

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

DATE: June 15, 2021

PLACE: Virtual Meeting on Microsoft Teams

**BOARD MEMBERS
(PRESENT):** Michael Mann, Chairman
Karen Hardy, Vice-Chair
Benjamin Butler, Member

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

Chairman Mann called the Caroline County Board of Zoning Appeals meeting to order at 6 PM. He introduced the Board members and staff then explained the duties that the Board is charged with and how the meeting will proceed.

DANIEL HUTCHISON – SPECIAL USE EXCEPTION NO. 21-0009

Chairman Mann read the Notice of Public Hearing into the record:

Application No. 21-0009: A request by **Daniel Hutchison** for a **Special Use Exception** in accordance with Zoning Chapter 175, Article 16 and §175-28 of the Code of Public Local Laws of Caroline County, Maryland to establish a natural wood waste recycling facility. Said property is located on the west side of Oakland Road, north of Ridgely, Maryland and is further described as Tax Map 13, Grid 5, Parcel 24 and is owned by Richard & Janice Edwards.

Ms. Dadds read the exhibits into the record:

Exhibit 1 Notice of Public Hearing Published in the Times Record on 6/2/21 and 6/9/21
Exhibit 2 Staff Report
Exhibit 3 Planning Commission Staff Report
Exhibit 4 Application
Exhibit 5 Business Plan
Exhibit 6 MD Dept of the Environment Permit No. 2020-NWW-GP01
Exhibit 7 SDAT Tax Map & Real Property Data Sheet Map 13 Parcel 24
Exhibit 8 Site Plan by Schrader Survey's
Exhibit 9 Expired Water & Sewer Verification
Exhibit 10 Aerial Photograph
Exhibit 11 Sign Posting Affidavit and Photographs of Property taken on 6/1/21
Exhibit 12 List of Notified Adjoining Property Owners
Exhibit 13 Applicant's Notice

Chairman Mann swore in:

Daniel Hutchison, 14488 Oakland Rd., Ridgely, MD

Mr. Hutchison stated that he was there to ask for approval of a grinding service on his property. He heard concern from his neighbors that he was asking to increase his business to include the entire property, however he is only requesting it to be on a 40,000 square foot area. They came to this conclusion from the map that was delivered to each adjoining property owner. His property was highlighted in red. Ms. Dadds explained that the notification to adjoining property owners is required by law and made evident by highlighting the property where the business is proposed to be located.

Ms. Hardy explained that when the neighbors received their notification, that was their opportunity to voice their objections. However, no one was there in opposition.

Chairman Mann asked Mr. Hutchison to show him where, on Exhibit 7, his grinding business is located. Mr. Hutchison pointed out the southeast corner of the property that looks like a foot on the aerial photograph. He added that he also owns parcel 73, which adjoins the "foot" area to the north. This property has a pond that is beneficial to his operation.

Mr. Hutchison had questions about the requirements. Ms. Dadds asked Mr. Hutchison to hold his questions until he first gives a narrative of what he is asking of the Board for the record. Mr. Hutchison explained that the general business is to recycle wood to produce mulch and different wood fibers. The material is delivered from offsite locations to be ground at this site and made into colored mulch to be hauled out for wholesale only. They haul 10-20 loads of material out per day.

Chairman Mann responded to Mr. Hutchison's question about the requirement for a fence and exterior lighting as stated in §175-28 of the Code of Public Local Laws of Caroline County. He explained that the Board of Zoning Appeals were charged with ensuring that the provisions of the Code are met. Any argument he may have about those provisions would have to go before the Planning Commission.

Chairman Mann pointed out that the operation already has appropriate screening from most directions, however, the site can be seen from the road when you are driving north from Ridgely. Mr. Hutchison explained that Maryland Department of the Environment (MDE) requires that he have a roadway fully around the operation. Their requirement and the requirement of a fence is substantially increasing the area he needs for the operation. Additionally, he explained that the access is shared with agricultural equipment and a fence would interfere. Ms. Hardy replied that he may need to consider a separate entrance.

Mr. Hutchison asked if there could be a variance to the provisions. Ms. Hardy suggested they ask the Attorney, Mr. Merriken, to weigh in on his question. Mr. Merriken referred to the section of code they were reviewing and explained that this is what the Board was there to ensure. They were not there to consider a Variance. However, he was doubtful that the request would fit the guidelines for a variance.

Ms. Hardy explained that in trying to review his request the last several days she does understand his request. She also understood that he has been operating this business for several years without

a County permit. She asked why he did not come before the Board initially for this approval. Mr. Hutchison corrected this by stating the business has been in existence for 6 years. MES operated it the first three years and never told him a permit was required when he took over.

Ms. Hardy confirmed that he was unaware that anything more was required. Mr. Hutchison stated that he had MES do the grinding the first three years and they never mentioned to him that one was needed. She urged that one should always check with their local authorities, that what they are doing is operating correctly.

Ms. Hardy was also surprised that before coming to the Board of Zoning Appeals, he had applied for a permit with Maryland Department of the Environment (MDE). She was further surprised that they allowed the application to go through without verifying with the County as well. She asked if he was told then that this approval was necessary.

Mr. Hutchison said they did not. They even stated that this location was ideal for his operation. They also inspect his operation every three months. They will check his daily log of temperature readings and weekly oxygen levels.

Ms. Hardy was concerned about the possibility of a fire emergency and asked Mr. Hutchison if he has an emergency plan in place. Mr. Hutchison referred to the Emergency Operational Plan he submitted in Exhibit 5. There is a well on site with a holding tank. He referred back to the precautionary oxygen and temperature checks. There is a 15' roadway around the operation for access. Ms. Hardy appreciated all that he had offered to be prepared for an emergency. However, §175-28 H. Emergency Services states that this plan must go to the Director of the Caroline County Department of Emergency Management for their review.

Ms. Dadds asked Mr. Hutchison what dyeing the mulch entails. Mr. Hutchison explained that he uses an iron oxide-based product and water when in the grinder to color the mulch either black, red, or brown. There is little runoff and Mr. Hutchison explained that he provided a preliminary soil conservation drawing to the Planning Commission.

Ms. Hardy explained that there were several holes in the testimony that prevents the Board from making an informed decision about his application. Mr. Mann agreed that the site plan that was drawn up was missing all of the information that is required. He didn't understand why the surveyor did not include this in his site plan.

Ms. Hardy also wanted to see a traffic study and the replies to the code requirements on the site plan. Mr. Hutchison complained about the fence and lighting requirements and commented that the lighting might be a deal breaker. Ms. Hardy stated that, that was a decision he will have to make. Mr. Mann asked if the applicant had received copies of the ordinance they were referring to and he agreed that he had.

Mr. Hutchison could not understand why he needs a fence when a gravel pit down the street from him, that digs holes 60 feet deep where someone could fall to their death, is not required to be fenced in. Chairman Mann suggested he go down and look closely at the site because there was a fence around it. Mr. Hutchison then said it was a split rail fence.

Ms. Hardy stated that the project up the road has no bearing on his request. That is a different issue that he would have to bring up to the County. She stated that they can only go by what he says and what the Zoning Ordinance says. She suggested that if Mr. Hutchison wanted them to table the request so he can gather the information that is needed, the Board would be open to that. She added that he may want to make an appointment with staff to discuss what is needed. In this way he would not lose his opportunity to be approved. It is not a denial but a continuance.

She noticed that Mr. Hutchison was frustrated. She explained that the Board was not trying to frustrate him, they were trying to explain to him what information they need in order to approve his request. The Board does not have the power to make the rules and cannot change the rules. They simply have to be shown the requirements have been fulfilled according to the Zoning Ordinance.

Chairman Mann pointed out the conditions in the Planning Commission staff report, Exhibit 3. He explained that if it is tabled, he will have the time to provide all that is listed there. Ms. Hardy, responding to an earlier complaint about lighting, suggested he might want to get solar lighting. It's cheaper and he would not have to run electric.

Mr. Hutchison stated that a lot of what he needed to know he didn't learn until late. He said it was his fault. Mr. Butler noted that the Water & Sewer application expired earlier this month. Ms. Dadds explained that Mr. Hutchison would need to go to Environmental Health to have it extended. Ms. Hardy suggested that he talk to Erica for help in that office.

Chairman Mann asked Mr. Merriken if they were staying within their boundaries as far as what they can do for Mr. Hutchison. Mr. Merriken offered that the Board did not have to list what is needed. The applicant stated that he had the lists and can work with staff to gather what is required. However, providing guidance, as they have, was very helpful. He continued, that at the request of Mr. Hutchison, the Board could table hearing the application at a later date. That way there won't be an adverse vote.

Ms. Hardy asked what Mr. Hutchison needed to do according to Code to satisfy the safety requirements that were listed. Ms. Dadds suggested that he take his plan to the Director of Emergency Services so they can submit their comments to the Board from their perspective. The Board needs comments from them that what he is doing will not cause a burden on the Emergency Services in Caroline County.

Because Mr. Hutchison had mentioned earlier that he would have to create a separate entrance from the one used by the agriculture business; Ms. Hardy suggested he carefully consider that in his site plans.

Mr. Hutchison asked where he would find the requirements for tree planting. Ms. Dadds explained that it was a plan Mr. Hutchison would provide to staff for review before the Planning Commission and BZA meetings. It would describe what trees he is planting. At what stage are the trees that he was planting. How far they are from each other. What kind of screening they would supply.

Mr. Hutchison asked where he could get a more definitive idea of what to do with vegetation. Ms. Hardy suggested he make an appointment with the planner to go over this with him. She suggested

his surveyor may also know what needs to be done. And if he doesn't, maybe he could find a surveyor that would. She does not know why his surveyor chose not to include these requirements.

Mr. Butler asked if Mr. Hutchison's business is shut down. Mr. Hutchison stated that it was not. He shared that he had a stop work order at one point, but it was lifted when he showed that he got the proper approvals from Shore Highway.

Motion: Chairman Mann made a motion to table the application until a better plan is submitted to support the request.

Second: Ms. Hardy seconded the motion.

In Favor: The motion was unanimously approved (3-0).

Crystal asked the Board if what Mr. Hutchison needs to bring back is the requirements listed in Exhibit 3, the Water & Sewer Verification updated and the letter from Emergency Services. The Board agreed.

GEORGE & BARBARA SHORT – VARIANCE NO. 21-0010

Chairman Mann read the Notice of Public Hearing into the record:

Notice is hereby given that the Caroline County Board of Zoning Appeals will hold a Public Hearing on Tuesday, June 15, 2021 at 6:00 PM using Microsoft Teams, relative to the following application:

Application No. 21-0010: A request by **George and Barbara Short** for a **Variance** in accordance with Zoning Chapter 175, Article 17 and §175-14 of the Code of Public Local Laws of Caroline County, Maryland to the yard and area setback requirements to construct a 40' x 40' pole building with surrounding concrete pad. Said property is located at 104 Fisher Ave, Federalsburg, Maryland and is further described as Tax Map 61, Grid 20, Parcel 617.

Ms. Dadds read the exhibits into the record:

Exhibit 1 Notice of Public Hearing Published in the Times Record on 6/2/21 and 6/9/21
Exhibit 2 Staff Report
Exhibit 3 Application
Exhibit 4 SDAT Tax Map & Real Property Data Sheet Map 61-Grid 20-Parcel 617
Exhibit 5 Professional Site Plan Prepared by Andrews Land Surveying
Exhibit 6 Aerial Photograph
Exhibit 7 Water & Sewer Verification
Exhibit 8 Sign Posting Affidavit and Photographs of Property taken on 6/1/21
Exhibit 9 List of Notified Adjoining Property Owners
Exhibit 10 Applicant's Notice

Chairman Mann swore in:

Chris Wilhelm, Pole Building Outfitters, 22849 Peaviner Rd., Ridgely, MD
George & Barbara Short, 104 Fisher Ave., Federalsburg, MD

Mr. Wilhelm explained that the Shorts want to erect a pole building but because they live on a corner and their driveway is off of Fisher Avenue rather than Charles Street their setbacks prevent them from doing this. The setbacks only allow for a 5' area to build on. If the driveway were on Charles Street, they wouldn't need a Variance to erect the building. They tried to get their driveway changed, however, that did not work.

There is an area with concrete for a building that was approved to be built by Planning and Codes, at one time but it was never constructed. They are using that original approval to apply for a Variance. Ms. Short stated that they will use the building for storage.

Chairman Mann stated that the building is substantially large for such a small property. He asked what it was for that they need that much area. Mr. Short collects antique tools, machinist tools and equipment. Tools that he uses for his rental properties. They are currently stored in Henderson. He has been robbed several times and lost a lot of money. He would like to bring the tools closer, where he can keep an eye on them.

Chairman Mann asked about the proposed concrete that is noted to the back of the building. Mr. Wilhelm said that was the small square where a man door would go. The overhead door would be located on the South side of the building facing Charles Street. That is so he can pull his equipment out onto the concrete for repair. Mr. Short stated that no driveway was planned for Charles Street.

The building has two garage doors one on the Southside and one on the Northside. Ms. Hardy stated that they must also think of future owners of the property. She is afraid someone may want to make a driveway to Charles Street because of the open access to the garage from the rear.

Mr. Butler asked what the lot coverage limit was for the property. Ms. Dadds stated that as long as he is not asking for over 5,000 sq. ft. of disturbance, he is not required to address storm water management.

Ms. Hardy noted that when they bought the home in 2002, they knew the lot was nonconforming and it did not sit right with her that they would expect to be approved for this enormous pole building. Chairman Mann noted that in Exhibit 6 it showed an aerial photo of the property. It looked like the lot was cut in half with their property on one half. He asked if they owned the other side of the lot as well. Ms. Short stated that the other side belonged to their neighbors.

Ms. Hardy understood that 5 feet is an unreasonable area to expect them to build in, however, they are requesting to max out the lot with such a huge building. She explained that Variances are not easy things to get. They must be the minimum measure to afford relief. Ms. Hardy said that they have not given the Board enough reason or need to approve this application.

Ms. Short explained that they used to live at 26659 Bee Tree Road, Henderson but with Covid and her son's inability to work they moved to the Fisher Road property. There they had a large two-story garage.

They are asking for this building to move and store Mr. Shorts tools from that garage.

Mr. Mann explained that what they are hinting at is, would the Shorts be satisfied to decrease the size of the building so that the Board can approve the request in good conscience. Mr. Short stated that his current shop is 40' x 24' two story building. He can no longer navigate the stairs and is asking for this size to put it all on one floor. Ms. Hardy asked what the equipment was for. Mr. Short said he has rental properties to care for and he trades in antique tools.

Ms. Hardy asked if they had any more to offer and notified them that at this point, she was not in favor of approving the request. She sees more reason not to grant it than she does for granting the request. Mr. Wilhelm noted that there was a similar building on the other side of Fisher about the same size as they are requesting. Ms. Hardy referred to the aerial and explained that the property there was both larger and within the municipality boundary. He asked if it would be an option to build on the existing 25' x 42' concrete pad that was previously approved for construction but never built on.

Mr. Short was hesitant about accepting the smaller size building but realizing that the Board would not approve a larger building he agreed to ask for approval of the 25' x 42' building upon the existing concrete pad.

This completing all testimony, Chairman Mann closed this portion of the meeting to deliberate.

DELIBERATION

Chairman Mann began the review of the conditions for approval of an Area Variance as written in Zoning Chapter 175-152 and § 175-14 of the Code of Public Local Laws of Caroline County, Maryland.

The Board of Zoning Appeals may grant an area variance only upon a finding that the strict application of such requirements would pose a practical difficulty to the owner of the property and upon a showing that:

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. *The Board agreed that the property was nonconforming to today's code. It is a very narrow property located on a corner lot.*

B (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. *The Board pointed out that the lot was created prior to any zoning regulations.*

B (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. *There was no testimony stating there was a financial hardship. Chairman Mann pointed out that the equipment is being stolen in the original location. Ms. Hardy stated that they moved from one home to the other knowing such a building did not exist and they were on a narrow and nonconforming lot.*

D (1) A written application for a special use exception has been submitted. *A written application was submitted. See Exhibit 3.*

D (2) A duly advertised public hearing has been held. *The hearing was published in the Times Record on the 2nd and 9th of June 2021. See Exhibit 1.*

D (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. *The Board agreed that they didn't see any threat to public health, safety, and welfare. However, they agreed that it would likely be injurious to the adjacent properties and the character of the neighborhood. The building they were requesting at first was enormous and took up a large percentage of the area compared to surrounding properties. Downsizing the structure will bring the peak down 2-3 feet and the new structure is more favorable. Chairman Mann rode by the property to see it for himself and feels like it might be acceptable.*

(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. *The Board pointed out that the lot was created prior to any zoning regulations.*

(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. *Exhibit 6 showed that it was located on a corner lot. Everything across Fisher are within the Towns jurisdiction.*

(d) The variance granted is the minimum necessary to afford relief. *Exhibit 5 shows that the property is located on a corner lot and is nonconforming which does not allow anything to be built on the property without a Variance. The applicant agreed to decrease the area of the building to that of the concrete pad, which measures 25' x 42'. The Board accepts their new offer as the minimum necessary to afford relief.*

(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 (COMAR 27.01.12) and this Chapter. *The project is not within the Critical Area.*

Motion: Mr. Butler made a motion to approve the Variance application on the conditions that:

- 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.
- A revised site plan is submitted showing the approved 25' x 42' pole building to be built on the existing concrete pad.

Second: Ms. Hardy seconded the motion.

In Favor: The motion was unanimously approved (3-0).

REVIEW AND APPROVALS

MINUTES – APRIL 20, 2021

Having read the minutes, the Board voted.

Motion: Ms. Hardy made a motion to approve the April 2021 minutes as written.

Second: Chairman Mann seconded the motion.

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

MINUTES – MAY 18, 2021

Having read the minutes, the Board voted.

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

Second: Chairman Mann seconded the motion.

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

DECISIONS

Bishop Variance No. 21-0008

Hetrick Special Use Exception No. 21-0007

Having read the decisions, the Board voted.

Motion: Mr. Butler made a motion to approve the decisions as written.

Second: Chairman Mann seconded the motion.

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

ADJOURNMENT

Motion: Ms. Hardy made a motion to adjourn the meeting at 7:57 pm.

Second: Mr. Butler seconded the motion.

In Favor: The motion was approved unanimously (3-0).


Minutes prepared by Melanie Smith