

APPLICANTS: Michael & Deborah Bedsaul

BEFORE THE

REQUEST: Special Exception to allow a plumbing business and store equipment and variance to allow a building within the required side yard setback in the Agricultural District

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

HEARING DATE: April 2, 2008

Case No. 5607

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Michael & Deborah Bedsaul

LOCATION: 1339 Knopp Road, Jarrettsville
Tax Map: 24 / Grid: 3F / Parcel 313
Fourth (4th) Election District

ZONING: AG / Agricultural District

REQUEST: Special Exceptions, pursuant to Sections 267-53H(1) and 267-53D(1) of the Harford County Code, to allow a plumbing business and store equipment, and variance, pursuant to Section 267-34C, Table II, to allow an existing building to maintain a 5 foot side yard setback (40 foot setback required), in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicants, Michael E. Bedsaul and Deborah J. Bedsaul, are seeking two special exceptions and a variance to allow a plumbing business and store equipment and a variance to allow an existing building to maintain a 5 foot side yard setback.

The subject parcel is located at 1339 Knopp Road, Jarrettsville, Maryland, in the Fourth Election District, and is more particularly identified on Tax Map 24, Grid 3F, Parcel 313. The parcel contains approximately 3.04 acres.

The Applicant, Michael E. Bedsaul, appeared and testified that he and his wife, Deborah J. Bedsaul, currently reside in the existing dwelling located on the 3.04 acre parcel. They have owned the property since 1979. When they purchased the property, a mobile home was located on the property. They constructed a new home in 1981, and used the existing well and septic. Mr. Bedsaul testified that he is self-employed and the owner of a plumbing business, located on the subject property.

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Mr. Bedsaul testified that he provides plumbing services, service work and installation of water pumps in the Harford County community. He has four (4) employees. He uses the property for the storage of equipment in a garage. In 1992, Mr. Bedsaul obtained a permit (Exhibit No. 3) for the construction of the garage. He used the garage for the storage of straw, hay, yard equipment and animals. His children were in 4-H at the time. Applicants' Exhibit No. 4 shows the garage as being located 5 feet off of the property line.

Mr. Bedsaul explained that he has three vehicles that are stored on the property – a dump truck with a trailer and a backhoe. He also has a van. The dump truck, backhoe and trailer are stored behind the garage and are not visible from the road. The vehicles are screened from the road by the garage and pine trees. They are also screened from view of the neighbor's property by the pine trees. The backhoe is also used to haul wood, plow snow, and plow the neighbors' driveways when it snows. The backhoe has rubber tires.

Mr. Bedsaul pointed out that the property to the west of his property is 6.57 acres, and the property to the east is 12 acres.

Mr. Bedsaul has taken steps to come into compliance with the Harford County Code. He planted additional trees to block the view from the road. He has also sold two of his trucks. At the present time, two of his employees take home company trucks in order to minimize the impact of his business on the property. There is only one employee vehicle parked on the property during the day.

Mr. Bedsaul described his property as being unique in that it is flat in the front and then there is a steep slope behind the home beyond the garage. AT&T phone lines with an easement of 20 feet are located behind the home. The property drops off behind the buildings toward the phone lines. The septic reserve affects how much he can shift the garage off of the property line. He demonstrated by Exhibit Nos. 11-A, 11-B, 11-D and 11-G that the septic reserve is located immediately behind the home. With the slope behind the home, the AT&T phone lines and the location of the septic reserve, the Applicants are limited in the use of the remaining acreage of the property.

Mr. Bedsaul also testified that he uses the trailer to haul an antique car, stored in another garage on the property, to car shows.

Mr. Bedsaul does not believe his business has a detrimental effect on the community or the adjoining property owners. It is a small business. He has no office employees. His business does not disrupt the neighborhood. He resides in an agricultural community, and his business blends in with other businesses in the community.

Mr. Bedsaul has operated this business on the property for 25 years and there has been no harm to the community. Mr. Bedsaul indicated he was storing the dump truck, backhoe, and trailer behind the garage and parking the panel van out of view. He also parks the other pickup truck in another garage on the property and limits parking during the day to one employee vehicle. He requested that the two special exceptions be granted and the variance also be approved.

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Next on behalf of the Applicants testified Edward G. Carson, Esquire. Mr. Carson has been an attorney since 1972. He practices in the area of property law, real estate law and conducts title searches. Based on Mr. Carson's qualifications, he was accepted as an expert in real estate and property law in Harford County.

Mr. Carson testified he is familiar with the property. He is a neighboring property owner. He resides in the original farmhouse. The subject property was divided from the same farm. His property line is 1,200 feet from the Applicants' property line. He can see the Applicants' home from his home.

Mr. Carson referred to Exhibit No. 6, which is a plat of the property. Mr. Carson stated that the property next to the Bedsaul property is greater than 3 acres.

Mr. Carson testified that under Section 267-53D(1) of the Harford County Code, the Applicants' property is more than 2 acres. The properties next to the Applicants' property are greater than 3 acres. With respect to Harford County Code Section 267-53H(1), the building is not adjacent to a residential lot, which is considered 2 acres. Further, it is not visible from the road. The equipment is stored behind the garage. The trees provide a visual screen from the public road and additional trees have been planted to screen the equipment.

Mr. Carson also explained that the topography behind the home is unique. The contour lines and map show a drop-off of about 20 feet. This is a significant drop. The property is also unique because of the location of the AT&T phone lines. Mr. Carson testified AT&T is vigilant about watching the phone lines and monitoring their easement. It is monitored by helicopter approximately once a week.

The AT&T lines run diagonally and force the home to be located closer to the road. Any improvements on the property must be towards the front of the lot. The septic reserve area also limited where building could occur on the property.

Mr. Carson has lived on his property since 1973. There is a main house with 33 acres. He knows the Bedsaul family and is also a customer. It is helpful to have the business located in the area to service neighbors in the event of an emergency. He testified you cannot even tell a business is located there.

Mr. Carson said he had the opportunity to review the Staff Report of the Department of Planning and Zoning. It was his opinion that the Staff Report was not supported by a factual basis and was based on speculation.

Mr. Carson reviewed the Staff Report and its application of Section 267-9I. With respect to Paragraph (1), he stated that this was not true. Most of the lots in the area are greater than 2 acres. The business is beneficial to the individuals living in the area.

As far as Paragraph (2), he explained he never experiences any problems. The speed limit is 25 m.p.h. It is a country road. Traffic is not a major concern of the community.

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With respect to Paragraph (3), he said the business is not “intense”. There is very little activity and few employees. Occasionally there may be deliveries, but he rarely sees them.

As far as Paragraph (4), there is no noise, dust, etc.

Paragraph (6) indicated that the proposal is not consistent with accepted planning principles. Mr. Carson disagreed with this statement and said a special exception is consistent with planning principles.

As far as Paragraph (8), he disagreed with the Staff Report, which indicated that the proposed use is not consistent with the Master Plan. It was his opinion that the use is presumed to be consistent.

Next on behalf of the Applicants testified Milton E. Poe, Jr. Mr. Poe’s property is east of the subject property. He purchased it in 1970. He has lived there since 1971. He said he never knew the business was located on the property. He said it has no negative impact on the community. In fact, he said it is an asset to the community.

Next on behalf of the Applicants testified Charles R. Knopp. He said his property is located west of the subject property. He purchased it in 1970 and has lived there since 1971. He has no objection to the special exceptions or variance being granted. It has no detrimental impact on the community.

Next testified on behalf of the Applicants Randy Knopp. He has resided in the community since 1980. He explained that the business has no detrimental impact on his property or the community. There is no increase in traffic. He said he did not even know the business was located on the property. There is no noise from the business.

The final neighbor who testified on behalf of the Applicants was Joe Donovan. Mr. Donovan testified that he lives around the corner from the property. He travels by the property frequently. The business does not hurt anyone in the community.

Mr. Anthony McClune, Deputy Director for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that Agency. He indicated that the Department had reviewed the application and attachments and had visited the site and surrounding area. They learned of the ongoing business as a result of a complaint.

Mr. McClune testified with respect to Section 267-53D(1). He stated that if the dump truck, backhoe and trailer are stored behind the garage, they can be properly screened. Any other areas would not be able to be screened from Knopp Road.

With respect to Section 267-53H(1), he testified that the business and vehicles are visible from the road. The employees park along the driveway, which is also visible from the road.

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Mr. McClune testified that the property is not unique. There is some sloping behind the property, but it is typical of homes in that area. The configuration of the property is also not unique. The AT&T easement is on numerous other properties, and this does not make the property unique. In addition, subsequent to building the garage at issue, the Applicant built another building on the property.

Mr. McClune also reviewed Section 267-9I. With respect to Paragraph (1), he noted that the agricultural zoning is a minimum of 2 acres. There are other smaller lots on Knopp Road. He also stated that the special exception was not consistent with growth. The Harford County Master Plan intends for retail and service business to be located in the village centers. Locating a business on this property would not be consistent with the goals of the Master Plan.

On cross-examination, Mr. McClune confirmed that the appropriate notices were sent, advising the community of the requests for two special exceptions. Applicants' counsel noted that there were no individuals present to testify in opposition to the requested special exceptions and variance.

Mr. McClune acknowledged he did not walk the property. He was on the property but did not walk the rear of the property. He looked at other properties on Knopp Road. He estimated that there is a 12% slope behind the home. He did not perform any independent evaluation. He acknowledged that it could be possible that the residents in that area may have more knowledge of that area than Planning and Zoning.

No testimony or evidence was presented in opposition to the request.

APPLICABLE LAW

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.*

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- 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.”*

Harford County Section 267-51 – Purpose, states:

“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 267-53D(1) of the Harford County Code reads:

“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.”*

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

“*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 Code is also applicable to the request and discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Request for Variance

The Applicants have made a convincing showing that their lot, located in an Agricultural District, is unique. When the Applicants purchased the property and built their home, they used the existing well and septic. The septic reserve is located immediately behind their home and effects how they can use the property to the rear of their home.

In addition, the topography of the lot is generally sloping behind the home, and then drops off. Behind the home and after the property drops off, an AT&T right-of-way of 20 feet is located on the property for telephone lines. Because of the sloping topography behind the home, the AT&T phone lines, along with the septic reserve area, the Applicants are limited in where they can place additional structures. Obviously, the unique nature of the property impacted the Applicants ability to improve their property.

It is clear that the pertinent Code provision, i.e., the requirement that a 40 foot side yard setback be maintained, impacts the Applicants more than others because of the unusual location of their septic reserve, the topography of their lot, and the AT&T right-of-way. For this reason, the Applicants suffer a practical difficulty in not being able to build an addition to their property similar to others in the Agricultural District and within Harford County.

Further, there is no finding of adverse harm and, in fact, the building has been in existence on the property since 1992 without any adverse impact to the neighborhood and to their neighbors.

2. Special Exception

In this request for a special exception, a review of Harford County Code Section 267-91, Limitations, Guides and Standards, is required to determine that no adverse impact will result. Those factors are reviewed as follows:

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“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 proposed special exception would have no significant impact on the number of people working or living in the neighborhood. The Applicants presented several neighbors who testified that there has been no negative impact on the community, and they do not anticipate any negative impact in the future. Further, there were no neighbors who testified in opposition to the special exception, or presented evidence indicating that the proposed special exception would have an adverse impact on the community. Further, the Department of Planning and Zoning failed to present evidence to support their position that the “special exception may have an adverse impact on people living in the 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.

The Applicants provided several witnesses, who testified that there would be no negative impact with respect to traffic conditions, etc. In particular, Mr. Carson testified that he has never experienced any problems. The speed limit is 25 m.p.h. Knopp Road is a country road and traffic is not a major concern. The Department of Planning and Zoning did not provide any evidence indicating that traffic conditions, etc. would be adversely impacted if the special exception were granted.

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

The testimony of the Applicants’ witnesses indicated that the activity with respect to the business on the property is not intense. There are very few employees. In fact, the neighbors did not fully appreciate the business that was being conducted on the property. They noted that occasionally there are deliveries, but rarely are they seen by the neighbors. Clearly, without any evidence to contradict the Applicants’ testimony, the proposal should have no applicable impact on the orderly growth of the neighborhood and the community.

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

The testimony indicated that there were no odors, dust, gas, smoke, fumes, vibration, glare or noise due to the business. No such affects should be created if the special exception is granted.

- (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.*

Public fire and police protection is available. Public utilities are not involved. The property is served by private well and septic system.

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

The proposal is consistent with planning principles as a special exception is an appropriate consideration for this type of request for a business in an Agricultural District. The Department of Planning and Zoning's position that the proposal is "not consistent with accepted planning principles" is not consistent with generally accepted planning principles.

- (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 as potentially being adversely affected.

- (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 all such purposes and studies. The business has been conducted on the property since 1981 and has demonstrated that it has, in fact, been consistent with planning for the community, which is in an agricultural district.

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

The proposal should have no impacts on surrounding natural features provided all equipment used for the vehicles and business are properly contained.

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

The request should not impact any cultural or historic landmarks.

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Accordingly, no adverse impact upon any adjoining property owner is found. Further, the Applicants have also demonstrated that pursuant to Section 267-53D(1), the vehicles and equipment are stored either within an enclosed building or fully screened from view, and the Applicants' lot is more than 2 acres.

In addition, the Applicants have also complied with Section 267-53H(1) as the vehicles are not visible from the road as they are stored behind the shed and the trees provide a buffer of the view from the public road, and the Applicants have planted additional trees. The steps taken by the Applicants also support the Hearing Examiner's decision to grant the special exceptions, subject to the guidelines submitted by the Applicants at the hearing.

CONCLUSION:

Accordingly, the Hearing Examiner recommends the approval of the Applicants' request for two special exceptions and a variance, subject to the following conditions:

1. The Applicants are only permitted to park one (1) employee vehicle on the property.
2. The dump truck with trailer and backhoe must be stored behind the shed or within the enclosed shed.
3. The Applicants agree to park their other pickup truck in the garage structure on the property when not in use for the business..
4. The Applicants shall park the panel van in the driveway near the shed so that it is not visible from the road.
5. The approval is for the Applicants only and shall terminate upon the sale of this lot or the sale of the plumbing business currently operated on site by the Applicants.

Date May 21, 2008

MICHAEL H. DANNEY
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JUNE 19, 2008.