

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

DATE: November 19, 2019

PLACE: Health & Public Services Building
403 S. 7th Street, Room 111
Denton, Maryland 21629-1335

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

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

Acting Chair Leavell called the Caroline County Board of Zoning Appeals to order at 6:00 p.m. The Board members and staff were introduced to the audience and the meeting procedures were explained.

WOOD FARM HEARING ON REMAND, CASE NO. C-05-CV-19-000029

Acting Chair Leavell read the Notice of Public Hearing into the record. The hearing was being held pursuant to an Opinion and Order of the Circuit Court for Caroline County, remanding the matter back to the Board. The Board will be making a new decision for the request by Wood Farm to establish a sand, gravel and mineral extraction facility based on the applicable standard in accordance with the exhibits and testimony already presented to the Board. Said property is owned by Daniel Schuster and is located on the southeast side of Log Cabin Road, southwest of Denton.

Ms. Dadds read the exhibits into the record:

- Exhibit 1 – Circuit Court Opinion & Decision
- Exhibit 2 – List of Notified Property Owners (October 15 Meeting)
- Exhibit 3 – Sign Photo and Affidavit (October 15 Meeting)
- Exhibit 4 – Notice of Public Hearing to Applicant
- Exhibit 5 – Notice of Public Hearing in Timed Record on October 1st & 8th
- Exhibit 6 – October Hearing Visitor Sign in Sheets
- Exhibit 7 – List of Notified Property Owners/Interested Parties (November 19 Meeting)
- Exhibit 8 – Sign Photo and Affidavit (November 19 Meeting)
- Exhibit 9 – Notice of November Hearing to Applicant
- Exhibit 10 – Notice of Public Hearing in Times Record on November 5th & 12th

Applicant's Exhibit 1 – Letter from Ogletree to Merriken

Acting Chair Leavell announced that the Board heard all the testimony at the first hearing in October. The meeting was scheduled at that time to proceed with the deliberation at the next available meeting. Therefore, the Board would not be taking any new testimony or exhibits and would go directly into deliberation.

DELIBERATION

Mr. Schuster answered a few questions posed by the Board before proceeding with the deliberations. Dust and debris from the trucks would be controlled by constructing a concrete path and using a sweeper when necessary. Mr. Schuster requested approval for 150 truckloads a day, however it would not be economically feasible for him to go below 90 trucks per day. Mr. Schuster also requested that he be open for full-service half a day on Saturdays.

Mr. Merriken confirmed that the Board was only expected to review the conditions set forth in §142.3.A-D of the Caroline County Zoning Ordinance. Ms. Leavell asked Mr. Mann to look at the Traffic Concepts Report conclusion, marked as Board Exhibit 7A, page 3 of 3 from the Nov./Dec. 2018 package.

Mr. Mann stated that the upgraded Route 404 is able to handle the proposed truck traffic. As with any business there are possible hazards, however, Mr. Hollingsworth has been successfully using this section of Route 404 for years. His business is not located there now because his trucks have moved.

Ms. Leavell noted that there are acceleration and deceleration lanes that assist with J-turns. The expert testimony stated that the use will not pose any unusual danger to the public or burden to the roadway network and is acceptable from a traffic impact perspective for the duration of the plant operations.

Mr. Merriken suggested the Board discuss whether or not the operation was more or less detrimental in this particular area of the R-Rural and C2 Zones of Caroline County. Mr. Mann assured everyone that he has studied the complete Administrative Record for Wood Farm and found nothing in the exhibits or testimony that could show the project would be any more disruptive here than any other area in Caroline County within the same zoning district.

Mr. Mann explained that he understood how this operation would affect the citizen's that were in attendance. But, because Mr. Schuster effectively responded to all the criteria set out in the Code, the Board has no basis to deny the request. However, they may be able to put some conditions on the approval that may respond to some of their concerns.

Mr. Mann is familiar with this type of business and has compared this application with some of the other mines that exist in Caroline County. He noticed that they still build homes along the Chaney mining operation and it has had no affect on the local property values. He asked Ms. Leavell to consider the following conditions:

1. No exhaust or Jake brakes are to be used while entering or exiting the site or within the site;
2. No tailgate slamming;

3. No trucks on Log Cabin Road past Fleming Road; and (Mr. Mann explained that he intentionally did not state that there could be no left turns when exiting the operation because he knows a truck owner that lives on Fleming Road that may pick up a load from the mine for the next day and keep it at his house until morning.)
4. No trucks on Tuckahoe or Thawley Road.

Mr. Mann knows that the area known as Deep Branch on Tuckahoe Road is dangerous for large equipment. He has witnessed, farmers who know that route, overturn their equipment. For that reason, he would like trucks to avoid that area. Mr. Mann explained that there are some things that may bother the neighbors, like the backup alarm. But that is an OSHA safety requirement and cannot be changed.

A member of the audience interrupted the proceedings to ask how anyone can ensure that Mr. Schuster will abide by the conditions. Mr. Mann replied that Mr. Schuster is a business man and if a County or State inspector should find the operation in violation of any of the conditions set forth it would have direct impact on his approval and license.

Mr. Schuster had proposed that one of the neighbors be a liaison to represent the neighbors with his operations manager. Together they can resolve any issues before they escalate into a poor relationship.

Mr. Mann appreciated such an arrangement. He suggested that those in attendance choose who they want to represent them before they leave the building and make that known to Mr. Schuster before he leaves tonight.

Hours were discussed and it was agreed that they would be open 5:00 am to 5:30 pm (or dusk, whichever comes first). They will be open on Saturdays from 6:30 am to noon. They will not process sand after noon. Mr. Mann knows that drivers like to line up early to pick up their loads. He asked Mr. Schuster how he will prevent this from happening along Log Cabin Road. Ms. Ogletree stated that one of the conditions should be that there will be no stacking of trucks on Log Cabin Road. Mr. Schuster would resolve this by opening the gates to allow them in before operations begin at 5:30 am.

Mr. Blazejak, a citizen from the audience asked if those opposed to the operation would be allowed to suggest conditions. Another audience member stated that they had already suggested conditions and suggestions at a previous hearing. Mr. Merriken explained that all of the testimony and exhibits were taken at the initial meeting in October. Everyone was given an opportunity to testify then. Now the Board is deliberating the information.

A woman continued to interrupt the proceedings to ask if there was a third member of the Board. Mr. Merriken explained that the third member was ill and because they have a quorum they can continue with the meeting.

When the Board began discussing the limit of trucks a day, Mr. Merriken suggested that Mr. Gorleski might have information to provide from his past testimony. Mr. Gorleski replied that there should be a traffic light at Route 404. Mr. Gorleski did not provide a number but suggested that summertime and resort traffic should be taken into consideration with any decision the Board should make. He suggested State Highway provide a report.

Mr. Mann explained that State Highway was given an opportunity to respond and would not be erecting a light at Route 404 and Log Cabin Road. Mr. Mann explained that the typical hours that trucks would be loading up were very early in the morning, an hour or so before lunchtime, and then finally around 4 p.m. The only time that traffic may be difficult is Friday evenings during the summer.

Mr. Mann reminded him that if there was a problem that the liaison should meet with the operations manager before filing a complaint to the Board with pictures of violations of any set conditions. Mr. Mann asked Mr. Merriken if he had anything, he needed clarified before they moved forward.

Mr. Merriken noted from previous testimony that:

- Mr. Gorleski had suggested moving the wash plant further back on the property. Mr. Schuster was not in agreement.
- The suggestion was made again to use Thawley Road as an access road, however, that would require Mr. Schuster to include other property that was not part of this operation.
- The number of employees should be noted
- The quantity of fuel or flammables stored on site
- The stormwater management plan would be taken care of at the permitting stage.

There was an agreement that Mr. Schuster would move the proposed berm inward 125 feet from the southern property line adjoining the Saathoff property. There will be a water appropriations requirement that should alleviate any concerns regarding neighboring water tables.

Mr. Schuster stated that he would employ an average of 15 employees. They will store 10,000 gallons of fuel on site surrounded by diking. Mr. Schuster was asked about moving the wash plant. He explained that if the wash plant were to be moved back as Mr. Gorleski suggested, they would need more equipment in the hole and leave 75% of the product in the ground. Then instead of taking advantage of a hole already open a new one would have to be opened in yet another location. Constructing a concrete road to the back would require more real estate. None of those options are in line with best business practices. He explained that the plans were drawn with a lot of discipline, with all of this taken into consideration.

Mr. Schuster added that they had requested the 200-foot setback be approved at 100 feet where there are no neighbors and Mr. Schuster owns the adjoining property. Mr. Drummond added that the Maryland Department of the Environment Surface Mining Division has standard practices for projects they permit which includes maximizing the safe and effective removal of all material on the site. The concept is to get as much material from an area that has been permitted, rather than pockmarking the area with numerous 10-20-acre sites.

The site plan marked as Exhibit 7 in the May 16, 2017 package was reviewed. Mr. Mann noted that on the site plan a 2,000-gallon fuel tank was shown. Mr. Schuster stated that he would like to be approved for a 10,000-gallon horizontal tank with diking.

Ms. Leavell asked Mr. Mann what he thought about the minimized set back request. Mr. Merriken suggested they review Board Exhibit 1A of the Nov./Dec. 2018 package regarding Option B. Ms. Ogletree explained that the Planning Commission had already approved Option B. Mr. Mann asked Mr. Schuster how much material he might gain from the reduced setback. Mr. Schuster said he would be guessing that maybe there was 3-5 acres more of material. The modification would not affect the 100-foot stream buffer.

Motion: Mr. Mann made a motion to approve the application with the following conditions:

- A 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 to conform with state and local public laws;
- The applicant must obtain a final site plan approval from the Caroline County Planning Commission;
- The applicant must have the addition plat signed and recorded into land records prior to applying for a building permit and/or zoning certificate which includes a detailed exhibit of the grave locations;
- Hours of Operation will be Monday through Friday from 5:00 am to 5:30 pm or dusk (whichever is earlier) and Saturdays from 6:00 am to noon;
- Trucks are limited to 100 trucks per day;
- There will be no exhaust or Jake brakes used upon entering, exiting or within the site;
- There will be no tailgate slamming;
- No trucks on Log Cabin Road past Fleming Road;
- They will not access Tuckahoe or Thawley Road;
- A liaison for the community with the operations manager will be determined by the community;
- The number of employees will not exceed 15 at a time;
- Diesel fuel storage will not exceed 10,000 gallons and will be surrounded by appropriate diking;
- Center of the berm will be 125 feet from the southern property line; and
- The Board grants the 100-foot setback reduction as requested in Option B.

Second: Acting Chair Leavell seconded the motion.

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

The Board took a ten-minute recess.

TRIBBETT PROPERTIES, SPECIAL USE EXCEPTION NO. 19-0014

Acting Chair Leavell read the Notice of Public Hearing into the record. Tribbett Properties is requesting permission to continue a temporary sand, gravel and mineral extraction facility. Said property is located at 8636 Tuckahoe Road in Denton.

Ms. Dadds read the exhibits into the record:

- Exhibit 1 – Staff Report
- Exhibit 2 – SUE Application
- Exhibit 3 – Entrance Approval from MD Dept. of Transportation (MDOT)
- Exhibit 4 – Aerial Photograph with Feature Overlay
- Exhibit 5 – Site Plan by Davis, Moore, Shearon & Associates
- Exhibit 6 – Photographs of Property taken on 11/5/19
- Exhibit 7 – SDAT Tax Map & Real Property Data Sheet
- Exhibit 8 – List of Notified 1,000 foot Property Owners
- Exhibit 9 – Sign Photo and Affidavit
- Exhibit 10 – Applicant’s Notice
- Exhibit 11 – Notice of Public Hearing in Times Record on 11/6/19 and 11/13/19
- Exhibit 12 – SUE Decision No. 08-01SE
- Exhibit 13 – SUE Decision No. 201000012
- Exhibit 14 – SUE Decision No. 201400014

Acting Chair Leavell swore in:

David Tribbett, Sr., 8636 Tuckahoe Road, Denton, MD

Mr. Tribbett is requesting approval to continue a sand, gravel and mineral operation that he was last approved for in 2014 for a period of 5 years. The mining operation is not in the critical area and creates a habitat that is attractive to wildlife. The operation has consistently followed all soil conservation and State highway regulations. The Maryland Department of the Environment conducts regular testing and inspects the mine annually. The project is beneficial to the public. The material has been used in schools for educational purposes. The material has been used for public roads, school construction, and the local fire department sources the pond water. He hopes he has helped his community in many ways.

Mr. Tribbett is aware that the County notifies neighboring properties of Special Use Exception applications. He followed that up with a letter to the neighbors asking if they have any questions and concerns about the site. So far, no one has contacted him.

He does not intend to make any changes to his operations. He is a small operation where he and his son do all of the preparation and loading. He lives on the farm and therefore very conscious of any issues that may arise. He has never had an accident or an injury. He has taken care of the dust levels and traffic is not an issue.

Mr. Tribbett submitted a copy of his letter to the neighbors and it was marked as applicant’s exhibit 1. He added that he desires to make the mine as aesthetic as possible as it is also their home.

Per Board questions, Mr. Tribbett stated that of the 24.9 acres he has been approved for he has so far mined 10 acres. The water from the pond is used for irrigation purposes on his farm. When asked how long Mr. Tribbett foresees operating the mine, he replied that he was 68 years old and neither of his sons have shown an interest in continuing the business. He suspects he may renew the application one more time, his health permitting.

He works Monday thru Friday until 4 pm. He will clean sand on weekends and would on certain occasions sell to a contractor in need on a Saturday morning. His hours run 6:30 am to 5:30 pm, Monday through Friday. On Saturdays he will be open to wash and stockpile product.

This portion of the meeting was closed for deliberation.

DELIBERATION

The Board referred to Chapter 175, Article XVI, Section 142 for the conditions of a Special Use Exception.

- (1) A written application for a special use exception has been submitted indicating the specific special use exception being sought and stating the grounds on which it is requested.
See Exhibit 2.
- (2) A duly advertised public hearing has been held as prescribed by §175-179 of this chapter.
See Exhibit 11
- (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.
Mr. Tribbett has consistently complied with all of the State and County regulations that is typical of a mining operation. His pond is stocked with fish. Ms. Dadds agreed that his property is very neat. See Exhibit 6.
 - (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.
Mr. Tribbett added to his testimony that he placed his lane far from any of the neighboring properties to negate issues caused by truck traffic. None of the neighbors have responded negatively when he reached out to them. No one has filed any complaints about his operation.
 - (c) Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district.
Mr. Tribbett's mine has assisted with the enhancement to Route 404. His material has also been used for living shorelines that contribute to the cleaning of local waters. Ms. Dadds is aware of developments built in the vicinity.
 - (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 apron to the entrance of his lane is much sturdier than most as it enters onto a state highway. He supplies a local high school material for their masonry classes. His material has also been approved for septic systems. The Board noted that the mine has existed for some time and no problems have occurred.

- (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.

See Exhibit 1. Ms. Dadds noted that Mr. Tribbett has complied with all regulations, including informing staff when he has a larger than normal business. He is also grandfathered into the ordinance at the time he first applied. He is not responsible to comply with the new regulations of 2016.

Motion: Mr. Mann made a motion to approve the extension of the extraction facility without any changes to prior approvals and that a Building Permit and/or Zoning Certificate be obtained prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements.

Second: Acting Chair Leavell seconded the motion.

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

The Board took a 5-minute break.

MACLEAY VARIANCE NO. 19-0012

Acting Chair Leavell read the Notice of Public Hearing into the record. T&M Custom Builders are asking for an after the fact approval of a pole building constructed without a building permit located closer to the side property line than the minimum required setbacks. They are also requesting a Variance to exceed the allowable Critical Area Lot Coverage limitations in order to construct an addition to the existing dwelling and to proceed with a building permit application for the pole building. Said property is owned by Kevin Macleay and is located at 11146 Branch Court, Denton, MD.

Ms. Dadds read the exhibits into the record:

- Exhibit 1 – Staff Report
- Exhibit 2 – SUE Application #19-0012
- Exhibit 3 – Permit Denial Letter
- Exhibit 4 – Water & Sewer Verification
- Exhibit 5 – Site Plan
- Exhibit 6 – SDAT Tax Map and Real Property Data Sheet
- Exhibit 7 – Aerial Photograph
- Exhibit 8 – Photographs of Property
- Exhibit 9 – Notified Adjoining Property Owners for October & November Hearings
- Exhibit 10 – Sign Photo and Affidavit
- Exhibit 11 – Notice of Hearing to Applicant
- Exhibit 12 – NPH in Time Record for October & November Hearings
- Exhibit 13 – Critical Area Response

Ms. Dadds added that the application was scheduled to be heard at the October meeting, but Mr. Macleay opted to postpone his hearing due to there only being two members available to vote. There are only two members again for tonight's meeting, however, Mr. Macleay has chosen not

to delay the hearing any further. In accordance with the Board's Rules of Procedure, two members constitutes a quorum.

Acting Chair Leavell swore in:

Kevin Macleay, 11146 Branch Court, Denton, MD 21629

Mr. Macleay explained that he is trying to get his home renovated with T&M Builders. He needed to have a survey completed in order to get a permit. This is when the issues arose about the Critical Area and setback requirements on an existing building. He was before them today to appease everyone here and move on with life.

Ms. Dadds clarified for the Board that Mr. Macleay was actually applying for two Variances. The first Variance is for an after the fact approval of an existing pole building and the lot coverage for both the pole building and the house. The maximum lot coverage that is allowed on property which is located in the Critical Area is 15% or 9,796 sq. ft. Mr. Macleay is at 25.5% now and will be at 28% or 18,287 sq. ft. if his application is approved. Ms. Dadds stated that his current home is 1468 sq. ft.

Per questions from the Board, Mr. Macleay stated that he has one bath and really one bedroom. He lives there alone.

Ms. Dadds referred to the Critical Area response marked as Exhibit 13. The last paragraph on the first page reads, "It appears that the applicant constructed existing structures on this lot without prior permit approval. It is unclear if the applicant has fully complied with the provisions of Natural Resources Article 8-1808(c)(4), without which a variance cannot be granted by the County.

The law reads that a local jurisdiction may not issue a permit, approval, variance, or special exception unless the person seeking the permit, approval, variance or special exception has: (i) Fully paid all administrative, civil, and criminal penalties imposed under paragraph (1)(iii)15 of this subsection; (ii) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and (iii) Performed the abatement measures in the approved plan in accordance with the local critical area program.

Ms. Leavell asked if she understands correctly, that they were putting the cart before the horse. Mr. Merriken answered that they were. He went on to say that the first condition was that all penalties and fines be paid in full. The County will issue a fine for the violation. Next, the applicant must offer a restoration or mitigation plan to abate impacts to natural resources. Once the abatement is performed, they can then move forward.

Ms. Leavell asked Mr. Macleay if he understood. He said he was not aware of this before but is now. When asked Mr. Macleay stated that a contractor built the frame and metal building.

Mr. Merriken offered another solution could be that the Board approve the variance on the condition that NR Article 8-1808(c)(4) is complied with. They would want to verify also that he meets the requirements of a variance as set forth in the County Zoning Code.

Mr. Mann stated that the issue of lot coverage is a problem. Ms. Leavell asked what Mr. Macleay wanted to build. He planned to include an office, laundry room, family room, kitchen, bedroom, upstairs bedroom, bathroom, storage room, living room and covered porch and deck as well as a wraparound porch. Mr. Macleay stated it was very simple.

Ms. Leavell asked if he had any of those now. When asked he said he had a laundry room, when asked he said he had a family room. He also had a kitchen.

Mr. Merriken asked Mr. Macleay if his request is a result of special conditions and circumstances peculiar to the same zoning district or neighborhood. Mr. Macleay explained that he asked for an estimate for a paved driveway on his property, but it was too high. Therefore, he put in a stone and shell driveway himself. He had no idea he was violating a lot coverage regulation.

Mr. Merriken explained that the second criteria is that the difficulty is not the result from the conduct of the applicant. Mr. Macleay agreed that he was at fault. He built the stone driveway and concrete pads. He also built the frame and metal building that was 34 feet outside of the building restriction line (BRL).

Mr. Merriken read condition §142.B(3). Mr. Macleay said his home is in awful shape and he couldn't sell it if he wanted to. It needs a new roof and he had a lot of plans that included new windows and he recently put in a new well and HVAC system.

Ms. Dadds asked if there was anything preventing him from renovating his existing home. Mr. Macleay said he cannot get a permit. Ms. Dadds clarified her question by asking what would prevent him from putting on a new roof or changing the windows and adding HVAC without including the porches for instance. She stated that for those repairs he would not require a variance. He agreed that nothing prevented him from making those repairs.

Ms. Dadds agreed that if it were not for the new driveway Mr. Macleay would have been within the allowed lot coverage. Mr. Mann noticed on the site plan that footers were marked for the expansion. Mr. Macleay verified that they did exist.

He stated that his second wife was going to take the house and she made those plans. He said it was never on paper, and the contractor never filed for a permit. He said he eventually took the house back from her. Mr. Merriken asked if the house was now in his sole name. Mr. Macleay replied that it has always belonged solely to him.

Ms. Leavell noted that the garage was rather large. He stored tools and vehicles in it. He was also planning to stay there while his roof was being fixed. She asked what he kept in the 34'x60' frame and metal building. He said he did not build that, and that it was twelve years old. Then a few minutes later he said that he did have it built. He said he uses that for equipment and tools, he compared it to a shed.

Mr. Mann stated that it was clear that they cannot approve the application. He asked for clarification from Mr. Merriken about what they are to do about the violations. Mr. Merriken explained that they only had to respond to the application. Either they can approve it, approve it with conditions, or deny it. Mr. Macleay cannot reapply for the Variance for a year after it has

been denied. He advised Mr. Macleay that it would make no sense to apply in a year if the violation is not paid for and resolved as set forth in the Natural Resources Code.

This portion of the meeting was closed for deliberation.

DELIBERATION

The Board referred to Chapter 175, Article XVII, Section 152.B,D for the conditions of an Area Variance.

B.

- (1) Such difficulty is a 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;
There were no special conditions or unique circumstances about the property that differ from the surrounding neighborhood.
- (2) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor in interest;
The applicant admitted that the difficulty was from his own actions.
- (3) The financial hardship to the applicant as the result of the strict enforcement of the zoning regulations 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;
Ms. Leavell appreciated Ms. Dadds comment that the necessary repairs can be resolved without a variance.

Mr. Macleay interrupted by saying it was too old and he already had new plans drawn. He said he paid for a new well to the house. He said the house had no insulation. He plans to retire there. He said the roof was shot – that the house was 75 years old. He asked for a variance to repair the house. Ms. Dadds explained that he does not need a variance to make the repairs to the house, but to build the addition and porches. He replied that he had already paid for the plans. Mr. Merriken explained that he would not need a variance to replace the roof and make the repairs.

Ms. Leavell reminded him that he is already well above the limited lot coverage. They could not approve him for more. He asked for a grandfather clause because the house existed before Critical Area Law. Ms. Dadds explained that when the law came into effect the house was grandfathered in as compliant. But the changes that he has made since the regulations were created is what has put the property out of compliance.

D.

- (1) A written application for a variance has been submitted in accordance with §175-162;
See Exhibit 2
- (2) A duly advertised public hearing has been held as prescribed by §175-179 of this chapter;

See Exhibit 12

- (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;
The Board agreed that the application was in no way in harmony with the intent of this chapter. Furthermore, this would set a very bad precedent for other land owners.
 - (b) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor in interest;
The applicant admitted that the difficulty is due to his own actions.
 - (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;
The situation is not of so general or recurring a nature as to make a general amendment to this chapter.
 - (d) The variance granted is the minimum necessary to afford relief;
Regarding the lot coverage, the applicant is far above the allowed lot coverage and the frame and metal building is ¾ into the building restriction line.
 - (e) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat with 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.
See Exhibit 13.

Motion: Mr. Mann made a motion to deny both the variance to the lot coverage and the setback variance for the frame and metal building. He added that the applicant will need to address the conditions of the Natural Resources Code §8-1808(c)(4) before reapplying if he should choose to a year from now.

Second: Ms. Leavell seconded the motion.

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

CMH HOMES, SPECIAL USE EXCEPTION NO. 19-0016

Acting Chair Leavell read the Notice of Public Hearing into the record. CMH Homes, Inc is requesting to construct a dwelling in the I-2, Light Industrial zoning district. The property is located at 13695 Holly Road, Greensboro, MD.

Ms. Dadds read the exhibits into the record:

Exhibit 1 – Staff Report

Exhibit 2 – SUE Application

- Exhibit 3 – Water & Sewage Verification
- Exhibit 4 – Aerial Photograph with Feature Overlay
- Exhibit 5 – Site Plan by Davis, Bowen & Friedel, Inc.
- Exhibit 6 – Photographs of Property taken on 11/5/19
- Exhibit 7 – SDAT Tax Map & Real Property Data Sheet M14-G22-P40
- Exhibit 8 – List of Notified Adjoining Property Owners
- Exhibit 9 – Sign Photo & Affidavit
- Exhibit 10 – Applicant’s Notice
- Exhibit 11 – Notice of Public Hearing in Times Record on 11/6/19 and 11/13/19

Acting Chair Leavell swore in:

Chris Waters, Davis, Bowen & Friedel, 106 N. Washington Street, Suite 102, Easton, MD 21601
Chuck Shade, CMH Homes, 38409 Sussex Highway, Delmar, Delaware 19940

Mr. Waters was hired by CMH Homes to place a dwelling on this property. When applying for the building permit they discovered it was located in an I2 Zone. CMH Homes was under the impression it was residentially zoned. He stated that the Zoning Map (Applicant’s Exhibit 1) was small and it is the last lot in an Industrially Zoned area.

Mr. Waters referred to the 1995 Aerial of the property to show the house that originated there. And then he showed the 2005 Aerial of the property to show the “basement” was still intact.

Mr. Waters submitted:

- Applicant’s Exhibit 1 - County Zoning Map
- Applicant’s Exhibit 2 - Aerial of the property from 1995
- Applicant’s Exhibit 3 - Aerial of the property from 2005
- Applicant’s Exhibit 4 – Merlin Map
- Applicant’s Exhibit 5 – Forest Conservation Map

They intended to use the existing lane and clear one acre to place the home. There are four industrial lots that are part of that zoning. One of the properties has a house situated on it. Mr. Waters informed the Board that they have already received approval for the sanitation and well permit. Soil Conservation has approved the plans. They are waiting for a response from Forest Conservation because they are changing the use from Agricultural to Residential. They are declaring more than 40,000 feet. They are putting a permanent easement by the stream. The state prefers them to put easements in the buffer and the flood zone.

Ms. Dadds suggested the Board look at Exhibit 6 for photographs of the agricultural land across the road and beside the property on the other side of the I2 properties. There is an existing foundation from an old home and Mr. Mann asked what they plan to do with that.

Mr. Shade explained that his office scouts out properties to buy for placements of mobile homes. Everyone he depended on for this gave him the impression that the property was residential. He didn’t see anything on the real property search and was not aware of the problem until he was told he had to apply for a Special Use Exception.

He said the customers that are buying the modular home really loves this piece of property. Mr. Waters stated that the home will have a sprinkler system.

Mr. Mann asked if later someone wanted to use the property for an industrial use they could. Ms. Dadds stated that they could. Ms. Leavell asked if the potential owners were aware that industrial uses may be erected beside them. Mr. Shade said they were informed.

Ms. Leavell asked how much of the lot is wooded. Mr. Waters said there was about eight acres of mature trees. They will be clearing an acre to build the home.

This portion of the meeting was closed for deliberation.

DELIBERATION

The Board referred to Chapter 175, Article XVI, Section 142 for the conditions of a Special Use Exception.

- (1) A written application for a special use exception has been submitted indicating the specific special use exception being sought and stating the grounds on which it is requested.
See Exhibit 2
- (2) A duly advertised public hearing has been held as prescribed by § 175-179 of this chapter.
See Exhibit 11.
- (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.
Mr. Mann believes it would create a safer area by filling in the concrete hole that was once a basement.
 - (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 project should not affect or impair property values. There are farms across the road and the Town owns the other property for use as a dump for brush.
 - (c) Will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the zoning district.
This area is I2 and Agricultural and will have no effect on either use.
 - (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 building is small and should not have any affect on public roads, schools or police and fire protection.

- (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.

See Exhibit 1

- (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 operation is not in the Critical Area.*

Motion: Mr. Mann made a motion to approve the application with the following conditions:

- A 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.

Second: Acting Chair Leavell seconded the motion.

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

REVIEW AND APPROVAL

The members read the minutes of the October 17, 2019 Board of Zoning Appeals meeting. No corrections or additions were needed.

Motion: Mr. Mann made a motion to approve the minutes as written.

Second: Acting Chair Leavell seconded the motion.

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

ADJOURNMENT

Motion: Mr. Mann made a motion to adjourn the meeting at 9:32 p.m.

Second: Acting Chair Leavell seconded the motion.

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

The meeting was adjourned at 9:32 p.m.



Minutes prepared by: Melanie Smith