

REPORT TO THE BOARD OF APPEALS

FROM: Roxana Whitt

REPORT DATE: January 17, 2008

HEARING DATE: February 07, 2008

CASE NO. 08-3506

APPLICANT: Howlin Investment Commercial Properties, LLC

LOCATION:

The property is located at 10100 Ward Rd., Dunkirk, and is otherwise known as Parcels 53 and 15 of Tax Map 6 in the Land Records for Calvert County.

ZONING: The subject property is zoned Town Center.

REQUEST:

The applicant in the subject case has applied for a Special Exception to install a drip irrigation wastewater treatment facility.

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.

APPLICABLE ORDINANCE SECTIONS:

ZONING:

Section 2-8.08 of the Zoning Ordinance addresses the purpose and intent of the Town Center (TC) zone:

The Town Center District is intended to include all property comprehensively zoned town Center and governed by Town Center Master Plans and zoning Ordinances. The purpose of this District is to provide attractive, pleasant and convenient places to live, work, and shop in a town-like setting; to promote strong business growth; to provide an alternative to scattered, strip commercial development along MD 2, 4, and 2/4; to expand the choice of housing options for all

ages and incomes; to reduce dependence on motorized vehicles by providing public transit alternatives and requiring that pedestrian circulation be addressed; to reduce residential growth in agricultural areas; and to provide cultural and recreational amenities serving the entire population.

SPECIAL EXCEPTION CRITERIA:

The general criteria for Special Exception approval are found in Section 11-1.02 of the Zoning Ordinance:

- 1. The proposed Special Exception does not adversely affect the implementation of the Comprehensive Plan for the physical development of the County, as embodied in this Ordinance, and*
- 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, and*
- 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, or adversely interfere with the surrounding environment, and*
- 4. 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.*
- 5. Where the Special Exception is a use based upon the Historic District status of the property, the proposed use will not be detrimental to the historic integrity of the property.*

FINDINGS BASED ON THE APPLICATION AND SITE VISIT:

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 Dunkirk Town Center. It is open fields and woodland. The adjoining property is developed with a CVS pharmacy.

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 BOA Special

Exception approval for installation of a wastewater treatment facility for the commercial development.

The property lies entirely within the Dunkirk Town Center, where wastewater treatment facilities are permitted as Special Exception uses. Public water and sewer are not available in the Dunkirk Town Center. Individual septic systems may be installed, or private wastewater treatment facilities such as proposed here are allowed by Special Exception.

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.

ISSUES AND CONSIDERATIONS

The Special Exception previously granted for this project has expired; therefore, the applicants must establish that each of the criteria for Special Exception approval can be met. The applicants must also demonstrate that the project is in compliance with the Water and Sewerage Plan, which is currently being updated.

Section 11-1.01.E of the Zoning Ordinance provides that

In granting a special exception, the Board of Appeals shall impose conditions or restrictions as it deems necessary or advisable for the protection of surrounding and neighboring properties. When appropriate, the Board may require a written agreement to be placed on record stipulating these conditions or restrictions.