

**Meeting Minutes
Board of Zoning Appeals
Caroline County, MD**

DATE: Tuesday, April 18, 2023

PLACE: Health & Public Services Building
403 S. 7th Street, Room 111
Denton, Maryland 21629

BOARD MEMBERS: Karen Hardy, Chair
Benjamin Butler, Vice-Chair
Kevin Parks, Sr., Alternate

OTHERS PRESENT: Patrick Thomas, Board Attorney
Crystal Dadds, Assistant Codes Director
Catherine McCulley, Board Administrative Assistant

Ms. Hardy opened the meeting at 6:00 pm. She introduced the Board members and staff that were present and explained how the meeting will proceed.

DANNY'S GRINDING SERVICE, LLC – SPECIAL USE EXCEPTION AND VARIANCE NO. 23-0009

Ms. Dadds read the following exhibits into the record:

- 1 Notice of Public Hearing in Times Record 4/5/23 and 4/12/23
- 2 Staff Report
- 3 Application (7 pages)
- 4 Facility & Operations Description (7 pages)
- 5 Emergency Operational Plan (3 pages)
- 6 Emergency Services Approval Letter
- 7 Traffic Exemption Letter (7 pages)
- 8 Health Department Water Sewage Verification (4 pages)
- 9 MD Department of the Environment Permit
- 10 Planting Plan (Areas 1 and 2) (27 pages)
- 11 Site Plan (Revised) 2023
- 12 Aerial Overlay
- 13 Aerial of Surrounding Area
- 14 SDAT Real Property Data Sheet 73 and 24 and Tax Maps (4 pages)
- 15 Adjoining Property Owner Affidavit (2 pages)
- 16 Sign Posting Affidavit & Photographs of Property (8 pages)
- 17 Applicant Notice (2 pages)

Ms. Dadds stated the Board had not received any additional exhibits nor has any written testimony been provided.

Ms. Hardy read the following portion of the Notice of Public Hearing:

Application No. 23-0009: A request by **Danny's Grinding Service, LLC** for a **Variance and Special Use Exception** in accordance with Zoning Chapter 175, Article XVI, Article XVII and §175-28 of the Code of Public Local Laws of Caroline County, Maryland to establish a natural wood waste recycling facility. Said property is located on Tax Map 13, Grid 5, Parcels 24 and 73, north of Ridgely, Maryland.

Ms. Dadds read Exhibit 2, the Department's Staff Report written by Matt Kaczynski, Development Review Coordinator which states Daniel Hutchison has requested a special use exception for a natural wood waste recycling facility and a variance to the setback requirements associated with the use. Location of properties have been previously stated. The applicant owns and operates Danny's Grinding Service where they receive natural wood waste such as wood chips, stumps, brush, tree limbs et cetera and processes the waste into mulch which is then sold to various wholesale customers.

The proposed use of the facility does require a Major Site Plan Approval from the Planning Commission along with Special Use Exception approval from the Board of Zoning Appeals. The applicant did present their site plan application along with supporting documents to the Planning Commission on March the 8th, and the Planning Commission voted to approve the preliminary site plan and did make a favorable recommendation for the applicant to move forward with the Special Use and Variance to the Board of Zoning Appeals.

It should be noted that natural wood waste recycling facilities do require a 50-foot setback between the facility and any adjoining property lines. The current facility does not comply with the setback requirements as shown on the site plan. It is located across property lines. The current configuration of the facility would require a variance approval from the Board of Zoning for encroachment on the required setback.

The Board must review and approve, approve with conditions, or deny the Special Use and Variance. The application must meet all the conditions for approval set forth in the code and must fit within the purpose and intent of the Zoning Chapter. Any conditions imposed by the Board will be enforced prior to the issuance of any Building Permits or Zoning Certificates associated with the application.

If the Special Use and Variance are granted by the Board, the applicant will have the following conditions:

- The Applicant must receive Final Site Plan Approval from the Planning Commission prior to the issuance of any Building Permit and/or Zoning Certificate associated with the project.
- A Building Permit and/or Zoning Certificate will be required prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements.
- The Board's decision shall be void one year from the date of approval unless a plat is recorded or a zoning certificate and/or building permit is issued and construction has begun in accordance with the terms of the decision.

The Chair administered the oath to the applicant, Daniel Hutchison (14488 Oakland Rd., Ridgely, MD 21660), who was represented by his attorney, James Worm (5 N. T' St., Denton, MD 21629).

Mr. Worm told the Board that Mr. Hutchison previously had come before the Board for the same purpose 2 years ago when he applied for a Special Use Exception. At that time there were some shortcomings [with his application] which he has now addressed. He is committed to doing this operation, fully complying with Code, and following any conditions the Board may impose. He is hopeful and thankful for this opportunity to bring the first wood waste recycling facility to the county.

Mr. Worm asked the applicant if he owned parcels 24 and 73 on the west side of Oakland Road.

Mr. Hutchison replied, I'm not quite sure about parcel [numbers]. We own the land that the grinding operation sits on, yes.

Mr. Worm asked who owned the other [adjacent] parcel.

Mr. Hutchison responded, My father-in-law, Richard Edwards.

Mr. Worm inquired if he was in support of Mr. Hutchison's endeavor.

Mr. Hutchison said, 100%.

Mr. Worm wondered if Mr. Edwards would be in support of Mr. Hutchison's seeking a Variance and a Special Use Exception on both of the parcels.

Mr. Hutchison replied, 100%.

Mr. Worm asked if it were reasonably foreseeable that there might be a time when Mr. Hutchison might acquire the lands which he owns.

Mr. Hutchison answered, yes.

Mr. Worm continued, at that point in time, essentially the parcels for our purposes will be merged under one owner, is that correct?

Mr. Hutchison replied, that's correct.

Ms. Dadds interjected, to clarify to the board and Mr. Hutchison, parcel 24 is the one where Mr. Hutchison's facility is planning to operate. To the north of that is 73 which Mr. Hutchison owns as well as the parcel south of that, which is his residence on parcel 26.

Mr. Hutchison added that [Parcel] 26 is out of the picture at this point because [the grinding operation is] off of that piece of property now.

Mr. Worm asked Mr. Hutchison, otherwise, Ms. Dadds' recitation was correct?

Mr. Hutchison responded, yes.

Mr. Worm continued, you are seeking a variance because you are not 50 feet away from your father-in-law's parcels. Is that correct?

Mr. Hutchison replied, that is correct.

Mr. Worm continued, to Mr. Hutchison, and you did not cause those two parcels to be subdivided? That was pre-existing?

Mr. Hutchison agreed.

Mr. Worm inquired, and if you do not receive this variance, you will not be able to pursue the special use exception, is that correct?

Mr. Hutchison answered, that's correct.

Mr. Worm questioned, so your grinding service, that would not be operational?

Mr. Hutchison answered, that's correct.

Mr. Worm asked Mr. Hutchison if he had submitted a written request for this variance, correct?

Mr. Hutchison said yes.

Mr. Worm continued, to your understanding, the Board has advertised the Public Hearing is that correct?

Mr. Hutchison said yes.

Mr. Worm asked, receiving a variance would allow you to operate on both your parcel and your father-in-law's parcel, that's not going to impact any other of your neighbors, correct?

Mr. Hutchison concurred.

Mr. Worm conjectured, the parcels you're operating on in the northern end of Caroline County, those are not in the Critical Area, correct?

Mr. Hutchison agreed.

Mr. Worm continued, they do not impact any sort of stream or tributary, or any sort of native wildlife or species, correct?

Mr. Hutchison concurred.

Mr. Worm queried, moving towards your Special Use Exception where you're seeking to operate this wood waste composting facility pursuant to section 175 - 28 of the Code, how long have you been pursuing this?

Mr. Hutchison replied, 6 years.

Mr. Worm followed with, pursuant to that endeavor, have you been able to determine if it will have any sort of danger to public health, safety, or welfare?

Mr. Hutchison replied, no.

Mr. Worm continued, so it's your belief that it's not going to endanger the public at large?

Mr. Hutchison replied, no.

Mr. Worm continued, as I understand as I'm sitting here today, you have had occasion to develop an emergency services plan is that correct?

Mr. Hutchison concurred.

Mr. Worm inquired; you also have a fire suppression plan in the event that something would happen?

Mr. Hutchison nodded affirmatively.

Mr. Worm asked, this machinery you are utilizing, is there a likelihood that it can create sparks, embers, or other incendiary pieces?

Mr. Hutchison responded, it could happen, but we have taken proper measures and we have talked with the local fire department, and they have come to terms about fire prevention.

Mr. Worm followed with, and they have offered a letter in support of this endeavor, correct?

Mr. Hutchison replied, that's correct.

Mr. Worm asked if there would be excessive particulates or dust developed by this?

Mr. Hutchison replied, no.

Mr. Worm summarized, so it's your belief that there is going to be no overall impacts to the community?

Mr. Hutchison affirmed this.

Mr. Worm continued, have you had occasion to discuss this Special Use Exception with your neighbors?

Mr. Hutchison replied, yes.

Mr. Worm asked, are they in support of this endeavor?

Mr. Hutchison replied, definitely.

Mr. Worm inquired if the immediate surrounding parcels were owned by Mr. Hutchison and his in-laws.

Mr. Hutchison said, correct yes.

Mr. Worm questioned if Mr. Hutchison had any basis to believe that the Special Use Exception would impair your property value or [your in-laws'] property value?

Mr. Hutchison answered, no.

Mr. Worm asked Mr. Hutchison to describe for the board more about the equipment to be used and say more about the operations. For example, is the machine permanent or is it capable of being mobile?

Mr. Hutchison answered that all of the equipment could be moved off-site.

Mr. Worm then said, so theoretically, any sort of changes to the land are capable of being reversed or undone.

Mr. Hutchison replied, oh, definitely.

Mr. Worm confirmed, so any sort of impact of the physical equipment being there is not permanent.

Mr. Hutchison answered, no, nothing's permanent.

Mr. Worm asked Mr. Hutchison if, when initially preparing the Special Use Exception application, he had commissioned a traffic study, is that correct?

Mr. Hutchison answered, yes we did.

Mr. Worm said that the results of that traffic study indicated there would be no adverse effects, correct?

Mr. Hutchison confirmed this.

Mr. Worm asked, what are the maximum numbers of vehicles entering and exiting the property per day?

Mr. Hutchison responded they were anticipating about 10 loads per day as they are wholesale only.

Mr. Worm said that a portion of the wholesale goes to you directly, and asked how many other individual customers do you envision servicing?

Mr. Hutchison replied that there might be ten.

Mr. Worm inquired if Mr. Hutchison contemplated that the wood waste facility is going to somehow impact the school system?

Mr. Hutchison said no.

Mr. Worm continued, any sort of water that is utilized for this operation, will that be sourced from the property itself?

Mr. Hutchison replied yes.

Mr. Worm asked, how will you obtain that water?

Mr. Hutchison said they had a well and added, for fire suppression they also have a pond that's in place in case the fire department needs to pull from it.

Mr. Worm asked, to your knowledge, will your water needs adversely impact any sort of fish, wildlife, or plant habitat?

Mr. Hutchison answered no.

Mr. Worm asked if Mr. Hutchison was in the Critical Area.

Mr. Hutchison replied, no.

Mr. Worm asked if there was anything else Mr. Hutchison would like the Board to consider while they're considering the Special Use Exception.

Mr. Hutchison replied not at this time.

Mr. Worm explained that Mr. Hutchison received a favorable report from the Planning Commission and told Mr. Hutchison that the Board of Zoning Appeals can issue a Special Use Exception and can impose additional conditions or requirements that must be met. He asked if Mr. Hutchison would be willing accept this.

Mr. Hutchison responded yes.

Mr. Worm stated he had no other questions for the applicant.

Ms. Dadds referred to a blue binder and asked Mr. Worm if he wanted to submit this as Applicant's Exhibit One and said that it contained additional documents the Board did not receive in their package.

Mr. Worm assented to submitting the documents as Applicant's Exhibit 1.

Mr. Butler asked to see Exhibit 12 (Site Plan) on the wall projection. Referring to the projection, he asked who owned Parcel 26.

Mr. Hutchison pointed to the projected Site Plan and said that he owned Parcel 26, and that his business had relocated from Parcel 26 because that property was in a MALPF (Maryland Agricultural Land Preservation Foundation) easement. The brush pile and the fence on Parcel 26 have been moved to Parcel 24. He pointed to Parcel 24 and said it was owned by his father-in-law, and that the business was on that property as well as on his property of Parcel 73.

Ms. Hardy asked if the bulk of his business was on his father-in-law's property.

Mr. Hutchison replied that it was "about 50/50."

The lane coming in from Oakland Road enters on his father-in-law's property. The location of the brush pile was in part due to a sand hill being there and it was closer to the road and out of the way.

Mr. Hutchison referred to Parcel 26 and said that the parcel is irrigated by a pivot covering 120 acres that he owns, then covers 80 of his father-in-law's property and swings back to cover 80 acres of his brother-in-law's property. He said that a well services the grinding operations but what the well supplies is peanuts compared to the irrigation well. Through irrigation 800 gallons is delivered, but the well for the grinding operation only pumps 60 gallons at the high end.

Mr. Parks asked about the irrigation sprinkler location when the arm pivots.

Ms. Dadds projected an aerial of a wider view that showed more of the fields serviced by the irrigation pivot.

Mr. Hutchison showed the areas covered by the pivot.

Mr. Butler asked if the grinding operation were relocated further back from the road, would it impede the irrigation.

Mr. Hutchison said it would, and that was the reason why the operation was "bunched up" in the current location in the front of the property.

Ms. Hardy asked Mr. Worm if he had further questions of his client at this point.

Mr. Worm said he had some remaining questions for the applicant. He referred to Mr. Hutchison's prior attempt (in 2021) to get the Special Use Exception that was tabled by the Board. Since that time, Mr. Hutchison has sold all of his equipment for the grinding operation. Mr. Hutchison said that was correct. Mr. Worm said following that, Mr. Hutchison was starting fresh with no equipment and no supplies. Mr. Hutchison affirmed this. Mr. Worm asked if Mr. Hutchison was starting from scratch and was not going to pursue this endeavor unless the Special Use Exception and Variance were

granted. Mr. Hutchison confirmed this. Mr. Worm asked if it was conceivable that the price of said equipment had increased in the last 2 years. Mr. Hutchison responded, most definitely.

Mr. Worm asked the applicant if the Board granted the Special Use Exception and Variance with the condition that the operation had to be moved back further into Parcel 24, you indicated that the move would likely interfere with the irrigation pivot, is that correct? Mr. Hutchison responded yes. Mr. Worm continued, if you had to subsequently move that pivot, or reconfigured it by shortening it for that, it would cause financial hardship for you, correct? Mr. Hutchison answered yes.

Mr. Worm indicated he had no further questions.

DELIBERATION

Ms. Hardy announced the Board would go into deliberations. Prior to considering the Special Use Exception or Variance, she directed the Board's attention to **§ 175-28 Composting facilities, natural wood waste recycling facilities, resource recovery facilities, solid waste disposal facilities and solid waste processing facilities** which each member had. She advised they would begin with **(2) Compost facility, natural wood waste recycling facility, resource recovery facility and solid waste processing facility:**

- Ms. Hardy asserted no water or wetland issues were involved.
- To determine the distance from a public road or driveway, Ms. Dadds projected the site plan and Mr. Hutchison pointed to the operations' location and showed it had a more than ample setback. The Board agreed.
- Ms. Hardy noted the requirement of being 50 feet from an adjoining property line was the reason for the Variance, and that would be discussed when considering the Variance.
- Regarding the 20 foot maximum height requirement for stockpiling of materials, Mr. Hutchison reported that the stockpiles are 20 feet and the site is regularly inspected by MDE concerning height. Ms. Hardy asserted that requirement was therefore met.
- Size limitations for building height were not applicable since there were none.
- Ms. Hardy asked to see the landscaping photographs supplied by the applicant for the consideration of screening requirements. Ms. Hardy indicated that though the site was hidden from view to the north due to the forested edge of the property, the applicant fully met the screening requirement since he also had an intricate planting plan for screening in the areas where there is no forest.
- The applicant has exceeded the fencing requirement since the fence will be 7 rather than the required 6 feet.
- Regarding lighting for nighttime security, the applicant indicated the entrance gate where the lighting was located on Exhibit 11. Ms. Hardy asked how the light worked, and Mr. Hutchison replied that it was solar and came on when it got dark. The Board confirmed this requirement was met.
- Ms. Hardy stated that access roads must be a minimum of 20 feet in width with adequate drainage. The Board determined that this criteria was met.
- Ms. Hardy noted no subdivision or neighborhood was near the property, so access will not go through either.

- Ms. Hardy referred to the Applicant’s traffic study (Tab 4 in Applicant’s Exhibit 1) submitted which proved that the operations would not necessitate any traffic infrastructure improvements since traffic entering and exiting the site will be minimal.
- The Board discussed the requirement to provide a map showing the geographic areas to be served by the facility and anticipated routes of ingress and egress to the facility. It was determined that this would not be applicable for a wood waste recycling facility but instead for a solid waste disposal or processing facility.
- The Board determined that additional signage for ingress and egress was not needed.
- The Board did not mention requiring the applicant to provide a monetary guarantee towards infrastructure improvements.
- Ms. Hardy referenced Exhibit 6, Emergency Services Approval Letter, which stated that “there are no additional concerns about the ability of local emergency response agencies to adequately respond to any reasonably anticipated emergencies at the site.”
- The Board examined their need to consider **I. Additional criteria, (1) – (6)**:
 - Noise generation was not a problem due to the facility’s distance (minimum 1,000 feet) from neighbors, but Ms. Hardy advised the applicant that should noise become problematic in the future, he would have to take steps to remediate it.
 - The applicant stated that water was used during operations to minimize dust and particulates. Ms. Hardy noted the forested buffer to the north and east would also contain dust and particulates.
 - Ms. Hardy questioned the applicant about any mud or debris that could be spread onto the public road. Mr. Hutchison responded that they have spoken with the State Highway Administration and one of their stipulations was that any mud or debris emanating from their operations must be cleaned up by them. They have hosed off any mud or debris spread onto the state road and will continue to do so.
 - Ms. Hardy confirmed with Mr. Hutchison that the hours of operation for grinding are from 8am - 5pm Monday through Friday.
 - The Board concluded the plantings and fencing (Exhibit 10) would make the site compatible with adjacent and adjoining lands.
 - Since residual mulch is regularly monitored by MD Department of the Environment, the Board determined noxious odors would not be present. Mr. Hutchison stated that MDE checks oxygen and temperature via readings every 5 days. Ms. Hardy questioned what type of rodents may be attracted to the mulch piles and Mr. Hutchison confirmed that he does not see any rodents living in the piles because it is hot. Ms. Hardy confirmed with Mr. Hutchison that should this become a problem, it would be dealt with. The Board deemed that technology, devices, or procedures to control rodents were not necessary.
 - Ms. Dadds stated that the additional site plan requirements listed in Section 175-28.K were reviewed by the Planning Commission and any items deemed insufficient would have been included in the Department staff report.

Ms. Hardy announced the Board would review the special use exception **§ 175-142 Conditions for approval**.

- Ms. Hardy identified Exhibit 3 (Application #23-0009) as the written application for a special use exception.
- Ms. Hardy identified Exhibit 1 as the duly advertised (on 4/5/2023 and 4/12/2023) Public Hearing Notice.
- Ms. Hardy and Mr. Butler identified the applicant's numerous efforts (MDE Permit, Emergency Services Approval, fire prevention consideration) to safeguard public health, safety, and general welfare.
- Ms. Hardy observed that the grinding operation was not located in a neighborhood, and no adjoining property owners have written letters or attended the hearing to speak against it.
- Board members noted that many of the surrounding properties were engaged in agriculture, and nothing about the operation would impede development of neighboring properties.
- From testimony given, the Board determined that the operation would not overburden public infrastructure, facilities, or services. There is a plan in place for fire. There would be no impact to schools or police services. The operation is not on public water or sewer and approval has already been granted from MDOT in regards to the roadway and traffic.
- The Board considered the special use exception to conform in all other respects to this chapter (§ 175).
- Since the location is not in the Critical Area, it will have no impact on water quality, fish, wildlife or plant habitat.

Motion: Mr. Parks made a motion that the Special Use Exception be approved for Danny's Grinding Service.

Mr. Butler amended the motion to include the following conditions:

- The Applicant must receive Final Site Plan Approval from the Planning Commission prior to the issuance of any Building Permit and/or Zoning Certificate associated with the project.
- A Building Permit and/or Zoning Certificate will be required prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements.
- The Board's decision shall be void one year from the date of approval unless a plat is recorded or a zoning certificate and/or building permit is issued and construction has begun in accordance with the terms of the decision.

Second: Ms. Hardy seconded the motion.

Vote: The vote was unanimous (3-0).

Ms. Hardy announced the Board would now deliberate the Variance request.

The Board deliberated the criteria set forth in the County Code §175-152(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;**

Ms. Hardy remarked that she did not know of any other properties with a similar situation. Mr. Butler thought the shape of the property was odd given the narrow area located close to the highway. Ms. Hardy noted that they are trying to keep the operation close to the highway to avoid using the rear portion of the property that is under agricultural use. Mr. Parks commented that the location of the operation was to use land which was a sand hill that would not be viable soil for farming. Ms. Hardy added that they were making use of what was available.

(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;

Ms. Hardy stated she had some problems with this [criteria] because the applicant created the situation by putting the business operations across a property line without any permits or approvals. While she understood why this happened, she also felt it might have been possible to locate it somewhere that did not require a variance.

Mr. Butler and Mr. Parks noted that the business had been moved from another parcel (Parcel 26). Mr. Parks mentioned that it was moved from the other parcel because of the land preservation easement. Ms. Hardy said yes, it was moved because it was in a spot where it shouldn't have been, and whatever the reasoning and the logic is, the actual fact is it is something that was self-created. To her, there is no way around it. She maintained that for the financial hardship criteria, she could definitely see that, but she felt it was somewhat self-created because the applicant did not seek approval or guidance from the County before setting up this operation.

Mr. Butler thought moving the operation further back on the property could cause it to obstruct the irrigation swing.

Mr. Worm requested to speak; Ms. Hardy responded that he could if he was going to address issues they were asking.

Mr. Worm stated that these were two separate parcels and Mr. Hutchison did not create these parcels. It was reasonably foreseeable that in the future, this issue would not even come before the Board because as we contemplated, he will acquire the parcel and the parcels would be merged. Mr. Hutchison did not create the parcel boundaries. As to the financial hardship, Mr. Hutchison is trying to make use of land that was unproductive and make it productive not only for the applicant but also for the community.

Ms. Hardy contended she was not saying that Mr. Hutchison created the parcel boundaries, but rather that [the need for the variance] was created by his decision to put it where he chose.

Mr. Parks agreed this made sense.

Ms. Hardy asserted that when one is choosing to locate a business, one needs to be aware of the boundaries and the setbacks. She understood Mr. Hutchison did this without malice, but it was done without any consideration to Caroline County zoning regulations.

(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.

The board addressed this criterion above.

The Board then proceeded to deliberate the criteria set forth in the County Code §175-152(D):

(1) A written application for a variance has been submitted in accordance with §175-162 of this chapter.

Ms. Hardy stated that the written application was part of the record.

(2) A duly advertised public hearing has been held as prescribed by §175-179 of this chapter.

Ms. Hardy noted this was also part of the record.

(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.

Ms. Hardy maintained this had been previously discussed. Ms. Dadds added that this variance was for a use instead of a structure. Mr. Parks thought that the adjacent land would never be developed. Ms. Hardy agreed that the land in preservation certainly would not be.

(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.

Ms. Hardy stated she felt the difficulty was the result of the conduct of the applicant and she did not know how to get around this. The applicant created the hardship.

Mr. Parks said he thought he had done everything he could do to get around it. Mr. Hutchison had moved what needed to be moved and has complied with everything.

Mr. Butler said he would have a big problem if there were 3 different owners and one of them was [opposed to it].

(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.

Ms. Hardy felt there was no property identical to this one seeking the same kind of activity, since Mr. Hutchison was the only one in the county doing [a natural wood waste recycling facility].

(d) The variance granted is the minimum necessary to afford relief.

Ms. Hardy stated that this is another big topic, because the minimum would be to do something that would not require a variance. He could push it further into the farm field, but then it would be in the irrigation which would be a problem. Or the properties could be joined. Is that something that could be done? She asked Ms. Dadds if a property line adjustment could be done.

Ms. Dadds replied that if the property line were moved south, that land is in an agricultural preservation easement, so she did not know if he would be able to take away land that is under an easement. That would be a question for the state.

Mr. Hutchison said his father-in-law [Richard Edwards] would do anything that was needed for Mr. Hutchison's business to be established.

Mr. Thomas advised that moving a property line to avoid having to get a variance should not be factored into the decision.

Ms. Dadds referred to the projected site plan to point out that meeting the required 50 foot setback required for this type of use would be difficult. The areas of operations currently do not meet a 25 foot setback. In addition, if the grind areas and staging area were moved to the north to meet the southern property line setback, the northern property line setback would not be met. There is no way to fit the areas [needed for operations] on the property in the proposed location and still meet the required setbacks.

Mr. Butler inquired if there was a setback requirement for the pond.

Ms. Dadds replied that Section 175-28.B(1)(c) requires a 100 foot setback between any intermittent or perennial stream, tidal or nontidal wetland, or 100-year floodplain but she is not sure whether the pond would be classified as a nontidal wetland.

(e) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area, and that the granting of the variance will be compatible with the Critical Area Program for Caroline County, the Critical Area Law and this chapter.

Ms. Hardy noted that the property is not located in the Critical Area.

Ms. Hardy thought it came down to whether the difficulty was self-created. She asked if the Board members had any other questions or concerns.

Mr. Parks said he didn't know what else Mr. Hutchison could do.

Mr. Butler said maybe he did somewhat create [the need for a variance], but he's trying to fix it. He doesn't know how Mr. Hutchison could shift everything [to meet the setbacks].

Mr. Parks commented that if he shifted it, he would have to tear everything out [fence and plantings] and it might be more visible whereas it is now hidden by woods.

Motion: Mr. Butler made a motion to approve the variance with the following conditions:

- The Applicant must receive Final Site Plan Approval from the Planning Commission prior to the issuance of any Building Permit and/or Zoning Certificate associated with the project.
- A Building Permit and/or Zoning Certificate will be required prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements.

- The Board's decision shall be void one year from the date of approval unless a plat is recorded or a zoning certificate and/or building permit is issued and construction has begun in accordance with the terms of the decision.

Second: Kevin Parks seconded.

Vote: Benjamin Butler, Yea. Karen Hardy, Na. Kevin Parks, Yea.

Vote carried, 2:1

MINUTES

The Board reviewed the minutes of the March 21, 2023 meeting.

Motion: Mr. Butler made a motion to approve the Minutes from the March 21" meeting.

Second: Ms. Hardy seconded.

Vote: Unanimous (3:0)

Ms. Hardy adjourned the meeting at 7:17 pm.

BOARD OF ZONING APPEALS

Karen Hardy, Chair



Karen Hardy, Chair



Minutes prepared by:

Catherine McCulley, Board Administrative Assistant