



Board of Zoning Appeals for Oaths TnuntB

LA PLATA, MARYLAND 20646
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June 10, 2009

Mark D. Mudd, Esq.
Mudd, Mudd & Fitzgerald, P.A.
P.O. Box 310
La Plata, MD 20646

Re: Docket #1232
Request for Special Exception

Dear Mr. Mudd:

The Board of Appeals has rendered the enclosed Decision and Order pertaining to the above-mentioned petition dated June 9, 2009.

If you have any questions concerning this Decision and Order, please contact Kirby Blass at 301-645-0653.

Sincerely,

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Carrol Everett, Clerk
Board of Appeals

Enclosure

cc: Kurt Wolfgang, Esq., 9375 Chesapeake St., Suite 113, La Plata, MD 20646
K. Blass (Planning)
BOA Docket #1232

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BOARD OF APPEALS FOR CHARLES COUNTY, MARYLAND

IN THE MATTER OF THE PETITION OF
WSG HOLDINGS, LLC FOR A SPECIAL
EXCEPTION FOR A RESEARCH FACILITY

Docket #1232

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DECISION AND ORDER

This matter came before the Board of Appeals for hearing on February 24, 2009, March 10, 2009 and April 14, 2009 at 7:00 pm, in the Commissioners Meeting Room of the County Government Building, La Plata, Charles County, Maryland, as a request for a Special Exception for a research facility, in accordance with Article XIII, Section 297-212 and Article XXV, Section 297-415 of the *Charles County Zoning Ordinance*. The subject property is located on Liverpool Point Road, (Route 426) Nanjemoy, Maryland, designated as Tax Map 60, Grid 2, Parcel 231.

A quorum of Board Members was present for, and participated in, the hearings. The Notice of the hearing was properly advertised, adjacent property owners notified, and the property was posted in accordance with the applicable regulations.

The Petitioner was represented by Mark Mudd, Esquire, with the law firm of Mudd, Mudd & Fitzgerald.

Incorporated into the record were the following:

1. The appropriate provisions of the Charles County Code;
2. The Charles County Zoning Regulations;
3. The Comprehensive Plan for Charles County;
4. The Zoning Map of Charles County;

5. The Technical Staff Report;
6. The Petition and Plat submitted by the Applicant;
7. The following Applicant Exhibits:

Exhibit #1 - Special Exception Request (overhead presentation)
8. The following Opposition Exhibits:

Exhibit #1 — Petition to Deny Special Exception (over 300 residents)
Exhibit #2 — Nanjemoy Shared Vision Plan
Exhibit #3 — 223 Wallboard Test
Exhibit #4 — GSA Contract & Permit Search
Exhibit #5 — EPA Best Management Practices for Lead at Outdoor
Shooting Ranges
Exhibit #6 — Photos of Wildlife (2008)
Exhibit #7 — Opposition Brief of Protestant Robert O'Neil

Testimony for the Applicant was given by Scott Burroughs, Lorenzi, Dodds & Gunnill, Sean Miller, CEO, WSG Holdings, Inc., Don Wentzle and Richard Pedicord.

Opposition testimony was given by Johnnie DeGiorgio, Kathryn Windley, Mary Sandy, Marcia Bach, Adam Jentilet, Linda Redding, Bonnie Bick, Howard Dent, Robin Wyrick, Mike Ziebell, Kay & David Shank, Kevin Grimes, Ken Hastings, Tom Saxton, Steve Parmley, Rick Campbell, Mike Bowie, Wayne Winker, John Swaim, Molly Tominack, Ronnie Scott, Vivian Mills on behalf of the Charles County Conservancy, Linda D'eustachio, Linda Wright, Norm Palmer, Chad Stoltz, Stefano Briguglio, Kurt Wolfgang, Esquire, on behalf of Robert O'Neil. Testimony in support of the Applicant was given by Charles Coghlan.

Based upon the testimony presented at the hearing, the plat and exhibits submitted by the Applicant along with the Petition, and the standards set forth by the *Zoning Ordinance*, and considering the proposed use on the health, safety, welfare, and

interest of the general public, the Board of Appeals makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The character of the surrounding neighborhood is a mix of undeveloped wooded properties and residentially developed properties. To the north and east of Parcel 231 is undeveloped wooded property. The southern boundary of the property adjoins a residentially developed property that is heavily wooded and (Route 426) Liverpool Point Road, the eastern boundary of the property adjoins undeveloped wooded property as well as a spattering of residentially developed properties fronting on (Route 426) Liverpool Point Road.

2. The Board found that the proposed use will not be detrimental to or endanger the public health, safety, and general welfare as the use is providing adequate safety measures for the firearms research through the use of 8-10' high earthen impact berms surrounding the three proposed firing ranges. According to testimony for the Applicant (which was not contradicted), the firearms research facility's design meets and exceeds US Air Force engineering and technical standards for small arms range design as well as adheres to Environmental Protection Agency (EPA) Best Management Practices for Outdoor Shooting Ranges. Additionally, the driving tactics research area is setback from the southern property line 446' and 226' from the eastern property and will be buffered by existing trees on all sides.

3. The subject property is Agricultural Conservation (AC) and the requested use of Research Facilities and Laboratories without processing of materials (Use # 7.04.100) is

permitted by Special Exception in the AC Zone. Based on the Applicant's submittal and testimony, the Board found that the proposed use of the site was consistent with the definition of "Research Facilities and Laboratories without processing of materials" (Use 7.04.100) per the Charles County Zoning Ordinance.

4. The site is to be served by well and septic. Currently, the Charles County Health Department is in the process of finding an adequate sewage disposal area on site. Testing was done in 2008 and the results of the testing suggested that more testing needs to be done in 4' conditions. A full Adequate Public Facilities review, which may include, but is not limited to, traffic analyses that show the effect of traffic generated by the proposed development on roads and intersections serving the site, will be required. This review shall be part of the Site Development Plan review.

5. The Board found that the proposed facility will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

The proposal complies with the Standards and Requirements set forth in Article XIII as follows:

6. Based upon the Applicant's submittal, testimony presented and exhibits, the Board found that the proposed use will not cause an impact on traffic nor cause objectionable noise, type of physical activity, fumes, odors, dust or glare. The noise generated on site regarding firearm or driving tactics research should be minimal and not cause objectionable impact, in any form, to neighboring properties.

Based on oppositional testimony from the community, the Board imposed additional sound mitigation requirements to ensure that sound levels generated at the site would not cause any objectionable impacts to the neighborhood or surrounding community. The Board took the site location into account and found, based on testimony, that both the firing range and driving tactics area should be mitigated further for sound by increasing the proposed mitigation measures to enclose each site by 10' high berms and landscaping that is equal to a Bufferyard "E" as described in the Charles County Zoning Ordinance.

7. Based upon the Applicant's submittal, the Board found that the proposed site will provide adequate ingress and egress on Liverpool Point Road and there will be minimal impact in regards to traffic congestion. Final review of the adequate access to roads and road safety shall be part of the Site Development Plan review.

8. The Board found that the proposed use in accordance with the objectives of the Charles County Comprehensive Plan.

9. The proposal conforms to the applicable regulations of the Agricultural Conservation (AC) Zone and other special requirements established for the specific use.

10. Based on the testimony of the Applicant, the Board found that the proposed small arms firing range and driving tactics range conforms to the definition of structure as required under the requested use "Research Facilities and Laboratories without processing of materials" (Use 7.04.100) in the Charles County Zoning Ordinance. In addition, the Board found that the proposed use is for research related activities only and the firing range and driving tactics range are not for public use, nor will the public be

granted access to these areas.

11. A site visit was conducted on Tuesday, March 17, 2009 and the following representatives attended:

- Frederick Mower (Board of Appeals Chairman), Luke Hannah (Vice Chairman) and Kenneth Cross, John Pearl Yates, Edward Baker (Members)
- Reed Faasen (Acting Planning Director), Kirby Blass (Case Planner) and John Buchanan (Assistant County Attorney)
- Sean Miller, Chief Operating Officer, Washington Security Group (Applicant) and Mark Mudd, Esquire
- Kurt Wolfgang, Esquire (Counsel for the Opposition) and community representative, Dr. Chas Stoltz (chosen by the Opposition)

Based upon this visit, the Board found the site consistent with the Applicant's testimony and site plan for the use of "Research Facilities and Laboratories without processing of materials" (Use #704.100).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is, this 1 day of October, 2009, by the Board of Appeals for Charles County, Maryland

ORDERED, that the Special Exception Docket #1232 for a research facility, be hereby GRANTED; and it is further,

ORDERED, under the following conditions:

1. The operating hours of the research facility shall be Monday through Friday, 8:30 a.m. to 5:30 p.m., Saturday 8:30 a.m. until 1:00 p.m. and no Sunday hours.

2. The Site Development Plan will be submitted along with a Traffic Analysis Study. The Applicant shall install any road improvement deemed necessary in order to promote safe ingress and egress to the site.
3. Any impact to the stream/wetlands or the Resource Protection Zone located along the eastern boundary and across the northeastern portion of the property shall be in accordance with the Zoning Ordinance, Article XI, and any other state or federal requirements.
4. Additional sound mitigation is required around both the firing range and driving tactics area as follows:
 - Berm height shall be increased from 8 ft. to 10 ft.
 - Additional landscaping equal to a Bufferyard E"
7. The Applicant shall post an approved stewardship plan on their website that is accessible to the public. In addition, environmental testing required shall be posted annually, on a continuous basis, as part of the stewardship plan.
8. The Special Exception will become Null and Void if the Applicant abandons the property, donates the property to the County or State for land presentation, or sells the property. In that event, the Applicant shall be responsible for restoring the property to its original environmental condition and shall remove the driving and firing ranges.
9. The Applicant must maintain the Special Exception request as a research facility and not a training facility.
10. The continued operation of this Special Exception is contingent upon compliance with all applicable county, state, and federal regulations.