

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

DATE: May 18, 2021

PLACE: Virtual Meeting on Microsoft Teams

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

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 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.

JAMIE HETRICK – SPECIAL USE EXCEPTION NO. 21-0007

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

Application No. 21-0007: A request by **Jamie Hetrick** for a **Special Use Exception** in accordance with Zoning Chapter 175, Article XVI and §175-13 (Attachment 3:2) of the Code of Public Local Laws of Caroline County, Maryland to establish a retail farmers market. Said property is located at 6635 Statum Rd, Preston, Maryland and is further described as Tax Map 42, Grid 20, Parcel 77.

Ms. Smith read the exhibits into the record:

Exhibit 1 Notice of Public Hearing Published in the Times Record on 5/5/21 and 5/12/21
Exhibit 2 Staff Report
Exhibit 3 Application
Exhibit 4 Permit Denial Letter
Exhibit 5 Partnership Document
Exhibit 6 Information Sheet for Proposed 16'x 26' Manufactured Building
Exhibit 7 Hetrick Farms Business Plan
Exhibit 8 Water & Sewage Verification
Exhibit 9 SDAT Tax Map & Real Property Data Sheet M42-G20-P77
Exhibit 10 Aerial Photograph
Exhibit 11 Sign Posting Affidavit and Photographs of Property
Exhibit 12 Professional Site Plan Prepared by Davis, Bowen & Friedel, Inc.
Exhibit 13 Applicant's Notice
Exhibit 14 List of Notified Adjoining Property Owners

Chairman Mann swore in:

Jamie Hetrick, 6635 Statum Rd., Preston, MD

Anne Ogletree, Attorney representing Ms. Hetrick, guided her through the following testimony. She learned, when she was denied a Building Permit in a letter from Planning and Codes, that she must first apply for a Special Use Exception. Ms. Hetrick is the granddaughter of the owners of the property. She was raised there before her college days at West Virginia University. That is where she earned a bachelor's degree in agriculture education with a minor in agriculture business and horticulture.

Ms. Hetrick described the area as very rural. Her Uncle owns the farm across the road. The properties are very spaced out and the neighbors are very friendly.

Ms. Hetrick envisions putting a building in the back of the farm where they will sell locally grown fruits and vegetables, hay and straw, frozen beef, maple syrup and honey, homemade baked goods, jams, and jellies. The farm currently sells feed for rabbits, equine, cattle, and alpacas that they sell for a dealer in Frederick, Maryland. She would then like to build a greenhouse to sell plants. Finally, becoming a one stop shop.

The market will be open Tuesdays through Sundays. Tuesdays to Fridays they will be open from 8 am to 6 pm; on Saturdays from 8 am to 5 pm, and Sundays from 10 am to 4 pm. They will be closed on Mondays. They will only employ family members. They expect to generate 300 customers, both those that visit and those they deliver to. This would be a steady number of visitors without becoming backed up.

They will have a flood light behind the market building. The light will not shine on any surrounding properties. They will build on the existing graveled area that will also provide appropriate space for parking. The building will be approximately 300 feet from the road. There shouldn't be any dust issues, however, they water down the dirt floors of the barns and would water down the market area if necessary.

Ms. Hetrick added that the operation would not endanger public health, safety, and welfare. It is not in the Critical Area and will not affect wildlife or plant habitat. The operation will not affect or overburden schools, public facilities, emergency services or water and sewerage. She expects it to be an improvement to the surrounding properties and local landowners will find value in the market.

Along with the Special Use Exception approval they will also need several licenses before they can begin selling their products. They have their Sales Tax License and have applied for their Trader's License, Food Service Permit, and On Farm Processing License.

When Ms. Hetrick was finished, Chairman Mann verified that visitors would enter through a normal doorway rather than the garage door mentioned in the building information sheet, Exhibit 6. He shared that he was very familiar with the farm and agreed it was in a very remote area. He also noted that no one provided testimony against the application.

There was no one else to speak and Chairman Mann announced that the Board would go into deliberation.

DELIBERATION

Chairman Mann began the review of the conditions for approval of a Special Use Exception as written in Zoning Chapter 175, Article 16, and §175-142 of the Code of Public Local Laws of Caroline County, Maryland.

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 5th and 12th of May 2021. See Exhibit 1.
- (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 noted that Ms. Ogletree directed the applicant well in her responses to show that there would be no detriment to public safety.*
 - (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. *Chairman Mann noted that the operation will be located far from other homes. Most of the neighboring property belongs to Ms. Hetrick's family. Ms. Hetrick testified that she believes it will be a welcome business to the area.*
 - (c) Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district. *The operation is agricultural, and the area is agricultural. This is a fitting operation and a value to the area.*
 - (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 agreed there was enough verbal and written testimony to support that the operation would not affect these areas of concern.*
 - (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 property is rural and the operation aligns with the uses within that district.*
 - (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. *The property is not within the Critical Area.*

Chairman Mann stated that other than the recommendations made by staff in Exhibit 2, the Board asks that they submit a copy of the licenses once they are obtained to keep on file with the application. Ms. Ogletree agreed.

Motion: Chairman Mann made a motion to approve the application on the conditions that:

- A final Site Plan is submitted and approved by the Planning Director.
- 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 applicant will submit copies of the Sales Tax License and Trader's License to the Board prior to the issuance of a Zoning Certificate.
- A copy of the applicant's Food Service Permit and On Farm Processing License shall be submitted to the Planning and Codes Office once obtained but is not a required condition of approval.

Second: Mr. Butler seconded the motion.

In Favor: The motion was unanimously approved (2-0).

LORI BISHOP – VARIANCE NO. 21-0008

Chairman Mann swore in:

Bill Ewald, Rauch Inc., 106 North Harrison St., Easton, MD
Lori Bishop, 12530 Knife Box Rd., Greensboro, MD

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

Application No. 21-0008: A request by **Lori Bishop** for a **Variance** in accordance with Zoning Chapter 175, Article XVII and §175-15 of the Code of Public Local Laws of Caroline County, Maryland to construct a 90' x 3' elevated walkway to access an existing pier which would be located within the 100-foot Chesapeake Bay Critical Area Buffer. Said property is located at 920 Sunday Dr., Denton, Maryland and is further described as Tax Map 105, Grid 19, Parcel 93.

Ms. Dadds read the exhibits into the record:

Exhibit 1 Notice of Public Hearing Published in the Times Record on 5/5/21 and 5/12/21

Exhibit 2 Staff Report

Exhibit 3 Application

Exhibit 4 SDAT Tax Map & Real Property Data Sheet M105-G19-P93

Exhibit 5 Professional Site Plan Prepared by Rauch Engineering

Exhibit 6 Critical Area Commission Response to Project

Exhibit 7 Aerial Photograph

Exhibit 8 Sign Posting Affidavit and Photographs of Property

Exhibit 9 List of Notified Adjoining Property Owners

Exhibit 10 Applicant's Notice
Exhibit 11 Water & Sewer Verification

Mr. Ewald, agent representing the applicant, explained that the applicant constructed a pier in June of 2020 and is now requesting a Variance to construct an elevated walkway to connect the pier to the adjacent grounds. Otherwise, Ms. Bishop could not access the pier due to the slope and the marshlands she would have to navigate first. The walkway will not create additional impervious surface but would allow rain to reach the plants below encouraging growth.

Ms. Bishop stated that to access the pier now she must wear high boots to get through the mud and a ladder to climb down the slope. She wants to access her pier in a safer and easier manner. She built the pier first she stated, because she was not aware that she could apply for both the pier and the walkway at the same time.

Ms. Bishop said the walkway was designed to curve around existing trees so removing them would not be necessary. The only disturbance to the foliage would be where the pilings are drilled (or vibrated) into the ground to support the structure. Chairman Mann asked if they have submitted a mitigation plan for the Development Review Coordinator's approval. Mr. Ewald stated that he has been unable to reach Mr. Kaczynski.

Mr. Merriken asked Mr. Ewald if steps will be necessary to connect the walkway with the pier. Mr. Ewald responded that it is 3' wide to comply with ADA regulations and they will need to comply also with the slope requirements. He believes steps are not necessary because the slope is under the 8.3' ADA limitation. Ms. Dadds pointed out that ADA regulations do not apply for private residential properties.

This completing all testimony, Chairman Mann closed this portion of the meeting to deliberate.

DELIBERATION

Chairman Mann began the review of the conditions for approval of an Area Variance as written in Zoning Chapter 175, Article 17, and § 175-152B. & D. of the Code of Public Local Laws of Caroline County, Maryland.

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 Board asked Ms. Bishop how she responds. She answered that most of the neighbors have piers with steps. Her walkway will not require steps because the slope is not as deep on her property.*

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. *Chairman Mann stated that the problem is the natural slope of the land, not a manmade condition.*

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. *A financial hardship is not in consideration on this application.*

D (1) *A written application for a variance has been submitted in accordance with §175-162. See Exhibit 3.*

D (2) *A duly advertised public hearing has been held as prescribed by §175-179 of this chapter. See 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. *Chairman Mann sees the construction as an advantage to the public safety. Ms. Dadds submitted (Exhibit 12) a screen shot of an aerial view of the property.*

(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. *Chairman Mann repeated that the problem is the natural slope of the land, not a manmade condition.*

(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. *Chairman Mann stated that most of the neighbors have piers and access them using steps. Ms. Bishops slope is shallower and requires only a slanted walkway to access her dock.*

(d) The variance granted is the minimum necessary to afford relief. *Chairman Mann noted that they are asking for a minimum 3-foot-wide walkway and the length is only what is necessary to avoid having to walk in muck to reach the pier.*

(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 (COMAR 27.01.12) and this Chapter. *The requirements set out in COMAR and this chapter are parallel, and responses are fitting for both ordinances. Mr. Merriken concurred, pointing out that COMAR 27.01.12.04(5) is not within the Boards purview.*

E. Additional Requirements:

(1) *In granting any variance, the Board of Zoning Appeals may also prescribe additional appropriate conditions and safeguards in conformity with this chapter. The Board had no additional conditions to prescribe to this application.*

- (2) *No nonconforming use of neighboring lands, structures or building in the same zoning district and no permitted use of lands, structures or building in any other zoning district shall be considered grounds for the granting of a variance. This requirement would be a condition of the pier application and not the walkway.*
- (3) *The application for a variance within the critical area shall also be submitted for review to the Chesapeake Bay Critical Area Commission at least 14 days prior to the scheduled hearing. A copy of the findings shall also be submitted to the Commission. If the application for a variance involves a nonconforming lot of record, the Board must also find that, due to the pattern of lot ownership, it is not possible to configure or consolidate lots so as to permit compliance with critical area regulations. The Chesapeake Bay Critical Area Commission was notified as required and the response is found in Exhibit 6.*

Motion: Mr. Butler made a motion to approve the application on the conditions that:

- 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.
- A buffer mitigation plan must be submitted as part of the Zoning Certificate and/or Building Permit that complies with COMAR requirements and statements in the Critical Area Commission letter of April 12, 2021 (Exhibit 6).

Second: Chairman Mann seconded the motion.

In Favor: The motion was unanimously approved (2-0).

MINUTES – APRIL 20, 2021


The members reviewed the minutes of the April 20, 2021 Board Hearing. Mr. Butler asked that the minutes be amended to correct his purpose for recusing himself from the Wood Farm decision. He stated that he worked for Mr. & Mrs. Schuster during the day. The correction would be made; however, they postponed signing the minutes at the June meeting when Ms. Hardy is present.

ADJOURNMENT

Motion: Chairman Mann made a motion to adjourn the meeting at 7:25 pm.

Second: Mr. Butler seconded the motion.

In Favor: The motion was approved unanimously (2-0).


Minutes prepared by Melanie Smith

