

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

**DATE:** October 15, 2019

**PLACE:** Caroline County Circuit Court  
109 Market Street  
Denton, MD 21629

**BOARD MEMBERS  
(PRESENT):** Mary Leavell, Acting-Chairman  
Mike Mann, Member

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

Acting-Chairman Leavell called the Caroline County Board of Zoning Appeals to order at 6:05 p.m. The Board members and staff were introduced to the audience. Ms. Leavell explained that the Macleay Variance was postponed to the November 2019 hearing. She added that the Woods Farm item will begin at 6:15 p.m. to allow anyone that was not aware of the venue change before seeing the notice on the HAPS entrance, time to arrive. The Board took care of the administrative items on the agenda first.

**SEPTEMBER 17, 2019 MINUTES**

The members confirmed that they read the minutes and approved it as written.

**Motion:** Mr. Mann made a motion to approve the September 17, 2019 minutes as written.  
**Second:** Acting-Chair Leavell seconded the motion.  
**In Favor:** The motion was unanimously approved (2-0).

**GROUND STAR DECISION SUE#201900019**

The members confirmed that they read the decision and found it to be consistent with their findings.

**Motion:** Mr. Mann made a motion to sign the Ground Star Decision.  
**Second:** Acting-Chair Leavell seconded the motion.  
**In Favor:** The motion was unanimously approved (2-0).

Acting-Chair Leavell asked everyone to be sure they signed in to the meeting.

**CIRCUIT COURT OF CAROLINE COUNTY, IN THE MATTER OF WOOD FARM, LLC, CASE NO. C-05-CV-19-000029** – Deliberation on whether or not the November Hearing on Remand will be on the record only with notice to all interested parties.

Acting-Chair Leavell opened by reading the Notice of Public Hearing into the record. She asked if anyone wanted to speak on how the Board should proceed with the Wood Farm case that was remanded back to the county by the Circuit Court.

Ms. Anne Ogletree, Attorney for the applicant stepped up to the podium. She pointed out in paragraph 2 of page 7 of the court opinion that the judge stated that he did not find in the record, nor in the Board's written decision, a finding on how Wood Farm's specific mineral extraction facility would pose an adverse effect above and beyond the same type of facility, regardless of where it is located within the zoning district. She pointed out on page 8 that the judge remanded it back to the Board for the narrow determination of whether there are facts and circumstances that demonstrate the proposed use would have adverse effects above and beyond those inherently associated with such a special use exception irrespective of its location within the zone.

She proposed that the Board can accomplish this without additional testimony by looking at the record.

Mr. Chris Drummond, Attorney for the applicant, stepped up to the podium. He provided a history of the events from the time Mr. Schuster first submitted his application in 2017. It was first delayed when the County Commissioner's placed a Moratorium on Sand & Gravel projects and Solar projects in 2017. The Commissioners wanted to research Public Local Law and the Comprehensive Plan regarding questions and concerns about the growing industries in Caroline County.

Mr. Drummond was active in the discussions on behalf of Woods Farm. Amendments were made to the Local Code as a result. The amendments responded to the concerns of the County and the citizens to the industries guidelines.

Mr. Schuster renewed his application with the changes in response to the amendments earlier this year when the moratorium was lifted. There were several days of testimony before the Board of Zoning Appeals made their decision.

The Board ensured that everyone had a chance to say all that they had to say before deliberating to make their decision. He stated that Mr. Schuster is frustrated that they are still going over the elements of this application. His client is ready for this to be over with however the Board decides.

Mr. Drummond referenced the *People's Counsel for Baltimore County vs. Country Ridge Shopping Center, Inc.* as an example of how to proceed with this case. He explained that in his opinion and according to the referenced case, the only option is to proceed on the record and to make the finding that the Judge found had not been made based upon the facts presented and the reasonable inferences that you can draw from those facts.

He went on to say that unlike an open-ended remand this remand is for the narrow determination of whether the adverse effect at the particular location is greater than ordinarily associated with the use. The Judge directed the Board to apply the correct principles of law regarding the conditions listed in §175-142A(3)(a) and (b) in the Caroline County Zoning Ordinance.

Mr. Drummond stated that he could foresee someone requesting a new hearing be opened because of the new board member that was not present at the time of the decision. He noted that this is also resolved in the case he referred to where it stated that the credibility of the witnesses was not in question but the findings of law or lack of findings to support the decision that was made. In this case only the law supporting the facts are needed and can be found in the Administrative Record that was filed in the Circuit Court.

James Worm, Attorney for several residents on Log Cabin Road, took the podium. Mr. Worm agreed that the Judge was asking for clarification as to how the Board came to the decision to deny the application. Not because their decision was wrong but because they did not clearly state the process of their determination. The Judge asked for further proceedings consistent with the record to say why this harm is unique to this locality. If the Judge does not agree then he can appeal it. Or if the Board cannot justify their decision, he directed the Board to approve the application with appropriate safeguards set as conditions that respond to the Boards concerns.

Mr. Worm referenced *Powell vs Calvert County*, “*If the record fails to reflect such findings or reasons, the appropriate remedy is a remand to the agency with directions to comply with the requirement. If the court cannot tell if the administrative agency was right or wrong, or to put it more accurately, whether it committed error because the court cannot discern the basis of the agency's decision to determine if it was proper, the court should remand to the agency for further proceedings.*”

Mr. Worm agreed that it may not be appropriate to reopen the case again. He also agreed with Ms. Ogletree that they should clarify their decision and if taking any additional testimony, it be taken in writing. He also agreed with Mr. Drummond that the Peoples Counsel case supported that it is appropriate for a newly seated member to respond to the remand, based upon the record and testimony on file.

Ms. Susan Gorleski stood up to speak against the application. She stated that it is a unique harm that there is a large residential neighborhood located across the road from the proposed site.

Mr. Richard Gorleski read a letter that he also distributed to the Board. He suggested the Technical Advisory Board review the application. It should be noted that this took place as part of the Site Plan approval process and the results of that review are included in the May 16, 2017 Wood Farm BZA Package, Board Exhibit 1.

Mr. Gorleski referred to a mineral extraction application (Schuster SUE No. 04-30SE) that Mr. Schuster was granted on the opposite side of Route 404. Studies showed the access to Route 404 was much safer because the trucks would be entering the highway at an intersection with a traffic light. He stated that there are no residential subdivisions near that site as they are with the Log Cabin Road site.

He added that Maryland State Highway Administration failed to provide a determination if there is a safety impact by as many as 150 trucks entering and exiting the intersection of Log Cabin Road and Route 404. Mr. Gorleski maintained that there are hazards particularly in poor weather and during heavy beach traffic throughout the summer.

Mr. Gorleski also noted that the Caroline County Comprehensive Plan recommends setting aside areas in the County for specific purposes. The development where he lives on Log Cabin Road was an example of what was envisioned. He asked if a mineral extraction facility was a sensible business to be allowed into a largely residential area.

Mr. Gorleski agreed with the others that gave testimony that the Board should support and reinforce their original decision.

Ms. Kim Stewart took the podium next. She stated that the project is taking proven prime farmland away from Caroline County. She also noted that the residents are most familiar with the traffic on that road and suggested they hear them when they say the increase of truck traffic will be disruptive to the neighbors. She suggested that Mr. Schuster could avoid the conditions put upon him if he were to choose another location away from the main highway and away from residential developments.

The Board asked that speakers keep their testimony to the matter at hand. They have asked for the public's input as to which of the four options they should choose in responding to the Courts' remand. They are not taking testimony on the merits of the case.

Ms. Lori Buss-Morton spoke next. She stated that she is a school teacher and the dust from the operation will result in more children needing inhalers and even dying.

The Board restated that the testimony should respond only to how the Board should proceed with the Courts' remand.

Mr. Jerry Stewart spoke next. As a bus driver he insisted that Log Cabin Road cannot handle the truck traffic that would occur as Mr. Schuster proposed.

Mr. Tyler Harper spoke next. He stated that traffic has changed since the expert opinions were given for this project and suggested the Board rehear the application as if it were new.

Mr. Scott Davis spoke next. Mr. Davis reminded the Board that they denied the application because of the safety issues it created at Log Cabin Road. He agrees that Maryland State Highway should provide an impact study. He also reminded the Board that the land was concluded prime farmland in Caroline County, and it will be forever removed by this operation.

Mr. Schuster spoke next. He stated that he has the greatest respect for the neighbors. He believes in the system that allows everyone to present their views. He believes the Board should do as the Judge directed and review the existing record to determine if the operation would be more injurious here or elsewhere. He was sure the contestants would have compelling testimony to add should the Board open up the application for review. He added that he would certainly also have compelling testimony to add. The Judge did not direct them to have a new hearing or take more testimony. The Judge ordered the Board to review what information has already been gathered and clarify the decision they gave.

## DELIBERATION

Mr. Mann stated that there has certainly been a lot of testimony in this case. He has been studying it carefully in the last two weeks.

**Motion:** Mr. Mann motioned that based on the testimony tonight and his understanding of the Judges order, the Board will make a new decision based on the applicable information and testimony already provided to the Board without the necessity of taking new testimony.

**Second:** Acting Chair Leavell seconded the motion.

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

Mr. Mann announced that the proceedings will continue at 6 p.m. on November 19, 2019 in the HAPS building conference room.

## ADJOURNMENT

**Motion:** Mr. Mann made a motion to adjourn the meeting at 7:11 p.m.

**Second:** Acting Chair Leavell seconded the motion.

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

The meeting was adjourned at 7:11 p.m.

  
Minutes prepared by: Melanie Smith