

**Meeting Minutes
Board of Zoning Appeals
Caroline County, MD**

DATE: Tuesday, March 21, 2023

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

BOARD MEMBERS: Karen Hardy, Chair
Benjamin Butler, Vice-Chair
Michael Mann

OTHERS PRESENT: Patrick Thomas, Board Attorney
Crystal Dadds, Assistant Codes Director
Matthew Kaczynski, Development Review Coordinator
Catherine McCulley, Board Administrative Assistant

Ms. Hardy opened the meeting at 6:00 pm and introduced new Board Administrative Assistant, Catherine McCulley.

Ms. Hardy read the following section of the Notice of Public Hearing:

Notice is hereby given that the Caroline County Board of Zoning Appeals will hold a **HYBRID PUBLIC HEARING** on **Tuesday, March 21, 2023 at 6:00 p.m.** at the Health & Public Services Building, 1st Floor, Room 111, 403 S. 7th Street, Denton, relative to the following application:

Application No. 23-0004: A request by **Choptank Electric Cooperative, Inc.** for a **Variance** in accordance with Zoning Chapter 175, Article XVII and §175-14 of the Code of Public Local Laws of Caroline County, Maryland to construct a 98'x50' metal building closer to the front property line than the minimum required setback. Said property is located at 24820 Meeting House Rd, Denton, Maryland and is further described as Tax Map 102, Grid 6, Parcel 19.

The public hearing notice was published in the Times Record on April 5 and April 12, 2023.

CHOPTANK ELECTRIC VARIANCE #23-0004

Ms. Dadds then read the following exhibits into the record:

1. Notice of Public Hearing
2. Staff Report
3. Application (4 pages)
4. Construction Plans (22 pages)

5. Health Department Water-Sewage Verification
6. Site Plan
7. Aerial Overlay
8. Aerial of Surrounding Area
9. SDAT Real Property Data Sheet
10. Adjoining Property Owner Affidavit
11. Sign Posting Affidavit & Photographs of Property (7 pages)
12. Applicant Notice

Ms. Dadds stated the list included everything submitted and no written testimony was received.

Mr. Kaczynski summarized the Staff Report by saying Lane Engineering filed the Variance on behalf of Choptank Electric to construct a 98 x 50 pole building that did not meet the property set-back requirements. He explained the application was previously approved for another, similar location, but in this case the location has shifted 74 feet southeast of the original site. While the application requested a front yard setback, due to the lot being a corner lot, according to regulations, it will actually be a side yard set-back variance. The property is being used as a bulk storage location for large utility equipment, including trucks and trailers. This building, like most on this site, is positioned around the perimeter.

The Board had no questions for Mr. Kaczynski.

Ms. Hardy swore in Mr. Callahan of Lane Engineering, 117 Bay Street, Easton, MD, Mr. Aydelotte of Choptank Electric, 8861 Newark Road, Newark, MD, and Anne Ogletree, 118 Market Street, Denton, MD, Counsel to Choptank Electric.

Ms. Ogletree clarified that the reason Choptank Electric had to come back to the Board regarding this variance was due to Mr. Aydelotte discovering after running a transit level, that the initial location of the building would have meant that one side of the building would have been 18 inches "off" in elevation from the other side. He then inspected different ways to position the building to see if there would have had to have been many different changes in cost estimates, and things like that. He found that by moving it +/- 73 feet to the Southeast, it is now level. It will be less costly, which is one of the issues, but it will also provide as much clearance between the building, the property line, and the street line as the original location. She asked Mr. Callahan to explain the changes in the plan.

Mr. Callahan began with the plan previously submitted in November 2022 and showed each Board Member a contour line which noted a sort of a hill which made a slight rise in the asphalt adjacent to the building. When Tom got ready to build the building, he suggested shifting the building from 12 feet away from the building next door to 86 feet from this building and the building will now sit on that hill. Then there will be less earth work to do to build the building in the revised location than in the former location.

Mr. Callahan introduced Exhibit 5, the plan from the previous hearing in November, and Exhibit 6, the plan for today's hearing.

Ms. Hardy asked Mr. Aydelotte to explain how this happened, and why this is considered a minor adjustment but still requires coming back to the Board.

Mr. Aydelotte explained it was his fault because when they hired Lane Engineering, he told them where he wanted to build, and they went through the process of obtaining the approvals. But the very next day, when they went to the site, he found out it was 18 inches off on one corner. He called Mr. Callahan and asked if he knew about the discrepancy. Mr. Callahan responded that Mr. Aydelotte had told him where he wanted the building built.

Mr. Aydelotte then went forward with the plan to move the building 73 feet to the right. Nothing else has changed and the new location will give them better access to the building with forklifts.

Ms. Ogletree mentioned the last hearing, and how Mr. Aydelotte had said the main reason for asking for the variance was the practical difficulty for large equipment to maneuver in the interior of the yard. The entrance is on the far side, the west side of the property, and anyone coming in has to come around the circle.

Mr. Aydelotte concurred.

Ms. Ogletree continued that placing the building on the perimeter would keep that traffic difficulty from becoming a real problem.

Mr. Aydelotte agreed that was correct and that would also be the safest route as well.

Ms. Ogletree questioned Mr. Aydelotte about the “conditions” requiring the variance, saying that Choptank built these buildings, but some of them were built before the County adopted zoning regulations.

Mr. Aydelotte agreed that was correct.

Ms. Ogletree inquired if the buildings were built on the perimeter in order to leave open the interior space in which to load and turn large utility vehicles safely.

Mr. Aydelotte responded, that would be correct.

Ms. Ogletree inquired, Is this an industrial district and what businesses are located across the street?

Mr. Aydelotte answered, Yes. There was a speed shop [Justin’s Performance Center], and a place that sells pool supplies [Sparkle Pools].

Ms. Ogletree commented that there were other industrial, or at least commercial, businesses in the area.

Mr. Aydelotte confirmed that there were.

Ms. Ogletree asked Mr. Aydelotte to explain what people would see, the exteriors, as they drove down River Road.

Mr. Aydelotte replied that they would see the building [to be built] 83 feet to the right.

Ms. Ogletree asked if this building would be similar to the existing building.

Mr. Aydelotte answered, yes.

Ms. Ogletree asked if the [new] building [and its nearness to the road] was unique to this particular property because of the way it's developed over the 70 years.

Mr. Aydelotte responded that it was unique because of the prior buildings being built before [zoning regulation].

Ms. Ogletree inquired if this is the minimum variance necessary, and that moving it any more [inward] would create a hardship.

Mr. Aydelotte replied, that's correct.

Ms. Ogletree asked, the entire property is black-top, is that correct?

Mr. Aydelotte confirmed that was correct.

Ms. Ogletree asked if, when digging through the black-top for the post holes, the least amount of disturbance would take place.

Mr. Aydelotte confirmed it would.

Ms. Ogletree asked if, when digging these post holes, there would be any run-off that would affect water quality or marine life.

Mr. Aydelotte answered no.

Ms. Ogletree told the Board she had no other questions for the applicant.

Ms. Hardy commented that it seemed "pretty cut and dried" as the Board previously approved the case and it was "just shifting."

Mr. Mann said he's looking at the new site plan and noted that he knew the old gate wasn't used anymore but it still is accessible so that if applicant needed to, they could get in and out that way.

Mr. Aydelotte remarked that the reason that exit was no longer used was due to a safety issue.

Chairperson Harding noted there was no opposition to the variance so the Board could move to deliberation.

DELIBERATION

The Board closed the hearing and entered into deliberations.

Mr. Mann questioned whether the Board could refer back to their previous deliberation for the case two months ago or if they needed to go through the entire process of deliberation.

Ms. Dadds reported that the Board must complete the process of deliberation even if their reasoning was the same.

The Board deliberated the criteria set forth in the County Code §175-152(B):

- (1) Such difficulty is the 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;**

Ms. Hardy noted that she thought the property was unique in the way it was set up. Mr. Mann commented that he did not think there was another property in the county with buildings set up similarly, especially with the consideration of having to keep safe distances for the equipment maneuverability. And, as was previously stated, many of the buildings had been built prior to [enactment of] zoning regulations. With both tractor trailers and pole trucks coming in, they needed to have accessibility to make those swings.

(2) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor(s) in interest;

Ms. Hardy stated that since the buildings had been in existence for 70+ years and prior to the County adopting zoning ordinances, she did not believe the applicant had done anything to create the situation.

(3) The financial hardship to the applicant as the result of the strict enforcement of the zoning regulation(s) 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. Harding observed that the building shift would help mitigate the cost of building where there would be an 18-inch difference in elevation. Not being able to shift the building location would cause financial hardship and may necessitate buying other property for their purpose.

The Board then proceeded to deliberate the criteria set forth in the County Code §175-152(D):

(1) A written application for a variance has been submitted in accordance with §175-162 of this chapter.

Ms. Hardy stated that a written application was submitted on January 17, 2023 per Exhibit 3.

(2) A duly advertised public hearing has been held as prescribed by §175-179 of this chapter.

Ms. Hardy noted that the public hearing was advertised on March 8, 2023 and March 15, 2023 per Exhibit 1.

(3)(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.

There was no discussion.

(b) Such difficulty is not the result of or does not arise from conduct of the applicant or the applicant's predecessor(s) in interest.

This item was addressed when discussing §175-152(B)(2) listed above.

- (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.**

Ms. Hardy stated that the use of the property is so unusual that there is nothing else out there that is identical to this situation for it to be something that would routinely need a variance and would necessitate the need for an amendment to the Code. Mr. Mann concurred.

- (d) **The variance granted is the minimum necessary to afford relief.**

Ms. Hardy mentioned the size of the building, the number of doors, and the shift being the minimum possible to facilitate the storage needs of the building as discussed.

- (e) **That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within 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.**

Ms. Hardy noted that the property is not located in the Critical Area.

Motion: Mr. Mann made a motion that the Board approve the application from Choptank Electric to build a 98' x 50' building with an 11-foot setback to the side yard with the following conditions:

- A Building Permit and/or Zoning Certificate will be required prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements.
- The Board's decision shall be void one year from the date of approval unless a plat is recorded or a zoning certificate and/or building permit is issued and construction has begun in accordance with the terms of the decision.

Second: Ms. Hardy seconded the motion.

Vote: The vote was unanimous (3:0).

Following the vote, Ms. Ogletree asked the Board if they could go "off the record." Mr. Thomas pointed out that the Board was still conducting an open meeting. Mr. Mann suggested Ms. Ogletree explain what she was asking for.

Ms. Ogletree explained that due to circumstances out of her client's control, the project is several months behind. She was hoping that it might be possible to get the written decision from Mr. Thomas so that the appeal period would begin sooner and the project could be started sooner.

Mr. Thomas asked what time frame Ms. Ogletree was seeking. Ms. Ogletree said, "Just as soon as possible." Mr. Thomas suggested a week. Ms. Ogletree said that would be perfectly fine.

Ms. Hardy added that the Board would also get the decision signed quickly. Ms. Ogletree thanked the Board very much.

Ms. Harding adjourned the meeting at 6:25 pm.

BOARD OF ZONING APPEALS
Karen Hardy, Chair



Karen Hardy, Chair

Minutes prepared by:
Catherine McCulley, Board Administrative Assistant