

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

DATE: September 18, 2018

PLACE: Health & Public Services Building
403 S. 7th Street, 1st Floor, Room 110
Denton, Maryland 21629-1335

**BOARD MEMBERS
(PRESENT):** Rene' Swafford, Vice Chair
Mary Leavell, Member
Mark Faulstick, Alternate

ALSO PRESENT: Bob Merrikin, Attorney
Crystal Dadds, Assistant Director of Codes
Melanie Smith, Board Administrative Assistant

Ms. Swafford called the Caroline County Board of Zoning Appeals to order at 6:18 p.m.

PUBLIC HEARING

LOWCOUNTRY HOLDINGS LLC – Special Use Exception (SUE) (#201800007) and Variance (#201800013)

Ms. Swafford introduced the notice of public hearing into the record.

The following documents were introduced as exhibits and accepted into evidence:

BOARD EXHIBITS

1. Staff Report (3 pgs)
2. Application for SUE #201800007 (16 pgs)
3. Application for Variance #201800013 (6 pgs)
4. Real Property Data Sheet & Tax Map 44 Grid 8 Parcel 4 (2 pgs)
5. Aerial Photograph with Features Overlay
6. Site Plan by Rausch Engineering (Revision Date 8/1/18)
7. Photographs of Property (3 pgs)
8. List of Notified Adjoining Property Owners (4 pgs)
9. Notice of Hearing to Applicant
10. Notice of Public Hearing Published in Times Record on 9/5/18 and 9/12/18

Ms. Swafford swore in the following representatives:

Ryan Showalter, Attorney, McAllister, DeTar, Showalter & Walker
Brendan Mullaney, Attorney, McAllister, DeTar, Showalter & Walker
Patrick Olsen, Principal of Lowcountry Holdings, LLC, 26250 Shortly Rd., Georgetown, DE

Mr. Mullaney, represented the contract purchaser, Lowcountry Holdings LLC, of the 2.11 acre property located at 28328 Shore Highway in Federalsburg. The applicant intends to use the property for two principal uses. The first is as a storage location for a landscape and property maintenance and snow removal service. The second use will be as a retail nursery operation. While the nursery use is permitted by right following site plan approval, a special use exception is requested to authorize a material storage yard to accommodate storage of plant material grown off-site, hardscape material, and bulk goods.

Mr. Mullaney pointed out that the western-most building, of the three existing buildings, is where they intend to conduct the retail sales. The applicant is requesting approval of a variance to permit this building to serve as a retail Nursery to exist 69.4' from the western property line (within the 100' minimum required setback). Mr. Mullaney apologized that the site plan he was referencing was not available to the members earlier. Applicant's Exhibit 1 was accepted into the record as a second revised site plan. (It should be noted that Applicant's Exhibit 1 had not been reviewed by the Development Review Coordinator prior to either the Planning Commission or the Board of Zoning Appeals meetings).

The middle building is a 4,020 sq. ft. garage that will store the landscaping and snow removal equipment. The building to the far-right is intended to be renovated and rented as a home. Attached to the house on the left is an area that will be partitioned off from the main house to serve as an office area for the service business.

The applicant wants to move in and use the phased-in approach to use the property. The first phase of the project will be the implementation of the service side of the business. The equipment will be stored there and picked up as needed by employees from another location.

The purpose of the phasing is that they must work with the Health Department to ensure there is adequate sewage disposal on site for the second phase. The second phase will be when they intend to have a maximum of 10 employees on site. Normally, when an application is approved, the approval is good for one year. Because they are proposing the phased-in approach for the retail and the service businesses, they are requesting an extension of the approval to two years.

There is also a fenced in area on the northwest portion of the property that will be used for service parking. The property was previously used as a service business, which consisted of the storage and maintenance of limousines, which were picked up at the property by employees who resided elsewhere. Lowcountry Holdings intend to continue using the property in a similar way.

The previous owner, Gene's Limousines, applied for a zoning change to General Commercial (C2) when the County rezoned the property to Rural (R). Although the County declined to rezone the property, they repeatedly acknowledged that the then-existing limousine service was recognized by the County as a legal, nonconforming use that could continue. That use has been idle for less than three years. Article XV §175-134 of the Zoning Code states the Board may grant a special use exception to allow the continuance of a nonconforming use which has been idle for less than three years.

Mr. Mullaney pointed out on the site plan the grayed in area to the south of the property as the area that will house the trees, shrubs and grasses for the service business. To the east is a 12,200 sq. ft. area material storage yard in connection with the retail sales business. This area will store the plant

material, hardscape and bulk goods. One of the County's requirements is that a storage area be screened from the road. They have proposed that the gray area to the south of the property that will house "portable" vegetation sufficiently fulfills that requirement.

The Planning Commission had unanimously recommended that the application go before the Board of Zoning Appeals for approval. One of the requirements was that the applicant provide 28 parking places and the plan shows 34 parking places with two reserved for the handicapped.

Ms. Swafford assured that there was no other testimony either in support of or opposed to the application. The Board had no further questions.

Ms. Swafford consulted §175-134 of the Caroline County Code and found that the Board may grant a special use exception to allow the continuation of a nonconforming use, in this case a trucking or service business, which has been idle for less than three years. The Board then consulted §175-142 for the criteria to approve a special use exception for the continuance of a nonconforming use.

- A.(1) An application was submitted. See Exhibit 2.
- (2) A duly advertised public hearing has been held. See Exhibit 10.
- (3) The following principles and requirements were satisfactorily met:
 - (a) The Board heard no testimony that the proposed use would endanger the public health, safety, or general welfare. Like the previous use, employees will report to the business in the morning to pick up the equipment they need for the day and return the equipment to storage at the end of the day.
 - (b) Because the property is in a rural setting with very few neighbors and the use is like what previously existed there for more than ten years, the Board determined the use would not be injurious to the peaceful use and enjoyment of neighboring properties nor diminish or impair property values.
 - (c) Again, because the use is like what previously existed on the property for more than ten years the Board found that it will not impede the normal and orderly development and improvement of the surrounding property.
 - (d) No additional construction was proposed, and the use will not otherwise affect schools, water, sewer or other public facilities or services.
 - (e) The proposed use is recognized by the County as a nonconforming use that is permissible with a special use exception if idle for less than three years and therefore conforms to the zoning chapter of Caroline County Code.
 - (f) This condition does not apply because the property is not located within the Critical Area Program.

The Board consulted Chapter 175, Attachment 3 - Table of Uses under the title of Commercial Retail for (R) Rural Zoning Districts and found that material storage yards in connection with retail sales is permissible subject to a special use exception. The Board then consulted §175-142 for the criteria to approve a special use exception for material storage in connection with retail sales.

- A.(1) An application was submitted. See Exhibit 2.
- (2) A duly advertised public hearing has been held. See Exhibit 10.
- (3) The following principles and requirements were satisfactorily met:
- (a) The Board heard no testimony that the proposed use would endanger the public health, safety, or general welfare. It was found that the retail sale of greenhouse and nursery products compliments the service business that is to operate from the property.
 - (b) Because the property is in a rural setting surrounded by forest and agricultural fields, the Board determined the use would not be injurious to the peaceful use and enjoyment of neighboring properties nor diminish or impair property values.
 - (c) The Board determined that the use will be conducted in a manner that will not impede the normal and orderly development and improvement of the surrounding property.
 - (d) The proposed use will not utilize, burden or adversely impact public facilities or services. It will not generate new residential or school demands.
 - (e) The proposed use is permitted by special use exception in the R Zoning district. The retail use (greenhouse and nursery) is permitted by right in the R zoning district.
 - (f) This condition does not apply because the property is not located within the Critical Area Program.

The Board consulted Chapter 175, Attachment 3, Table of Use Regulations, under title Agriculture for a retail greenhouse or nursery and found a 100-foot building setback is required from all property lines. Because the building they intend to use is 31' short of that setback an area variance is required. Then the Board referred to Ordinance #2016-1 "Chapter 175 Zoning" under Article XVII §175-152 and found that the Board may grant an area variance within the scope of §175-153A(3)(a). The following general requirements were considered:

- D.1) An application was submitted. See Exhibit 3.
- 2) A duly advertised public hearing has been held. See Exhibit 10.
- 3) That the special conditions or circumstances do not result from the actions of the applicant.
- A) Approval of the variance would permit the reasonable use of an existing building on property that is in a rural location. The historic use of the building and property has not created detriment to the area or surrounding properties and the use of the building for the proposed greenhouse and nursery use, within the 100' western side yard setback, will not be injurious to adjacent property, the character of the neighborhood, or the public welfare.

- B) The existing circumstances and location of the building were not a result of the applicant's actions. The building has been situated as it exists for decades before the applicant became associated with the property.
- C) The Board found that it is reasonable that any proposed greenhouse or nursery uses in the future will propose new structures to house their operations. At the time of those proposals, the County can enforce the 100' setback requirement and the buildings for those operations can be in conformance with the zoning ordinance.
- D) The variance will not permit any new construction within the setback and the building will not be further expanded to increase any nonconforming situation on the property.
- E) This condition does not apply because the property is not located within the Critical Area Program.

Ms. Swafford asked if the applicant had any closing statements. Mr. Mullaney stated that he felt the narrative was thorough and understood by the Board. He asked that they include in their decision a one-year extension to the approval of the variance and material storage special use exception.

DELIBERATIONS

Ms. Dadds recommended that two conditions be included, specifically, that Health Department approval is received and that a schedule for the phased development is required in accordance with §175-124.

- Motion:** Ms. Leavell made a motion to approve the special use exceptions and variance with an additional one-year extension for the variance and material storage on the conditions that:
- The final Site Plan is approved by the Planning Commission prior to the issuance of a Building Permit and/or Zoning Certificate, and
 - A Building Permit and/or Zoning Certificate is received prior to any proposed development and must be accompanied by all the necessary documentation and site plan requirements to conform with State and Local laws, and
 - They receive an approved Water & Sewer Verification from the Environmental Health Department, and
 - A phased development schedule is submitted and approved by the Planning Commission.

Second: Mr. Faulstick seconded the motion.

In Favor: The applications were unanimously approved (3 -0).

REVIEW AND APPROVAL OF MINUTES

All members read the minutes of July 17, 2018.

Motion: Ms. Leavell motioned to approve the minutes as written.

Second: Mr. Faulstick seconded the motion.

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

ADJOURNMENT

Motion: Ms. Leavell made a motion to adjourn the meeting at 7:20 p.m.

Second: Mr. Faulstick seconded the motion.

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

The meeting was adjourned at 7:20 p.m.

BOARD OF ZONING APPEALS

Rene' Swafford, Vice-Chair



Minutes prepared by: Melanie Smith