

APPLICANTS:
Todd & Karen Paterniti

REQUEST: Special exceptions to operate
a lawn maintenance service and store
commercial vehicles in the Agricultural District

BEFORE THE
ZONING HEARING EXAMINER
FOR
HARFORD COUNTY

HEARING DATE: April 4, 2007

Case No. 5571

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Todd A. Paterniti

CO-APPLICANT: Karen Paterniti

LOCATION: 1642 Castleton Road , Darlington – Land of R Slater Plat 85/51
Tax Map: 19 / Grid: 3D / Parcel: 531 / Lot: 4
Fifth (5th) Election District

ZONING: AG / Agricultural

REQUEST: A special exception pursuant to Section 267-53H(1) of the Harford County Code to conduct a lawn maintenance service as a construction services and suppliers' use, and a special exception pursuant to Section 267-53D(1) to store commercial vehicles in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Todd A. Paterniti, Co-Applicant, stated that he and his wife and 3 children reside on the subject property, which the Applicants purchased approximately 11 years ago. The subject property is an approximately 2 acre parcel located on the west side of Castleton Road, about 3,500 feet north of MD Route 440.

The subject property is improved by a single family detached dwelling, a shed, and an above-ground pool. As described by the Applicant, and as shown by the exhibits in the file, the topography of the parcel is virtually flat and level.

The Applicants seek permission to operate a lawn maintenance services and construction service and suppliers' use on the property. They further request, if necessary, a special exception to allow the storage of commercial vehicles used in their lawn maintenance business.

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The business itself, known as East Coast Supply and Services, Inc., was started approximately 3 years ago by Todd Paterniti. The equipment used in the business is stored to the left of the house as one were looking at it from Castleton Road, which would be the south side of the property. Mr. Paterniti described plantings of Leland cypress along his property line, which function somewhat as a screen. The plantings on the south side (left property line) of the property are approximately 5 to 6 feet tall. The back of the lot is also planted with Leland cypress trees, which are approximately 3 feet tall, according to the Applicant. Leland cypresses planted on the right, or northerly side of the lot, are 8 feet in height, stated the Applicant. The Applicant testified that approximately 250 pine trees were planted when he purchased the property, but since that time some have been lost.

Mr. Paterniti testified that one employee regularly comes onto the property. The typical day of his business begins at 8:00 - 8:30 a.m. when equipment leaves his property to go to job sites. This equipment usually returns at sunset. The application indicates a total of five (5) full time employees. Saturday operations are occasionally necessary, with activity beginning about 9:00 a.m. No business is conducted on Sunday, except in an emergency.

Mr. Paterniti stores his lawn mowing equipment, trailers used in the lawn mowing business, and trucks to the south of the property, on the existing driveway and in front of the existing shed. Mr. Paterniti's testimony is that he has a total of 3 pick-up trucks on the property, 2 of which are used in the business and 1 being a personal vehicle. Two trailers are used to haul mowers and other equipment to the job site, and an additional trailer is used for storage. These trailers are 18 feet long, 20 feet long, and 21 feet long.

The Applicant also has at least 3 push mowers and 7 riding mowers on the site, of which the Applicant states 4 riding mowers are used in the business, and "2-3 mowers for home use". Apparently, although the Applicant's presentation was somewhat confusing, he seeks permission to store 2 riding mowers on the property which will be employed in the business. Two snow plows are also stored on the property.

In addition, the Applicants and their family have at least 2 personal-use motor vehicles on the property; a motor home is stored on the subject property; and, occasionally, one or more cars which Mr. Paterniti restores. At the time of the hearing no cars on the property were in the process of being restored, although parts from those vehicles remain in the shed.

Only minor maintenance is engaged in by the Applicant. This includes sharpening blades, changing oil, etc. The Applicants' business is seasonal. The riding mowers which are used in the business are similar mowers which are owned and used by average property owners.

Mr. Paterniti discussed the various photographs which are marked as Attachment 11 to the Staff Report. The box shown in the first photograph, marked No. 1, is gone, with the rest of the material remaining on-site.

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In the next photograph, marked No. 2, Mr. Paterniti explained that everything shown is gone, with the exception of the vehicle frame. In photograph No. 3, Mr. Paterniti explained that only the mulch remains. All that is left in photograph No. 4 is the white shed. Photograph No. 5 shows mowers which remain on the property.

The next photograph, marked No. 6, shows walk behind mowers which remain. The 55 gallon drum contains kerosene and remains on the property. Mr. Paterniti described most of the material showed in photograph No. 7 as gone. Tires remain piled outside of the garage. The photograph marked No. 9 shows a volleyball net which remains.

On Applicants' Exhibit No. 2 (which is Attachment No. 3 to the Staff Report), the Applicant indicated certain screening which will be erected on both the southerly property line and the rear or westerly property line.

For the Harford County Department of Planning and Zoning next testified Anthony McClune. Mr. McClune described the property as being flat and rectangular in size. Prior to the construction of the dwelling the property was an agricultural field. Everything on the property is very visible, according to Mr. McClune. It would take a substantial amount of landscaping and time to adequately screen the uses on the property.

Furthermore, Mr. McClune states that the property is subject to a 50 foot use setback restriction along the southerly (left lot line) property line. The uses proposed by the Applicants cannot be located within the 50 foot use setback, and no variance has been requested. It should be noted that the equipment is, for the most part, now parked within the 50 foot use setback.

Mr. McClune described the lot as being very small for the proposed use.¹ He and the Department believe the property is not suitable for the requested special exceptions, as it does not meet the applicable special exception criteria.

The Harford County Staff Report concludes;

"The Department find that the request is not appropriate at this location."

The Staff Report also notes that during an inspection in preparation for the hearing;

". . . it was observed that there were at least 3 large commercial walk behind mowers, one zero turn riding commercial mower, two small ATV's, an untagged and/or inoperable vehicle, a stack of tires, a trencher, wheel barrows, snow plows, furniture, and miscellaneous items all stored outside."

¹ The lot is described by the application as "2 acres " ."

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Next in opposition testified Melvin Braun, who resides at 1701 Castleton Road and owns other properties in the area. He owns the property directly across Castleton Road from the subject property. He also owns property to the rear of the subject property and controls a right-of-way next to and adjoining the subject property.

Mr. Braun stated the property looks like a “pigs’ sty”. He does not like employees coming and going, in and out of the property. He does not believe the uses can be screened from the front, along the Castleton Road side. He would, however, agree to accept a limited number of vehicles if adequately screened.

Next testified Cindy Pugh, who resides at 1640 Castleton Road, to the south side of the subject property. Ms. Pugh has no problem with the Applicants running a small family business with two trailers, two trucks and four mowers. However, she is concerned about employees coming in and out of the property and impacting the neighborhood.

No other evidence or testimony was presented.

Subsequent to the hearing², by letter dated May 31, 2007, the Applicants proposed that approval be subject to the following conditions:

- “1. Business vehicles and equipment
No more than: 2 trailers
2 pickup trucks
2 snowplows
2 walk behind mowers
6 riding lawnmowers
No other business vehicles or equipment stores outside
Business vehicles and equipment parked behind garage
No parking of vehicles and equipment within 50 feet of adjoining property lines.
2. No increase in vehicles and equipment without Board of Appeals approval.
3. No more than two employee owned cars to be parked on the premises. No other employee parking permitted.
4. Approval is for the Applicants only. If business is sold or the property is sold, approval terminates and new owners must obtain Board of Appeals approval to operation business from property.
5. All junk removed from property.
6. Screening to be planted or installed as shown on map attached as Exhibit A.

² The Hearing Examiner allowed a post hearing submission by the Applicants.

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7. Screening to consist of Leland cypress or other evergreen trees to be not less than 6-7 feet tall at time of planting.
8. All trees to be planted by no later than October 1, 2007.
9. All trees to be maintained by Applicant. Dead trees to be replaced by Applicant.
10. No DAC approval required.”

APPLICABLE LAW:

These special exception requests are governed by Sections 267-53D(1) and 267-53H(1) of the Harford County Development Regulations:

“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.

(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 residential lot or visible from a public road.”

Furthermore, Section 267-9I of the Harford County Development Regulations, Limitations, Guides, and Standards, is also applicable to this request.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

In reviewing the testimony and, most particularly, in examining the photographs in the file, one is immediately struck by the neglectful way in which the property has been and is maintained. While the Applicant stated that much of the, for lack of a better word, “junk”, stored on the property has been removed, enough remains to cause consternation not only to one who is hearing these facts for the first time, but no doubt to the neighbors who have been forced to live with the Applicants’ abuse of their property.

Mowers, trucks, snow plows, miscellaneous metal parts, tires, a 55 gallon drum containing kerosene, and miscellaneous scrap items remain strewn throughout the property, even if the Applicant’s testimony that much has been removed is accepted as accurate.

In addition, the Applicants store trailers used to transport lawn mowing equipment. A fairly large enclosed trailer is permanently maintained on the property in which is stored lawn maintenance equipment. Occasionally, automobiles which the Applicant restores come onto and remain on the property.

Compounding this situation is a virtual total lack of effective screening. The Applicant attempted to describe, in an exaggerated fashion, the scope of the landscaping which exists around his property. Refuting Mr. Paterniti’s testimony, photographs show sparse, short trees planted at various and scattered locations along the perimeter of this two acre parcel. The location, height and type of trees are not nearly sufficient to screen any part of the Applicants’ property, particularly his equipment. Obviously, and it is found as a matter of fact, existing landscaping is not sufficient to screen any part of the Applicants’ equipment.

Furthermore, much of the equipment for which the Applicant seeks a special exception is visible from Castleton Road. Absolutely no screening exists between Castleton Road and the existing equipment. One neighbor suggests that the equipment cannot be screened from Castleton Road. The Applicants’ suggestion of 6 to 7 foot Leland cypress trees, planted as shown on the drawing submitted with the May 31, 2007 letter, is not nearly sufficient to provide an adequate screening. The neighbor’s suggestion is well made that the equipment cannot effectively be screened from the road.

The Applicants have been aware of these issues since at least mid 2005, when they were first given a zoning violation notice. That violation notice cannot, of course, be a basis for any findings in this opinion. Nevertheless, it is of concern that having such a long period in which to adequately prepare for their presentation, the Applicants have done very little to minimize - or eliminate - the quite obviously objectionable impact those uses present.

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The Applicants store lawn mowing equipment, a multitude of walk behind mowers, trailers, and a storage trailer on their property, in full view of neighbors and passing motorists. Indeed, most of this material is stored within the 50 foot use setback, which is prohibited, and to which no variance is requested. All of the equipment must be moved out of the 50 foot use setback and fully screened from adjoining residential lots and the street. By its May 31, 2007 letter, the Applicants agree to move the equipment. However, no persuasive suggestion has been made of how effective screening can be constructed. The screening shown on the marked-up drawing of the Applicants - attached to the May 31, 2007 letter - will not be effective in providing necessary screening from adjoining residential properties or from Castleton Road. Other than the drawing, there has been no practical suggestion by the Applicants of how effective screening can be constructed, and it is not up to the Board to devise screening. It is accordingly found that equipment which is the subject of these special exception requests will not be adequately screened and, if not screened, constitute an adverse impact on adjoining properties and neighboring residents.

In addition, the actual operation of the business, again, not being susceptible to screening, will also constitute an adverse impact.

Special exceptions are designed to have applied conditions and characteristics which help mitigate impacts which are usually less than desirable. However, without that mitigation the uses must be denied.

It is found, accordingly, that the inability to properly screen the equipment will allow business activity on the property to be fully seen and experienced by the surrounding property owners and neighbors, including users of Castleton Road, and will as a result constitute an adverse impact.

While perhaps not necessary in view of the above findings, the specific requirements of Section 267-53H(1) of the requested special exceptions are reviewed as follows:

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 residential lot or visible from a public road.*

The Applicants can comply with these specific requirements in that the property is AG and a buffer yard can be provided around all outside storage and parking areas, if the Applicants were to remove equipment from the 50 foot use setback.

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

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.

While this is an AG District, as discussed above, the vehicles and equipment are not proposed to be stored within an enclosed building, and no screening has been suggested or can be envisioned that will be effective in fully screening the view of the equipment from the surrounding residential properties or motorists on Castleton Road. The suggestion made by the Applicant that two pickup trucks used in the business are not required to be screened is rejected. As commercially used equipment, they must be screened.

(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.

No sales or service use will be conducted by the Applicants.

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

The Applicants apparently meet this requirement, although it should be noted that the lot size is only given as “2 acre ”. If actually less than 2 acres, the request must be denied.

Accordingly, it can be seen that the Applicants meet the specific requirements of Section 267-53H(1), Construction Services and Suppliers’ Uses, but not the Motor Vehicle and Related Services special exception of Section 267-53D(1).

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A review of Section 267-9I, Limitations, Guides and Standards, follows:

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

As discussed above, this commercial use, employing up to five employees³, and using a variety of equipment, will constitute an adverse impact to this residential/agricultural district. The use cannot be mitigated by any suggested, proposed or envisioned screening, and the business activities on the site have been and will continue to be fully visible to adjoining neighbors and passers-by. This is not acceptable, given the number of people living in this relatively rural agricultural area, and using Castleton Road.

- (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 property fronts on the west side of Castleton Road. The sight distance from the driveway access point is good.

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

The proposed use is not consistent with the orderly growth of the neighborhood as suggested by the Department of Planning and Zoning. For reasons stated above, the impact of this use cannot properly be mitigated. Its effect will be adverse and more extreme than similar uses due to the extreme visibility of the activity and equipment stored on-site.

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

No particular impact from any uses was identified, although it is noted that the storage of fuel oil in a 55 gallon drum on-site, (although the Applicants did not articulate a connection between this drum and their equipment), is clearly not appropriate in this neighborhood. These properties are on wells and any substantial spill from this unguarded and apparently unsecured storage container could have an extreme adverse impact on neighboring 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.*

³ An apparent discrepancy exists between Mr. Paterniti's testimony on the number of employees and his application.

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The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Dublin/Darlington Volunteer Fire Departments will provide fire protection and emergency service. The property is served by a private well and septic system. A company of the Applicants' choice will handle trash collection.

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

The proposal is not consistent with acceptable planning principles for purposes set forth both in the Staff Report and above.

- (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.*

Without adequate screening and protection to the neighbors and the neighborhood, this use is not consistent with the Harford County Master Plan.

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

No such features or opportunities have been identified.

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

No such landmarks have been identified.

Under Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981), it must further, although in light of the findings above it is perhaps unnecessary, be determined if the use would have a greater impact at this particular location than it would at any other similar location within the zone.

For reasons set forth above it is found that the equipment, and business activities on-site, would cause an adverse impact above and beyond that inherently expected from such a use. This unusual impact is caused primarily by the inability of the Applicants to fully screen, or fully enclose, the uses from adjoining neighbors and passers-by. While perhaps it is unnecessary to add, it is found that in the Applicants' situation, due to the fairly large amount of equipment on their property and the flatness of the topography, 2, 3, 4 and 5 foot trees, sparsely spaced, are wholly inadequate for screening purposes. No persuasive suggestion was made as to how complete screening could be achieved. The Applicants' suggestion of 7 foot Leland cypress trees, planted as shown on Attachment to letter of May 31, 2007, is found to be totally ineffective in screening this use. It is not the Board's responsibility to devise screening and, even if it were, no effective screening can be envisioned.

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While in some situations it may be appropriate to allow screening to eventually develop to the point where it acts as a complete barrier, this is not such a situation. Neighbors should not be subjected to what is an objectionable and improper use in this rural residential/agricultural district.

CONCLUSION:

For the above reasons, it is recommended that the requested special exceptions be denied.

Date: June 6, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 5, 2007