

Edward Howlin has applied to the Board of Appeals for a Special Exception to install a drip irrigation wastewater treatment facility. The subject property is known as the Shoppes at Apple Green, and is located on the east side of Route 4 and the south side of Ward Road in the Dunkirk Town Center.

The matter was presented October 3, 2002 before Mr. John C. Smith, Chairman of the Board of Appeals, Mr. H. Wilson Dowell, Vice-Chairman, and Mr. Michael J. Reber. Mr. Edward Gibbs, Attorney-at-Law, was present at the hearing and represented the property owner Edward Howlin. The following Exhibits were dated and entered into the record at the hearing: (1) A letter dated September 27, 2002, from Edward Howlin to the Board of Appeals authorizing C. R. Bailey, Jr. to testify on his behalf was marked as Applicant's Exhibit No. 1; (2) A Site Plan for the Shoppes at Apple Green, dated September 2002 was marked as Applicant's Exhibit No. 2; (3) A Map with an enlargement of Pre-Treatment Facility Tanks Shown on Exhibit No. 2 was marked as Applicant's Exhibit No. 3; and (4) Maryland Department of The Environment Ground Water Discharge Permit Number 02-DP-3400, effective August 1, 2002 through August 1, 2007 was marked as Applicant's Exhibit No. 4. Mr. C. Rick Bailey, Jr. from Marrick Properties, Inc., Mr. Randy Barrett, from R. A. Barrett & Associates, and Mr. Dan Williams, Chief, Bureau of Utilities for Calvert County, were present at the hearing and testified in support of the Applicant's request. Public comments were received at the hearing from Mr. Jay Lounsbury, President of the Dunkirk Area Concerned Citizens Association (DACCA) supporting the Applicant's request.

FINDINGS OF FACT

Through testimony and evidence presented at the hearing, the Board found the following facts to be true:

1. The subject property consists of approximately 41.69 acres and is currently unimproved.

2. The Applicant is requesting a special exception to install a drip irrigation wastewater treatment facility on the property.
3. The property is located entirely within the Dunkirk Town Center. Wastewater treatment facilities are permitted as a special exception use in the Town Center subject to the condition that it is in accordance with the Comprehensive Water and Sewer Plan.
4. Mr. C. R. Bailey, Jr. testified that the drip irrigation wastewater treatment facility will be developed by Marrick Properties, Inc. in partnership with Edward B. Howlin, Jr. Inc.
5. Mr. Bailey testified that the site development will include approximately 105,000 square feet of commercial space, which will include a food store and additional retail facilities, which are permitted uses within the Town Center of Dunkirk. He testified road improvements would be made to Dunkirk Way in conjunction with the retail development. He testified a Special Exception is required for the proposed drip irrigation wastewater treatment facility, which would be used for the Shoppes at Apple Green project only.
6. Mr. Bailey testified to the following: that the drip irrigation system would exceed 5,000 gallons per day; pre-treatment, of the affluent discharged from the septic systems from the retail stores, would be required putting the proposed project in the category of a wastewater treatment facility; the system would be located below grade; the system would be operated under a permit from the Maryland Department of the Environment, which has been received; there will be a licensed operator on site, and periodic reports will be sent to the Maryland Department of the Environment, indicating how the facility is operating, to safeguard against any violations; the system includes two pre-treatment tanks with a capacity of 15,000 gallons each; once treatment is completed the affluent would be conveyed in lines to the drip irrigation fields; the system was designed for 30,000 gallons a day of discharge with a 25% factor over and above as a safety feature; approximately 24,000 gallons of the proposed drip irrigation wastewater treatment would be needed for the proposed project; the additional 6,000-gallon capacity will be held in reserve for future expansions; the system is designed identically to the system installed at Marley Run in Calvert County, which has been operating successfully for over two years; the system may have an indefinite life; and the proposed system has been designed to meet the factors required for protecting public health and safety.
7. Mr. Bailey testified he attempted to contact all adjoining property owners to make them aware of the proposed project. He testified he met with Mr. Ronald Hall and addressed his concerns regarding access to the development site and the clearing proposed for the project.

8. Mr. Randy Barrett from R. A. Barrett and Associates, engineers for the project, testified: his firm prepared the site plan for the project; the wastewater treatment facility is permitted by Special Exception in the Dunkirk Town Center; he has reviewed ordinances relating to the construction and operation of the drip irrigation wastewater treatment facility and that the proposed system will not adversely affect the requirements of the Calvert County Zoning Ordinance, the Comprehensive Plan, the Dunkirk Master Plan and the Calvert County Water and Sewer Plan; the subject facility would not be detrimental to the use and enjoyment of adjacent properties; he does not foresee any adverse impacts on the health, safety, or general welfare of the County; and there is nothing about this project that would tend to overcrowd or concentrate population or create a greater impact than if it were constructed in some other Town Center.
9. Mr. Barrett testified the project is zoned S-5 by the Comprehensive Water & Sewerage Plan. The three parcels which make up this project will be combined into one parcel to meet the S-5 requirements.
10. The project will require site plan approval.
11. Mr. Dan Williams, Chief of the Bureau of Utilities for Calvert County testified that he is familiar with the drip irrigation wastewater treatment facility operating at Marley Run in Calvert County and systems located in St. Mary's County and they have been operating with success.
12. Mr. Jay Lounsbury, representing the Dunkirk Area Concerned Citizens Association (DACCA) was present at the hearing and read a letter into the record supporting the proposed project in the Dunkirk Town Center as it is in concert with the Comprehensive Plan.
13. The proposed development is consistent with the Comprehensive Plan and the Dunkirk Master Plan.
14. The project will be developed entirely within the Town Center and will be consistent with the Water and Sewerage Plan.
15. Section 7-3.01.E. of the Calvert County Zoning Ordinance gives the Board of Appeals the authority to grant special exceptions provided the Board finds that:
 - a. The proposed special exception does not adversely affect the implementation of the Comprehensive Plan for the physical development of the County, as embodied in the Ordinance.

- b. The proposed special exception will not be detrimental to the permissible use and enjoyment of adjacent properties, or to the health, safety or general welfare of the County.
 - c. The proposed special exception will not create congestion on roads or streets, create fire hazards, tend to overcrowd land or unduly concentrate population, interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public services, or adversely interfere with the surrounding environment.
 - d. The Applicant can meet the conditions spelled out in the Ordinance or required by the Board. The Board may vary from the conditions spelled out in the Ordinance except in cases where the Ordinance specifically states that a requirement shall not be waived.
16. The application to the Board of Appeals was submitted under the Dunkirk Zoning Ordinance, which lists the condition that the treatment facility must be in accordance with the Comprehensive Water and Sewerage Plan.
17. The Zoning Ordinance was written in accordance with the goals and objectives of the Comprehensive Plan.

CONCLUSIONS

Based on the above Findings of Fact, the Board came to the following conclusions (in accordance with Section 7-3.01.E of the Calvert County Zoning Ordinance):

1. The proposed special exception will not adversely affect the implementation of the Comprehensive Plan for the physical development of the County, as embodied in the Zoning Ordinance as the use is permitted as a special exception by the Dunkirk Zoning Ordinance, which was written in accordance with the goals and objectives of the Comprehensive Plan. Commercial use is encouraged in this portion of the Dunkirk Town Center.
2. The proposed special exception will not be detrimental to the permissible use and enjoyment of adjacent properties, or to the health, safety or general welfare of the County as the facility will allow commercial development of a property which has been designated for that type of use. In addition, it will be constructed and operated to comply with all Maryland Department of the Environment and County regulations for wastewater treatment facilities.

3. The proposed special exception will not create congestion on roads or streets, create fire hazards, tend to overcrowd land or unduly concentrate population, interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public services due to the nature of the use. In addition, the use will not adversely interfere with the surrounding environment based on testimony presented by the Applicant and the Applicant's representatives that the facility will be constructed and operated under a permit issued by the State.
4. The Applicant can meet the conditions spelled out in the Ordinance or as required by the Board. The Board may vary from the conditions spelled out in the Ordinance except in cases where the Ordinance specifically states that a requirement shall not be waived. This application was submitted under the Dunkirk Zoning Ordinance, which lists the condition that the treatment facility must be in accordance with the Comprehensive Water and Sewer Plan.

ORDER

It is hereby ordered, by a unanimous decision, that the special exception to install a drip irrigation wastewater treatment facility, as requested by Edwin Howlin, be GRANTED based on the above findings of fact and conclusions, subject to the condition that the subject parcels must be combined into one parcel or the Applicant must request a category change for the subject property.

NOTICE TO APPLICANTS

In accordance with Section 7-3.02 of the Calvert County Zoning Ordinance, "any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals...may appeal the same to the Circuit Court of Calvert County. Such appeal shall be taken according to the Maryland Rules, Title 7, Chapter 200 within 30 days. If any application for a variance is denied by a final order of the Board, or if appealed, by a final order of the Court, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order."

In accordance with Section 7-3.01.C, pertaining to special exceptions, "If construction has not commenced within a period of two years after the effective date of the special exception, the special exception shall automatically expire without notice. The Board of Appeals may grant an extension because of the occurrence of conditions unforeseen at the time of the granting of the special exception provided that application for an extension is made at least 30 days prior to the expiration date."

Entered: November 6, 2002
Pamela P. Helie, Clerk


John C. Smith, Chairman