

BOARD OF APPEALS CASE NO. 5504	*	BEFORE THE
APPLICANTS: Brian Fitzpatrick and Maryann Nacrelli	*	ZONING HEARING EXAMINER
REQUEST: Special Exception to permit commercial motor vehicle and equipment storage and construction services and suppliers' use in the AG District	* *	OF HARFORD COUNTY
HEARING DATE: October 10, 2005	*	

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Brian M. Fitzpatrick and Maryann Nacrelli, are seeking a Special Exception, pursuant to Section 267-53D(1) of the Harford County Code, to permit commercial motor vehicle and equipment storage, and a Special Exception, pursuant to Section 267-53H(1), to allow construction services and suppliers' in an Agricultural District.

The subject property is located at 2630 Conowingo Road, Bel Air, Maryland 21015, in the Third Election District, and is more particularly identified on Tax Map 34, Grid 2E, Parcel 86, Lot 1. The parcel contains approximately 11.05 acres.

The Applicant, Brian M. Fitzpatrick, appeared and testified that he and his wife, the Co-Applicant Maryann Nacrelli, are the owners of the subject parcel. They reside on the property with their two children and five dogs. The Applicants are self-employed, operating a business known as Fitzpatrick and Sons from the subject location. The business was started by the Applicants in 1986, and currently employs three H2D Hispanic workers with ten-month visas, and one American citizen. The Applicant described the property, as shown in the Site Plan, designated as Attachment 4, to the Department of Planning and Zoning's Staff Report. He indicated that he and his family live in the stone dwelling located toward the southeastern portion of the property. The parcel contains two entrances, both from Conowingo Road. The commercial vehicles utilized in the Applicants' business are stored on a portion of the property behind the frame dwelling to the left rear of the Applicants' home. The structure designated on that site plan as a metal shed, is actually a 30 foot by 40 foot metal pole building. There is a carport located next to that building which houses lawn mowers utilized by the Applicants' business.

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The Applicant testified that the property contains a natural buffer on the left-hand side, and that the entire rear portion of the parcel is wooded. This information is verified by the aerial photograph designated as Attachment 10 to the Department of Planning and Zoning's Staff Report. He depicted the stone dwelling in which he resides by marking it with a circle. The metal pole barn was enclosed with a square, and the closest adjoining residential property was marked with a double circle.

Mr. Fitzpatrick testified that he is requesting to store commercial vehicles in the area designated by a square surrounding the metal shed. He indicated that his business currently owns and operates three vehicles under 10,000 pounds, and three other vehicles consisting of one bucket truck, one 14,000 pound chipper truck, and a 14,000 pound F450 dump truck. In addition, the business owns an Isuzu flatbed truck, which is stored under the carport adjoining the metal pole building.

According to the witness, a typical day in the operation of his business begins at approximately 8:00 a.m., and ends around 4:00 p.m. On a day when the work crew is scheduled to cut grass, they arrive at the property at approximately 8:00 a.m., and check the vehicles before leaving at 8:20 a.m. On days when the crew is scheduled to chip wood, they arrive at approximately 8:00 a.m., after which some employees dump the chipper while others prepare the equipment to leave for the work site. On wet days when it is not possible to perform landscaping operations off-site, the crew works on-site maintaining vehicles and equipment. Actual mechanical repairs to the vehicles are not performed on-site, as they are sent out for repairs. Mr. Fitzpatrick explained that it is extremely rare for vehicles to travel back and forth to the property during the day.

The Applicant indicated that hours of operation change during the winter, when days end earlier. In the summer, the crew occasionally does not return to the shop until approximately 6:30 to 7:00 p.m. His employees usually do not work on Saturdays and Sundays, except to perform occasional wood chipping in the fall, and grass cutting on Saturdays during the summer. The witness stated that he is requesting to keep a minimum of two, and a maximum of six, employees working from the subject premises. He further indicated that he does not anticipate needing more than the current seven commercial vehicles. However, he would like to be able to replace those vehicles as needed.

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According to Mr. Fitzpatrick, the proposed special exception uses would have no adverse impact on any surrounding properties, because of the distance between the area where the commercial vehicles are stored and Conowingo Road. He stated that traffic on Conowingo Road is heaviest between 6:30 and 7:30 a.m., and again between 4:30 and 6:30 p.m. In addition, he noted that Conowingo Road is a major road which is heavily traveled. The witness further testified that he had spoken with the owners of the two properties closest to the south of his parcel, neither of whom objected to the proposed special exception. He has also spoken with Mr. Daniels, whose property adjoins his parcel to the east. Mr. Daniels advised him that he is in agreement with the proposed special exception, so long as no commercial use is conducted directly behind his rear property line.

Mr. Fitzpatrick testified that he had reviewed the Staff Report, and that he agreed with all proposed conditions set forth therein. With regard to the Department of Planning and Zoning's proposed condition Number 4, the Applicant introduced a site plan (Applicant's Exhibit No. 2) on which he clearly designated the area he intends to use for the outside storage of equipment and commercial vehicles. This area is limited to the portion of the property between the metal shed, and the existing gate east of the tenant house, in the area of the gravel drive.

Mr. Dennis Sigler, Coordinator, Zoning and Board of Appeals Review, appeared and testified for the Department of Planning and Zoning, regarding the findings of fact, and recommendations made by that agency. The Department reviewed the Application and Attachments, and visited the site and surrounding area. The Department also prepared photographs and submitted an aerial photograph in connection with the Staff Report. The witness noted that the photographs and aerial photograph indicate that the area of the property proposed to be used for commercial vehicle storage is surrounded by woods.

According to Mr. Sigler, the Applicants meet or exceed all standards set forth in Harford County Code Sections 267-53D(1) and 267-53H(1). He emphasized that commercial motor vehicle and equipment storage is a permitted use in an Agricultural District, provided that all vehicles are stored in a well screened area. In addition, he noted that the rear portion of the subject property is wooded, and the proposed storage area is not visible from Conowingo Road. A minimum parcel of two acres is required. The subject parcel exceeds 11 acres in size. The witness indicated that construction services and supply uses may be granted in the AG District provided that a buffer yard of ten feet wide is provided around all outside storage and parking areas adjacent to visible residential lots, or visible from a public road. He stated that this condition is easily met on the subject property, as verified by the aerial photographs.

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The witness further testified that the Department had considered all provisions set forth in Harford County Code Section 267-9I in connection with subject request, and determined that the proposed special exception uses meet all requirements of that Code provision. With regard to Section 267-9I, Mr. Sigler noted that Conowingo Road is a heavily traveled arterial road, and that the equipment used by Applicants' business is no different than other traffic which normally traverses that roadway. He also stated that there is good sight distance in either direction from Applicants' driveway. Mr. Sigler noted that the proposed use would create no odors, dust, noises, fumes or other adverse impacts to surrounding properties.

Finally, the witness stated that, in his opinion, the proposed use, at the proposed location, would not cause any adverse impact to adjoining properties. The proposed use is compatible with other uses found in the area, and meets or exceeds all conditions set forth in the code provisions.

The Department recommended approval of the subject application in its Staff Report, subject to six conditions set forth in that report. Condition Number 1 required the Applicants to submit a detailed site plan to be reviewed and approved through the Development Advisory Committee. Condition Number 1 also indicated that "the site plan shall include a lighting plan." In response to questions by the Hearing Examiner, Mr. Sigler testified that a lighting plan would be required only if the Applicant proposed to erect lighting around the subject use, and that the Department was not requesting that lighting be installed as a condition of approval.

No witnesses appeared in opposition to the subject Application, however, Mr. Howard Daniels, whose property adjoins the subject parcel to the east, appeared and testified that he was acting as a spokesperson for the Applicants' neighbors. Mr. Daniels indicated that the neighbors wanted to make sure that the proposed uses would be limited to the area surrounding the existing metal shed. He also verified that as long as the uses are confined to the referenced area, the neighbors have no opposition to the granting of the requested special exceptions.

CONCLUSION

The Applicants, Brian M. Fitzpatrick and Maryann Nacrelli, are seeking a Special Exception, pursuant to Section 267-53D(1) of the Harford County Code, to permit commercial motor vehicle and equipment storage, and a Special Exception, pursuant to Section 267-53H(1), to allow construction services and suppliers' in an Agricultural District.

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The relevant Provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 provides:

“Purpose.

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 this Part 1.”

Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9(I), 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 of 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.
- 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.”

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Section 267-53D(1) provides:

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.
 - (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 provides:

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 residential lot or visible from a public road.

Section 267-9I provides as follows:

“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.
- (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.

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- (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 on 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.”

The Court of Appeals established the standard for determining whether to grant a special exception in the case of Schultz v. Pritts, stating that

“...[t]he 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. (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held 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; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicants have met their burden of proving that the requested uses meet the standards and requirements prescribed by Sections 267-53D(1), and 267-53H(1) of the Harford County Code. The subject parcel is zoned AG. All commercial vehicles and equipment will be stored in an area that is fully screened from view of adjacent residential lots and public roads. The parcel contains over eleven acres, and therefore far exceeds the minimum two acre lot size. The Hearing Examiner adopts the findings of the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code.

The Hearing Examiner also finds that the proposed use, at the proposed location, would not result in any adverse impact to adjoining properties, or have any greater impact on adjacent properties, at this location than it would have if allowed elsewhere within the AG District. The subject parcel is very secluded, and the proposed special exception uses will not be visible by either adjoining property owners, or travelers along Conowingo Road (Maryland Route 1). The rear of the property is completely wooded, and the nearest residential property is a considerable distance from the subject parcel. In addition, all commercial vehicles will be stored within a fully screened area, with a buffer far exceeding the ten foot requirement. Finally, the business employs a limited number of people, and generates very little traffic. Any traffic which is generated by the requested special exception uses can easily be absorbed by existing roadways.

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The Hearing Examiner recommends approval of the Application, with the following conditions:

1. The Applicants shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC).
2. The Applicants shall obtain all necessary permits and inspections for the use.
3. The approval is for the Applicants only and shall terminate upon sale of the property.
4. The outside storage of equipment and vehicles shall be limited to the area around the metal shed and carport designated on Applicant's Exhibit No. 2, and introduced into evidence at the October 10, 2005 hearing.
5. The existing trees, screening and landscaping shall be maintained to assure that the vehicles and equipment are properly screened from the road and/or adjacent residential uses.
6. No major repairs to any of the vehicles and/or equipment shall take place on the subject property. This does not preclude the general maintenance of the equipment and vehicles.

Date: October 28, 2005

Rebecca A. Bryant
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 28, 2005.