

APPLICANTS:
Joshua & Cheryl Chavis

**REQUEST: Special exception to permit
construction services and suppliers use in the
Agricultural District**

HEARING DATE: June 10, 2009

**BEFORE THE
ZONING HEARING EXAMINER
HARFORD COUNTY
BOARD OF APPEALS**

Case No. 5688

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Joshua & Cheryl Chavis

LOCATION: 3811 Federal Hill Road, Jarrettsville
Tax Map: 24 / Grid: 4B / Parcel: 352
Fourth (4th) Election District

ZONING: AG / Agricultural District

REQUEST: Special exception, pursuant to Section 267-88H(1) of the Harford County Code, to permit construction services and suppliers use in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The parcel which is the subject of this application consists of 8.5482 acres, zoned Agricultural, and located on Federal Hill Road in Jarrettsville. The property is improved by a single-family dwelling occupied by the Applicants as their principal residence, and a storage building used for business purposes. Also on the property are three large metal storage boxes and a framed, three-sided shed which houses above-ground fuel tanks.

The parcel itself is accessed by a 50 foot wide by approximately 450 foot long driveway. As a result that part of the parcel which is used by the Applicants for their business uses is relatively far off Federal Hill Road. To the south and adjoining the subject parcel is the North Harford Swim Club. The Swim Club improvements and pool are within 100 feet of the property line. The Applicants desire to continue to use the property for their septic repair and installation business and accordingly seek a special exception.

For the Applicants first testified Gerry Wolff of L.G. Wolff Associates. Mr. Wolff identified himself as a certified property line surveyor and land planner. Mr. Wolff described the parcel and its' surroundings as generally rural residential. Located on the parcel is a 40 foot by 80 foot building used for storage. Also located on the property is a three-sided shed used for the storage of fuel oil. Between the buildings is the equipment parking area, which has a gravel surface. Along the property line adjoining the northeasterly neighbor is a solid board fence. Significant tree plantings exist to the southeast between the parking area, storage buildings, and the North Harford Swim Club property. In Mr. Wolff's opinion, the parking area is adequately screened by the existing fence and by a triple row of well-developed pine trees to the southeast.

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The trees fully screen the commercial activities on the Applicants' property from the activities on the Swim Club property. Furthermore, the back portion of the parcel, on which the commercial activity has been and will be conducted, is approximately 1,000 feet from Federal Hill Road, and is also fully screened by existing vegetation from the view of passersby. Only a portion of the roof of the storage building is visible from Federal Hill Road.

In Mr. Wolff's opinion, the Applicants are able to meet all applicable requirements of Section 267-88H(1) of the Harford County Development Regulations. He believes that the proposed special exception should be granted.

Mr. Wolff stated that the panhandle driveway of the subject parcel is 50 feet wide, although the actual drive portion is 12 feet wide. While the 80 foot by 40 foot building was constructed for storage, it cannot contain all of the Applicants' equipment.

The three-sided shed on the Applicants' property contains three above-ground fuel storage tanks. Mr. Wolff indicated that the commercial activity on the Applicants' property will be approximately 280 feet from the Swim Club property line, and about 650 feet from the swimming pool.

Mr. Wolff described the parcel as being bounded by a 5 acre lot to its northwest side; a 7.95 acre residential lot to the north; to the south and east by an 85 acre farm known as the Cairnes property; and to the south and west by the property of the North Harford Swim Club. Not far to the north of the subject property lies a church and the Jarrettsville Volunteer Fire Company.

On cross examination, Mr. Wolff stated that the panhandle driveway is located next to the Swim Club property. All equipment owned by the Applicant cannot be stored with the existing building. The driveway is paved. The entrance to the Swim Club is about 100 feet from the entrance to the subject property.

Mr. Wolff noted that the subject parcel was adjacent to lots within the Cloverdale subdivision, but those lots are not classified as residential as they are in excess of 2 acres in size.

Co-Applicant Joshua Chavis next testified. Mr. Chavis stated that he built the storage building in 2001; the house was built in 2003 and 2004; he has been in business since 2004 with two employees. He has approximately 14 separate pieces of equipment, including two single/double axel dump trucks, one tag-along trailer, one skid loader trailer, a track-loader/dozer, a track-hoe, two skid loaders, one utility body truck, and one pick-up trucks. His hours of operation are generally from 6:30 am to between 2:00 and 4:30 pm, five days per week. His business does excavating work for septic systems.

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On site, light maintenance work is performed such as tire changing, lubrication of equipment, and light bulb replacement. No body work is performed. Two 40 foot storage boxes and one 20 foot storage box are also located on site and contain tools, pipe fittings, wheelbarrows, and miscellaneous small tools.

On cross-examination Mr. Chavis indicated that equipment generally leaves or comes onto his property 3 to 4 days a week. The operation generates some noise on-site. Perhaps a small amount of dust is kicked up, as the driveway itself is paved and the parking area is gravel. Generally stored outside the storage building are two dump trucks, one tractor trailer, and one demo trailer, two utility trailers, one excavator, loader, a backhoe and a bulldozer. The above-ground fuel storage tanks have never been inspected, and he does not know if he has a permit for their use.

Mr. Chavis does not know if permits are necessary for above-ground fuel tanks.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune and the Department of Planning and Zoning agree that the outside storage area is fully buffered from adjacent residential dwellings by existing trees. Mr. McClune stated that existing vegetation and fencing is sufficient to fully buffer adjacent properties. The existing buffer meets all Code provisions. The outside storage area must be paved if the application is approved. The only part of the activities on site visible from Federal Hill Road is the very top of the 40 foot by 80 foot storage building. Traffic along Federal Hill Road is fairly low and, accordingly, the Department finds no adverse traffic impact.

Mr. McClune finds no unusual impact if the proposed special exception were granted. Certainly, any impact generated by the use is no greater than that which would be expected if located elsewhere within the Agricultural District. However, the Department recommends that no additional equipment be allowed on the site.

The hearing was continued to provide the Applicants time to address potential permitting issues surrounding the above-ground fuel tanks. At a subsequent hearing the Applicants proffered evidence of compliance with all County and State requirements, although County permits had not been applied for. The Applicants also presented a letter from the North Harford Swim Club by which the Club expressed its lack of opposition to the granting of the special exception.

No testimony or evidence was presented in opposition.

APPLICABLE LAW:

Section 267-88H(1) of the Harford County Code provides as follows:

“Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that:

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- (a) A minimum parcel area of 5 acres in the AG district and 1 acre in the VB district is required.*
- (b) If the use includes the storage of commercial vehicles and equipment, the vehicles and equipment must be stored entirely within an enclosed building or fully buffered from view of adjacent residential lots and public roads.*
- (c) All parking and storage areas must be paved.*
- (d) A type “C”, pursuant to Section 267-30 (Buffer Yards), shall be provided along any adjacent road right-of-ways or adjacent residential lots.”*

Section 267-9I, “Limitations, Guides and Standards” of the Harford County Code is also applicable and will be discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject parcel is approximately 8.5 acres in size, zoned agricultural and located on Federal Hill Road in Jarrettsville. While the area in which the subject parcel lies is generally rural/agricultural, containing large lot residential developments, the property is also adjacent to the North Harford Swim Club. The parcel is improved by the residence of the Applicants, a 40 foot by 80 foot metal storage building, three storage containers, and a three-sided lean-to type building which contains the Applicants’ above-ground fuel storage tanks.

The area in which the metal building, storage containers and fuel storage tanks are located is paved with gravel. The lot is somewhat unusual in that it is accessed by a 450+ foot long panhandle driveway from Federal Hill Road. Accordingly, the evidence presented indicated that most of the parcel is hidden from view of the passersby on Federal Hill Road.

Furthermore, testimony, site plan, and photographs of record demonstrate that the property is fully screened from adjoining parcels by both existing and added vegetation, and by the existence of an 8 foot high privacy fence along the northeastern property line. Much of the parcel itself is wooded to the east and southeast side.

The testimony of the Applicants indicates that they have been operating a relatively small excavating business for a number of years on the parcel. The equipment is located both within the existing metal building and stored outside on the gravel parking area and within the storage containers.

The Applicant asserts that his business is not a bother to any of his neighbors and his use does not constitute an adverse impact. No retail customer visits the site. The hours of operation are not unusual. As with most similar businesses, the majority of the Applicants’ work is conducted off-site. The Applicant will do minor maintenance on his equipment.

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At the time of the hearing the Applicant maintained 3 above-ground fuel storage tanks on the property. The Applicant submitted satisfactory evidence that the tanks are in compliance with State regulations and no State permitting is necessary (See Applicants' Exhibit No. 3). The June 22, 2009 letter from ETS, Inc. indicates that, at the time of inspection, "all 3 tanks were in good condition, protected by the weather, and maintained in a responsible manner." Furthermore, the Harford County Health Department, by letter accepted as Applicants' Exhibit No. 4, has no objection to the continued maintenance of the above-ground fuel storage tanks. Apparently, Harford County permits will be necessary, however (see Applicants' Exhibit No. 6). A condition of this approval will be that the Applicants comply with all Harford County permitting requirements.

There exists a concern about potential impact of the use on the activities of the North Harford Swim Club. However, this concern is alleviated by a letter submitted by the Applicants from the North Harford Swim Club, accepted as Applicants' Exhibit No. 2. The letter generally indicates that North Harford Swim Club has "...never in any way, experienced any noise, dust, or related issues with Mr. Chavis' operation." The letter closes by supporting the application of Chavis Enterprises, LLC to continue its operation.

While having the potential to impact surrounding residential and institutional uses, evidence of record shows that such has not been the case during the past few years of the Applicants' actual operation. The property is fully, and well, screened, and is set back a substantial distance from Federal Hill Road. It is, accordingly, found that the use as conducted and as conditioned herein, will not constitute an adverse impact on adjoining neighbors.

Furthermore, the Applicants are easily able to meet the requirements of Section 267-88H(1) as follows:

"Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that:

(a) A minimum parcel area of 5 acres in the AG district and 1 acre in the VB district is required.

The property is zoned agricultural and consists of 8.5482 acres.

(b) If the use includes the storage of commercial vehicles and equipment, the vehicles and equipment must be stored entirely within an enclosed building or fully buffered from view of adjacent residential lots and public roads.

The vehicles are stored within the commercial building and on the gravel area which is located virtually in the middle of the parcel. It is found, as discussed above, that the area in which the vehicles and equipment are stored is fully buffered from adjacent residential lots and public roads.

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(c) All parking and storage areas must be paved.

A condition of this decision will be that the existing gravel area be paved.

(d) A type “C”, pursuant to Section 267-30 (Buffer Yards), shall be provided along any adjacent road right-of-ways or adjacent residential lots.”

This condition has been met.

The Applicant must also show compliance with the more generalized requirements of Harford County Code Section 267-9I, Limitations, Guides and Standards. The Applicants have shown compliance with these requirements, as follows:

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

The use is fully screened from adjacent residential properties and from the adjacent North Harford Swim Club. It will not impact persons living or working in the area, nor should it be impacted by adjacent lots.

(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.

Sight distance along Federal Hill Road (MD Route 165) is good at the location of the parcel’s driveway. Pedestrian use is not an issue.

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

There was no evidence to support a finding of impact on the orderly growth of the neighborhood. Accordingly, it is found that the orderly growth of the neighborhood will not be impacted, nor there will be an adverse fiscal impact.

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

No such specific impacts have been identified. Clearly, the use of gas and diesel powered equipment will generate noise and odors to some degree. Certainly, that impact will not be any greater than normal allowed uses on an agriculturally zoned parcel. Furthermore, there is no evidence of any past impact from such uses.

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- (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.*

Harford County Sheriff's Department and the Maryland State Police will provide police protection. The local volunteer fire company will provide fire protection. The property is serviced by private well and septic.

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

The request will be consistent with generally accepted planning principles and practices with appropriate conditions.

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

As discussed, North Harford Swim Club is located immediately adjacent to the southern property line of the subject parcel. However, no real or potential impacts 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.*

The proposal is consistent with the Master Land Use Plan.

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

No such impacts have been identified.

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

No such landmarks have been identified.

Lastly, a special exception use may not be approved if it is found that the proposed construction services and suppliers use would have a greater impact at the Applicants' location than at some other location within the zone. Discussed by Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), this and other special exceptions may be allowed, and generally must be allowed, provided that the impacts of such use are no greater than what would normally be expected of such a use. If, on the other hand, some unusual feature of the property or surrounding properties create or help to exacerbate an existing impact, an impact that the same use at another location would not have, then the use may be denied.

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However, the use proposed appears to be a fitting one for the parcel on which it is and will be located. There is no feature of the property or surrounding properties which would exacerbate expected impacts of such a use, and no extreme or unusual impacts of the use were identified.

CONCLUSION:

Accordingly, it is recommended the requested special exception be granted, subject to the following conditions:

1. The Applicants shall submit a site plan for review and approval through the Development Advisory Committee (DAC).
2. The Applicants shall pave all parking and storage areas.
3. The Applicants shall be limited to the quantity and type of equipment as shown on Attachment 1, and as described herein. The Applicants shall be permitted to replace, but not add to, existing equipment.
4. This approval is for the Applicants only and shall terminate if the property is sold or transferred.
5. The Applicants shall obtain all permits and inspections for the use of the storage building.
6. The Applicants shall obtain Harford County permits for the 3 storage containers and the structure housing the above-ground fuel tanks.
7. The Applicants shall not perform major repairs to the equipment and vehicles on-site. Normal maintenance such as oil changes, tire rotations, etc. shall be permitted.
8. The Applicants shall meet and comply with all requirements for the proper storage and containment of fuels on-site.

Date: September 24, 2009

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 23, 2009.