

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

**DATE:** July 21, 2020

**PLACE:** Virtual Meeting on Microsoft Teams

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

**ALSO, PRESENT:** Katheleen Freeman, Director of Planning & Codes  
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 6:05 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 Law of Caroline County, Maryland.

### **VIRTUAL PUBLIC HEARING PROTOCOL**

The first item on the agenda was approval of the Virtual Public Hearing Protocol. Ms. Dadds read the document into the record. The Board reviewed the document and it was publicly posted on the County website. The members approved the draft as a final without any amendments.

**Motion:** Ms. Hardy made a motion to approve the Virtual Public Hearing Protocol as written.

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

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

### **JONES ESTATES BAY COUNTRY, LLC – SPECIAL USE EXCEPTION NO. 20-0003**

Chairman Mann asked Ms. Dadds to conduct a roll call of the public in attendance:

Brendan Mullaney, Esq., McAllister, DeTar, Showalter & Walker, LLC, Easton, MD;  
Bob Rauch, Rauch Engineering, Design, & Developing Services, Easton, MD;  
Payton Anderson, Jones Estates, LLC, Durham, North Carolina;  
Melissa Solomon, Jones Estates, LLC, Durham, North Carolina;

Nick Kelly – Critical Area Commission Regional Program Chief, Annapolis, MD;  
Annie Sekerak – Critical Area Commission Natural Resource Planner, Annapolis, MD;  
Emily Vainieri – Assistant Attorney General, Department of Natural Resources, Annapolis, MD.

Chairman Mann introduced the case and swore in Attorney Brendan Mullaney and Bob Rauch for the record.

Ms. Dadds read the exhibits into the record and Mr. Mullaney was given the floor.

Mr. Mullaney stated that he represented the owners/operators of the existing Mobile Home Park located at 21182 Marsh Creek Road in Preston, Maryland. A portion of the property that the Wastewater Treatment Plant (WWTP) lies on is within the Critical Area, some of which is classified as limited development area (LDA) and some as resource conservation area (RCA). The applicant has applied for Growth Allocation to reclassify the .814-acre substation area as LDA and has requested the Board approves the Special Use Exception with a contingency that the Growth Allocation application be approved by the County and Critical Area Commission.

The applicant's predecessor in interest was made aware that the Mobile Home Park's septic system was failing and would require a new WWTP to serve its residents. The Board, at the time, approved the Special Use Exception No. 2014400018 to construct a new WWTP. By Notice of Violation dated November 30, 2016 it was determined that the newly constructed WWTP was within the RCA and R (Rural) District rather than the LDA and MH (Mobile Home) Zone and was therefore illegal and nonconforming.

The WWTP currently operates within the R (Rural) District. All permitting and certification for the WWTP has been completed and it meets all other necessary standards prescribed by the County and State of Maryland. This application seeks to allow the WWTP to remain as constructed within the R (Rural) District. The applicant is also undergoing a lot line revision for the Property so that all the RCA is on parcel 94, to the east of the WWTP, and all Critical Area located upon Parcel 264 is classified as LDA. The revision plat will be recorded shortly after approval of the Special Use Exception sought by this application.

Mr. Mullaney stated that the proposed use satisfies the requirements of §175:145 and §175:142, of the Caroline County Zoning Ordinance. The WWTP replaced a failed septic system which had the potential to corrupt the soil and environment on the property and adjacent properties. The state-of-the-art ENR system ensures that the public health, safety, and welfare is protected and "Little Creek" remains clean. The system is housed in an "agricultural pole barn structure" similar to many of the structures found in the area. As of the date of the application the WWTP has been in operation without any known adverse effects on neighboring properties.

Mr. Mullaney asserted that no additional development was planned or being proposed for the property. The plant is privately funded and privately operated which serves eighty (80) mobile home sites on the property. The system reduces the likelihood that public facilities and resources will be necessary to remedy leaching of toxins and waste into the local soil and water. He contended that the R (Rural) District is "intended for purposes of protecting watersheds and water supplies" and there is no odor, smoke, dust, fumes, fire, vibration, noise, or hazardous conditions generated by the WWTP. The WWTP is a highly regulated use with oversight by MDE and applicable state and local agencies.

Mr. Mullaney closed stating that the WWTP protects the environment from discharge of harmful waste. It ensures that water quality is enhanced and fish, wildlife, and plant habitat within the

Critical Area remain protected. Managing the waste produced by the property is critical to that end and accomplishes the goal of the Critical Area law.

Chairman Mann asked if the mitigation has not been completed due to the outstanding approvals. Mr. Mullaney stated that once the lot line revision and SUE is approved significant mitigation will be required to comply with the Critical Area requirements as well as the Growth Allocation agreement. Planting will be placed to the south and east of the WWTP and further conceal the building from public view. The County Planning Office will review the plans before a Zoning Permit would be issued.

Mr. Mullaney informed the audience that according to the doctrine of “Impermissible Change of Mind” the conditions of the first SUE approval cannot be changed, except for what is asked for according to the application. He asked the Board to recognize that the applicants that inherited this problem had taken great strides to bring the WWTP into compliance with the Critical Area and County requirements. They believe this to be the last hurdle they must overcome to put this issue to rest.

Ms. Hardy was pleased with how Mr. Mullaney presented the case and believes they have met all conditions required to comply. Mr. Butler asked if 80 sites were the maximum number of sites allowed on the property. Mr. Mullaney responded that Mr. Butler was correct, and that the property was one site short of full capacity.

Mr. Mann asked if anyone from the Critical Area Committee (CAC) had anything to add. Mr. Kelly stated that a Growth Allocation was approved as Mr. Mullaney stated. This occurred in March of 2020. There were six conditions attached to that approval as shown in Exhibit 11. The CAC conditions reflect those of the County. He noted that, because of the COVID pandemic, deadlines are softened until six weeks after the State of Emergency has been lifted.

Ms. Dadds read the transcribed testimony of Andrew Kinn, 21182 Marsh Creek Road, Lot 41, Preston. He stated that he had no objection to the WWTP location inside the Dover Bridge Park along Marsh Creek Road. It’s already there and its present location is fine with him. Moving it does not make any sense and serves no purpose.

When asked if anyone had testimony opposed to the application, Ms. Dadds read the written testimony of Arlene Stevens, 3740 Frazier Neck Road, Preston. Ms. Stevens reason for opposing the application was that the Zoning Code requires a primary use and the accessory use that serves it, to both be located on the MH (Mobile Home) District property. However, the WWTP was constructed on the portion of land zoned R-Rural. Her letter contended that the Park would have been shut down had the WWTP not been developed to treat its wastewater. She contended that the Zoning Code stipulates that each mobile home site in a park must have a sewage system and the WWTP is the only sewage system for the park.

Ms. Hardy responded that she understands Ms. Stevens concerns. However, the original application was approved with one error, about the overlay, and the WWTP was constructed. The Board of Zoning Appeals and the Critical Area Commission have found this to be the easiest solution. They do not want to remove the WWTP and go back to failing septic systems. Nor do they want to put 80 families out of their homes. This solution is the best economic and environmental response. The applicant applied to have the CAC review the location for approval

of a Growth Allocation, which resolves the location within the Critical Area. And they have applied for a lot line revision to include the WWTP area into the MH Zone. They have gone through the proper channels to correct the previous owner's violation. Any other solution would be unethical. Mr. Butler and Mr. Mann concurred.

Chairman Mann asked Ms. Dadds if it were true that each site within the Park must have a sewage system rather than the WWTP serving all of the sites. He believed that it would be impossible to comply with such a condition because there was no room for an SRA on each lot. Ms. Dadds recalled that Ms. Stevens did state that County Code confirmed this statement but did not reference which code. Ms. Dadds would have to research the code to answer Chairman Mann properly.

Ms. Dadds referred to §175-68 (B)(1) of the Caroline County Code where it states under "Mobile Home Parks" [Community water and sewerage systems shall be provided to all individual mobile home sites and shall be in compliance with all requirements of the Caroline County Health Department.] She pointed out that it does not state that they be served by an individual system but rather a community system.

## **DELIBERATION**

Having heard everyone's testimony and summary statements, Chairman Mann closed this portion of the meeting for deliberation. The Board reviewed the testimony against the applicable regulations of the Caroline County Zoning Ordinance Chapter 16, Section 175-142.

Chairman Mann stated that the application (Exhibit 3) fulfills requirement 175-142A(1) of the conditions for approval. (Exhibit 1) verifies that the public hearing was duly advertised in the Times Record on July 8 and July 5 of 2020 as required in subsection 175-142A(2). 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. Chairman Mann referred to Mr. Mullaney's testimony that the original application was approved, and it was determined that the request will not endanger public health, safety, or general welfare.
- (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 WWTP is housed in a barn style pole building commonly found in the area and it will be hidden from the public view once mitigation is complete.
- (c) Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district. Chairman Mann stated that again it is a common barn type structure that experiences no vehicle or foot traffic.
- (d) Will not overburden existing public facilities, including schools, police and fire protection, water and sewerage, public roads, storm drainage and other public

improvements. Chairman Mann noted that it was all privately owned and operated. No resources are required or requested of the County.

- (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. Mr. Mann referred to counsel's testimony that the request does conform to all applicable regulations.
- (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. Ms. Hardy noted that this is a state-of-the-art system that replaced failing septic systems within the Park and was found acceptable by the CAC.

**Motion:** Chairman Mann made a motion to approve the application on the condition that a mitigation plan is approved and fulfilled; that all conditions outlined in the Critical Area Letter (Exhibit 11) are met and noted that deadlines may be extended according to the State actions imposed due to the COVID crisis.

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

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

## REVIEW AND APPROVALS

The members reviewed the minutes of the February 18, 2020 Board of Zoning Appeals meeting.

**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 (2-0).

## ADJOURNMENT

**Motion:** Ms. Hardy made a motion to adjourn the meeting at 7:05 PM

**Second:** Chairman Mann seconded the motion.

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

The meeting was adjourned at 7:05 PM.



Minutes prepared by Melanie Smith