

The Dorchester County Board of Appeals met in regular session on Thursday, May 24, 2018 in Room 110 of the County Office Building at 7:00 PM. Present were, Catherine McCulley, Chairperson, Elizabeth Hill, Vice Chair, Lin Spicer, Cindy Smith, Mike Starling, Robert Collison, Attorney, and Brian Soper, Critical Area Planner. Absent: Steve Dodd, Director of Planning and Walt Gunby, Attorney

An introduction was made by Chairperson McCulley, explaining the procedures of this meeting to the audience. She then called the first case.

**Case # 2626 - Farmers Daughter, LLC  
Kyle & Lisa Marshall – Owners**

**To request a determination by the Board of Appeals that the Dorchester County Zoning Inspector erred in determining the applicants are not permitted under the Dorchester County Zoning Ordinance to sell pre-built sheds from the subject parcel. Property is located at 4149 Ocean Gateway, Vienna, MD 21869. Zoned AC - Agricultural Conservation; 8.39 acres.**

Kyle and Lisa Marshall, 4410 Maple Dam Road, Cambridge, MD, and any other person who would be testifying in this case, were sworn in.

Ms. McCulley advised the applicants that because this is an allegation of error, she would like the applicants to state their case and then staff will present their case.

Ms. Marshall reviewed the case. She advised that they are selling pre-built sheds at their produce market located at 4149 Ocean Gateway to supplement their income. She advised that the County does not see the sheds as an agricultural related product. She advised that the sale of the sheds is essential to enhance the profitability of the produce market.

Ms. Marshall referenced §155-50, Supplementary Use Regulations, “MM”, Produce Market, from the County zoning code, noting that their produce stand is classified as a produce market because of its size, and is a permitted use in the agricultural conservation (AC) zoning district. She also read from “C” of the General Requirements, the list of merchandise permitted to be sold at a produce market.

Ms. Smith asked if there was a difference between a produce stand and a produce market. Mr. Soper advised the original permit, issued in 1999, was for a produce stand. He noted an amendment to this language in 2014 defined a produce market as a principle structure of 500 sq. ft. or more, used for display and retail sale of consumer agricultural products. A produce stand is a structure less than 500 sq. ft.; the Marshall’s structure is 1,600 sq. ft.

Mr. Collison clarified that both are permitted as a right in the AC zoning district. He noted that at the time the permit was issued it, was a stand and, with the 2014 amendment, it now falls under the description of a market. The question the Board must answer is whether this type of shed falls under the definition of an agricultural product.

Mr. Soper read the first sentence of item C of the General Requirements that states, retail sales of items other than consumer agricultural products shall not exceed 30% of the total annual revenue generated by the produce market. Mr. Soper also read the definition from the zoning code for “consumer agricultural products” §155-13, Terms Defined.

The Board discussed limiting the size of the sheds. Mr. Collison pointed out that the “not to exceed 30% of the total annual revenue generated by the produce market”, would put limitations on the size of the sheds.

Mr. Collison asked if the Marshalls would be agreeable to approval conditioned on this percentage. The Marshalls were agreeable. Mr. Collison asked the Marshalls if they would be agreeable to allow personnel from Planning & Zoning to review their sales records annually. Mr. and Mrs. Marshall agreed to this.

Gene Harper, Codes Enforcement, Planning & Zoning, reviewed the actions he had taken once the complaint was received.

Mr. Soper read agency comments into the record. Department of Public Works had no comment on this case, it appears this focuses on zoning matters. The Health Department had no comment on the case. State Highway Administration stated the access point to US 50 at 4147 Ocean Gateway is for residential use only. This access point is not constructed to commercial standards and should not be used for any commercial activity. All commercial activity conducted at 4149 Ocean Gateway should enter and exit from the access point on Salem Road.

After all testimony, Ms. McCulley asked Mr. Collison he if would put together a motion on behalf of the Board. Mr. Collison stated, “the Board finds that an error was made by the Zoning Official in determining that the sale of storage buildings in the Agricultural Conservation Zoning District (AC) was not a permitted use based upon §155-50, MM, subsection C that states, retail sales of merchandise other than consumer agricultural products is permitted provided the annual retail sales of such goods shall not exceed 30% of the total annual revenue generated as a produce market.” Mr. Spicer seconded and the motion unanimously carried.

**Case # 2627 – Rise Up Coffee  
Selby Sign Co. – Applicant**

**To request the following variances relative to an application for free-standing sign. Property is located at 3028 Ocean Gateway, Cambridge, MD. Zoned B-2; .65 acres.**

- a. A variance to exceed the maximum square footage of 50 ft. Applicant is requesting total signage of 129 sq. ft. and a variance of 79 sq. ft.**
- b. A variance to exceed the maximum height of 20 ft. above grade of adjacent roadway. Applicant is requesting a total height of 31 ft. above grade and a height variance of 6 ft.**
- c. A variance to exceed the total number of permitted free-standing signs. Applicant is requesting a total of three signs; the zoning code permits one free-standing sign.**

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

Tim Cureton, 618 Dover Road, Easton, MD, John Selby, Selby Signs, Pocomoke, MD, and any other person who would be testifying in this case, were sworn in.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Cureton advised he would rely on his written responses.

Mr. Cureton spoke about the signs they are requesting. He provided pictures of signs that were located on this property over past years, noting that the remaining posts are from a Shell station once located there.

Mr. Selby spoke about the requested signs, what the County code allows and how the height of the sign is measured. He pointed out there are several signs along Rt. 50 that are larger than what the code allows and, showed pictures of these signs. He spoke about Board of Appeals case #2412 for signage. This case was presented to the Board in 2011 and was approved. Mr. Selby noted that this case was a special exception for the size, not the height.

Ms. Smith asked why the signs on the poles are considered as three separate signs. Mr. Selby advised the County interpreted the regulations as three free-standing signs instead of one. Ms. Smith clarified that if this was considered one sign, a variance would not be required. Mr. Soper stated that was correct. Mr. Selby suggested they are asking for one free-standing sign with three sections.

Ms. McCully asked if the Board was still ruling on three separate variances. Mr. Collison stated that he sees two variances applicable to this case, the height, maximum allowed by code is 20 ft., the request is for 31 ft. (7 ft. difference) and the square footage, maximum being 50 sq. ft., requested is 79 sq. ft.

Mr. Soper read agency comments into the record. Mr. Soper advised the Health Department had no objection to the request. Department of Public Works had no comments concerning the variances as they all focus on zoning. State Highway Administration had no objections to the size increase for the old Hot Spot advertising sign. No off premise outdoor advertising content will be allowed on the structure and cannot overhang MDOT SHA right of way.

Ms. McCulley asked if there was anyone who would like to speak in favor of the request. Mr. Soper read a letter into record from Tack, Inc, (Cynthia Johnson) 5304 Cedar Drive, Cambridge, MD, in favor of the variances.

No one spoke in opposition to the request.

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, Mr. Collison suggested the Board's motion, "to approve a 79 sq. ft. variance for the total square footage of the free-standing sign and approval of a variance of 7 ft. to the maximum height for the free-standing sign as requested". He added that the Board interpreted and found that because the sign is an existing structure, that will be advertising only one business, it constitutes only one free-standing sign. Mr. Spicer seconded and, the motion unanimously carried.

**Case # 2629- James Christian Little- Owner  
Steve Whitten - Applicant**

**To request as a special exception, a sum total area of accessory structures greater than the building footprint of the principal residential structure, or as allowed by Code. Property is located at 1725 Brannocks Neck Road, Cambridge, MD 21613. Zoned RC; 24.998 acres.**

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

Steve Whitten, Agent, Fink, Whitten & Associates, 504 Maryland Ave., Cambridge, MD and any other person who would be testifying in this case, were sworn in.

Ms. McCulley advised the applicant of his two options, to rely on his written responses to the criteria or comment on the responses. Mr. Whitten advised that he would rely on his written responses and comment briefly on them.

Mr. Whitten passed out an aerial of the property and surrounding area, noting that the proposed building will be compatible with the surrounding area. The proposed building will be elevated since it will be located in the floodplain and might be climate controlled for the owner's personal property.

Mr. Whitten stated that the proposed building will have a hose bib, wash sink and possibly a toilet. He noted that if a sink or toilet is installed, that portion of the building will need to be elevated an additional 2 ft. per floodplain requirements. Mr. Whitten advised the building will not be used for living space.

Mr. Whitten advised the principle residence is 2,268 sq. ft. He noted the owner will be removing two existing sheds; one is 379 sq. ft., the other 360 sq. ft. There is an older accessory structure, not entirely enclosed, to remain.

Mr. Soper read agency comments into the record. The Health Department had no comment on the requested special exception. Department of Public Works had no comment as the case appears to be related to zoning issues.

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. Mr. Collison suggested the Board's motion "to approve the special exception as requested and, to permit the sum total of accessory structures greater than the building footprint of the principal residential structure and, permit a sum total of 6,054 sq. ft. of accessory structures; with the stipulations: (1) Applicant must obtain all required permits for the accessory structure(s) and (2) the two existing smaller accessory structures to be demolished within one (1) year." Ms. Smith seconded and, the motion unanimously carried.

Mr. Soper advised that one case is scheduled for the June meeting. He asked if the Board was agreeable to hearing the case at the regular June meeting or if they would prefer to postpone until July. All Board members present were agreeable to hear the case at their regular June meeting.

A motion was made by Mr. Spicer to approve the minutes of April 19, 2018. Seconded by Ms. Smith and unanimously carried.

With no further business, a motion was made by Mr. Starling to adjourn. Seconded by Ms. Smith and unanimously carried. Time of adjournment: 8:51 PM.

Respectfully submitted,

Brian Soper  
Executive Secretary