

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Israel and Rachel Fisher,
37404 Westham Lane,
Mechanicsville, Maryland

Case No. CUAP #16-131-005

DECISION AND ORDER

Introduction

Israel and Rachel Fisher (hereinafter "Applicants"), filed an application for a conditional use pursuant to the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 37404 Westham Lane, Mechanicsville, Maryland (hereinafter the "Property"). The application seeks conditional use approval for use type 86, slaughterhouse.

After due notice, a public hearing was conducted at 6:30 p.m. on September 27, 2018 at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. The proceedings were recorded electronically.

Legal Standard

The Board shall not approve a conditional use unless it finds, based on the evidence, that:

1. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;
2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, morals, order, or general welfare;
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood;
4. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district;
5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided;
6. Adequate measures have been or will be taken to provide ingress and egress following a design that minimizes traffic congestion in the public streets;

7. The proposed conditional use is not contrary to the goals, objectives, and policies of the Comprehensive Plan; and
8. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in Chapter 51.

Findings of Fact

The subject property (hereinafter the "Property") is a family owned and operated farm consisting of 82.65 acres according to the Maryland Department of Assessments and Taxation Real Property Data. The Property contains a two-story single-family dwelling, six barns, and a silo according to the site plan submitted in support of this conditional use request.

The Property is also the site of an active surface mine, which obtained conditional use approval in 2015 (CUAP 15-131-011) and authorization from the Maryland Department of the Environment (MDE).

The Property is constrained in part by steep slopes and highly erodible soils - Evesboro-westphalia complex (EwC2 and EwE2) and Croom gravelly sandy loam (CrD2). Both a stream and nontidal wetlands are located on the west side of the Property.

The Applicant obtained conditional use approval on January 12, 2017 (Order attached) to convert an existing 2,100 square-foot, or 30-foot by 70-foot, barn to a slaughterhouse. A second barn, measuring 20 feet by 60 feet, or 1,200 square feet, was also approved to be converted into a retail butcher shop. The barns are labeled B and A respectively on the site plan.

Since conditional use approval, the Department of Land Use and Growth Management approved two additions to the slaughterhouse: one addition measuring 16 feet by 46 feet and the second addition measuring 30 feet by 30 feet. These two approvals should have first obtained approval by the Board of Appeals as modifications to the approved conditional use.

The Applicant now requests approval of a 30-foot by 30-foot holding floor, which is required by the U.S. Department of Agriculture (USDA) as a place to confine the animals waiting to be slaughtered. The Applicant is also asking for approval of the two earlier additions as modifications to the conditional use.

The Applicant is seeking the proposed addition to provide USDA approved shelter, housing and watering of livestock under humane treatment of animals requirements to complete his USDA application. The approval of this modification will not change the operations that have already been granted in the previous conditional use approval.

Conclusions of Law

The legislative body, by designating a conditional use, has deemed it to be generally compatible with other uses. Therefore, general compatibility is not normally a proper issue to be considered. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a conditional use will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered. In the present case, any adverse effects will not be greater, and may be less, than the adverse effects ordinarily associated with a slaughterhouse.

According to Section 4.2 of the Comprehensive Plan, "Within designated rural areas agricultural activities are the preferred land use, including those that may produce agriculturally related noise and odors at any time. The sale of farm products from the land where they are produced should be supported."

The addition is necessary so that the applicant can process the animals under USDA inspection. It does not change the original conditional use approval except to allow the animals to be processed more humanely and to allow stricter oversight of the process by USDA.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a conditional use pursuant to the St. Mary's County Comprehensive Zoning Ordinance have been met, the request to modify the approved conditional use for use type 86, slaughterhouse, with the additions to Building B as shown on the site plan for the Property located at 37404 Westham Lane, Mechanicsville, Maryland is *approved*.

Date: September 27, 2018

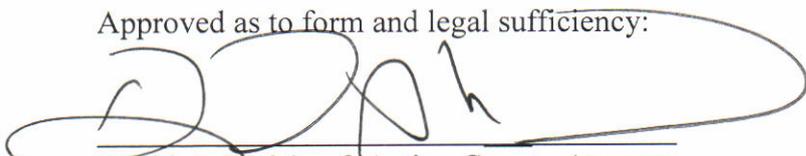

George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Miedzinski and Ms. Delahay

Those voting to deny the variance:

Approved as to form and legal sufficiency:


David A. Weiskopf, Acting County Attorney