

The Dorchester County Board of Appeals met in regular session on Thursday, November 17, 2011 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, and Steve Dodd, Director of Planning. Mr. Cromwell was absent.

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 #2409 - Michael and Karen McKinley

To request a variance from the (expanded) tidewater buffer setback to allow construction of addition(s) to an existing dwelling to be located in the (expanded) tidewater buffer. Property located at 5432 Cassons Neck Road and contains 3.09 acres. RR, Rural Residential Zoning District.

Mr. McKinley, 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.

Michael McKinley, 5432 Cassons Neck Road, Cambridge, MD explained to the Board that he wishes to rely on his written responses to the criteria, but would also add that he and his wife bought the property approximately four years ago. This property was obtained to eventually be their retirement home. Before he bought the property, Mr. McKinley did visit the Planning office and speak with Mike Bonsteel. At that time, the tidewater buffer was 100'. Since that time, the law has changed to include the expanded buffer. Mr. McKinley told the Board that the additions they wish to construct would be within the expanded buffer and make this small house somewhat larger and more livable as a permanent home. The house was built in 1973 as a summer cottage. Mr. McKinley compared other homes in the immediate area and found that the average size of the homes was 3,044 square feet. They wished to add onto their house and make it about 2,752 square feet, which is 10% smaller than the average. This would allow them to put some bedrooms together and enlarge the kitchen so that it's actually eat-in, and have a master bedroom. What they are asking for here is to enjoy the same property benefits that their neighbors in the Neck District enjoy. The possible hydric soils on the property have not been evaluated by a professional soil scientist.

Mr. Dodd read agency comments into the record. The Department of Public Works had no comments. The Health Department had no objection. The Planning Commission had no objection if the applicant could prove a hardship. The Critical Area Commission stated that if the Board should grant this request, mitigation is required at a 3:1 ratio for the limit of disturbance; applicant must provide a Buffer Management Plan and final building permit approval cannot be granted until the County approves the Buffer Management Plan.

At this time, Mr. Howard made a motion to meet with Counsel for a few questions.

When the Board reconvened, it was determined that no one was present 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. Mr. Foxwell made a motion “to approve this request with the following stipulation: applicant must mitigate at a ratio of 3:1.” Seconded by Ms. Hill. Ms. McCulley and Mr. Howard voted no, and Mr. Foxwell and Ms. Hill voted yes. With a split decision, the variance is denied.

Case #2410 - Schultz and Son Recycling Hurlock, LLC, Owner
Mitchell Cornwell, Esq., Applicant

To request a variance to allow a parcel containing less than 10 acres to be eligible for rezoning to an industrial zoning district. Property located at 6012 Shiloh Church-Hurlock Road and contains 5.66 acres. AC, Agricultural Conservation Zoning District.

Mr. Cornwell, 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.

Mitchell Cornwell, attorney for Schultz and Sons, 127 N. West Street, Easton, MD came forward and told the Board that he would rely on his written responses to the criteria.

Mr. Dodd read agency comments into the record. The Department of Public Works had no comments. The Health Department had no objection. The Planning Commission supported this request. The State Highway Administration had no objection to this request.

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.” Seconded by Mr. Foxwell and unanimously carried.

Case #2411 - Suzanne Applegarth, Owner
Raymond Simmons, Esq., Applicant

To request, as a special exception, a "hardship" manufactured home for a person in need of care. Also, to request a variance to allow the manufactured home to remain within the required sideyard setback area. Property located at 1709 Taylors Island Road and contains 4.15 acres. AC, Agricultural Conservation Zoning District.

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

At this time, Mr. Simmons informed the Board that they would be withdrawing the request for a setback variance for this case.

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

J. Suzanne Applegarth, 1709 Taylors Island Road, Woolford, MD and Ray Simmons, PO Box 753, Cambridge, MD came forward to present their case to the Board. Mr. Simmons told the Board that they would rely on their written responses to the criteria, but would supplement with oral testimony. Ms. Applegarth told the Board that her son had been in a moped accident approximately two years ago and as a result of that accident, he is now disabled. He has had 26 surgeries. He is currently living in Ms. Applegarth's home, which is two stories and this limits his mobility. Mrs. Applegarth understands that obtaining permission for this home is a process and this hearing is just the first step. The supervision and care for Ms. Applegarth's son is an ongoing situation and he needs daily care. Ms. Applegarth is the only person who is providing this care for her son. A certificate was submitted from a doctor stating the need for care and there have been no changes since that certificate was submitted. There is no other place her son can live and get the level of care and attention he needs. The mobile home will not be used for any kind of financial income. Ms. Applegarth intends to continue living in her home on the property, which is within 200' of the mobile home. If for any reason her son will no longer be living on the property, the mobile home will have to be removed.

Mr. Dodd read agency comments into the record. The Department of Public Works had no comments. The Health Department stated in a letter dated November 3, 2011, that "Although the Dorchester County Health Department does not object to the specific special exception request or the variance request from the side property line the variance requested raises several other issues regarding a potential building permit application. Currently the site is not approved for an onsite septic system or connection to sewer at this time. The following steps would need to be taken prior to building permit approval by this office: 1. Applicant must request connection to the Dorchester County Sanitary District sanitary sewer. If denied, a written denial notice from the Dorchester County Sanitary District must be presented to this office to proceed to the next step. 2. If denied, the applicant must make application to this office for a perc test (\$400.00) for the site to see if an onsite septic system can be approved for this site. If approved, a sanitary construction permit would be required for the site for an onsite septic system. If the perc test is disapproved the proposed building permit would be denied by this office. The recently abandoned septic system for the existing dwelling

does not meet current standards and could not be used for any future use. The Planning Commission had no objection to the special exception, but felt the applicant should come into compliance with the setback. The State Highway Administration had no objection. A letter in favor of the request from Old Trinity Church was read into the record.

No one spoke in favor of this request. Alan Herbert, 1713 Taylors Island Road, told the Board that he really didn't have any objection, but questions about location and future use, which seemed to have been answered by the testimony already presented.

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 a motion "to approve this request with the following stipulations: Must submit application to Sanitary District for a sewer connection within 10 days; if denied sewer connection, must submit application for perc test within 10 days; if septic permit is denied, must remove trailer from property within 45 days; septic must be permitted by June 1, 2012 or this special exception will expire." Seconded by Mr. Howard and unanimously carried.

OLD BUSINESS: MARKEY - #2390

Mr. Gunby discussed the Findings of Fact prepared for this case. Ms. McCulley called for a vote to adopt these Findings. All Board members were in favor.

A motion was made by Mr. Howard to approve the minutes of the October 20, 2011 meeting. Seconded by Mr. Foxwell and unanimously carried.

With no further business, a motion was made by Mr. Howard to adjourn. Seconded and unanimously carried. Time of adjournment: 9:15 PM.

Respectfully submitted,



Steve Dodd
Executive Secretary