BOARD OF APPEALS CASE NO. 4974	*	BEFORE THE
APPLICANTS: David & Janet McMillan	*	ZONING HEARING EXAMINER
REQUEST: Modification of Special Exception and variance to construct an oversized building; 2852 Dublin Road, Street	*	OF HARFORD COUNTY
	*	Hearing Advertised
HEARING DATE: November 17, 1999	*	Aegis: 9/22/99 & 9/29/99 Record: 9/24/99 & 10/1/99
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ZONING HEARING EXAMINER'S DECISION

The Applicants are David & Janet McMillan. The Applicants are requesting a modification of Board of Appeals Case No. 3693, allowing Mr. McMillan to operate a motor vehicle repair shop on the subject property and, if necessary, a variance from the provisions of Section 267-26(C)(1), permitting the proposed shop building to exceed 50% of square footage of the habitable space of the existing dwelling.

The subject property is located at 2852 Dublin Road in the Fifth Election District. The parcel is identified as Parcel No. 162, in Grid 4-E, on Tax Map 18. The parcel contains 3.914 acres, more or less, all of which is zoned Agricultural.

Mr. David McMillan testified he received permission in Board of Appeals Case No. 3693 to operate a motor vehicle repair shop from his property. He said he is now asking permission to expand the business by erecting a 60 foot by 80 foot shop building, and to modify the approved site plan. He said the subject property is improved by a dwelling, which he and his wife occupy, an existing shop building, several sheds and a parking area. He said that he purchased additional land from an adjoining property owner after receiving the approval in Board of Appeals Case No. 3693.

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Mr. McMillan said that approving his request would enable him to perform all repairs inside of an enclosed building and that the business will operate in essentially the same way. He pointed out that some large vehicles he repairs are unable to fit into the existing building. Using several photographs, Mr. McMillan described the screening that currently exists on the property and noted that MD Route 440 is a State highway that carried large volumes of truck traffic traveling to the nearby Scarboro Landfill. Mr. McMillan said that he has reviewed the Department of Planning and Zoning's Staff Report and that all of the recommended conditions are acceptable, with one exception. He said that he wanted permission to have an outdoor parts storage area on the property that will be fenced or screened, as indicated on the site plan.

Several area residents appeared and testified that they are all adjoining or nearby property owners and said they understood the nature of the Applicants' request and that they had no objections to the request. Each of the area residents testified they are familiar with Mr. McMillan's operation and said that they have not been impacted by noise or traffic and that MD Route 440 is frequently used by heavy trucks traveling to the Scarboro Landfill.

Mr. Denis Canavan, who qualified as an expert in the field of land planning, said that he testified on behalf of the Applicant in Board of Appeals Case No. 3693 and said that he has been retained to analyze the Applicant's request to modify the approval granted in that Case. He said that he personally visited the site and had reviewed the Staff Report of the Department of Planning and Zoning with all attachments.

Mr. Canavan testified that, based on his review of the Zoning Code, the site plan, and the testimony presented, the proposed use complied with all requirements of the Zoning Code. He testified that he agreed with the Department of Planning and Zoning that no variance from the provisions of the Code regulating the size of the accessory structure was required.

He pointed out that the use, as modified, is compatible with other uses permitted in the Agricultural District such as farming. He said that it was important to remember that the application was not for a new use. Mr. Canavan noted that Mr. McMillan's business has been in operation at the subject property for almost 10 years. He explained that the Applicant's are merely requesting a modification of the existing use which will reduce impact by allowing all repairs to be performed inside. He said that the proposed building is similar in size to a barn used in nearby farming operations. Mr. Canavan testified that modifying the Special Exception would not cause any adverse impact to surrounding properties, provided that appropriate conditions are imposed. He indicated that the conditions recommended by the Department of Planning and Zoning's Staff Report were generally appropriate. However, he noted that he felt it would be appropriate to allow outdoor storage of parts on the property, provided the area was located and screened as indicated by Mr. McMillan.

Mr. Anthony S. McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, testified that the Department recommended approval of the requested, subject to the conditions recommended in the Staff Report. Mr. McClune indicated that the Department did not agree that an outdoor storage area for parts should be provided on the property.

Responding to questions posed by several area residents, Mr. McClune indicated the Applicant had never been cited for zoning violations in connection with the current business operation.

Several area residents appeared and testified in opposition to the Applicants' request. For reasons, the area residents stated they felt that approval of the request would adversely impact the value of their property, that the Applicant was in violation of some conditions imposed in Board of Appeals Case No. 3693, that the Applicant was storing more vehicles on the property than were allowed on the subject property, and that a commercial operation should not be allowed in a residential area.

However, on cross-examination, the area residents indicated that their property values had increased since approval of Board of Appeals Case No. 3693, that they had not reported any zoning violations to the Department of Planning & Zoning, and that MD Route 440 was a busy State highway used by heavy trucks going to and from Scarboro Landfill.

CONCLUSION:

The Applicants are requesting a modification of Board of Appeals Case No. 3693, to construct a shop building and approval to modify site plans.

Section 267-52 provides:

B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.

C. Extension of any use or activity permitted as a special exception shall require further Board approval.

The evidence shows that the Applicant meets all of the requirements of a Special Exception for a motor vehicle repair shop and that approval of the motor vehicle repair shop on the subject parcel will not have any greater impact on the subject than elsewhere in the zoning district. The use has occurred for a number of years without impact or complaint from area residents. The modification requested by the Applicant will not create additional impact and may, in fact, lessen the impact because the Applicant has indicated that he will keep the vehicles stored on the property within the enclosed building while they are being repaired, and the proposed building will provide screening from properties located on the opposite side of MD Route 440.

As set forth in the Staff Report and as testified to by Denis Canavan, because the motor vehicle repair shop is a separate principal use under the Code, the provisions of Section 267-26(C)(1) of the Code does not apply. Accordingly, the variance for the size of the shop building requested by the Applicant is not necessary.

The testimony of the area residents does not constitute probative evidence sufficient to rebut the evidence presented by the Applicants, the Department of Planning & Zoning, Mr. Canavan, and the neighbors who support the Applicants' request. One area resident said the Applicant was in violation of previously imposed conditions, but she did not know how many vehicles shown in a photograph of the parcel were owned by Mr. McMillan, and she also testified that she did not notify the Department of Planning and Zoning to conduct an investigation.

Conversely, Mr. Anthony McClune testified that the Department of Planning and Zoning responds to complaints from citizens regarding zoning violations and he stated that the Applicant has never been cited for a violation.

Additionally, the area residents who complained about additional traffic admitted that MD Route 440 is a heavily traveled State highway and that even though the Applicant has been operating the motor vehicle repair business for 10 years, the appraised values of their properties have increased. It should also be noted that the Applicant's business is not a new use. It has been in operation in the same location for approximately 10 years and the Applicants are requesting a modification which should reduce the impact.

Likewise, the Staff Report of the Department of Planning and Zoning indicates that the predominate land use in the area is Agricultural and there are no major residential developments in the area.

Based on the testimony presented and the Staff Report, the Hearing Examiner finds that the request to revise the site plan, as described by the Applicants' witnesses, will not adversely affect the public health, safety and general welfare, or result in dangerous traffic conditions or jeopardize the lives and property of people in the neighborhood.

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The Applicant did request a modification of the conditions proposed in the Staff Report to allow an outside storage area. However, the Hearing Examiner does not find a basis for allowing an outside storage area since the Applicant is substantially increasing the size of the building used in the motor vehicle repair operation.

Therefore, it is the recommendation of the Hearing Examiner that the requested modifications be approved, subject to the following conditions:

1. That the Applicants prepare a detailed site plan that reflects required setbacks, existing and proposed improvements, parking and vehicle storage areas, and screening to be reviewed and approved by the Department of Planning and Zoning.
2. That the Applicants shall plant a double staggered row of evergreens along the western property line. These trees shall be planted on 8 to 10 foot centers and be a minimum of 3 to 5 feet in height at the time of planting.
3. That the number of vehicles waiting for repair shall be limited to ten (10). This does not include employee vehicles or personal vehicles owned by the Applicants and their family.
4. That all other conditions of approval in Board of Appeals Case No. 3693 shall remain in effect.
5. That the Applicants shall obtain all necessary permits and inspections for the new building and parking/vehicle storage area.
6. That the proposed storage and parking area shall be paved with an all-weather surface.

Date JANUARY 13, 2000

L. A. Hinderhofer
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Zoning Hearing Examiner