APPLICANTS: **Jack & Lynda Berndt**	**BEFORE THE**
REQUEST: A special exception to permit commercial vehicle storage in the Agricultural District	**ZONING HEARING EXAMINER** **FOR HARFORD COUNTY** **BOARD OF APPEALS**
HEARING DATE: January 24, 2007	**Case No. 5578**

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Jack Berndt

CO-APPLICANT: Lynda Berndt

LOCATION: 537 Carsins Run Road, Aberdeen
Tax Map: 43 / Grid: 3D / Parcel: 144
Second (2nd) Election District

ZONING: AG / Agricultural

REQUEST: A special exception, pursuant to Section 267-53D(1) of the Harford County Code to permit commercial vehicle storage in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Jack Berndt, Applicant, asks for permission to park a commercial tractor and trailer on his property, and inside a pole barn to be constructed by him for that purpose.

The property is a 5.75 acre parcel, zoned agricultural, located at 537 Carsins Run Road. The parcel is currently improved by a single family dwelling, with well and septic. The property has frontage on the east side of Carsins Run Road. The front portion of the lot is open; the remaining, rear portion of the lot is wooded and adjoins densely wooded areas to the south and east.

The Applicant purchased the property in August, 2006.

Preliminarily, it is noted that a review of the Deed for the property, recorded among the Land Records of Harford County at Liber No. 6898, folio 43, shows Mr. Berndt being co-owner with Linda Berndt. The application is only signed by Jack Berndt. Linda Berndt's signature is not affixed thereto. The application is accordingly improperly filed as it is not signed by all owners in interest.

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Mr. Berndt described the home now on the property as having been built in the 1940's, and currently occupied by his son. Mr. Berndt has a business which uses a semi-truck and car carrying trailer. This vehicle is only on his property approximately 4-6 days per month, he says. For the most part, it is gone from the property.

Mr. Berndt has begun constructing a lane from Carsins Run Road to the back portion of his property on which he will be constructing the pole barn. The truck and trailer will be parked in the pole barn on those occasions when it is on the property.

In addition, Mr. Berndt explained that he has various pieces of farm equipment and grass mowing equipment which he will also be storing in the pole barn.

Additionally Mr. Berndt has acquired, and photographs in the file demonstrate, an accumulation of other equipment and items on the property. Those other items include a backhoe; approximately 15 engine motors in crates; a trencher machine; a stake body truck; a trailer for hauling equipment; a farm tractor, a small dump truck with snow plow attached; a car carrier trailer which Mr. Berndt explained is not utilized by his business; a bulldozer; a backhoe; and a commercial roller. Various other items of equipment and material are also on the site, although their use and nature cannot be readily identified. All of this equipment is owned by Mr. Berndt and has been brought onto the property since he purchased it in August. Much of this, Mr. Berndt explained, was used to construct a driveway and to remove some trees. He stated that the engine motors will be removed. All other equipment will be stored in the pole barn once it was constructed.

Mr. Berndt explained that for financial reasons he cannot construct a pole barn for approximately 18 months. His application indicates that when he purchased the property he did not understand he needed a special exception in order to allow the parking of commercial equipment on the property.

Mr. Berndt explained that the pole barn, to be approximately 40 feet by 70 feet, will be in the forested part of his property. It should not be visible from Carsins Run Road, at least during most of the year. A neighbor to the north side of the property should be able to see the pole barn. However, that neighbor has submitted a letter, marked as Applicant's Exhibit No. 1, stating that this neighbor has no issue with the commercial vehicles being parked next door. Mr. Berndt does not believe that anyone else will be able to see the pole barn through the tree cover.

Mr. Berndt explained that all commercial equipment will be removed by the time the driveway and pole barn is constructed, except for the equipment which the Applicant seeks permission to store and which he needs to maintain his property.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune explained that the commercial vehicle use must be fully screened. He and the Department believe this can be accomplished by the construction of a pole barn as proposed. The property meets the two acre minimum lot size standard.

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The Department has observed several trucks on the property. The Staff Report notes on the day of its inspection;

> *". . . a car carrier parked on the stone driveway, a small dump truck in the grass, a small bull dozer, a large goose neck triple axle trailer, bobcat skid loader, a commercial style roller, a lawn mower, a farm tractor, parts to a backhoe, a frame to a small trailer, and miscellaneous items."*

A large stake body truck was also noted.

The Staff Report also notes that upon the initial inspection on August 31, 2006, three commercial vehicles were located on the property, including two semi-tractor trailers.

Mr. McClune states that sight distances along Carsins Run Road are good. Traffic should not in any way be impacted if the proposed special exception is granted.

Mr. McClune believes, however, than 18 months to construct a pole barn is not reasonable. He believes that a more reasonable time to construct such a building is 8-9 months. All contractors and commercial equipment must also be removed, according to Mr. McClune.

In opposition testified Brad Fox, who lives on the west side of Carsins Run Road close to the subject property. Mr. Fox owns a 21 acre parcel, which comes as close as 20 feet to Mr. Berndt's property.

Mr. Fox has observed car carriers coming from Carsins Run Road and onto Mr. Berndt's property regularly. Mr. Fox is concerned that the request to park one commercial truck and trailer is simply the tip of the iceberg. He believes Mr. Berndt is using his property as a distribution center, bringing equipment and other items onto the property, storing them and then removing them at a later date. Mr. Fox objects to the great intensity of the use, to the present commercial use, and to any future commercial use. He believes that the granting of a variance will negatively impact his property. Mr. Fox identified a series of photographs, accepted into evidence, of various items of equipment on the Berndt property, including trucks and trailers which enter and leave the subject property. Mr. Fox reiterated his belief that the property is being turned into a distribution center. He believes that if granted the special exception, Mr. Berndt will continue his warehousing and distribution operations. Mr. Fox also states that a great deal of scrap metal is being brought onto the property which, in turn, forms at least a portion of the basis of Mr. Berndt's warehousing and distribution operation.

Next in opposition testified Kathy LaCroix of 601 Carsins Run Road. Mrs. LaCroix is one parcel up from that of Mr. Berndt's. Her property is a 30 acre horse farm, and she is very concerned about the impact truck traffic coming and leaving Mr. Berndt's property will have on the horses which she breeds. She believes that the noise and commotion of the traffic will interfere with the health and well being of her horses.

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Mrs. Berndt then stated that commercial truck traffic uses Carsins Run Road all day long, and implied that the use of Carsins Run Road by an additional truck would have little impact. She also stated that once the driveway and pole barn is constructed, the construction equipment will be taken off the property as she and her husband will no longer have a need for it.

No other evidence or testimony was presented in opposition.

APPLICABLE LAW:

This special exception request is governed by Section 267-53D(1) of the Harford County Code:

> *"D. Motor Vehicle and related services.*
>
> *(1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*
>
> *(a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*
>
> *(b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*
>
> *(c) A minimum parcel area of two (2) acres shall be provided.*

Section 267-51 of the Harford County Development Regulations, Purpose states:

> *"Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1."*

Section 267-52 of the Harford County Development Regulations, General Regulations states:

> *"A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.*

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.

D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.

E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof."

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this request and will be discussed in more detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is a 5.75 acre, agriculturally zoned parcel located in a mixed residential/agricultural area of Harford County. The property is improved by an older single family home, occupied by the Applicant's son.

The Applicant requests a special exception to use the property for the parking and storage of a tractor and trailer combination. A tractor and trailer is used by the Applicant to transport cars. According to the Applicant's testimony, the truck will be on the property only occasionally. It will be stored in a 40 foot by 70 foot pole barn which the Applicant desires to construct. The pole barn will be located to the rear of the Applicant's property, within a wooded area. The drive, currently under construction, will be used as an access from Carsins Run Road to the pole barn.

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The Applicant can meet the special exception requirements of Section 267-53D(1), discussed as follows:

> *D. Motor Vehicle and related services.*
>
> > *(1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:*
> >
> > > *(a) The vehicles and equipment are stored entirely within an enclosed building or fully screened from view of adjacent residential lots and public roads.*

The property is within the agricultural district. The tractor and trailer combination is considered a commercial vehicle. The Applicant proposes to store the vehicle within an enclosed building.

> > > *(b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.*

The Applicant will not be engaged in the sales and service of construction and industrial equipment, or of farm vehicles and equipment.

> > > *(c) A minimum parcel area of two (2) acres shall be provided.*

The Applicant easily meets this requirement, having a lot in excess of five (5) acres.

However, the analysis of Applicant's request cannot end at this point. While legislatively determined to be compatible with other uses allowed in the agricultural district, the special exception requested must nevertheless not result in an impact greater than the impact that would result from such a special exception if located elsewhere in the district. This means that while the parking of a commercial use tractor and trailer on agriculturally zoned property will have, no doubt, some impact regardless of where it is located, the use may not be denied provided the impact is no greater than the impact one would normally expect of it.

The parking of a commercial tractor and trailer on the Applicant's property may not be what the neighbors would like to see but, provided the impact is a "normal" or "average" impact and provided the specific special exception requirements are met, the use cannot be denied. See Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981).

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The Applicant's past history and present use of his property, however, raises serious questions as to whether the Applicant will, in the future, conduct himself in a manner so as not to allow impacts to occur which are beyond what one would normally expect of such a commercial vehicle and equipment storage use.

Almost from the day the Applicant purchased the property he began to accumulate scrap metal, vehicles, construction equipment, engine motors (some 15 or more), large storage boxes, a stake body truck, an older used car hauling trailer, and what appears to be all matter of other types of material and equipment. With the exception of those items which are readily identified as farm vehicles, or equipment used by the Applicant in cleaning and maintaining his property, this equipment and these materials are not allowed. The Applicant has, as a result, allowed illegal uses on his property. The extent of the equipment and material which he has accumulated since August 2006 is impressive. The Applicant now presents himself as requesting a special exception, with the application being filed as a result of a zoning violation notice. One questions whether a request for special exception would have ever been made if not for the filing of the Violation Notice.

The Applicant is surrounded by residentially used properties. The equipment and materials he now has on the property are readily visible to his surrounding neighbors, as well as users of Carsins Run Road. The tractor and trailer is visible to his neighbors and to users of Carsins Run Road. Two of his neighbors appeared to testify in opposition to his request. Testimony of these neighbors is credible, is based on their observations, and was persuasively presented. They are worried that the Applicant's obvious commercial use of his property is on a scale totally out of keeping with the neighborhood and will, based on the Applicant's history to date, continue to be out of keeping with the neighborhood. The Applicant suggests that if the pole barn is built all equipment which he may legally retain on the property will be stored within the pole barn, and all other equipment will be disposed of. As the tractor and trailer will be parked within the pole barn, there will be nothing visible of an objectionable nature to the neighbors. The Applicant also suggests, however, that he needs 18 months to do so. Presumably, in the meantime, the neighbors will continue to be exposed to the unsightly and obtrusive accumulation of equipment, materials and vehicles now on the Applicant's property. It is found herein that 18 months is not an acceptable period to construct a pole barn. If the Applicant wishes to be granted his requested special exception, he must agree to the construction of such a structure in a much shorter time.

While one is tempted to anticipate that any approval, even with conditions, would merely allow the nuisance to continue, and to perhaps even thrive, the Board of Appeals must be guided by two principles: The first is that evidence of past violations cannot be used as a basis for the denial of a present application. If this were allowed, the application must be denied. However, this remedy is not available. Secondly, the use requested, i.e., the parking of a tractor and trailer within a pole barn, is exactly the type of use which is a commercial storage special exception is designed to allow and, as such, it must be approved provided all specific and general conditions are met, and that there is no adverse harm beyond that normally associated with such a use.

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These principals, when taken together, require the approval of the requested special exception provided the Limitations, Guides and Standards of Section 267-9I are adequately met. It is found that the standards can be met provided certain operating conditions are imposed and complied with, as discussed below:

(1) The number of persons living or working in the immediate area.

The storage of one commercial vehicle on the parcel should not impact the number of persons living or working in the immediate area, nor, in turn, will the people in the area adversely impact the proposed use.

(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The Harford County Department of Planning and Zoning is of the opinion that the parking of one commercial vehicle on the subject property will not impact traffic on Carsins Run Road. Sight distances are adequate. The property has adequate frontage on Carsins Run Road. These suggestions are adopted and relied upon herein.

(3) The orderly growth of the neighborhood and community and the fiscal impact on the County.

The use is permitted in the Agricultural District as a special exception with Board of Appeals approval. The use, accordingly, should have no adverse impact on the growth of the neighborhood or community. However, the storage of materials, junk, and equipment not related to the Applicant's use causes an adverse impact to the neighborhood and must be eliminated immediately as a condition of approval.

(4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

With appropriate conditions, imposed below, there should be no significant impacts related to these items. However, it is found that 18 months is not a reasonable amount of time to conform to the special exception statute. The Applicant will be given 6 months only to build his barn and store his vehicle.

(5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Level Volunteer Fire Departments will provide fire protection and emergency service. The property is served by private well and septic system. A company of the Applicant's choice will handle trash collection.

(6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The use is consistent with generally accepted engineering and planning principles. The building will be constructed on the wooded portion of the Applicant's site. It should not be substantially visible to any adjoining neighbor or to passing motorists.

(7) The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.

No such uses have been identified.

(8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

As conditioned, the use will be consistent with the Harford County Master Plan.

(9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

No such sensitive environmental features have been identified.

(10) The preservation of cultural and historic landmarks.

No such landmarks have been identified.

Despite the Applicant's ability to meet, with conditions, the specific and generalized requirements referred to above, the Applicant's use has a potential of causing great concern and impact to the neighborhood, and of actually causing a decrease in property values as well as impacting the enjoyable use by the neighbors of their own properties. Accordingly, approval will be conditioned in light of the discussion above.

CONCLUSION:

It is, therefore, recommended that the requested special exception be granted, subject to the following conditions:

1. Lynda Berndt shall, in writing, immediately join the application filed in this case.

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2. The Applicant's approval shall be conditioned on having no more than one tractor and trailer on the subject property at any one time. The tractor and trailer must be enclosed within the pole barn at all times it is on the property. The Applicant shall maintain a log of the dates on which the tractor and trailer is stored on the property. That log of dates shall be available to the Harford County Department of Planning and Zoning upon its request. All other tractors and trailers, semi-tractor and trailers, trucks (except personal vehicles), and car carriers must be permanently removed within 30 days of this decision.

3. The Applicant shall clean the property, shall dispose of all commercial construction material, equipment, parts and other miscellaneous materials, and shall remove all other vehicles and equipment from the property within 30 days of this decision. Farm tractors and lawn and ground maintenance equipment used on the subject property, and, of course, the Applicant's one tractor trailer shall be stored at all times within the pole barn immediately upon its completion. No equipment or material of any nature shall be stored outside the barn.

4. There shall be no major repairs of vehicles or equipment on the site. There shall be no diesel fuel or gasoline stored on the site. Minor repairs to the tractor and trailer, such as light repair, shall be allowed.

5. Given the potential for adverse impact on adjoining neighbors, there shall be no exterior lighting around the proposed building except modest security lighting. Security lighting shall be directed away from Carsins Run Road and neighboring properties.

6. The Applicant shall submit a detailed site plan to the County for review and approval through the Development Advisory Committee.

7. The existing trees, other than those removed for the construction of the building and driveway, shall be maintained.

8. This approval is for the Applicant's use only and shall terminate upon the sale of the property or of the tractor and trailer business.

9. The pole barn shall be fully constructed no later than six (6) months from the date of this decision, and at that time the tractor and trailer shall be stored within the pole barn and all other applicable terms and conditions shall become effective. All remaining equipment and materials must be fully stored within the enclosed building within that time. The Harford County Department of Planning and Zoning shall be contacted immediately upon completion by the Applicant and shall conduct a property inspection at that time to insure compliance with these conditions. A certification of their inspection and compliance shall be inserted in this file. No extensions of the six (6) month limitation will be granted.

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10. The Applicant will be in violation if he fails to comply with any term hereof, particularly condition number 9. Any future request to modify the terms of this decision will only be considered with the requirement that the Applicant post a bond to insure continued compliance.

Date: March 19, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on APRIL 16, 2007.