

IN THE MATTER OF
THE APPLICATION OF
FRANK ALLEN

* BEFORE THE CECIL COUNTY
* BOARD OF APPEALS
* CASE NO.: 3656

(Special Exception – NAR)

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OPINION

The Cecil County Board of Zoning Appeals (the “Board”) is now asked to consider the application of Frank Allen (the “Applicant”). Applicant seeks to renew a special exception to operate a farm market on property owned by the Applicant located at 35 New Bridge Road, Rising Sun, Maryland 21911, designated as Parcel 148 on Tax Map 02 in the Eighth Election District of Cecil County (the “Property”), in an area zoned Northern Agricultural Residential (“NAR”) in accordance with Article V, Part I, Section 63 of the Cecil County Zoning Ordinance (the “Ordinance”).

Section 63 of the Ordinance provides:

Farmers markets may be permitted as a special exception in the NAR and SAR zones provided:

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.

In determining whether to grant an application for a Special Exception the Board must consider Section 311 of the Ordinance, which states:

No special exception shall be approved by the Board of Appeals after considering all facts in the case unless such Board shall find:

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 (1981).
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.

Article XVII, Part II, Section 311, Cecil County Zoning Ordinance.

Applicant testified that a farm market has been operated at the Property pursuant to the previously granted special exception for approximately two years since the original special exception was granted. The Applicant does not anticipate any changes to the size or nature of the business.

No further witnesses testified in favor or in opposition to the application.

Clifford Houston of the Cecil County Department of Planning and Zoning testified that the Planning Commission recommended approval of the renewal of the special exception for as long as the Applicant operates the business and the property owner owns the property.

Pursuant to Section 311 of the Ordinance, the Board finds as follows:

1. The special exception is not detrimental or an endangerment to the public health, safety, or general welfare. The proposed use is on a Property in an area where the nature of said use causes no harm to 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, or substantially diminish or impair property values in the neighborhood. The business use does not create pollution in the form of noise, light, or particulate matter. There is nothing in the nature of the proposed use that would diminish or impair property values in the neighborhood.

3. The use will not impede the normal and orderly development and improvement of the surrounding properties for uses permitted in the zone. The Board does not find that the use of the Property as a farm market is an impediment to the preservation of the character of the area or to the reasonable and orderly residential development permissible within the zone.

4. The proposed use will not overburden existing public facilities, including schools, police and fire protection, water and sewer, public road, storm drainage, and other public improvements. The Applicant has operated the business for a period of approximately two years with no evidence that said use contributes to an increased burden upon public facilities or municipal services.

5. The continued use will not adversely affect critical natural areas or areas of ecological importance. The Property is not located in a Critical Area District.

6. The continued use will, in all other respects, conform to the applicable regulations of the zone in which it is located. The Board finds that this portion of the NAR is predominately residential and agricultural in nature. Based upon the evidence presented, the Board finds that the continued operation of a farm market as contemplated by Applicants is not inconsistent with these neighboring uses.

7. The particular use proposed at the particular location proposed will not have any adverse effects above those inherently associated with such special exception use irrespective of its location in the zone. *Schultz v. Pritz*, 291, Md. 1 (1981). The Board finds that, because of the residential density of the zone and the nature of the activities undertaken in the area, the impact of Applicant's proposed use in this particular area of the NAR zone would produce no more of an adverse impact than operation of the proposed use in other areas of the NAR zone.

8. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets. No evidence was presented evincing issues related to traffic and parking.

9. The use is not contrary to the objectives of the Comprehensive Plan for the County. The special exception is presumptively valid and the Board finds nothing in the record

to indicate that the proposed use is contrary to the objectives of the Comprehensive Plan.

For the reasons stated above, by unanimous vote, the Board is satisfied that the requirements of Article XVII, Part II, Section 311, of the Ordinance have been met and the application for renewal of the special exception under Section 63 is therefore **APPROVED** for as long as the Applicant operates the business and the property owner owns the Property.

9/24/13
Date

James A Eder
James Eder, Acting Chairperson

**BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND**

MEET. MONTH: August 2013
FILE NO. 3656

THIS REQUEST IS FOR:
SPECIAL EXCEPTION RENEWAL
SPECIAL EXCEPTION
VARIANCE
APPEAL

DATE FILED: 7/13/13
AMOUNT PD: 350.00
ACCEPTED BY: J. Dempsey

CK - Mail
#628

A. APPLICANT INFORMATION

FRANK ALLEN
APPLICANT NAME - PLEASE PRINT CLEARLY
35 New BRIDGE RD Rising Sun MD 21911
ADDRESS CITY STATE ZIP CODE
Frank Allen
APPLICANT SIGNATURE 215 651 4653
PHONE NUMBER

B. PROPERTY OWNER INFORMATION

FRANK ALLEN
PROPERTY OWNER NAME - PLEASE PRINT CLEARLY
35 New BRIDGE RD Rising Sun MD 21911
ADDRESS CITY STATE ZIP CODE
Frank Allen
PROPERTY OWNER SIGNATURE 215 651 4653
PHONE NUMBER

C. PROPERTY INFORMATION

35 New BRIDGE RD
PROPERTY ADDRESS 8th ELECTION DIST. 008647 ACCT. NUMBER
2 TAX MAP # 20 BLOCK 148 PARCEL N/A LOT # 43.683 #ACRES NAR ZONE

D. PURPOSE OF APPLICATION - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

Premiunt Approval of a Farm Market.
S.E. Renewal for a Farmers Market

E. On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project. Show distances from the front, side and rear property lines and the dimensions of the project.

F. LAND USE DESIGNATION

Is property in the Critical Area? YES NO
If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: _____
Is property in the 100 year Floodplain? YES NO
Is property an Agricultural Preservation District? YES NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

G. PROVISION OF ZONING ORDINANCE: Section 63

H. SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: 3562

I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

Will unit be visible from the road? _____ If yes, distance: _____
Will unit be visible from adjoining properties? _____ If yes, distance: _____
Distance to nearest manufactured home: _____ Size/Model/Year of Unit: _____
Number of units on property at present time: _____

