

IN THE MATTER OF
THE APPLICATION OF
FRANK ALLEN
(Special Exception - NAR)

BEFORE THE CECIL COUNTY
BOARD OF APPEALS
CASE NO.: 3562

OPINION

Application of Frank Allen (the “Applicant”), for a special exception for a farmer’s market at property located at 35 New Bridge Road, Rising Sun, Maryland 21911, designated as Parcel 148 on Tax Map 2, in the Eighth Election District of Cecil County (the “Property”), in an area presently zoned Northern Agricultural Residential (NAR). The property is owned by the Applicant.

This application is brought under the provisions of Article V, Part I, Section 63 and Section 54.4 Table of Permissible Uses 1.06.000 of the Ordinance, which permits a farmer’s market as a Special Exception in the NAR zone provided that:

1. Any permanent structure for the display and sale of locally produced agricultural and fisheries products shall be no larger than 3,000 square feet.
2. Buildings shall maintain the front yard setback for the zone in which it is located.
3. Exits and entrances shall be provided which shall be at least one hundred (100) feet from any intersection on a local road and two hundred (200) feet from all other intersections.
4. A minimum of three (3) off street parking spaces and one (1) space per 300 square feet of building area over 900 square feet shall be provided.
5. A minimum of one (1) self contained privy shall be maintained on the site while operation is in use.
6. No temporary structure shall be permitted for a period exceeding three (3) years, subject to renewal.
7. The farmers market is used for the sale of predominantly locally produced agricultural products.

Article XVII, Part II, Section 311 of the Ordinance specifies that no special exception shall be approved by the Board of Appeals after considering all facts in the case unless the following findings are made:

1. Such use or any operations thereto will not be detrimental to or endanger the public health, safety, or general welfare.

2. The use will not be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor substantially diminish or impair property values in the neighborhood.

3. The establishment of the use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zone.

4. The use will not, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.

5. The use shall not adversely affect critical natural areas or areas of ecological importance.

6. The use shall, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. That the particular use proposed at the particular location proposed, would not have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD.

1)

8. 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.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

Applicant requests special exception to operate a farmer's market on the Property. The Applicant operates an existing produce stand on the Property, and wants to expand to operate a farmer's market. The Applicant testified that the expansion will be primarily produce related, with more products to be offered for sale, such as flowers, shrubbery, jellies, pies, etc. No animals will be offered for sale, however, the Applicant will from time to time offer kittens or rabbits free of charge. The Applicant testified that there will be no expansion of the physical dimensions of the existing structure, and that there are currently no Sunday sales and none planned for the future. The Applicant further testified that there is currently a sign on the Property which states "farmers market" and that the sign has been there since 1999. The Applicant would have one small temporary sign which states the type of product available, e.g., "flowers" or "produce", and a flag stating "open" during times when the farmer's market is open for business. The Applicant stated that the farmer's market would be open seasonally from May to November, that the Property has parking for ten cars, that he does not expect a material increase in traffic, and that the Property, which is located off of Rt. 222, has a "U" shaped driveway for ingress and egress. The Applicant will have few deliveries to the Property, and testified that what is delivered would go first to the farm, and not directly to the farmer's market.

No one spoke against the application, and three individuals spoke in favor the special exception.

Clifford Houston, Cecil County Department of Planning and Zoning, testified that the Planning Commission recommended approval of the application for a period of two (2) years.

From the evidence, the Board makes the following findings of facts pursuant to the requirements of Section 311:

1. That granting the special exception will not be detrimental to or endanger the public health, safety, or general welfare. There was no opposition to the application at the hearing or submitted to the Board in writing, and the Applicant will be using the Property for a farmer's market that is in comparable to the existing use, albeit with more product available. Robert J. Riley, who testified credibly in favor of the application, stated that the Property is located in a sparsely populated area, and is not near homes, and the Applicant testified that there will not be a material increase in traffic associated with the farmer's market. There is ample parking for patrons on the Property, and adequate means of ingress and egress via a semi-circular driveway directly onto Rt. 222.

2. There was no evidence indicating that the use will be unduly injurious to the peaceful use and enjoyment of other property in the neighborhood, nor was there any evidence to demonstrate that such use will substantially diminish or impair property values in the neighborhood. The application for the special exception was supported by competent testimony which demonstrates that the use meets the requirements of Section 63 of the Ordinance. Additionally, as stated above, the Applicant will be using the Property for a farmer's market that is in comparable to the existing use, albeit with more

product available, the business will not be open on Sunday, the Property is located in a sparsely populated area and is not near homes, there will not be a material increase in traffic associated with the farmer's market, there is ample parking for patrons on the Property, and the Property offers adequate ingress and egress via a semi-circular driveway directly onto Rt. 222.

3. There was no evidence indicating that normal and orderly development and improvement of the surrounding properties will be impeded by the proposed use.

4. There was no evidence indicating that the proposed use will, with respect to existing development in the area and development permitted under existing zoning, overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements.

5. There was no evidence indicating that the proposed use will adversely affect critical natural areas or areas of ecological importance.

6. The proposed use will, in all other respects, conform to the applicable regulations of the zone in which it is located.

7. There was no evidence that the particular use proposed at the particular location proposed, will have any adverse effect above and beyond those inherently associated with such special exception use irrespective of its location in the zone. (*Schultz v. Pritts*, 291 MD. 1)

8. 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.

9. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the County.

For the reasons stated, by unanimous vote, the Board is satisfied that the requirements of Sections 63, 1.06.000 and 311, along with *Schultz v. Pritts*, 291 Md. 1 (1981) have been met, and the application is **APPROVED FOR A PERIOD OF TWO (2) YEARS.**

8/23/2011
Date

David Willis, Jr.
David Willis, Chairperson