The Dorchester County Board of Appeals met in regular session on Thursday, September 24, 2015, in Room 110 of the County Office Building at 7:00 PM. Present were Catherine McCulley, Chairperson, Edwin Howard, Vice-Chairman, Wendell Foxwell, Gordon Hill, Elizabeth Hill, Walt Gunby, Attorney, Rodney Banks, Deputy Director of Planning, with Sherry Wood recording. Absent was Dwight Cromwell and Steve Dodd, Director.

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

Case #2580 – Larry and Jennifer Nagel, Owners

To request, as a special exception, a commercial boarding and riding stable for up to a maximum of fifteen (15) horses. Property is located at 5610 Bradford Rd., Federalsburg, MD and contains 17.06 acres. Zoned AC - Agricultural Conservation District.

Larry and Jennifer Nagel, 5610 Bradford Rd., Federalsburg, MD and any other person who would be testifying in this case, were sworn in.

Mr. Banks read the case and all pertinent information into the record. Mr. Banks noted that the aerial was taken in 2013 and does not contain the boarding facility which was recently added.

Ms. McCulley advised the applicant of the two options; to rely on their written responses to the criteria or comment on the responses. The applicants advised that they would rely on their written responses.

Mr. Nagel advised that a permit was obtained to build the horse barn, and they were aware at that time that a permit would be needed for commercial operation. Mrs. Nagel advised that she would use the building for their two horses even if they did not have a commercial operation. The barn has electricity and water is supplied from a well. There will be no employees and, there is space by the barn for parking.

Mr. Banks read agency comments into the record. The Health Department had no objection. The Department of Public Works had no objection, a stormwater management plan and erosion, sediment control plan will need to be submitted for review/approval if the project disturbs more than 5,000 sq. ft. Based on the information provided, the Planning Commission had no objection, but would like the Nagels to obtain a Certificate of Use from the Planning Office.

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 "to approve this request with the following stipulation: the owners obtain a Certificate of Use from the Planning Office." Seconded by Mr. Foxwell and unanimously carried.

Case # 2581 – Shore Sand and Gravel, Applicants

To request, as a special exception, the expansion of an existing borrow pit (mineral extraction activity) approved by the Board of Zoning Appeals under Cases #754 and 1083. Expansion consists of approximately 26.258 acres of land and a parcel containing 63.114 acres. Zoned AC, AC-RCA-Agricultural Conservation-Resources Conservation Area District.

Kyle Murray, 2410 Evergreen Rd., Gambrills, MD, applicant and Sean Callahan, Lane Engineering, 15 Washington Ave., Cambridge, MD and any other person who would be testifying in this case, were sworn in.

Mr. Banks read the case and all pertinent information into the record. Mr. Banks noted that in the staff report, a letter was mentioned from the Soil Conservation District stating that the sediment and erosion control plans have been approved. The approved plans are for the existing site. The plans for this area are still under review.

Ms. McCulley advised the applicant of the two options. to rely on their written responses to the criteria or comment on the responses. Mr. Callahan advised that they would supplement and comment on their written responses.

Mr. Callahan reviewed the "aerial phase exhibit". He noted that the property has been mined for approximately 30 years. He gave a summary of how the mining operation works. He advised that the permitting process is a multi-phase process, involving federal, state and county approval. MDE and Army Corp of Engineers have verified limits of wetlands at the crossing and borders of phase 2 expansion area. Mr. Callahan reviewed and explained the plans that were before the Board. He noted that a revision will need to be made on the plat to indicate a 200 ft. buffer instead of 100 ft. He also noted that 1 acre of land will be lost with this revision. He stated that plantings for the 200' buffer will be required. Mr. Callahan advised that the total coverage of the mining area will be 90 acres and the end use for the property will be a large pond with finished side slopes.

Mr. Murray advised that phase 1 has about 6 months left for active mining. They will continue to reclaim this phase. He also noted that they are required to bond every acre of disturbance and MDE will actively monitor the reclamation process. Mr. Murray also advised that they try to actively mine 10 acres, reclaim 10 acres and prepare 10 acres at one time. The company has no plan at this time to actively mine phase 2 since the plant sits on this site.

A question was raised about security of the site, and fencing. Mr. Murray advised that they have a safety and security group that are actively involved and there are cameras at the entrance. Mr. Murray stated that there has never been fencing around the area.

Ms. Hill asked for a motion to go into closed session to ask questions specific to mining. Mrs. McCulley asked if everyone on the Board was in favor of this request. The Board unanimously agreed. The closed session began at 8:00 pm.

The Board of Appeals reconvened at 8:20 pm.

Mr. Callahan introduced Page Warro, Attorney for the applicant.

Ms. Hill asked about the operation of power driven or power producing equipment, used for the washing operation, do they meet the 100 ft. setback from all adjacent property lines. Mr. Warro addressed this issue from a legal standpoint and stated that from a recent case out of Queen Anne County, the Maryland Department of the Environment was given authority to address setbacks and regulate all mining activity, trumping County regulations. The setback under those rules is 25 ft. Mr. Warro also noted that Mr. Callahan has shown the setbacks to be 50 ft.

Ms. Hill asked Mr. Murray to explain the bond required by MDE. Mr. Murray reviewed each phase. Each phase is bonded for $1,200 per disturbed acre.

Mr. Gunby advised that it is his opinion concerning the bond issue, that it has been preempted by the State because the County's bond provision states a dollar amount that is adequate be placed on a bond; whereas the State has already decided an appropriate amount. The County has no mechanism to put a price on the bond. Mr. Gunby noted that the two provisions are in conflict so there is a preemption.

Mr. Banks read agency comments into the record. The State Highway Administration has reviewed the Traffic Study submitted by the applicant and has made a site visit. The State Highway has no objection to the expansion as proposed. The existing main exit on the plans and in the Traffic Study is sufficient as proposed. The Health Department had no objection. The Department of Public Works had no comment or objection. Copies of permits should be forwarded to this department for files. The Critical Area Commission asked that the additional 200 ft. buffer be added on the plat as Mr. Callahan had noted. They also requested a copy of the Department of Natural Resources, Wildlife and Heritage letter and, a buffer management plan will be required. Based on the information provided, the Planning Commission made a favorable recommendation as long as public safety was maintained.

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.

Mr. Gunby spoke about the supplemental criteria under the Dorchester County Zoning Code, Article 9, Section BB "Mineral Extraction Activities", items 1, 2 and 3. The criteria mentioned in item 1 has been preempted because the state has a 25 ft. setback, and when the County is inconsistent with the State, it is a form of preemption. Mr.

Gunby asked the Board members to say “aye” if they were in agreement with this statement. The Board unanimously agreed.

Mr. Gunby reviewed item 2. Must have at least 50 ft. distance from all adjoining property lines for extraction purposes. He asked the Board members to signify “aye” if they agreed with this. The Board unanimously agreed.

Mr. Gunby reviewed item 3. The County gave the Board the authority to determine a suitable bond but not the means. The Board does not have the ability to perform that task and as well, the State has set up specific bond amounts, $1,200/acre, preempting the County. He asked the Board members to signify “AYE” if they agreed with this. The Board unanimously agreed.

After all testimony, Ms. McCulley called for a motion regarding this case. Mr. Howard made a motion “to approve this request as presented. Seconded by Mr. Foxwell and unanimously carried.

A motion was made by Mr. Foxwell to approve the minutes of the August 20, 2015 meeting. Seconded by Mr. Howard and unanimously carried.

With no further business, a motion was made by Mr. Howard to adjourn. Seconded by Mr. Foxwell and unanimously carried. Time of adjournment: 9:00PM.

Respectfully submitted,

Rodney Banks
Executive Secretary