

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JAMES KENDLE  
Appellant

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Appeal No. AP2009-22

OPINION

This action is a request for a special exception to establish a contractor's storage yard for a hauling business. The subject property is located at 9835 Garis Shop Road, Hagerstown, Maryland, is owned by the Appellant, and is zoned Agricultural (Rural).

A public hearing was held before the Board on May 13, 2009. The Appellant offered evidence and testimony in support of the appeal. Some 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 establishment of a contractor's storage yard for use in his hauling business.
2. The yard will house roll-off storage containers, trucks, backhoes, a skid loader, a tire loader, and other related equipment.
3. The storage area is 10,650 sq. ft. in area.
4. No buildings will be constructed in conjunction with this request.
5. The subject property is about 4.46 acres in area.
6. Only empty containers will be stored onsite; otherwise, they will be kept at customer's properties.
7. Appellant is engaged in a container hauling business and rough grading business,

and he is the only employee of the operation.

8. The business has been operated from this site for some time.

9. The proposed use conforms to the Plan and is not incompatible with the existing neighborhood.

10. Some opposition was presented to this request, largely complaining of issues that are not germane to this special exception request or within this Board's jurisdiction (including the failure of this Board to grant special exception for a contractor's storage yard on another, wholly-unrelated property and complaints surrounding Appellant's hobby activities).

#### 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. Section 25.6 of 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.

Appellant has met its burden for a special exception. The special exception use is one that is pre-deemed to be compatible in the district unless the inherent adverse effects of the use are greater at the proposed site than they would be at any other location in the district. The use has occurred on the site for some time without incident. The site is in a relatively rural area of the County, and traffic generated by the use is not incompatible with existing road infrastructure. Likewise, the use itself will not generate fumes, smoke, odors, dust, gas, vibrations, glare or noise different in quantity or quality from the normal operation of motorized vehicles upon the property. Trash will not be stored onsite, and the Appellant is the only employee of the business, a self-limiting condition on its size. Furthermore, the 4.46 acre size of the property presents adequate area to buffer the 10,650 sq. ft. that are the

focus of this special exception request. The inherent adverse effects of the use can be mitigated by limiting its scope to the area and equipment proposed herein.

No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors' quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED by a vote of 5-0 *with conditions* as set forth below.

*Conditions*

1. No storage of trash onsite is permitted.
2. Appellant shall be the only employee of the business.
3. The storage area shall be limited to 10,650 sq. ft.
4. Business-related equipment onsite shall be limited to 12 roll-off containers; a backhoe, a skid loader, a rubber tire loader with extra buckets, 3 trucks used for hauling, 5 small trailers and 1 large trailer used for hauling, and related accessory/component equipment.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Date Issued: June 12, 2009