IN THE MATTER OF * BEFORE THE CECIL COUNTY

THE APPLICATION OF * BOARD OF APPEALS

JENNIFER R. EWING * CASE NO.: 3678

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(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 Jennifer R. Ewing (the "Applicant"). Applicant seeks to renew a special exception to operate a beauty salon as a home occupation on property owned by Gregory J. and Jennifer R. Ewing located at 1540 Jacob Tome Highway, Port Deposit, Maryland 21904, designated as Parcel 586 on Tax Map 17 in the Sixth Election District of Cecil County (the "Property"), in an area zoned Northern Agricultural Residential ("NAR") in accordance with Article V, Part V, Section 79 of the Cecil County Zoning Ordinance (the "Ordinance").

Section 79 of the Ordinance provides:

Home occupations may be permitted in the RMU zone and permitted as a Special Exception in the NAR, SAR, RR, LDR, ST, VR, UR, MH, RM, and MEA zones provided that:

- 1. Home occupations are in the same building as the residence, and do not change the residential character and appearance of the dwelling.
- 2. No type of advertisement for the home occupations shall be carried out on the property, except one (1) unlighted sign identifying the home occupation, limited to three (3) square feet in size.
- 3. No goods for sale or rent shall be stored on the property in a manner as to be seen from off the premises.
- 4. Parking is provided in accordance with Article XIV.

5. No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference detectable outside of the dwelling unit.

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 appeared and was represented by Dwight Thomey, Esq. Applicant testified that the beauty salon has been operated at the Property pursuant to the previously granted special exception. At the time of the initial granting of the special exception, some neighbors expressed concerns regarding possible issues regarding traffic and parking. She further testified that there have been no traffic or parking issues to date. The salon is operated four days per week with one or two customers at the residence at a time. There is no storage on the premises and the business does not receive deliveries via truck.

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.
- 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 home occupation 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 operation of a beauty salon 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 beauty salon 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. Based upon the evidence presented, the Board finds that the operation of a beauty salon as contemplated by Applicant is not inconsistent with 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 is no different than the impact of the operation of a home occupation 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 79 is therefore **APPROVED** for as long as the Applicant operates the business and the property owner owns the Property.

7/29/14 Date

Mark Saunders, Acting Chairperson

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