

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP 19-131-008

NOAH & ANNIE FISHER

FIFTH ELECTION DISTRICT

DATES HEARD: JUNE 11, 2020 & AUGUST 8, 2020

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: August 27, 2020

Pleadings

Noah & Annie Fisher (the “Applicants”) seek conditional use approval, CUAP Number 19-131-008, for a chicken processing plant within the Rural Preservation District (“RPD”).

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County (“County”), on May 27, 2020 and June 3, 2020. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished by the St. Mary’s County Department of Land Use and Growth Management (“LUGM”). The agenda was also posted on the County’s website on June 3, 2020. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes that the Applicants have complied with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on June 11, 2020 and August 8, 2020 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed conditional use requested by the Applicants.

The Property and the Site

The Applicants own a property of approximately 60.73 acres (the “Property”) at 36723 Dixie Lyon Road, Mechanicsville, Maryland. The Property is located in the RPD and is identified on Tax Map 8, Grid 7, Parcel 318, Farmstead B of the Hertzler Property.

The proposed conditional use is a chicken processing plant comprising of a 2,400-sf building; a 9' x 11' external smoker; a gravel parking lot; and a paved parking area (the "Site"). Thirty percent of the 2,400-sf building will encompass refrigeration units. The refrigeration will run on diesel generators.

The Site is 795 feet from Dixie Lane Road and several hundred feet from Maryland Route 236. The property is approximately 500 feet from the nearest property line.

The Conditional Use Requested

The Applicants seek a conditional use pursuant to St. Mary's Comprehensive Zoning Ordinance ("CZO"), Chapter 25, Schedule 50.4 Use # 1, Section 51.3.1 for a chicken processing plant.

The St. Mary's County Comprehensive Zoning Ordinance

Pursuant to Schedule 50.4 of the CZO, Use Type 1, "Agricultural Industry, Major" is defined as:

Extensive processing of crop and animal products produced off site. This use type includes dairy processing plants, meat processing facilities, fertilizer manufacturers, and tanneries.

The Evidence Submitted at the Hearing by LUGM

Harry Knight, Deputy Director of LUGM, presented the following evidence:

- The Property is a family-owned and -operated farm consisting of 60.73 acres according to the Maryland Department of Assessments and Taxation. The Property contains two single-family dwellings and several agricultural outbuildings according to the site plan submitted in support of this conditional use request.
- Neighboring properties maintain similar rural characteristics.
- The Applicants are requesting Conditional Use approval for a proposed chicken processing

plant comprising of a 2,400-sf building, an external smoker, a gravel parking lot, and a paved parking area for ADA compliance.

- The Applicants describe the proposed “chicken processing” activity as follows:
 - Once a month, a tractor trailer load of butchered chickens will be delivered by a United States Department of Agriculture approved supplier.
 - The butchered chickens will be kept in cold storage in the building until ready for smoking.
 - The butchered chickens will be prepared for smoking in the building prior to being placed in the external smoker.
 - The smoked chickens will be removed from the external smoker and kept in cold storage in the building until ready for shipment.
 - Once a week, a two-axle refrigerated box truck will take a shipment of smoked chickens to a wholesale buyer.
- There will be approximately 130 trips per month, averaging five trips per day.
- LUGM reviewed the proposed project during the April 2019 Technical Evaluation Committee cycle.
- Pursuant to Section 25.9 of the Ordinance, “Limitations on Conditional Use Approval,” “Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period.”
- The following Attachments to the Staff Report were introduced:

- #1: Standards Letter;
- #2: April 2019 TEC comments
- #3: Land Use Map
- #4: Location Map;
- #5: Zoning Map; and
- #6: Minor Site Plan.

Applicants' Testimony and Exhibits

The Applicants appeared over WebEx before the Board. The following evidence was presented:

- The Applicants seek to diversify their property. The Site was chosen because the Applicants are farmers with readily available land, and the Site is as far away as possible from neighbors. Specifically, the site is approximately 500 feet from the nearest property line.
- Relocating the Site to an industrial zone is not viable due to the costs associated with leasing and/or purchasing property.
- There are no outside investors for the Site. Instead, the Site will be a small family business.
- One time per month, a tractor trailer will bring in 22,000 plastic-wrapped chickens in waxed boxes. The chickens will arrive cleaned such that there will be no blood, innards, or feathers. Those chickens are then prepared, seasoned, and placed into the smoker on the Site. One thousand chickens will be placed in the smoker at a time. The Applicants estimate that each set of 22,000 chickens will be smoked within two weeks, as they plan to operate the smoker twenty-four hours per day, six days per week.
- The smoker is not self-contained, thus allowing smoke to escape. The smell emanating

from the Site will be a combination of chicken and hickory wood. Local sawmills will provide the hickory wood.

- As the chickens arrive clean, the only waste from the processing includes wastewater, oil drippings, and ash from the hickory wood. The wastewater from rinsing the chickens will run to a 600-gallon standard septic tank. There will also be a 1,500-gallon grease trap grease trap in the septic similar to a commercial kitchen. The oil will drain into a 55-gallon above-ground grease drum, which will be picked up once per week.
- Once processed, the Applicants will chill, freeze, and individually wrap the chickens for a wholesale buyer. There will be no onsite retail sales; rather, the site will be purely to process chickens for the wholesale market in and around the District of Columbia. The wholesaler will arrive mid-morning and leave early afternoon.
- Traffic on the Dixie Lyon Road is rated A, and the intersection at which the Property sits is rated B. These ratings will remain the same, despite the increased daily traffic to the Site. As no traffic engineers account for daily traffic resulting from agricultural use, the Applicants compared the projected number of trips with the permitted number of trips under an industrial use. Under that analysis, industrial uses of a property permit up to 17 trips per day, and the Site meets those requirements averaging approximately 9.5 trips per day by buggy. Two employees per day will arrive per day.
- There will be five tractor trailer trips per month, one of which is to deliver the raw chicken in a single refrigerated box truck, and four of which will be picking up the smoked chicken for delivery. Finally, there will be another truckload per week to haul the oil drippings from the chicken. The Applicants anticipate accepting trucks from 8 a.m. to 5 p.m.
- There will be no dumping of burned material after processing. Rather, the Applicants

intend to place the smoker and ash container on gravel at least ten feet away from the nearest vegetation. They will develop a vegetation management plan to prevent growth close to the ash containers and cooking facilities.

- The Applicants intend to use two 55-gallon metal drums with lids to dispose of ash. Once one is filled, they will use the other to allow the ash in the first drum to become dormant as the second is filled. By the time the first drum is disposed, the ash will be cold. Moreover, the smoker uses a slow burning process such that the hickory wood will become more of a dust than chunks of embers once burned.
- The Applicants will have two diesel generators on the Site to keep the freezers and coolers at the appropriate temperatures. One of the diesel generators will serve as a backup. The diesel will be stored in a double-walled 300-gallon fuel tank.
- The generators will sit on an 8' x 12' slab, and the Applicants are considering installing a 6-inch curb over the slab, which would hold nearly 400 gallons of fuel if spilled. The fuel will need to be refilled every seven days.
- The generator will run twenty-four hours per day, seven days per week at thirty to forty-five-minute intervals, averaging eighteen hours per day, or about eighty percent of the time. However, the generator may run more or fewer hours per day depending on the weather.
- The diesel generators measured 72db and 92db when running, but they measure under 60db at the property line. If the Applicants place a sound shroud over the generators, the decibel level will be reduced by another 10db to 15db.
- The generators are new and are required to meet Tier 4 requirements as of 2016, thus producing minimal smoke and meeting United States Environmental Protection Agency

standards. The Applicants also intend to add a lean-to that will additionally shield the generators from the elements.

- The water disposal is equal to a modest family home, and the Applicants anticipate using approximately 600 gallons of water per day. The stormwater management plan, which includes bioretention, has been approved by the St. Mary's County Department of Public Works & Transportation ("DPW&T").
- The St. Mary's County Health Department has approved the plan, finding that there will be no groundwater contamination. Moreover, there will be no cross contamination, as the Applicants will be following the required sanitary standards. Poultry arriving will be inspected and will be returned if spoiled. Discarded food products will be put into a dumpster with bleach to prevent reuse and then taken to the St. Mary's County Landfill.
- The Applicants plan to hire an additional one or two employees.
- As the Applicants are running a wholesale processing plant, there will be a United States Department of Agriculture Food Safety and Inspection Service inspector on site every day when the Applicants are smoking the chickens.
- In June 2020, the Applicants applied for a general permit from the Maryland Department of the Environment.

Decision

County Requirements for Granting Conditional Uses

The St. Mary's County Comprehensive Zoning Ordinance § 25.6 sets forth eight separate standards that must be met for a conditional use to be granted:

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 St. Mary's County, Maryland Comprehensive Plan ("Comprehensive Plan"); and
8. The conditional use, in all other respects, conforms to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in the Ordinance.

Conclusions

Upon review of the facts and circumstances, the Board concludes that the Applicants have met the general standards for granting a conditional use under CZO § 25.6. Several factors support this decision.

First, the Site is in the RPD, and the proposed conditional use, "Agricultural Industry,

Major,” complies with the standards of the RPD because the proposed conditional use is permitted in this zoning district pursuant to CZO Schedule 50.4 Use # 1. There are no additional RPD standards applicable to this use.

Second, the proposed chicken processing plant will be subject to numerous County, state, and federal regulations intended to assure the public’s health, safety, and welfare. Specifically, there will be a United States Department of Agriculture Food Safety and Inspection Service inspector on site every day. Moreover, LUGM reviewed the proposed project during the April 2019 Technical Evaluation Committee cycle, the St. Mary’s County Health Department has approved the plan, and the Applicants will obtain a general permit from the Maryland Department of the Environment. Finally, under the conditions approved by this Board, the Applicants must adhere to the requirements of the National Fire Protection Association (“NFPA”) 96 Manual regarding ash removal.

Third, the current uses on adjoining properties are residential and agricultural. The proposed chicken processing plant will be 500 feet from the nearest property line and over 1,000 feet from the nearest residence on adjacent property. Furthermore, as the Property is located in the RPD, neighboring properties maintain similar rural and agricultural characteristics. While the decibel level of the generators at the property line is approximate to the sound of an office, the Board is imposing additional measures to dampen the sound to allow the neighbors to enjoy their property without disturbance. Moreover, the smell emanating from the Site will be of smoked chicken and wood and therefore is not unlike other scents that may emanate from a farm in the RPD.

Fourth, given the rural character of the surrounding agricultural and residential properties, the proposed chicken processing plant is less likely to have an adverse effect at this location, than

it would on a smaller parcel and/or a parcel accessed solely by a private road. As stated above, several measures are required to ensure safety and quiet for neighbors, including heightened fire control and sound requirements.

Fifth, the commercial site plan review process, administered by LUGM will ensure that adequate utilities, road access and stormwater management will be provided. In particular, LUGM reviewed the proposed project during the April 2019 Technical Evaluation Committee cycle, and DPW&T approved the Applicants stormwater management plan, which includes bioretention.

Sixth, the existing point of ingress and egress is the existing driveway onto Dixie Lyon Road. Dixie Lyon Road is a secondary class road that is owned and maintained by St. Mary's County. Dixie Lyon Road is rated A, and the intersection at which the Property sits is rated B. Neither will be affected by the site. The Department of Public Works and Transportation has approved the continued use of the existing driveway for the proposed and existing uses without improvement.

Seventh, the proposed Site comports with the Comprehensive Plan, Section 4.4 of which seeks to “[e]ncourage and prefer any farm use of land and agricultural activities including those that may produce agriculturally related noise and odors at any time”; “[a]llow supplemental income productive activities at a scale or intensity that will not unduly change the character of the area; [and] establish performance standards that will prevent negative impacts on surrounding properties.” Here, the Applicants seek to obtain supplemental income. Here, the Applicants will continue to make use of their Property, diversifying its uses, allowing supplemental income to the Applicants without unduly changing the character of the area. The conditions imposed by this Board will ensure that negative impacts on surrounding properties are eliminated.

Finally, the Site is consistent with RPD development standards, which contemplate this

proposed use on RPD property. Moreover, CZO Chapter 51 has no special requirements, or conditional standards, for this specific conditional use. The commercial site plan review process, administered by the LUGM, will ensure that the chicken processing plant, as proposed, complies with the requirements of the CZO, as it pertains to Use #1 in the RPD.

ORDER

PURSUANT to the application of Noah & Annie Fisher, requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance for Use Type 1, Agricultural Industry, Major, (CUAP 19-131-008); and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Applicants are granted a conditional use to allow a chicken processing plant, Use # 1, Agricultural Industry, Major, within the Rural Preservation District, with the following eight conditions:

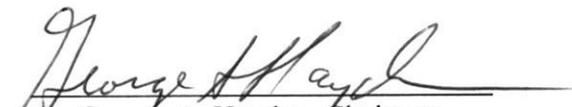
1. The gravel should extend beyond all sides of the smoker and ash containers for a minimum distance of 10 feet;
2. Adopt a vegetation management plan to prevent growth of vegetation in the gravel area;
3. Signs should be provided on the smoker and ash containers prohibiting both parking and the placement or storage of combustibles within 10 feet of them;
4. Provide a portable fire extinguisher in a weatherproof cabinet mounted on the exterior face of the proposed processing facility nearest the smoker and ash containers;
5. Provide a Type K portable fire extinguisher inside the door to the processing facility, with specific signage to use in case of a grease fire. Post a sign on the smoker indicating the location of the Type K fire extinguisher. It must be kept inside to prevent freezing;

6. Follow the requirements of NFPA 96 regarding ash removal with these exceptions due to operations six days per week and the amount of ash produced:
 - a. Determine and document the necessary timeline for ash removal and present to St. Mary's County; and
 - b. Extinguish any cinders as soon as the cinders and ash are removed from the smoker, rather than while inside the smoker;
7. Provide sufficient quantity and volume of metal ash containers to allow complete cooling of embers and hot ash prior to further disposing of the cool ashes. It will be necessary to provide at least two containers, with lids; and
8. Provide a sound suppression enclosure, to dampen the sound of the generator.

Additionally, the foregoing conditional use is also subject to the following condition that the Applicants shall comply with any instructions and necessary approvals from the Department of Land Use and Growth Management.

This Order does not constitute a building permit. In order for the Applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: August 27, 2020


George A. Hayden, Chairman

Those voting to grant the conditional use:

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

Those voting to deny the conditional use:

Approved as to form and legal sufficiency


Neil A. Murphy, Deputy County Attorney

NOTICE TO APPLICANTS

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 25.9 provides, "Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period."

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.