

CALVERT COUNTY BOARD OF APPEALS

Case No. 08-3506

**Public Hearing
February 7, 2008**

Edward B. Howlin, Jr. from Howlin Investment Commercial Properties, LLC has applied for a Special Exception to install a drip irrigation wastewater treatment facility. The property is known as the Shoppes at Apple Green, and is located at 10100 Ward Road, Dunkirk (Tax Map 6, Parcel 53 & 15) in the Dunkirk Town Center.

AUTHORITY OF THE BOARD OF APPEALS

The jurisdiction of the Board of Appeals is based on Article 66B of the Annotated Code of Maryland, as amended, and Article 11-1.02 of the Calvert County Zoning Ordinance, which provides that the Board of Appeals shall have the authority to hear and decide petitions for special exceptions. A special exception is defined as, "A grant of a specific use that would not be appropriate generally or without restriction. Approval of a special exception is based upon a finding that certain conditions as detailed in the Zoning Ordinance are met, that the use conforms to the Comprehensive Plan and is compatible with the existing neighborhood."

TESTIMONY & EVIDENCE PRESENTED

1. The case was presented February 7, 2008 before Board of Appeals members Mr. Michael Reber, Chairman, Dr. Walter Boynton, Vice Chairman, and Mr. Michael Redshaw, member, (the Board). Mr. C. Rick Bailey, Jr. from Marrick Properties, Inc. was present at the hearing and represented the property owner. Mr. Ed Gibbs served as the applicant's attorney.
2. A Staff Report, including photographs taken on site, was entered into the record and marked Staff Exhibit No. 1.
3. The following Applicant Exhibits were dated and entered into the record at the hearing:
 - Exhibit No. 1 - Application
 - Exhibit No. 2 - Plat submitted with the Application
 - Exhibit No. 3 - Board of Appeals Order No. 02-2852
 - Exhibit No. 4 - Site Plan - Shoppes @ Apple Green Revised 9/30/05
 - Exhibit No. 5 - Letter dated February 5, 2008 from Edward Howlin

To the Board of Appeals Authorizing C. R. Bailey, Jr. to testify on his behalf

- Exhibit No. 6 - Drawing Depicting Chamber for Wastewater Treatment Facility
- Exhibit No. 7 - Map Amendment Staff Report
- Exhibit No. 8 - Maryland Department of the Environment Ground Water Discharge Permit, effective August 1, 2002
- Exhibit No. 9 - Maryland Department of the Environment letter dated January 16, 2008 with Ground Water Discharge Permit No. 07-DP-3400, effective March 1, 2008

4. The following persons testified at the hearing:

- Barry King, Bureau Chief, Calvert County Department of Public Works, 150 Main Street, Prince Frederick, Maryland 20678
- Jay Lounsbury, Former President, Dunkirk Area Concerned Citizens Association, P. O. Box 887, Dunkirk, MD 20754

FINDINGS OF FACT

Based on the application and testimony and evidence presented at the hearing the Board makes the following Findings of Fact:

1. The property consists of 41.7 acres and is situated at the southeast corner of the intersection of Ward Rd. and MD 2-4 in the Dunkirk Town Center. It is currently open fields and woodland. The adjoining property is developed with a CVS pharmacy.
2. Commercial use is encouraged in the Dunkirk Town Center. Public water and sewer are not available. Individual septic systems may be installed, or private wastewater treatment facilities such as proposed here are allowed by Special Exception.
3. A proposal for a 5-phase commercial development of the property received conditional approval from the Planning Commission in 2003. Since that time, many of the original agency approvals have expired, including the 2002 Board of Appeals Special Exception approval for installation of a wastewater treatment facility for the commercial development.
4. The facilities must be constructed and maintained in accordance with the Comprehensive Water and Sewerage Plan. Groundwater discharge permits from Maryland Department of the Environment are required for this project.

5. The water and sewer category for the property is S-5, according to the County's Comprehensive Water & Sewerage Plan. With pending changes to the Water & Sewerage Plan, it will be identified as S-3, meaning there is a higher priority for the proposed facility.
6. The project will require site plan approval.
7. The proposed development is consistent with the Comprehensive Plan and the Dunkirk Master Plan.
8. The project will be consistent with the new Water and Sewerage Plan, once adopted.
9. The Dunkirk Area Concerned Citizens Association (DACCA) supports the proposed project.

CONCLUSIONS

Based on the above findings of fact, the Board makes the following conclusions:

1. The Board concludes that 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 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.
2. The Board concludes that 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 Board concludes that 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's representatives that the facility will be constructed and operated under a permit issued by the State.
4. The Board concludes that the applicant can meet the conditions required by the Board and those specified in the Ordinance.

ORDER

It is hereby ordered, by a unanimous decision, that the Special Exception to install a drip irrigation wastewater treatment facility as requested by Edward B. Howlin, Jr. from Howlin Investment Commercial Properties, LLC be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. All permits and approvals required by the Calvert County Zoning Ordinance and the Department of Planning and Zoning and those required by any other departments, agencies, commissions, boards or entities, in accordance with County, State and Federal law, must be obtained before commencing the development activity approved by this Order, including Fire Marshall approval.
2. The approval is conditional upon the revisions to the Water & Sewerage plan that identify this property as Category 3.
3. In accordance with Section 11-1.02.C.3 of the Calvert County Zoning Ordinance any violation of conditions imposed by the Board of Appeals shall be considered a violation of this Ordinance and subject to the enforcement provisions of Section 1-7.
4. In accordance with Section 11-1.02.D of the Calvert County Zoning Ordinance the grant of this special exception shall lapse if the proposed use or the proposed construction has not commenced within a period of two years after the effective date of the special exception; or, where the grant of the special exception has been appealed, the proposed use or the proposed construction has not commenced within two years of the date of a final order of the last appellate court to hear the matter including the granting of a special exception upon the remand by an appellate court.
5. In accordance with Section 11-1.02.E of the Calvert County Zoning Ordinance if the Board of Appeals finds that conditions unforeseeable at the time of the granting of the special exception have occurred, it may grant an extension to the two-year lapse provisions contained in paragraph "D" of this Section, provided

that application for an extension is made at least 30 days prior to the expiration date of the special exception.

6. In accordance with Section 11-1.02.F of the Calvert County Zoning Ordinance the Board of Appeals shall have the authority to rescind approval of a special exception if the conditions of approval are not met.

APPEALS

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, "any party to a case may apply for a reconsideration of the Board's decision no later than 15 days from the date of the Board's Order."

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered: February 25 2008
Pamela P. Helie, Clerk



Michael J. Reber, Chairman