

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

DATE: September 15, 2020

PLACE: Virtual Meeting on Microsoft Teams

**BOARD MEMBERS
(PRESENT):** Michael Mann, Chairman
Mary Leavell, Vice-Chair
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 6:05 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 Local Laws of Caroline County, Maryland. Ms. Dadds conducted a role call of those in attendance.

JAMES STUART –VARIANCE NO. 20-0025

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

Application No. 20-0025: A request by **James Stuart** for a **Variance** in accordance with Article 17, §175-137.A and §175-14 of the Caroline County Zoning Ordinance for a Variance to construct an addition to an existing non-conforming dwelling which would be located closer to the rear property line than the minimum required setback. Said property is located at 2960 Mowbray Creek Rd, Federalsburg, Maryland and is further described as Tax Map 61, Grid 22, Parcel 456.

Ms. Dadds read the exhibits into the record.

Exhibit 1	Notice of Public Hearing Published in the Times Record on 9/2/20 & 9/9/20
Exhibit 2	Staff Report
Exhibit 3	Variance Application
Exhibit 4	Permit Application Denial Letter
Exhibit 5	Site Plan
Exhibit 6	Photographs of the Property
Exhibit 7	Tax Map & Real Property Data Sheet M61-G22-P456
Exhibit 8	Aerial Photograph with Features Overlay
Exhibit 9	Water & Sewage Verification Application
Exhibit 10	List of Notified Adjoining Property Owners

- Exhibit 11 Applicant's Notice
- Exhibit 12 Sign Posting Affidavit and Photos
- Exhibit 13 Critical Area Commission (CAC) Letter
- Exhibit 14 Ad Verification

Chairman Mann swore in:

James Stuart, 28969 Old Farm Rd., Wye Mills, MD 21679

Mr. Stuart stated that he was applying for a variance that would not have been required if it hadn't been for the annexation by the State of Maryland. The land was annexed for MD Route 318 circa 1960. He was not asking to build any closer to the property line. However, because the property is already too close to the property line, he was required to have a variance. He proposed to replace the rear porch and bathroom and build a second floor above. This will increase the value of the home from \$30,000 to \$175,000 and in turn increase the revenue the County receives in property tax.

At Mr. Merriken's prompting, Mr. Stuart stated the he bought the property in May of 2020. He is not asking to be closer to the property line than the home already is but rather build up to a second floor. He hired Harry Smith to survey the property. He learned of the annexation from Mr. Smith. Ms. Dadds displayed exhibit 6 page 3. All of the proposed building will be inside of the existing asphalt driveway that circles around the rear of the dwelling.

Ms. Hardy asked Mr. Stuart why he was applying for a variance to do the work, when in exhibit 6-page 3 it shows that it is already under construction. Mr. Stuart answered that he applied for a permit, but it was denied because a variance was required. The County Planner, Matt Kaczynski, told him that the Board could not decide on this until September 15th. He felt he could not wait and decided to do the work immediately. He chose to deal with the consequences of his action. Ms. Hardy stated that was very presumptuous of him considering he has not yet been approved for a variance. She understands his timing limits firsthand but explained that he could not move forward without permission to do so from the County.

Mr. Stuart explained that he started the demolition as he was applying for the permit. They found so much rotten wood, water and termite damage during the demolition. He had to make it structurally sound. It was at this stage that he was told he needed a variance. He had never heard of a variance before. When he received the news that it would take an additional two months, he realized this would kill him. It left the house exposed to the rain and the weather that was in the forecast.

Chairman Mann stated that he has driven by the site and saw there was more work completed even after the pictures were taken. He was informed on July 8th that he would have to apply for a variance before he could be approved for a permit. It was evident that Mr. Stuart was aware that his permit application was not approved when he started the construction. He asked Mr. Stuart if he replaced the footers and foundation before beginning construction. Mr. Stuart stated that there was no existing foundation, the bathroom and porch were supported by cinder blocks and a wood beam. Therefore, he did lay the foundation and footers for the new construction.

When asked, Mr. Stuart said, the work was not inspected. Chairman Mann said that the rafters were up, and the second floor was closed in with plywood and covered in plastic. Chairman Mann does not understand why he continued building even after knowing it wasn't approved. Mr. Stuart answered that he could not wait for two months.

Ms. Dadds asked, if the Board were to grant the Variance, how will Mr. Stuart resolve this so the footers and framing could be inspected. Mr. Stuart replied that he was not aware he needed an inspection, but he could open it up to allow an inspector to view the work that has been done.

Ms. Dadds asked how the rebar inspection would be possible when the concrete has already been poured. Mr. Stuart said that he could have the person who did the work certify how it was done. Ms. Hardy asked if he thought at any point, he would have to have some kind of certification and understand what is required to do the work before he endeavored to start the project. She asked why he didn't take pictures as evidence to prove what he did rather than now saying it's impossible to show the rebar. It's conceivable that the County could require him to dig it up to be inspected. She was concerned that all of these steps were taken without his having any understanding what he was endeavoring to do. She asked Mr. Stuart if he had ever done work like this before, or, was he a contractor, or, just a homeowner and who advised him to do this.

Mr. Stuart stated that he has pictures but chose not to flood Ms. Dadds' email with them. Included in the pictures is the rebar, the concrete being poured, the concrete block, the wood boring organism plate, and the pressure treated wood. He is not a contractor; he is the homeowner. This is not the first house he has done; however, this is the first house he has had to repair with this extent of damage. He stated they went above and beyond the code requirements. The code requires they install an 8" footer and they used 24" footer with rebar. It's still 16" deep.

They dug a 2' crawl space out from under the existing house that was not there before because a crawl space is required. He offered for the builder to sign an affidavit of how the footer was built, or, he could send 400 photographs to Ms. Dadds' email.

Mr. Butler asked Mr. Stuart why the original foundation needed to be replaced. Mr. Stuart responded that there was no foundation. The bathroom was built on concrete blocks and a beam. Mr. Butler hoped that he did not compromise the foundation by digging under the existing house. Mr. Stuart replied that the center is supported by 8' x 8' or 10' x 10' beams.

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; *Chairman Mann inspected the neighborhood and confirmed the lots became larger as he drove down the road. The only issue is the 8'6" setback and the building was already in nonconformance due to the State Roads annexation;*

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 the State Highway annexation rather than the applicant or the applicant's predecessor;*

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; *This section does not apply as there was no testimony of a financial hardship;*

B (4) The granting of the variance satisfies the general requirements set forth in subsection D,

B (5) The granting of the variance is subject to any additional requirements imposed by the Board pursuant to Subsection E;

D (1) *Exhibit 3 is the application that was filed; and*

D (2) *Exhibit 1 is the Notice of Public hearing that was advertised on September 2nd and 9th in the Times Record;*

D (3) The Board has considered the application and rendered a decision in accordance with the following principles and requirements:

- (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 stated that the nonconformity has been in existence and granting the variance will not increase this or endanger anyone;*
- (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 the State Highway annexation rather than the applicant or the applicant's predecessors;*
- (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 and the Board agreed that this is a unique situation and will not require an amendment to this chapter;*
- (d) The variance granted is the minimum necessary to afford relief. *Chairman Mann stated that Mr. Stuart is not increasing the nonconformity, he is building up to avoid further disturbance;*

- (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. *Exhibit 13 is a letter, stating there was no objection to the application, from the Critical Area Commission dated August 7, 2020;*

E (1) The Board discussed possible conditions of approval. *Chairman Mann stated that all permits and all inspections to date must be completed before any work can proceed further. He believes that under certain circumstances an inspector may approve an after the fact foundation and footer. Ms. Hardy stated that pictures could speak volumes, but she thinks an Engineer's certification that the footer is sound is necessary. That is the foundation the house sits on. She understands that Mr. Stuart believes he has done exactly what he was supposed to do and even gone beyond that. But for his protection and the safety of anyone that may occupy the house that some sort of certification from an engineer should be required or requested. Mr. Merriken suggested that if they are going to require a certificate from an Engineer, they should make it subject to the approval of the County Building Inspector. Ms. Dadds agreed and stated that such conditions have been set in the past, such as requiring a soil compaction study from an engineer.*

E (2) *Mr. Merriken stated that this does not apply in this case;*

E (3) *The Critical Area Commission was contacted for review and received approval (see Exhibit 13. It is also not possible to consolidate lots as to permit compliance.*

Ms. Dadds clarified that once the decision is signed in October there is a 30-day process for appeal before the permit would be released. Mr. Merriken stated that someone would have to be an interested party to appeal and, in this case, no one provided testimony in opposition to the application. Therefore, the County would not need to wait to issue the permit however, someone could come in during that time and say that they are an interested party and have reason to appeal. The applicant would then be at risk if they decided to proceed having known that the appeal process has not ended. He further stated that even if the permit is issued, the applicant could still not proceed until the stop work order is lifted. All required inspections to date would have to be completed before the stop work order is lifted.

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

- The applicant must provide an Engineer's certification subject to the approval of the County Building Inspector for the existing structure that was started without a building permit (Chairman Mann suggested they amend this to say that it is up to the Building Inspector to decide what is required of the applicant to be satisfied that the building is safe and complies with code) The other Board members agreed with this amendment.
- An after the fact Building Permit and/or Zoning Certificate is required prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements;

- No further work is to be done until the permit is granted and the stop work order is lifted; and
- Any conditions set forth by the Board will be enforced during the Building Permit Application process.

Second: Mr. Butler seconded the motion.

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

VERIZON WIRELESS/MASTEC NETWORK SOLUTIONS – SPECIAL USE EXCEPTION NO. 20-0023

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

Application No. 20-0023: A request by **Verizon Wireless/MasTec Network Solutions** for a **Special Use Exception** in accordance with Article 16 and §175-41 of the Caroline County Zoning Ordinance for a Special Use Exception to install a telecommunications monopole facility to include a 199-foot monopole within a 60 x 40 fenced equipment compound. Said property is located at 17760 Henderson Road, Marydel, Maryland and is further described as Tax Map 5, Grid 16, Parcel 21.

Ms. Dadds read the Exhibits into the record:

- 1 Notice of Public Hearing Published in Times Record on 9/2/2020 and 9/9/2020
- 2 Staff Report
- 3 SUE Application
- 4 Statement of Justification
- 5 Professional Engineers Report
- 6 Federal Airways & Airspace Summary
- 7 Economic Study
- 8 Simulated Monopole Photographs
- 9 Site Plan
- 10 Tax Map & Real Property Data Sheet M5-G16-P21
- 11 Aerial Photograph
- 12 List of Adjoining Property Owners
- 13 Applicant's Notice
- 14 Sign Posting Affidavit
- 15 Ad Verification

Chairman Mann swore in:

Joshua Schakola, 9115 Guilford Rd., Columbia, MD 21046;
 Jacob Toroney, Morris & Ritchie Associates, 1220-C E. Joppa Rd., Ste 505, Towson, MD 21286;
 Paul Dugan, Radio Frequency Expert, 42 Old Barn Dr., West Chester, PA 19382;
 Sonya Haley, 17809 Marvel Rd., Marydel, MD 21649; and

Wayne Voshell, 17702 Henderson Rd., Marydel, MD 21649.

Mr. Schakola, Zoning Manager, MasTec Network Solutions, summarized Exhibit 4 for the Board. MasTec Network Solutions on behalf of Cellco Partnership doing business as Verizon Wireless respectfully requests approval to permit a 199' Monopole Tower for telecommunications business in the wireless industry. They will also have a 40' x 60' compound to house the communication equipment. It will be surrounded by a chain link fence with dark green/black slats to conceal the equipment.

This is an agricultural use property. It is not located in the Critical Area. They have completed their FCC compliance for their NEPA review as of July 27.

They are asking for a waiver to the landscaping requirement that requires a professional landscaping plan to screen the tower structure and equipment compound. The existing thick tree coverage screens the site on the north, west and south sides and a good portion of the roadside. He stated that someone driving 15 MPH past the small portion on the eastside that is open to view would only glimpse the site for a second.

The second reason for requesting the waiver is that the landowner would prefer there be no more vegetation to take care of and would prefer no more obstruction to the agricultural use of the land.

Before introducing Mr. Dugan, he added that the tower has two sites reserved for other carriers to use to improve their coverage. There is no access to the public and they should only need to visit the site once or twice a year for maintenance. Most monitoring is done remotely.

Mr. Dugan stated that the service in the area of the County is practically non-existent. He tested the signal and his phone would not even perform a speed check. He stated that having no cell service in the area is a danger. Erecting the tower will provide 4G LG service to Henderson Road, Crownstone Rd., Halltown Rd., Rt. 54, Rt. 8, River Bridge Rd., and Westville Rd. There will be an approximately two-mile coverage from the tower.

This tower will also provide capacity relief on surrounding towers. Ms. Dadds displayed Exhibit 5 Page 7 as a visual of the coverage the tower would provide.

Mr. Voshell stated that they need cell coverage very badly in this area of the County. Adjoining property owner, Sonya Haley added that she works from home and has three small children who are schooling from home because of COVID and it is impossible to get internet connection. They must go to family members' homes to hook up to WiFi.

Ms. Hardy asked if the Board had the authority to waive the screening requirement. Mr. Merriken asked Ms. Dadds what the Board may have done in the past. Ms. Dadds didn't remember the Board ever receiving such a request. Mr. Merriken concluded that there is nothing in the code to support that a waiver of this requirement is allowed. However, because there is some screening already existing, the Board may consider the screening sufficient.

Ms. Dadds displayed exhibit 8, page 2 for the audience. She suggested that the Board may ask that trees be added to the existing trees on the eastside of the pond to prevent disturbing the agricultural

use and still concealing the compound from the road. Mr. Toroney showed on the site plan where the employees would enter the site to the northside of the property.

Ms. Dadds also suggested that the Board could request a professional landscaping plan be submitted, as the ordinance requires, and allow the Development Review Coordinator to decide what is appropriate as a buffer during site plan approval.

There being no more questions and no opposition they closed this portion of the meeting to deliberate.

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 publicized in the Times Record on September 2nd and September 9th;*
- (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 tower will increase safety and general welfare by providing coverage for emergency communications.*
 - (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 neighbors are far from the property and will not be affected negatively by this project.*
 - (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 having a better signal will assist the development and improvement of 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 that this requirement does not really apply to this application.*
 - (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 also does not apply to this application because the land is not within the Critical Area.*

In regard to responding to the requirements of §175-41 Ms. Dadds and Mr. Merriken agreed that this section has been reviewed by the County's Development Review Coordinator and any concerns would have been noted in Exhibit 2 - Staff Report. Furthermore, the Board read adopted Exhibit 4 – Statement of Justification and are confident, except to include a professional landscaping plan, all the requirements have been met.

Ms. Hardy suggested the condition could read there should be appropriate landscaping to screen the project from the roadway located southeast of the property.

Motion: Ms. Leavell made a motion to grant the Special Use Exception with the following conditions:

- The Applicant must obtain a Final Minor Site Plan Approval from 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
- Submit a professional landscaping plan that would screen the base of the project from view from Henderson Road for review and approval by the Development Review Coordinator at the permitting stage of the application.

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 August 18, 2020 Board Hearing.

Motion: Ms. Leavell made a motion to approve the minutes after they have been reviewed to ensure Ms. Hardy did not second her own motion.

Second: Ms. Hardy seconded the motion.

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

The members reviewed the minutes of the August 26, 2020 Board Hearing.

Motion: Ms. Leavell made a motion to approve the minutes as written.

Second: Ms. Hardy seconded the motion.

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

The members reviewed the Mountaire Farms, Inc. Special Use Exception and Variance No. 20-0021.

Motion: Ms. Leavell made a motion to approve the decision as written.

Second: Ms. Hardy seconded the motion.

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

The members reviewed the Bramble Special Use Exception No. 20-0017.


Motion: Ms. Hardy made a motion to approve the decision as written.

Second: Ms. Leavell seconded the motion.

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

ADJOURNMENT

Chairman Mann adjourned the meeting at 8:16 PM.



Minutes prepared by Melanie Smith