

APPLICANT:
Board of Education of Harford County

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

REQUEST: Variance to increase the impervious surface within the 100 foot radius of an existing well in the Agricultural District

HEARING DATE: January 20, 2016

Case No. 5856

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Board of Education of Harford County

LOCATION: 1901 Fallston Road, Fallston
Tax Map: 47 / Grid: 2E / Parcel: 228
Third (3rd) Election District

ZONING: AG / Agricultural District

REQUEST: A variance pursuant to Sections 267-66F(2)(b) and 267-66G of the Harford County Code, to increase impervious surface within the 100 foot radius of an existing well in the AG/Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is the location of the Youth's Benefit Elementary School. It consists of approximately 26 acres, with the school having been originally constructed in 1952. While there are currently three buildings on the site, the school is being rebuilt with construction having begun on September 22, 2014. The existing school buildings continue to be utilized by the school's students and staff while the new building is being constructed. As one can imagine, the entire property is very actively utilized. The newly constructed school will include updated stormwater management facilities, septic reserve areas, and other new additions to the property.

The school now finds itself in the position of having to retain an existing well for back-up purposes. However, portions of the newly constructed buildings will come within 100 feet of the well and will increase the impervious surface coverage within that 100 foot radius. Accordingly, the Applicant requests a variance to Section 267-66F(2)(b), set forth below.

First for the Applicant testified Chris Morton, Supervisor of Facilities Management for Harford County Board of Education. Mr. Morton has been with the Board of Education for Harford County for 6 years and supervises the reconstruction of Youth's Benefit Elementary School.

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Mr. Morton explained that, as part of the construction of the new facilities, a water well was proposed to be drilled to the southwest side of the subject parcel, close to MD Route 152, and would have complied with the 100 foot setback requirement. However, the well was found to have an inadequate flow and could not be utilized. Due to site constraints imposed on the property by the new facilities which are being constructed on the site, the Applicant has been unable to find another location to drill a replacement well. Accordingly, the Applicant proposes to maintain that existing well, noted on “Applicant’s Exhibit B” as EXW-1. According to Mr. Morton, the 100 foot buffer around the well is now somewhat impacted by impervious surface but, as part of the main Youth’s Benefit School building is to be built within that 100 foot radius, the impervious impact will increase. Given the fact that that well produces a rate of 72 gallons per minute, and together with the site constraints which prohibit the location of another well, the Applicant now requests that a variance be granted to allow well EXW-1 to remain.

Mr. Morton explained that the well which the Applicant hopes to retain will be a back-up well only, and will not be used except in a back-up capacity for both potable water and fire protection purposes.

Mr. Morton foresees no adverse impact if the variance is granted. There is no other location on the site for a back-up well, and the well at its present location causes no impact of any nature upon the school facility or grounds.

Next for the Applicant testified Fritz Behlen, who identified himself as a licensed architect and designer of the new Youth’s Benefit Elementary School. Mr. Behlen has been involved in over 100 similar projects, has testified as an expert in other cases, and is being now offer as an expert in land planning and zoning. He was accepted as such.

Mr. Behlen is familiar with the subject property and the design of the new school facility. The Applicant wishes to use the existing well described on the Exhibits as EXW-1. This well will be for back-up purposes, primarily used to provide potable water and to provide water for fire protection, if needed. Mr. Behlen testified that there is no other available land due to the significant site constraints posed by the new, and quite extensive facilities which are under construction and, in part, by new building code requirements.

Mr. Behlen anticipates no adverse impact if the variance is granted. The Applicant would suffer practical difficulty if the variance is denied. A good well with significant water yield would be closed and there is no other suitable location on the property for a back-up well.

For the Harford County Department of Planning and Zoning testified Anthony McClune, Mr. McClune and the Department believe the property is unique. According to the Staff Report, “the unique configuration of the property and the location of the existing improvements create the need for the variance.”

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In support of this conclusion, the Staff report states, inter alia:

“The construction of the new school will require the installation of stormwater management facilities and a new septic system which occupy a considerable area of the subject property. The septic system will also include the construction of a waste water treatment facility. Several acres of land must be dedicated to the construction of these utilities. Therefore, the area where the new school can be constructed is constrained due to the phased construction around the existing facility and the location of the new stormwater management and waste water treatment facilities. Due to these constraints, the new school building could not be designed to avoid an increase in impervious surface within 100 feet of the existing well.”

The Staff Report notes that the impervious surface coverage which exists within a 100 foot radius of well EXW-1 is now 1,140 square feet or 3.6 % of area. The proposed impervious surface coverage within the 100 foot radius of well EXW-1 will be 4,565 square feet or 14.5%.

Neither the Department of Planning and Zoning or Mr. McClune feel that there will be any adverse impact if the variance is granted. Mr. McClune notes, as required by Code, that the Harford County Department of Water and Sewer and the Maryland Department of the Environment were contacted with requests for comments on the application.

No evidence or testimony was given in opposition to the requested variance.

APPLICABLE LAW:

Section 267-66F(2) of the Harford County Code provides:

- “F. Non-transient Non-community Water System Protection Area.
 - (2) Impervious surface requirements.
 - (b) Existing non-transient non-community wells. Existing impervious surfaces located within 100 feet of a non-transient non-community well, as designated by Maryland Department of the Environment prior to the date of this Part 1, shall be permitted to remain provided there is no increase in impervious surfaces within 100 feet of the well.”

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Section 267-66G states:

“G. Variances. The Board may grant a variance from the provisions of this section upon a finding by the Board that the proposed development will not have a significant adverse effect on the Water Source Protection District. Prior to rendering approval, the Board shall request advisory comments from the Director of Planning, the Harford County Health Department, the Department of Public Works and the Maryland Department of the Environment.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Clearly, the retention of an existing well (EXW-1) will be beneficial to the Applicant and to the new Youth’s Benefit Elementary School and its students and staff. No doubt, the public purpose will be served by having an adequate back-up well for both potable water and for fire protection. The Applicant suggests that there is no other possible location on the property given the active construction activity now underway which, together with the functioning school, will encompass virtually 100% of this 26+ acre site.

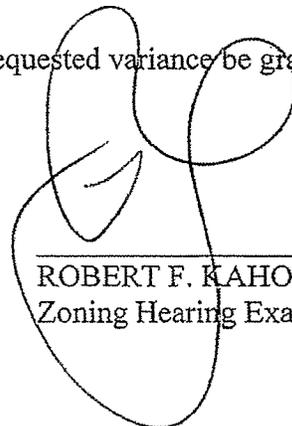
The testimony of the Applicant’s witnesses and the Department of Planning and Zoning is sufficient to demonstrate that there will be no adverse harm if this relatively minor variance is granted. It should be noted that a significant portion of the approximately 3,000 square foot impervious surface impact will consist of part of the school building itself and related walkways.

The Applicant has submitted sufficient evidence to support a finding that the variance, if allowed, would have no impact on the Water Source Protection District. In fact, the evidence demonstrates that there will be no adverse impact of any nature.

CONCLUSION:

Accordingly, it is recommended that the requested variance be granted.

Date: February 5, 2016



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on MARCH 7, 2016.