

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

RODNEY A. MILLER  
8844 Sharpsburg Pike  
Fairplay, MD 21733  
Appellant

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Appeal No. AP2008-039

OPINION

This action is a request for a special exception to establish a contractor's equipment storage area for Ram Home Builders with leasable storage bays for others in a proposed 30'x92' six-bay garage with an office and for a variance from the minimum lot area of 4 acres to 1.5 acres and from the minimum 50' front and side yard setbacks to 40' and 15', respectively. The subject property is located at 9839 Garis Shop Road, Hagerstown, Maryland, is owned by the Appellant, and is zoned Agricultural (Rural).

A public hearing was held before the Board on August 13, 2008. The Appellant offered evidence and testimony in support of the appeal. No opposition was presented to this appeal.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellant proposes to use a six-bay garage for an office and storage area related to Ram Home Builders and to make additional space available for rent.
2. The business will not be identified with signage.
3. The property will also be improved with a care home for the physically and mentally handicapped, and the entity would also use the garage for storage of equipment.
4. Appellant is amenable to screening the property with landscaping vegetation.
5. Opposition to this request centered on concerns regarding water and septic capacity, road capacity, and increasing commercialization of the neighborhood.

## RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood. Section 28.62. This Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. "Practical Difficulty" may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 25.56(a).

This action is hopelessly confused, both factually and procedurally. Factually, Appellant's actual plans for the subject property seem imprecise and continually evolving. As a result, procedurally, it is unclear what use Appellant is actually proposing and which section of the Ordinance controls. What is clear is that Appellant has failed to meet his burden for a special exception based on the testimony and evidence presented at the hearing, and we deny his request for a special exception. For this reason, we have no reason to reach the variance issues. Given the uncertainty shown by Appellant at the hearing, we will permit him to crystallize his plans and resubmit a proposal for the property without the need to wait one year before submitting a subsequent application. Filing fees will be waived.

Accordingly, for the reasons set forth herein, this appeal is hereby DENIED this 11<sup>th</sup> day of September, 2008.

BOARD OF APPEALS  
By: Bert Iseminger, Chair