

The Dorchester County Board of Appeals met in regular session on Thursday, January 22, 2015 in Room 110 of the County Office Building at 7:00 PM. Present were Ed Howard, Vice-Chairman, , Wendell Foxwell, Catherine McCulley, Chairperson, Elizabeth Hill, Walt Gunby, Attorney, Steve Dodd, Director of Planning, with Teresa Robinson recording. Absent was Dwight Cromwell.

An introduction was made by Chairperson McCulley, explaining the procedures of this meeting to the audience. She then asked Mr. Dodd to read the first case.

Case # 2457A – Fred and Gail Hooper owners

To request a variance from the side yard setback required (as it relates to “lots of record”) to allow for the construction of an addition to an existing dwelling located at 5148 Paw Paw Point Road. Property is zoned RR – Rural Residential Zoning District and contains .58 acres

Mr. and Mrs. Hooper were sworn in.

Mr. Dodd read the case and all pertinent information into the record. Mr. Dodd stated that the lot is 100 ft. wide; sum of the side yard is 27 ft. with the addition which is a 3 ft. variance from side yard setback in ref. to Code 155-51 E1. The lot is in the floodplain and critical care area. The lot is tax map 40, parcel 53, lot S-4. Mr. Dodd entered in exhibit 4 photos showing the exact location of the requested addition. The Hooper’s were here last year but the vote from the BOA was a 2 to 2 . which meant a denial. Applicants refiled within the stated time.

Mr. Hooper stated that he had a letter of approval from the property owner in favor of the addition. At this time both neighbors have no problem with the addition. Mr. Hooper pointed out in the aerial photos where the 3 ft. variance is needed.

Ms. McCulley asked if there were any comments from the board at this time. There were none.

Mr. Dodd read agency comments into the record. The Health Department had no objection. The Department of Public Works had no comments or objection only that a stormwater management plan and erosion and sediment control plan will need to be submitted if disturbance is over 5, 000 sq. ft. The Planning Commission had a consensus to prove hardship.

Ms. McCulley stated that the hardship required by the Planning Commission would need to be proved. Mr. Hooper stated that more solar panels would need to be added to reduce the deficit from the electric company and would also be used for storage and an added need for an additional vehicle. Ms. Hill questioned the need for additional space for storage which was answered by Mr. and Mrs. Hooper.

At this time no more questions were asked by the Board. .

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Mr. Foxwell made the motion and Mr. Howard seconded the motion in favor of the request. Ms. Hill opposed. Motion carried 3-1.

Case # 2569 – Douglas Scott – applicant
Yvonne Phillips et al., owner

To request a variance from the setback required to allow a manure storage building to be located with the required setback area. Property located at 4410 Drawbridge Road and contains 628 acres. AC – Agricultural Conservation Zoning District.

Mr. Scott was sworn in.

Mr. Dodd read the case and all pertinent information into the record. The variance was to permit a manure storage building to be located less than 200 ft. to a property line. Applicant proposes to construct said building within 45 ft. of property line abutting parcel identified on tax map 64, parcel 39. 155 ft. variance. The property is not in the floodplain or in the critical care area. All evidence was entered into exhibit.

Mr. Scott explained the purpose of building the manure shed. He did have a letter from the adjoining property which did not object. Mr. Scott indicated in his request that placing the building more than 45 ft. the desired location may impact irrigation that may be installed in the future. Mr. Howard did ask Mr. Scott how many tillable acres there are on the property. Mr. Scott stated there are 425 tillable acres on the property.

Mr. Dodd read agency comments into the record. The Environmental Department had no objection. The Department of Public Works had no comments or objections only that a stormwater management plan and erosion and sediment control plan will need to be submitted. The Planning Commission recommended approval.

No one spoke in favor of this request and no one was opposed.

Ms. McCulley announced the end of testimony and the Board began their deliberations.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Ms. Hill made a motion for approval to this request. Seconded by Mr. Howard and unanimously carried.

Case #2570 – Roberta Holt (trustee, owner)
Ryan Showalter Esq., applicant

To request, as a special exception, a mineral extraction activity (surface mining) on property located north Johnson Road and east of Marshyhope Creek (Tax 7, Parcel 5) Property contains 81.14 acres and is in the AC – Agricultural Conservation Zoning District and AC – RCA.

Mr. Showalter and any other person who would be testifying in this case, were sworn in.

Mr. Dodd read the case and all pertinent information into the record. Mr. Dodd entered all exhibits as evidence.

At this time Ms. McCulley asked the individuals presenting the case to stand and give their name and address. Mr. Ryan Showalter of Miles & Stockbridge, representing Marshyhope Operations, LLC, Mr. Steven Ward, managing partner of Marshyhope Operations, LLC and Shaw Callahan of Lane Engineering each introduced themselves. Mr. Showalter gave a brief introduction stating this application requests approval of a special exception to permit operation of a sand and gravel extraction and processing facility. The subject project is zoned Agricultural Conservation (AC) and the portion located within the Critical Area is designation as Resource Conservation Area (AC-RCA), both of which permit the proposed used by special exception. Mr. Showalter then proceeded to explain the proposed used by stating that the requested use would permit sand and gravel surface mining and processing more or less as a standalone or expansion or continuation of the existing operation which has been in existence for about 50 years. Mr. Ward explained how he became involved in the operation and how the operation actually works. The material extracted during this initial excavation will be transported by truck to an existing processing facility owned and operated by the applicant. After sufficient excavation has occurred to create an open water area in which to float a hydraulic dredge and further explained the process to the point in which the processed aggregates will be removed from the facility by truck. Mr. Ward then proceeded to explain the new site and the how the operation will work. Mr. Howard asks about the disturbance of the topsoil and the depth of the site. Mr. Ward explained that there would be very little disturbance of the topsoil and the depth of the new site that would be dredged. Mr. Hill asked why they need to start a new site. Mr. Ward explained the existing site has been exhausted and that the new site would probably be in existence for about another 20 years (a conservative estimate) due to new technology. Mr. Ward explained the environmental impact on both sites and that the exiting operation would be used as a pond for camping and fishing. Mr. Howard asked where the closest residents live? Mr. Showalter pointed out the location of the four closest residents. Mr. Showalter questioned Mr. Ward about the hours of operation and the schedule. Mr. Ward responded the operation would operate under the same hours and days of the week. Mr. Ward also stated this operation would be job retention

of current employees and truckers. Ms. McCulley expressed an interest in the new site being in the critical area. Mr. Showalter stated the new site would not be in the critical area. Mr. Lane of Lane Engineering explained the end use plan. There are 20 acres of forest cover in the Critical Area which they are allowed to clear 6 acres under the rules. Mr. Lane also stated that there are no wetlands on the subject property in reference to using a dredge pipe from one site back to the mine site. Mr. Lane also explained a new improved work area, parking and work pad. Mr. Lane stated any trees that will be taken out in the Critical Care Area will be replanted and have sent a letter out to nearby neighboring properties with the hope of replacing the trees. Mr. Showalter also explained that all efforts will be complied with in reference to the FIDS (Forest Interior Dwelling Bird Habitat) which a letter from the Md. Dept. of Natural Resources has sent. Ms. McCulley questioned the effect of hydrology on Davis Mill Pond. Mr. Lane explained that there would be no impact due to the fact there would no dirty water leaving the site. Also all regulations and state laws as well as the Department of the Environment guidelines and mitigations will be met. Mr. Foxwell asked about if the County had been asked about the maintenance of Johnson Rd. Mr. Lane explained that even though this is a County Rd. it is not maintained by the County. Mr. Showalter stated they would maintain Johnson Road and was confirmed by Mr. Ward. Mr. Showalter confirmed there would not be an increase in traffic; it would remain the same as the existing site.

There were no questions from the Council at this time. Ms. McCulley asked Mr. Dodd to read agency comments at this time.

Mr. Dodd read agency comments into the record.

The Dorchester County Health Department has no objection.

The Planning Commission recommended approval.

The Critical Area Commission could not support this special exception submitted at this time for the following reasons; 1) Although the Existing Conditions plan sheet includes lot coverage allowance calculations, there does not appear to be any proposed lot coverage cited on the plans in the Critical Area 2) The Existing Conditions plan sheet indicates that 20.461 acres of the Critical Area portion of the site is forested. A Clearing Limit table indicates that a 20-30% clearing limit is allowable (between 4.092 and 6.138 acres). However, the plan does not indicate how much of the forest will be cleared 3) We have not received a letter from the Department of Natural Resources Wildlife and Heritage Division in regards to this proposal.

The Dorchester County Department of Public Works stated that 1) the County would like to abandon the access road (from North Tara Rd. to the Site) and transfer ownership to the Applicant 2) Improvement to the entrance off of North Tara Road is necessary 3) The approval of future facilities at the proposed should be contingent on analysis of North Tara Road for increased traffic.

The Department of Natural Resources, refer to letter dated December 17, 2014 from Ms. Marsha Usilton.

Ms. McCulley asked for any comments from the audience.

Mr. Waqar Ahmed – 6848 North Tara Rd.
Federalsburg, MD 21632

Opposed because of the following:

- Speeding trucks
- Sand blowing on the car
- Mud on the road
- Johnson Rd. not passable due to dump trucks
- Noise from pumping
- The safety of children playing
- Dust
- Water quality
- Flooding issue

Mr. Douglas Merchant – 6920 Reliance Rd.

Opposed because of the following:

- This is a Critical Care Area
- All that will be left from the existing site will be a big hole.

Mr. Showalter gave submission to all of the above statements and questions.

Ms. McCulley announced the end of testimony. Mr. Howard made a motion to adjourn to meet with counsel. Seconded and unanimously carried.

Ms. McCulley announced the Board was now back in session.

At this time, each Board member explained his decisions regarding the criteria.

After all testimony, Ms. McCulley called for a motion regarding this case. Mr. Howard made a motion “to approve the special exception with the following stipulations: 1) Must comply with Forest Interior Dwelling Bird species guidelines both existing and promulgated henceforth by the Critical Area Commission 2) Must comply with zoning conditions for extraction activities noted in Staff Report, Seconded by Mr. Foxwell and unanimously carried.

OLD BUSINESS

Case #2433 –Dennis and Mary Mabry, owner
Mabry Solar Farm 35311, LLC, Applicant

To request an extension of time for the approval of a special exception granted to Dennis Mabry for a utility scale solar project on Dec. 13, 2012. Property located at 5665 Hawkeye Road and contains 131.5 acres. AC, Agricultural Conservation Zoning District.

Mr. Dodd read the case and all pertinent information into the record.

A motion was made by Ms. Hill to approve the extension two years from the expiration of the special exception and was seconded by Mr. Foxwell.

A motion was made by Mr. Foxwell to approve the minutes of the last meeting. Seconded by Ms. Hill and unanimously carried.

The Election of Officers was made and decided for retention of Ms. McCulley as Chairperson and Mr. Howard as Vice Chairman.

With no further business, a motion was made by Mr. Foxwell to adjourn. Time of adjournment: 10:05 PM.

Respectfully submitted,

A handwritten signature in cursive script that reads "Steve Dodd".

Steve Dodd
Executive Secretary