

**MEETING MINUTES  
BOARD OF ZONING APPEALS  
FOR CAROLINE COUNTY, MARYLAND**

**DATE:** February 16, 2021

**PLACE:** Virtual Meeting on Microsoft Teams

**BOARD MEMBERS  
(PRESENT):** Michael Mann, Chairman  
Karen Hardy, Member  
Benjamin Butler, Alternate

**ALSO, PRESENT:** Crystal Dadds, Assistant Director of Codes  
Robert Merriken, Board Attorney  
Melanie Smith, Board’s Administrative Assistant

Chairman Mann called the Caroline County Board of Zoning Appeals meeting to order at 6:13 PM. Chairman Mann introduced the Board members and staff that were present. He then explained the duties that the Board is charged with and how the meeting will proceed according to the Zoning Chapter of the Code of Public Local Laws of Caroline County, Maryland. Ms. Dadds conducted a roll call of those in attendance.

**FAZAL KAYANI – VARIANCE NO. 20-0043**

Chairman Mann read the Notice of Public Hearing into the record:

**Application No. 20-0046:** A request by **Fazal & Saima Kayani** for a **Variance** in accordance with Article 17, Section 175-135.A and Table of Uses Attachment 3:1 of the Caroline County Zoning Ordinance, to rebuild a nonconforming poultry house that was destroyed by fire closer to the property lines than the minimum required setbacks. Said property is located at 3640 Pepper Rd, Federalsburg, Maryland and is further described as Tax Map 60, Grid 11, Parcel 43.

Ms. Dadds read the exhibits into the record:

- Exhibit 1 Notice of Public Hearing Published in the Times Record on 2/3/21 and 2/10/21
- Exhibit 2 Staff Report
- Exhibit 3 Variance Application
- Exhibit 4 Tax Map & Real Property Data Sheet M60-G11-P43
- Exhibit 5 Aerial Photograph
- Exhibit 6 Professional Site Plan Prepared by Rauch Engineering
- Exhibit 7 Photographs of Property taken on 2/9/21
- Exhibit 8 List of Notified Adjoining Property Owners
- Exhibit 9 Sign Posting Affidavit and Photo
- Exhibit 10 Applicant’s Notice

Exhibit 11  
Applicant's Exhibit 1

Ad Verification  
Aerial

Chairman Mann swore in:

Fazal Kayani, 24448 Pine Needle Ct., Seaford, DE 19973  
Whitney Bonnett, Rauch Engineering, 106 N. Harrison St., Easton, MD 21601  
Bill Ewald, Rauch Engineering, 106 N. Harrison St., Easton, MD 21601

Bill Ewald, Engineer for Rauch Engineering, stated that he would present the case. Mr. Ewald explained that a fire destroyed one of three poultry houses on the Pepper Road property in December of 2019. In order for Mr. Kayani to make his operation economically sound, the third house must be rebuilt. He proposes to build the new house on the same footprint as the original house. The house will be 386' X 46'. This will not comply with the 200' setback required of poultry houses. Ms. Bonnett confirmed that the property is not in the Critical Area.

Chairman Mann asked when Mr. Kayani will start building the house. Mr. Kayani explained that he should be able to begin three months after approval. Ms. Hardy asked Mr. Ewald how he will be handling the Stormwater Management and Sediment & Erosion control.

She pointed out that the requirements must have changed quite a bit since the first building was erected. She asked because the new requirements would make the new building an improvement from the original building. Mr. Ewald agreed that it would be a better building.

Chairman Mann asked Mr. Ewald to go over his responses to the requirements of a variance. Mr. Ewald read Exhibit 3, pages 2 & 3. He stated that if the applicant were to follow the setbacks required for commercial poultry houses, it would not be possible for them to replace the one destroyed by fire. There is no other place on the property for a third house to be built that would not also require a Variance. The property was functioning as a non-conforming commercial poultry facility when Mr. Kayani purchased it in 2015. Because the building has existed for so long, replacing it will not have any effect on the neighboring properties. The house fire is not of a recurring nature to make a general amendment to the zoning chapter. Mr. Kayani is only asking for a house the same size and location as the one that was destroyed.

Ms. Dadds asked, if the Variance were denied, how would this impact the existing operations. Mr. Kayani explained that if it were not replaced and because the other two houses are much smaller than the modern ones, it would be difficult to contract with the poultry companies to service his houses.

With all being said and no one else present in favor or opposition to the application, Chairman Mann closed this portion of the hearing to deliberate.

## **DELIBERATION**

Chairman Mann began the review of the conditions for approval as written in §175-152B. & D. of the County Zoning Ordinance. The Board of Zoning Appeals may grant an area variance only upon

a finding that the strict application of such requirements would pose a practical difficulty to the owner of the property and upon a showing that:

B (1) Such difficulty is the result of special conditions and circumstances not generally shared by other properties in the same zoning district or in the same neighborhood and is peculiar to the property, structure or building for which the variance is requested; *The original poultry house was destroyed by fire and is being rebuilt according to its original size rather than upgrading to the much larger houses that are common today. Furthermore, the Stormwater Mgmt. and Sediment and Erosion Control will be updated to today's regulations.*

B (2) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor(s) in interest; *The difficulty is the result of an accidental fire.*

B (3) The financial hardship to the applicant as the result of the strict enforcement of the zoning regulation(s) in question may be considered by the Board only when such financial hardship is severe and only when and if the above conditions have been found to exist; the financial hardship alone cannot serve as a basis for granting an area variance; *Ms. Hardy stated that while Mr. Kayani would certainly suffer a financial hardship, in conjunction with B.1 & 2 it does not stand alone. Chairman Mann added that if a Variance is not granted, the poultry company would not contract with such a low volume business.*

D (1) *A variance application was filed as shown in Exhibit 3.*

D (2) *A Notice of Public Hearing was advertised on February 3<sup>rd</sup> and 10<sup>th</sup> in the Times Record as shown in Exhibit 1.*

D (3)

(a) The granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to adjacent property, the character of the neighborhood or the public health, safety, or welfare. *The applicant is only returning the building to its original state and will have no additional impact on the neighboring areas.*

(b) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor(s) in interest. *The difficulty is the result of an accidental fire.*

(c) The condition, situation or intended use of the property concerned is not of so general or recurring a nature as to make practicable a general amendment to this chapter. *The situation is unique in that the previously approved poultry house was destroyed by fire.*

(d) The variance granted is the minimum necessary to afford relief. *The applicant is only seeking to replace what was originally there and not asking to upgrade the house to today's larger buildings. According to Mr. Ewald, this is the smallest size the integrator would allow for a rebuild.*

(e) This section is not applicable as the lot is not within the Chesapeake Bay Critical Area.

Mr. Merriken asked the Board to talk about the size of the new building in relationship to the original building. On the site plan it only shows a proposed size. Mr. Ewald explained that according to the evidence from his surveys it appears to be the same size as the original house. He is also aware that this is the smallest house the integrator would agree to work with. Mr. Kayani stated that the concrete pads from the original house can remain where they are and verifies that the house will be no longer than the original house.

**Motion:** Ms. Hardy made a motion to approve the variance on the following conditions:

- A Zoning Certificate and/or Building Permit will be required prior to any proposed development, and must be accompanied by all the necessary documentation and site plan requirements, and
- The new building will be built according to the site plans in Exhibit 6.

**Second:** Mr. Butler seconded the motion.

**In Favor:** The motion was unanimously approved (3-0).

## **BENEDICTINE SCHOOL – SPECIAL USE EXCEPTION NO. 20-0042**

Chairman Mann read the Notice of Public Hearing into the record:

**Application No. 20-0042:** A request by the **Benedictine School** for a **Special Use Exception** in accordance with Article 16 and Table of Uses Attachment 3:4 of the Caroline County Zoning Ordinance, to approve Phase I of an overall campus improvement project. Said property is located at 14374 Benedictine Lane, Ridgely, Maryland and is further described as Tax Map 13, Grid 10, Parcel 28, Lot 1.

Ms. Dadds read the exhibits into the record:

Exhibit 1	Notice of Public Hearing Published in the Times Record on 2/3/21 and 2/10/21
Exhibit 2	Staff Report
Exhibit 3	Application
Exhibit 4	Explanation
Exhibit 5	SDAT Tax Map & Real Property Data Sheet M13-G10-P28-L1
Exhibit 6	Aerial Photograph
Exhibit 7	Site Plan by Lane Engineering, LLC
Exhibit 8	Sign Posting Affidavit and Photo
Exhibit 9	List of Notified Adjoining Property Owners
Exhibit 10	Applicant's Notice
Exhibit 11	Ad Verification

Chairman Mann swore in:

Tim Glass, Lane Engineering, Easton, MD  
Jody Winter, JFW Consulting, Vienna, VA  
Ed Foley, Cox Graae & Spack Architects, Washington D.C.

Mr. Glass presented the case. He explained that the school is asking for approval of phase 1 of an overall campus improvement project. The land is zoned “R” rural and a domiciliary care facility is a permitted use subject to a special use exception.

The school is on a large remote farm located in the middle of large agricultural fields far from neighboring properties as seen in Exhibit 6. They have already met with the County Planning Commission and received preliminary approval of the site plan marked Exhibit 7.

Referring to the site plan page 4 of 19 he pointed out a circled area shown in the center of the page, explaining that this was the construction area being proposed for this phase. Then referring to page 7 of 19 he showed where they plan to remove a few trees and demolish part of the parking lot to the southwest of the Monastery. They will also remove some trees in the rear to make room for a 14,000 SF addition as shown in the shaded reversed “C” area in the center of page 7.

He showed that the entrance will remain the same, however the parking lot will be reconstructed for better access. This will also make room for storm water management features. The Monastery wing will be gutted and redone. There will be a roadway looping around the existing open space so visitors can avoid navigating the interior roads to reach their destination. A walking path will be constructed alongside this road with a grass strip separating them.

The land is mostly sand. Mr. Glass explained that the stormwater management plan will be MDE compliant. He explained that the school is a self-contained operation. They have their own water tower, water distribution system and well supply. They have a series of gravity collection mains that connect all the different buildings to convey waste to the wastewater treatment plant. He showed where there were two large septic fields to the north of the school. Mr. Glass stated that they had more than adequate capacity to support the planned construction and more. Their water distribution system has added capacity as well.

The forest conservation plan will be submitted to the Planning Office. He next reviewed their responses to the BZA requirements to approve a special use exception as laid out in §175-179 of the County Zoning Code. He explained that the purpose of the project is to create a better space for the student population. The added space will only allow 14 more students to attend the facility and 17 new staff members.

A written application was submitted, and the project was duly advertised as Chairman Mann noted. Mr. Glass showed that the land is remote from any other homes or buildings. Agricultural fields surround the location. The updated building and roadway around the perimeter provide more safety to students and an easier path for visitors. The proposed improvements represent needed operational enhancements to the existing use and will not endanger public health, safety, or welfare. The addition and associated site improvements conform to all required setbacks and will not affect development made by neighboring property owners.

The proposed increase of student and staff is minimal. The school owns, operates, and maintains its own private water and wastewater facilities which have adequate capacity to serve the campus. The traffic will be better routed with the new road and walkway. The retrofit of the monastery wing and additions will have sprinkler systems. Therefore, the project will not overburden existing public facilities, including schools, police and fire protection, water and sewerage, public roads, storm drainage and other public improvements. This property is not within the Critical Area.

With all being said and no one else present in favor or opposition to the application, Chairman Mann closed this portion of the hearing to deliberate. He first asked Mr. Glass if he feels they may need more than the typical one year to gain the building permit and begin construction as required by Section 175-144.A of the Zoning Ordinance. Ms. Winter and Mr. Glass agree that while under normal circumstances a year would be sufficient, but because of the impact of the Covid crisis they would appreciate an additional year.

## **DELIBERATION**

The Board reviewed Article 16, § 175-142. Conditions for Approval. The Board of Zoning Appeals shall not grant a special use exception unless and until:

- (1) A written application for a special use exception has been submitted. *See Exhibit 3.*
- (2) A duly advertised public hearing has been held. *The hearing was published in the Times Record on the 3<sup>rd</sup> and 10<sup>th</sup> of February 2021.*
- (3) The Board has considered the application in accordance with the following principles and requirements and determined that the granting of a special use exception:
  - (a) Will not be detrimental to or endanger the public health, safety, or general welfare. *The Board heard testimony that the new roadway is a large enhancement to the safety of the students and public as well as prevents confusion for visitors by avoiding the inner winding roads.*
  - (b) Will not be injurious to the peaceful use and enjoyment of other property in the neighborhood and will not substantially diminish or impair property values in the neighborhood. *The Board was familiar with the property and noted that it is far removed from both the road and homes nearby. As was testified it is surrounded by agricultural fields including farmland on the school property.*
  - (c) Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district. *The project is within the existing school area and would not impede the normal development of the surrounding property.*
  - (d) Will not overburden existing public facilities, including schools, police and fire protection, water and sewerage, public roads, storm drainage and other public improvements. *The Board noted that the school has its own water and wastewater treatment plant. Secondly there will be a new sprinkler system in place. Mr. Glass informed the Board that there were fire hydrants strategically placed around the property.*
  - (e) Conforms in all other respects to this chapter and especially to the applicable regulations of the zoning district in which it is to be located. *The Board has reviewed all the documents and have found it conforms in all other respects to this chapter.*
  - (f) Will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the critical area and that the granting of the special use exception will be in

accordance with the "Critical Area Program for Caroline County," the critical area law and this chapter. *Chairman Mann stated that this condition does not apply to this application because the land is not within the Critical Area.*

The Board discussed increasing the approval to obtain the permit and begin construction to two years.

**Motion:** Ms. Hardy made a motion to approve the variance on the following conditions:

- A Zoning Certificate and/or Building Permit will be required prior to any proposed development, and must be accompanied by all the necessary documentation and site plan requirements; and
- Final site plan approval from the Planning Commission; and
- The Board's decision will be valid for two years for them to receive a building permit and begin construction.

**Second:** Mr. Butler seconded the motion.

**In Favor:** The motion was unanimously approved (3-0).

## REVIEW AND APPROVALS

The members reviewed the minutes of the November 17, 2020 Board Hearing.

**Motion:** Chairman Mann made a motion to approve the minutes as written.

**Second:** Ms. Hardy seconded the motion.

**In Favor:** The motion was approved unanimously (3-0).

## ADJOURNMENT

Chairman Mann adjourned the meeting at 7:44 PM.

*Melanie J. Smith*

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Minutes prepared by Melanie Smith