler stated that the proposed pole barn would not normally require a special exception permit, provided it not be used for commercial purposes. Since the proposal is for commercial purposes, the special exception request is appropriate.

Upon questioning by the neighbors, Mr. Sigler admitted that the pole barn will be visible from MD Route 152, and the uses on the property will be visible until full screening is established. Mr. Sigler acknowledged that this use is not permitted in a rural residential district, but it is a permitted special exception in the agricultural district. The area is generally a mix of both agricultural and residential uses.

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A series of neighbors then testified in opposition. The first was Janet Myers, 3232 Fallston Road, Fallston. Ms. Myers' property faces the back of the subject property. The witness only recently moved into her property, after building a home worth in excess of One Million Dollars. Ms. Myers notes that while the area is generally zoned agricultural, it is in fact a residential community. She objects to the Applicant having illegally operated a business for approximately the past year and a half. The Applicants have set a precedent by showing no regard for their neighbors. The Applicants have allowed delivered trees to remain within their front yard for lengthy periods of time, only removing the trees after they had died. The Applicants, in Ms. Myers' opinion, should buy commercially zoned property and not impact this residential district.

Ms. Myers herself has been a business person for over twenty-two years. She purchased appropriately zoned property, and did not move into an area not zoned for her business. She feels that the Applicants are attempting to take advantage of the neighborhood.

Next testified Zonda Landis of 2317 Kings Arms Drive, located across MD Route 152 from the subject property. Mrs. Landis also testified that the general area is a residential community. She is very much opposed to the proposed use, and she further objects to the use as it may be visible from Route 152. She objects because of the impact which the proposed use will have on this residential community. Specifically, she does not believe, if the application is granted, that the Applicants should be allowed to park any equipment outside of the pole barn. However, she asked that it not be approved as it would have a deleterious effect on her community.

Mrs. Landis also testifies as a representative of the Wood Brook Community Association. She further does not believe that the proposed landscaping is sufficient, and fears the adverse precedent such an approval would set.

Next testified Charles Arcodia who resides at 3230 Fallston Road, Fallston. Mr. Arcodia objects to a business being run out of a garage on the Applicants' property. Nobody in the area, according to Mr. Arcodia, wants such an operation in their community. The neighborhood in which the Applicants' property is located has changed dramatically over the years, becoming a residential community.

Mr. Arcodia requested that the approval not be granted. If, however, approval is granted, he requested restrictions be very specific so that the business will not be allowed to expand, that there be no retail sales on the property, and that the business not become a nuisance, or harmful to the neighborhood. He believes approval should be highly restricted, if granted at all.

Next testified John Robbins who resides at 3238 Fallston Road. Mr. Robbins does not wish to have a business as a neighbor. Approval of the special exception would create a bad precedent. He objects to the use, not the Applicants personally.

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Next testified Otto Plate who residents at 3224 Fallston Road. Mr. Plate is also opposed to the requested use. He worries about the value of his property, and is also concerned about the safety issues due to the impact of commercial vehicles exiting the Applicants' property onto MD Route 152.

APPLICABLE LAW:

Section 267-51 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”

Section 267-52 of the Harford County Code defines General regulations as:

- “A. Special exceptions require the approval of the Board in accordance with Section 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.*
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.”*

Section 267-53D(1) of the Harford County Code states:

- “D. Motor Vehicle and related services.*
 - (1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the -VB District, provided that:*
 - (a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

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- (b) *The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*
- (c) *A minimum parcel area of two (2) acres shall be provided.”*

Section 267-53H(1) of the Harford County Code, states:

“H. Services.

- (1) *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.”*

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and is discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants own an attractive, two acre parcel improved by an older but well maintained two story home. The subject property also contains a detached garage located close to the northern boundary line. The subject property fronts on the MD Route 152 right-of-way. Due to the existence of an extensive State Highway right-of-way, the property appears to have a deeper front yard than in fact is the case.

The Applicants find themselves in a predicament of their own making. To begin with, they purchased the property without, apparently, making sufficient inquiry into the uses which may be allowed on that property. The subject parcel is bordered on its north and northwest side by open lands which, if not at the present time, have in the past been used for agricultural purposes. However, immediately to the south is a residential parcel, approximately 200 feet to the southwest is a newly built residence and, as can be seen on the aerial photographs, farther to the south is a series of large, recently built homes on large lots. Across Route 152 is a residential subdivision also containing relatively large homes built on large lots. It would appear to any objective observer that the area could be classified as mixed residential and agricultural, with the predominant use clearly being residential.

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The Applicants, prior to purchasing their home, were engaged in the landscaping business. They lost their lease. They then purchased the property expecting to be able to use the subject property for this commercial operation. They say they relied upon the representations of the real estate agent that this could be done. The Applicants apparently did not contact the Department of Planning and Zoning or any other entity or individual to verify the particular use which could be made of the subject property. This is an oversight which is difficult to understand and not easily excused given the obvious nature of the uses in the neighborhood.

The Applicants made a second error after purchasing the property when they took a relatively large delivery of trees and stored some or all of those trees immediately in front of the house, directly in the middle of their front yard, in clear view of all passers-by. The trees were apparently allowed to stay there until at least some died, at which time they were removed. This, no doubt, caused consternation in the neighborhood and certainly caused the neighbors to become aware of this illegal use. It is a use which is not allowed as a principal permitted use, it is a use which the neighbors believe should not be allowed in their neighborhood, and it is a use which has the potential of seriously impacting the residential uses which exist in the immediate vicinity.

The Applicants must first meet the specific special exception requirements of Section 267-53D(1), Motor Vehicle and related services. That section is as follows:

- (1) *Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*

The property is zoned agricultural.

- (a) *The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

Unfortunately for the Applicants, as mentioned above, the vehicles and equipment are not stored within an enclosed building and are not fully screened. Testimony of the witnesses makes it clear that, at least from the rear of the property, the business equipment can be seen. Fortunately, however, for the Applicants the adjacent lots do not meet the strict definition of “adjacent residential lots” and therefore, as contra-intuitive as it may seem, the Applicants have no statutory obligation to screen from the adjoining properties on which residences are located.³

³ The Zoning Code defines “Lot, adjacent residential” as “A lot which abuts another lot or parcel of land and is either within a residential district or is a lot of two acres or less intended for residential use.” Adjoining lots are not two acres or less, (although the subject property is just barely two acres) nor are they considered to be within a residential district. The zoning of those properties is agricultural.

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- (b) *The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

This section is not applicable as the Applicants plan no sales or service of farm vehicles or equipment.

- (c) *A minimum parcel area of two (2) acres shall be provided.*

The parcel is exactly two acres in size.

Accordingly, the Applicants meet, albeit barely, the requirements of Section 267-53D(1).

The Applicants must then meet the specific requirements of Section 267-53H(1) of the Harford County Code as follows:

- (1) *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.*

Again, the Department of Planning and Zoning points out in its Staff Report that the adjoining lots are not “adjacent residential lots” as defined by the Code and therefore this buffer yard requirement does not apply. The Hearing Examiner accepts, although regretfully, the interpretation of the Department of Planning and Zoning. However, many areas of Harford County which are zoned “agricultural” have nevertheless changed their general use to residential by virtue of large lot subdivision. There seems to be no justifiable reason for not requiring buffer yards next to residentially used properties which may be zoned agricultural and which just may happen to be in excess of two acres. They certainly deserve the same protection as similar properties which may be two acres or slightly less than two acres.⁴

Nevertheless, the Applicants do escape the application of Section 267-53H(1), although again, barely.

⁴ Interestingly, and illogically, if these special exceptions were being requested for a lot which adjoined the subject property, then screening would be required on that adjoining property as the subject property is two acres in size. However, the Code does not require screening on the Applicants’ property if the use is on the subject property.

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Having met the specific requirements of the applicable special exception regulations, the Applicants must then confront the Limitations, Guides and Standards provisions as contained in Section 267-9I of the Harford County Code.

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

As discussed above, the area in which the subject property is located is an area which is mixed agricultural and residential. Primarily, the developed residential properties surrounding the subject property are in large lot subdivisions. Some agricultural uses continue in the area. However, clearly, the predominant use, at least as one travels down MD Route 152 in the vicinity of the subject property, is residential. Little if any commercial use of any nature exists in the immediate vicinity of the subject property. The business of the Applicants employs four people, two of whom are the Applicants themselves. Accordingly, the impact on existing employment in the neighborhood is minimal, at best. The business itself, which provides environmental landscaping, does not appear to be the type of business which would easily market itself to the neighbors, or which necessarily contributes a service which the neighborhood may need.

- (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.*

MD Route 152 is a State Highway which carries a significant traffic load during morning and afternoon travel times. However, there is no evidence the delivery of materials to the subject property, or the coming and going of employees, will adversely impact existing traffic conditions.

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

No fiscal impact has been identified. However, even though the requested special exceptions are presumptively permitted uses in this particular zoning district, they are uses which have the potential of disrupting the orderly growth of this agricultural/residential neighborhood. The Hearing Examiner is aware of comparisons which can be made between the requested special exceptions and active agricultural uses which are made of properties in the neighborhood. However, no property having a size of two acres or less was identified as having any sort of active agricultural operation and, indeed, is unlikely that such properties are common in the area. An agricultural use conducted on a fifty acre parcel would have potentially much less of an impact than an agricultural use conducted on a two acre parcel. Similarly, the requested special exceptions would have much less impact if conducted on a larger parcel. Accordingly, it is found that the proposed use is inconsistent with, and potentially would have an adverse impact on, the orderly growth of the neighborhood and community.

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

No doubt, the use of the property as proposed by the Applicants would tend to have the potential of generating noise, fumes, smoke and dust which could harm adjoining properties. These potential characteristics can be controlled, however, by appropriate conditions.

- (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.*

Fire and safety protection services will be provided by local fire and police departments. Water and sewer is private and on-site. Trash and garbage collection will be provided by contractors.

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

The Harford County Department of Planning and Zoning feels that the proposed use is consistent with generally accepted engineering and planning principles and practices. Nevertheless, for reasons set forth above, it is found that the proposed use has the potential of drastically impacting the immediately surrounding neighbors and the neighborhood at large. The actions of the Applicants in beginning this use without a proper permit, continue it without promptly filing an application when they had been cited for a violation, and in storing materials within the front yard of the property and directly in full view of passers-by supports this finding of a potentially deleterious impact on the neighborhood.

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

No such structures have been identified.

- (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.*

A special exception is presumed to be permitted in an agricultural district, with appropriate conditions. The use, according to the Department of Planning and Zoning, is in compliance with the Master Plan.

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

No such impact has been identified.

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

No such landmarks have been identified.

In summation, a review of Section 267-9I results in, at best, a mixed finding. The requested uses barely meet the specific standards of the Code. The more generalized considerations of Section 267-9I result in findings that the use is potentially adverse to immediately adjacent properties and the greater neighborhood.

With this mixed finding, the final analysis required by Schultz v. Pritts, 291 Md. 1, (1981) becomes unusually significant. That standard requires a review to determine if

“ . . . the neighboring properties in the general neighborhood would be adversely affected and whether the use in particular is in harmony with the general purpose and intent of the plan.”

The Applicant meets its burden of establishing that the prescribed standard is met if it shows to the satisfaction of the Board

“ . . . its proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest . . . ”.

That standard is set forth by Schultz as follows:

“ . . . 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.”

While the standard is well known, its application to a particular set of facts is not always easy. One way of examining the Schultz standard is to determine if the use as proposed by the Applicants would have the same impact, or lesser impact, at the location proposed than it would generally at any other location. For instance, a proposal to store, as a special exception, commercial equipment and vehicles next to a certified historic residential structure, perhaps one open to the public on a regular basis, may lead one to conclude that the location proposed is not an appropriate one. However, that finding is justified only by the unusual fact of being located to such a historic structure. However, where there is not such an unusual situation, then there generally can be no finding of an adverse impact greater at the proposed site than anywhere else within the zone.

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Clearly, as mentioned above, the proposal has the potential of having a deleterious impact on adjoining uses and on the neighborhood. The neighbors were credible and articulate in expressing their fear that the use is not only inappropriate for the neighborhood, but also would tend to impact their properties values and quality of life. A review of Section 267-9I also leads to a mixed finding that the uses have a significant potential of causing adverse impacts. At the same time, these findings must be balanced by what the Legislative Body has determined to be a presumptively permitted use, one which is subject to specific conditions, and one which can be further conditioned in order to protection against potential impact.

Accordingly, while a close call, it is found that the proposed special exceptions should be approved provided, however, the Applicants conduct its operations in strict compliance with the conditions which follow. These conditions are imposed in order to guard against the very high potential for adverse impact which the proposed uses have, as discussed at length above.

CONCLUSION:

Accordingly, for reasons stated above, it is recommended the proposed special exceptions be granted, subject to the following conditions:

1. The Applicants comply with all conditions as agreed to with the neighbor Foudos, to the extent those conditions are not incorporated below.
2. That there shall be no retail sales on the subject property.
3. That customers or potential customers shall not be invited or allowed to come onto the subject property.
4. Employees' vehicles shall not be parked, stored or allowed to remain on the subject property. This prohibition does not apply to the personal vehicles of the Applicants.
5. That there shall be a maximum of four (4) commercial deliveries per year, excluding deliveries from Federal Express, U.P.S., and other similar type deliveries. The Applicant shall maintain a log of all commercial deliveries, to be made available to the Department of Planning and Zoning upon its request.
6. That the Applicants shall be allowed to maintain and replace, but not increase, the vehicles now on-site and used in its commercial operation. Those vehicles are as follows:
 - a. Chevrolet Suburban S.U.V.
 - b. One stake body truck
 - c. One skid loader
 - d. One pick-up truck
 - e. One trailer

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7. The stake body truck, skid loader, trailer and all equipment used in or associated with the Applicants' business are to be stored at all times within the pole barn while they are on the subject property.
8. The Applicants shall construct a 6 foot high solid wooden fence along their northerly property line beginning at a point next to their existing garage, and to extend along the entire northern property line to the back, western property line, and along the entire back, western property line, to the southwestern corner. (See Attachment 7 on which the area of the required 6 foot fence is shown.) The Applicants are free to supplement this barrier with additional vegetative screening.
9. The Applicant shall submit a detailed site plan to be reviewed and approved through the Development Advisory committee (DAC). The site plan shall include all landscaping and any outside security lighting.
10. The Applicant shall direct all outside security lighting onto the subject property so as not to impact any adjacent property.
11. Plant storage is to be in the rear portion of the property, to the westerly side of the pole barn, and in the area which is enclosed on two sides by the 6 foot fence. This area is further shown on Applicants' Exhibit No. 8. The Applicants request to store nursery stock to the MD Route 152 side of the garage is specifically denied.
12. No advertising signs or signs identifying the commercial operation shall be placed on or about the property.
13. These special exceptions shall terminate upon the sale of the business or of a controlling interest in the business, or the sale of the property which is the subject of this application, or at such time as the Applicants no longer reside on the subject property.

Date: November 21, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on DECEMBER 21, 2005.



To Accompany
Hearing Transcript's
Decision of 11/14/05
Re:

Plant
Storage

Fence Line