

BOARD OF APPEALS

September 26, 2011

7:00 PM

ATTENDANCE: Board Members: Chairman William Malesh, Bob Matthews, Mike Salmon, Town Attorney Sue Ford, Court Reporter Carol Beresh, Town Planner Mary Ann Skilling and Planning and Zoning Coordinator Dianna Battaglia.

Meeting was called to order at 7:03 PM.

APPROVAL OF MINUTES

Motion was made by Mr. Matthews and seconded by Mr. Salmon to approve the September 28, 2009 meeting minutes as written. **All in Favor; Motion Carried.**

Mr. Malesh indicated that the second order of business, SE2011-02 – Special Exception request to operate a group home has been withdrawn by the applicant.

NEW BUSINESS

- A. File No. SE2011-01-** Appeal & Special Exception Request to operate seasonal produce/flower business at 1000 Cedar Corner Road; PROPERTY OWNER: Porter Real Estate, 225 Principio Road, Port Deposit, MD 21904; APPLICANT: Ron Baer, 655 Brenda Lane, Aberdeen, MD 21009; LOCATION: 1000 Cedar Corner Road, Perryville, MD 21903; Tax Map 800, Parcel 766, Zoned NB.

Mr. Ronald Elwood Baer was sworn in. He was laid off from his job and decided to start his own produce stand business. His plan is to offer plants, flowers, local produce, perennials, pumpkins, Halloween stuff, Christmas decorations and Christmas trees, beginning in March and continuing through to December 24th.

Mr. Salmon asked if he had considered the site at the old Bines and Crabbe location that operates a flea and produce market. Mr. Baer stated they are only there from Friday to Sunday and he wants to work six or seven days a week.

Discussion continued regarding Mr. Baer's petition of support that includes many out of state names. Mr. Baer explained some are from BRAC who haven't moved here yet; many of his customers stop on their way home from work. When asked how many of his customers are repeat customers, Mr. Baer responded most of them.

During staff review other properties along Route 40 were suggested as alternative locations in the C-2 zoning district where a produce stand is permitted. Mr. Matthews asked Mr. Baer if he considered any of those locations. Mr. Baer explained the other locations want too much money and he wouldn't be able to afford it. He didn't check it out but knows the old Colonial Honda site wants Five Thousand Dollars and he can't afford that. Mr. Porter is working with him by letting him use his site. He is just getting started and has no money.

Discussion continued regarding permitted uses in the Neighborhood Business district. Mr. Baer stated this is a neighborhood business. I'm selling produce to the people in the area. That's why I came to this area because there was nobody else around. Mr. Malesh

indicated we have to consider the safety and welfare of the community and that particular corner is one of the most difficult places to get in and out of. Mr. Baer was asked if he would consider moving his stand to the other end of the property facing Cedar Corner Road. Mr. Baer explained he would be out of sight from 222 and needs the visibility. If they are repeat customers they already know he's there and will turn into Cedar Corner Road to buy. Mr. Baer stated if people don't see him they will think he moved and they will not stop. If people can't see what he has to offer they will just ride by. Mr. Salmon indicated he uses the intersection every day and doesn't think the business impacts the traffic, but it is in violation of zoning regulations. Mr. Baer disagreed because what else would be considered a neighborhood business than a produce stand.

Questions were asked regarding available parking. Some customers turn on Cedar Corner and use the parking behind him, but others use the parking lot for the small retail center on 222. That parking lot is on a different piece of property and was designed to provide spaces for the customers of those stores: liquor store, karate school, and pizza shop. Mr. Baer said there is always room for people to park and have never had a problem. The businesses have never complained and Mr. Baer gets along with everyone.

Mr. Andrew Harreld was sworn in. He commented that the traffic is not a problem and parking is never a problem. If people want to stop to buy something they will deal with the issue of traffic, and use other ways out of the area. If he's legally entitled to that spot and he wants to sell what he wants to sell I think we should let him do it, whatever we can do in Perryville to help Perryville is a good thing. We should be helping each other. I enjoy going by there every day.

Discussion continued regarding sight issues around the intersection. Mr. Matthews commented over the last couple weeks I have been coming out of that road and I have noticed display of mums within the required setback area almost all the way out to 222. They're not tall enough to impact sight lines to somebody now but as you transition into Christmas trees or larger bushes and stuff like that it could potentially create a problem. Setback and sight line requirements must be met. Mr. Baer responded I know about the sight issue and I'm not going to put anything out there that you can't see around. Storage of Christmas trees should be placed behind the building or further down on the site, reviewing a layout of the property to show where the trees would be stored and displayed. Displaying in front would be a problem. Mr. Baer pointed out that the existing sign on the other property is a problem as a sight issue.

Ms. Skilling submitted and reviewed the Staff report as part of the record:

DATE: September 26, 2011

RE: File #SE2011-01 Appeal & Special Exception to operate a seasonal produce/flower business at 1000 cedar corner Road located in the Neighborhood Business District (NB)

GENERAL: The property on which the Produce Stand is located is on the corner of Cedar Corner Road and MD-222 (Tax Map 800, Parcel 0766 – Exhibit A). The existing zoning is Neighborhood Business (NB). Per Section 161, Table of Permissible Uses, Commercial, Office and Service - 2.900 Open Air Markets and 2.910 Open Air Markets (farm and craft markets, flea markets, produce

markets non-municipal) are NOT permitted in the NB District. However, open-air markets, including produce markets are permitted in the C-2 district.

Ms. Skilling indicated Greenhouse and Horticultural Sales requires a minimum of two (2) acres. The problem is we just don't have a permitted use; it's not listed to allow. We considered the possibility of a seasonal market.

BACKGROUND:

On June 20, 2011, the applicant applied for a Zoning Certificate (#2011-088) to operate a seasonal produce stand at the above location and the application was denied because the use was not permitted in the NB District.

On July 25, 2011, after discussion with the Planning staff, the applicant applied for a Special Exception (SE2011-01) to operate a Produce Flower Shop at the above location operating from mid March to December 31, Monday through Sunday 9:00 to dusk.

PROCEDURAL/ADMINISTRATIVE:

Zoning Certificate #2011-088 – Article V Appeals, Variances, Interpretations, Section 62. An appeal from any final order or decision of the Zoning Administrator may be taken to the board of Appeals by any person aggrieved. Based on the uses presently prescribed in the Permissible Use Table for the NB District, it was determined that the use for a seasonal produce stand is not allowed. Although staff is looking into possible Zoning Changes that may impact this type of use/activity, the present Ordinance language does not allow this use in the Neighborhood Business District (NB).

A motion was made on the validity of the decision of the Zoning Administrator.

Information submitted to support the request:

- *Letter from Steve Porter, property owner, authorizing use of the property known as 1000 Cedar Corner Rd to be used for a produce/flower stand to Ron Baer operating as Sun Produce.*
- *Letter, Special Exception Application, and minor site plan.*

In consideration of the Special Exception, the Board of Appeals must consider the criteria for granting the SE (as established in Part II, Section 52) as followings:

1. *The intent of zoning districts within which the use of land and buildings and the bulk and location of building structures in relation to the land are substantially uniform. Recognizing, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration in each case of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location.*
2. *The section is to establish procedures and minimum standards to be used as guidelines for the consideration and authorization of those uses classified as special exceptions under the respective District regulations.*
3. *The granting of a special exception does not exempt the applicant from complying with all other requirements of this chapter or of the law.*

Section 57 – Standards for approval of a Special Exception by the Board of Appeals.

No special exception shall be approved by the Board of Appeals unless such Board shall find:

- 1. That the establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare.*
- 2. That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.*
- 3. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.*
- 4. That adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities and improvements have been or are being provided.*
- 5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.*
- 6. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the Town of Perryville.*
- 7. That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific use.*
- 8. Conditions and Guarantees. Prior to the granting of any special exception, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in Article XII. In all cases in which special exceptions are granted, the Board of Appeals shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with. Such proof shall be filed with the board on or before March 15 of each year. The first filing shall not be made unless and until at least 12 months have elapsed since the date of the grant of the special exception.*

Planning considerations:

- 1. There is limited parking on the lot and parking areas are not defined. Many patrons park on the adjoining property housing 3 businesses and parking is limited.*
- 2. The intersection of Cedar Corner Road and MD 222 is heavily travelled with two-lane traffic and a center turn lane.*
- 3. The location of sale items is within the “sight triangle” at corners that is a requirement for vehicular safety.*
- 4. Ingress and egress onto Cedar Corner Road is not defined.*

5. *Adequate utilities are not available (water, sewer).*

Mr. Baer stated there is water. I get the water from the house. I had to get the water turned on and then the next day someone said you need a Zoning Certificate. I am able to go into the house to use the bathroom, that's the only thing I go in for. The water to the house is turned off and I use a bucket to flush the toilet. The house has leaky pipes so he disconnected the water to the house and ran it out to me to the hose that's outside. Whatever I need to do I have water for it.

Although the business provides a service to the community, the proximity to the intersection is a safety concern. Any use of the site long term as a produce stand would require conditions that would guarantee safety on site and at the intersection. Staff has offered to assist in locating a site that would be more appropriate for long-term use or relocating the temporary building fronting Cedar Corner Road where there is an appropriate ingress and egress onto Cedar Corner Road.

Consideration should be given by the Board of Appeals to limit the use to "seasonal – 3 months" based on the provisions in place that limit vendors from locating at will temporary sales venues.

Ms. Skilling continued the way the Ordinance is written today this use is not permitted. I have checked with the Town Attorney to confirm the fact. In addition we have discussed the process for making changes to the Ordinance.

Mr. Baer argued what's more neighborhood business that a flower and produce shop. I don't understand that. I'm not breaking the law, I'm not a criminal. I'm just trying to make a living. You are making this difficult. It shouldn't be this difficult. What am I doing wrong? Absolutely nothing. Trying to make a living.

Ms. Skilling responded we don't think you are doing anything wrong except right now our regulations do not allow this use...

Mr. Baer interrupted then it's wrong. A produce stand is a neighborhood business. I don't understand what you're talking about. A neighborhood business is a produce stand. I'm in the neighborhood, everybody comes there, this is ridiculous. I'm just trying to make a living.

Ms. Susan Ford stated as a point of order I think the record will be clearer if staff complete the staff report not interrupted then if there are questions of staff then the board or the applicant could ask questions of staff without interruption. I am counsel to the Town with the law firm of Council, Baradel, Kosmerl, & Nolan.

Ms. Skilling concluded the report and submitted the review package provided to all members as Exhibit 1 for the record.

Mr. Baer continued arguing that moving the stand back would create more of a safety issue because the customers would then be parking in front of him, making it more difficult and dangerous.

Mr. Malesh indicated basically this does not fit the area and that's what the appeal is all about. Mr. Harreld testified strongly there is not traffic problem but it is a problem on a regular basis for the residents there. I read Ms. Skilling's information prior to this and my feelings are I'm pretty uncomfortable with this. Is there any other place in Town you could possibly get into, or let the Town help you so you could make a livelihood at a better location.

Mr. Baer responded where I'm at is working for me, everywhere else will be too expensive. Steve Porter is working with me.

Mr. Matthews asked but how do you know that if you haven't checked.

Mr. Baer responded I know somebody who tried to buy the old Colonial property up there and that was Five Thousand Dollars a month. All these other places are going to be more than what I'm paying right now, a whole lot more. I wouldn't be able to go there because it would be too much money. I'm just trying to make a living. It's not as dangerous at that corner that you're trying to make it.

Mr. Malesh asked are you finished. I'll give the board here a moment to consider and we'll make a motion.

Ms. Ford stated the board is going to take two (2) votes this evening; one on whether or not the Zoning Administrator correctly denied the Zoning Certificate of use, that's the first issue that will need to come to a vote. And the second would be whether or not to grant the requested Special Exception for the produce and flower stand. On the Special Exception, staff correctly stated the criteria for the Special Exception and one of them set forth in your standards in Section 57 of your code, number 7 states "*Special Exception shall...conform with the applicable regulations of the district in which it is located or to the special requirements established for the specific use.*" So it has to conform to whatever requirements there are, and it's also discussed in Staff's report that the section under which I believe the applicant is requesting a Special Exception, which is Section 189, Greenhouses and Commercial Nurseries, the tract of land must be two (2) acres in size. I've heard testimony on that issue and you would have to make a decision about whether that particular standard is met or not. I think staff was also referring to Section 187 of the code which would be Festivals and Special Events and basically seasonal markets, "*seasonal business uses, may be permitted in any district by the Mayor and Commissioners*" so that wouldn't be an issue for the board to determine this evening, whether a seasonal use of up to 90 days would be permitted for this applicant, that would be a separate determination for the Mayor and Commissioners to make under Section 187. So you need the two motions.

Motion made by Mr. Matthews and seconded by Mr. Salmon to approve the Zoning Administrator's denial of the request per reasons set forth in Staff report. **All in Favor. Motion Passed.**

Discussion continued regarding the proposed use as greenhouse or horticultural sales. Ms. Ford explained it would be for the board to determine whether horticultural sales are the same thing as horticultural nursery because a horticultural nursery is what requires the site to be at least two acres in size and so that's within that conditional use standard. The permitted use is Greenhouse and Horticultural Sales with outdoor display. The common meaning in Webster's dictionary, horticultural is basically plants

that are grown so if what he is proposing to sell are Christmas trees, pumpkins, and produce, those are all plant products. Ms. Skilling stated the property is .545 acres as per application submitted and as indicated on Tax Assessment detail and submitted as Exhibit 1.

Motion made by Mr. Matthews and seconded by Mr. Salmon the Special Exception request SE2011-01 be denied based on the reasons stated in Staff report and legal review, the acreage is significantly less than the two acres required, safety reasons at the corner sight triangle, and there does not seem to be any option for approving it under current Zoning laws. **All in Favor. Motion Passed.**

Mr. Malesh indicated to Mr. Baer you may continue to operate until October 31, 2011.

Mr. Baer shouted thanks for nothing, you've put me out of business. I hope you're all happy. I'm going to get you all fired. This is a joke.

Ms. Ford stated I'll do a written decision and then the decision becomes final from the time of the written decision and he has a thirty (30) day appeal period. An appeal is what we'll do next and I'm sure staff can work with him on the seasonal use.

Ms. Skilling indicated we'll work with him and try to see if we can find another location, which we've been trying to do.

Motion made by Mr. Matthews and seconded by Mr. Salmon to adjourn the meeting at 7:50 p.m. **All in Favor; Motion passed.**

Respectfully submitted,

Dianna M. Battaglia
Planning & Zoning Coordinator