

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JILL MILLER
Appellant

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Appeal No. AP2009-015

OPINION

This action is a request for a special exception to construct and operate a special events center and for a variance to reduce the minimum 200' setback from any lot which is part of a duly-recorded subdivision to 100' on the North and East sides of said building, and for a variance from the minimum 25' street right-of-way to 5' for the placement of a freestanding sign. The subject property is located along the southwest side of Cearfoss Pike 1,800' north of Route 63, Hagerstown, Maryland, is owned by the Andrew J. and Edna L. Michael III, and is zoned Agriculture (Rural). A public hearing was held before the Board on April 15, 2009.

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 construction and operation of a special events center on a 10.86-acre area of ground.
2. The property is adjacent to Cearfoss Pike, a major collector road.
3. The special events center will host social receptions, business meetings, wedding receptions, estate shows, and the like, and it will have a patio area.
4. Hours of operation will be based on demand for the year-round facility, from 9 AM to 10 PM Mondays through Saturdays, and noon to 10 PM on Sundays.
5. Use of the property is expected to occur primarily during "off-peak" times, i.e., nights and weekends.

6. Adequate parking is available onsite.
7. The maximum capacity of the proposed structure will be about 275 guests.
8. The structure will have a warming kitchen, but no onsite food preparation.
9. Appellant argues that the topography of the property will limit noise emissions.
10. The property is located in a rural area amidst numerous residential uses.
11. The property is part of land previously platted as a residential subdivision.

12. Area residents testified in opposition to this appeal, citing their concerns about the potential adverse effects from the grant of this special exception. They testified that they were concerned about increased traffic and crime, stormwater runoff, and septic system failure.

13. The peak time of operation of the special events center would be at the same time (evenings and weekends) when most residents are relaxing and enjoying their residences and their yards.

14. The proposed use is not compatible with the existing neighborhood for the reasons set forth below.

15. Appellant argues that the proposed use is functionally similar to clubs, lodges, fraternities, and churches, in that they each hold periodic assemblies, but we disagree, as discussed below.

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. Because we do not grant the requested special exception, we will not address the requested variances.

Appellant has presented an attractive proposal for a useful special events center that is, unfortunately, plagued by its proximity to surrounding residential uses, its inherent adverse effects, and its lack of functional similarity to any permitted use or special exception in this district.

Taking those difficulties in reverse order, we'll begin with the proposed use's lack of functional similarity to a permitted or special exception use. The Ordinance allows as a special exception use in this district any use listed in the Table of Land Use and "any other use the Board of Appeals finds is functionally similar to any permitted use or special exception listed in the table for this district." § 5A.2. Appellant argues that the special events center is functionally similar to clubs, fraternities, lodges, or similar organizations, or churches, in that these uses have periodic assemblies of people. However, the Ordinance specifically restricts "clubs, fraternities, lodges, or similar organizations" to those that are "not conducted as a gainful business." Churches are also non-profit in nature. This suggests that the drafters of the Ordinance were concerned with the intensity of these uses in the Agriculture (Rural) district, as the periodic assemblies that inherently accompany those uses would occur less frequently, presumably, than they would at an event facility operated for profit-making purposes. Thus, as the proposed event center is not "not conducted as a gainful business," and as it is not a church, we cannot find that it is functionally similar to a permitted or special exception use in the district. As such, its use is prohibited.

A special events center hosting up to 275 attendees and supported by additional staff creates certain unavoidable adverse effects: noise, traffic, the need for lighting, etc., attendant to the comings-and-goings of a sizeable group of people. This is amplified when a use is conducted for commercial purposes, as the frequency of the use is regular, and not episodic. When this proposed special event center is placed within a residential area populated with single-family dwellings, the adverse effects are greater than "those inherently associated with such a special exception use irrespective of its location within the zone." *Schultz v. Pritts*, 291 Md. 1, 15 (1981). Here, the property is part of a platted residential subdivision, and it is surrounded by other residential uses. People invested in property and built homes with the expectation that the zone would "provide for continued farming activity and the many uses that do not require public water and sewerage facilities and which may be more suitably located outside of the urban type growth of the larger communities of the County." The intensity of the proposed use is not compatible with the existing neighborhood found in the area, nor is it compatible with the types of uses those residents expected to find in the zone.

Finally, the Ordinance directs the Board to consider the following factors, as applicable, in rendering its decision: (a) the number of people residing or working in the immediate area concerned; (b) the orderly growth of a community; (c) traffic conditions and facilities; (d) the effect of such use upon the peaceful enjoyment of people in their homes; (e) the

conservation of property values; (f) the effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values; (g) the most appropriate use of land and structure; (h) the decision of the courts; (I) the purpose of these regulations as set forth herein; (j) the type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like. Section 25.6. Here, a sizable residential community already exists in the area, and traffic is already heavy and quick on Cearfoss Pike and its arterial feeders. A commercial special events center and its attendant traffic will generate noise, glare, and fumes (exhaust), the effect of which will be deleterious on residents' peaceful enjoyment of their homes. These effects are antithetical to the growing residential neighborhood in this area.

Weighing the totality of the facts, testimony, and evidence before us, we cannot find that the subject request does not adversely affect the public health, safety, security, morals, or general welfare; result in dangerous traffic conditions; or jeopardize the life and property of neighborhood residents, nor is it the most appropriate use of the subject land. Accordingly, for the reasons set forth herein, this appeal is hereby DENIED by a 5-0 vote.

BOARD OF APPEALS

By: Bert Iseminger, Chair

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