

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 20-1716

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Easton, Maryland beginning at 6 p.m. on November 16, 2020, on the application of the **TALBOT COUNTY ROADS DEPARTMENT** (alternately, the “Applicant” or the “Department”). The Applicant is requesting a special exception to operate a repurposing and recycling facility on a 15-acre portion of the 104-acre parcel owned by Talbot County and currently being used as a dredge placement facility. The Applicant is also seeking a variance of the 500-foot supplemental setback for equipment and storage areas.

The subject property (the “Property”) comprises 104 acres, more or less, and is located at 28128 St. Michaels Road, Easton, Maryland 21601 in the Countryside Preservation (“CP”) zone. It is shown on tax map 34 as parcel 11. The Property is situated on the north side of St. Michaels Road (also known as Maryland State Highway 33), approximately one mile equidistant from both the crossroads of St. Michaels Road and the Easton Bypass (Maryland State Highway **322**), and the juncture of St. Michaels Road and Unionville Road (Maryland State Highway 370). The Property is improved with dredge spoil containments, a gravel parking lot and an access road. Due to the Property’s proximity to the Town of Easton and its situation on the furthest edge of the town’s Designated Growth area, the surrounding properties are zoned Western Rural Conservation (“WRC”) to the west and General Commercial (“GC”) along the east side of St. Michaels Road, also known as Maryland Route 33. The Property is adjacent, on its eastern interior line, to a forest conservation parcel located in the Town of Easton limits. Unimproved agricultural parcels abut the Property to the north, south and west.

The purpose of the Applicant's proposed plans (the "Proposal") is to obtain special exception approval for a repurposing and recycling facility under the land use category of Product Recycling, Section 190-30.12 of the Talbot County Code (the "Code"). The site operations include the processing, stockpiling and retail sales of masonry (concrete, asphalt, brick, block and stone) and material products (including trees, stumps, branches, leaves, grass trimmings and soil). The subsequent site plan approval would include the installation of a 10-foot by 40-foot office trailer and parking for employees. The land use requires a minimum parcel size of 75 acres, and the maximum site coverage for the equipment and storage area is 15 acres. The Applicant also requests a variance of the supplemental setback of 500 feet from the western property line, to 100 feet, for equipment and storage areas. The project area complies with the minimum setback of 1,000 feet from existing residences.

The owner of the Property is Talbot County, which acquired it in 1986 and has intermittently used the Property as needed for dredge material placement and material storage. The Property has been in the same configuration since the County purchased it. The request is made in accordance with Chapter 190 Zoning, Article IV, §190-30.12; Article III, §190-56.1; Article VII, §190-56.2; and Article VII, §190-58.3 of the *Talbot County Code* (the "Code").

Present at the hearing were Board of Appeals members Phillip Jones, Chairman; Frank Cavanaugh, Vice Chairman; Louis Dorsey, Paul Shortall and Zakary Krebeck. Warren Edwards, Roads Superintendent, appeared on behalf of the Applicant. Elisa Deflaux, Planner II, and Miguel Salinas, Assistant Planning Officer, attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the "Board"). It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for Special Exception with Attachment A.
2. Tax Map of subject property.
3. Notice of Public Hearing for *The Star Democrat*.
4. Newspaper Confirmation.
5. Notice of Public Hearing with Adjacent Property Owner list.
6. Standards for Special Exception and Standards for Variance.
8. Staff Report prepared by Elisa Deflaux and Miguel Salinas.
9. Planning Commission's Recommendation.
10. Sign Maintenance Agreement.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Directions to the Property.
13. Site Plan of the Property prepared by Davis, Bowen & Friedel, Inc.
14. Email from Emory & Vicki Tate to Chris Corkell, Board of Appeals, dated November 15, 2020.

Mr. Edwards testified on behalf of the Applicant. Mr. Edwards said that the Applicant sought to establish a repurposing and recycling facility (the "Facility") on the Property to serve as a supplemental revenue source for the Talbot County Roads Department. The idea surfaced, he said, over time as landfills and recycling yards that traditionally collected the types of materials sought to be recycled at the Facility, began to close. The Department, Mr. Edwards said, would have to collect items left by the roadside. The Department began recycling materials it collected, including hundreds of tons of tree materials into wood chips and mulch used for

County government facilities. Mr. Edwards said another factor in seeking to create the Facility is that, for many area contractors, the cost to dispose of certain materials is prohibitive. The Department, he said, also began installing bio retention ditches after figuring out the materials mix for such ditches, to the tune of \$400,000 in revenues across 18 major projects. The Facility would also expand the Department's bio retention ditching capabilities, he said.

Three years ago, Mr. Edwards said, the Department studied similar facilities in Wicomico County, comparing volumes, costs, materials and projects. Around that time, he said, the Department began milling the County's roads itself, 95 percent of which are tar-and-chip, of which 98 percent contain high crowns in the center that require milling, while ruts on the edges of travel lanes require wedging. This work creates 10-15 tons of millings in a year, Mr. Edwards said, which can be recycled into four different products. The Facility can also produce crushed concrete, he said.

The Facility does not deliver materials, nor sell to homeowners, Mr. Edwards said, although the Department would like to allow collection of recyclables from homeowners, contractors, local governments and agencies for a small fee. Mr. Edwards said the Facility will charge \$100.00 per year for a sticker fee, with a \$20 per load sorting fee, and that it will sell recycled materials to contractors with resale licenses as well as farmers, with revenue going to the Department.

Mr. Shortall asked Mr. Edwards if the Facility would accept tree materials from homeowners. Mr. Edwards said it accepts logs, leaves and stumps, but that the Department has an agreement with the Maryland Department of the Environment that it will not accept brush.

Mr. Edwards reviewed the criteria for the special exception with the Board. Mr. Cavanaugh commented that the Property is neat and well maintained and the Applicant appeared

to take pride in the Property and the work performed thereon. Mr. Edwards assured the Board that this appearance of the Property will continue to be of top priority.

Mr. Jones asked Mr. Edwards about an email received from Emory and Vicki Tate, expressing concern about runoff and pollution, especially related to asphalt. Mr. Edwards said that several years ago, the cleared area on the Property comprised 1.5 acres or so, and that everywhere the Applicant has cleared and graded since, the land has been graded so that the water will flow directly to the pond Applicant is in the process of creating on the southeast corner of the Property. The cleared area is approximately four acres now, he said, adding that the Applicant will not go outside the first bermed area. Mr. Edwards said the buffer area has a layer nearly two feet thick of mulch covered by fill dirt, and that “you can see water go through and filter totally clear.”

Mr. Shortall and Mr. Krebeck asked about heavy machinery and noise, and whether, if approved, the scope and amount of machinery would increase. Mr. Edwards said the Department had received no complaints and that there is no discernable noise from the road when he has walked the Property. He said the Applicant would like to add a horizontal grinder (which he described as quieter than currently used machinery) and a trommel plant to screen topsoil. Mr. Edwards said he does not anticipate expansion in scope to increase noise, because the work is seasonal – “you won’t be crushing concrete and grinding trees at the same time.” He said mulching is a quieter operation. In the winter, Mr. Edwards said, concrete crushing can only occur for a few hours a day, because materials freeze to metal in low temperatures. Mr. Dorsey said he noticed the screening machine was “noisy,” but the Facility is very secluded. Once he was back on St. Michaels Road, Mr. Dorsey added, the traffic noise drowned out any noise from the Property.

Mr. Edwards said the Applicant already has obtained Maryland Department of the Environment permitting related to air quality, and has dust control measures in place.

Mr. Cavanaugh reminded Mr. Edwards that the Facility would still need to comply with the Talbot County Noise Ordinance even if the special exception is approved. Mr. Edwards said he understood that, and added that the only activity he could anticipate on weekends would be residents dropping off waste materials.

In response to questions about traffic, Mr. Edwards said staff documents all details regarding vehicles entering the Property to deliver materials, including Department vehicles. Trucks are already hauling these materials on County roads, Mr. Cavanaugh said; if they aren't going to the Facility, they are going further on County roads. Mr. Edwards said an average of 30-50 trucks visit the Property a day, including Department vehicles. He said almost every truck that comes to "get something, also brings something." The Facility, he added, will reduce dependence on landfill for waste.

Mr. Krebeck said a traffic impact study is required if the use includes 50 or more daily trips to the Property, and one has not been submitted, nor have the entrance to the Property and traffic patterns been studied. Mr. Edwards said the Applicant has "gone above and beyond" what the State Highway Administration requires for the entrance. Mr. Jones said that, in his own observations of St. Michaels Road, since the traffic light was added at the Route 33 entrance to Waterside Village, it created large gaps in traffic, which is helpful. Mr. Dorsey said he had visited the Property that day, that traffic on St. Michaels Road was heavy, and that he had waited for a break in traffic to perform a U-turn. As a former tractor-trailer driver, Mr. Dorsey said, he saw no problem with the ability to enter the Property and only potential issues with exiting. However, at 50 trucks a day or so, Mr. Dorsey said, he did not foresee any problems. Mr.

Edwards said that if the Department knows there is an accident, he is able to inform Department staff and redirect.

Regarding precautions related to environmental hazards, Mr. Edwards said that the Applicant will never accept asbestos shingle, siding nor debris from home demolition. He said every state in the United States puts asphalt shavings on the side of the road, and that grass thrives in those locations, and also that the Applicant is following all applicable guidelines. Mr. Krebeck reminded Mr. Edwards that the Staff Report stated that the Applicant will need to address stormwater management; Mr. Edwards said the buffer as designed is, in effect, stormwater management.

Mr. Edwards reviewed the variance criteria with the Board. He said Department employees have dug up to 22 feet deep on the Property and still been within dredge spoils, and that there are few if no other potential uses for the Property. Being limited to the 500 feet supplemental setback, he said, would further limit the Property.

Mr. Edwards said the Facility is an opportunity for the Applicant to give back to the County, its residents and local contractors.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested special exception modification and variances, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan. The Talbot County Comprehensive Plan does not specifically address the practice of recycling solid waste products. However, there

are overall benefits to recycling and reusing bulk products generated by construction in Talbot County, where the local service-based economy supports much of the County's workforce. Collection, processing, storage and reuse of solid waste saves space in the landfill and deters public nuisances such as open burning or burying of solid waste materials. The Countywide Land Use Policies in the Comprehensive Plan states, in Statement 2.3, that "most new residential, institutional, commercial business and industrial development should be located in the Designated Growth areas and incorporated towns." The location of this repurposing center, adjacent to the Town of Easton on St. Michaels Road, is more centrally located to the higher development volumes than the Talbot County Landfill on Barkers Landing Road.

3. The use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance. The Applicant's proposed Facility will comply with the bulk standards spelled out in the Code for the CP zone and the supplemental setbacks for the *Produce Recycling* land use, with the exception of the Applicant's requested variance for a supplemental setback reduction to 100 feet along the western property line in order to operate the repurposing facility on an existing gravel area on the site.
4. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property. Parcels of forest and agricultural uses mostly surround the Property.

The western parcel, owned by the Gannon family, was recently timbered in 2014 and is the subject of a conservation easement held by Eastern Shore Land Conservancy (located in the land records of Talbot County, Maryland at Liber 2947, folio 481). The parcel to the east is a forest conservation parcel within Town of Easton limits for Waterside Village. The first 700 feet of the Property is forested, and the access driveway on the western side is almost 1,000 linear feet from the General Commercial zoned properties. The entire work area is enclosed within an earthen berm. While the industrial land use is not typical to the neighboring parcels, the general appearance and use should not greatly affect these properties.

5. The use will not constitute a nuisance to other properties and will not have significant adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. The site should not generate trash or odors. The operation will be permitted by the Maryland Department of the Environment, Air Quality Compliance Division. The work area is set back off the road approximately 700 feet. Where the proposed activity will not meet the supplemental setbacks, the adjacent property is forested and under a conservation easement. The adjoining property owner was notified of the proposed activity. St. Michaels Road is a high traffic volume road with traffic noise. The noises associated with the operation, during daylight hours, should not be any more noticeable than the day-to-day noises of the road traffic. In addition, the earthen berm should diffuse some of the noises associated with the Facility.

6. The use will not have significant adverse impact on public facilities or services, including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services. Either community sewer or a private septic system will serve the site. Interim measures have been approved to allow for a temporary restroom facility, according to the Applicant. No other facilities or services should be impacted. The Applicant states that additional fire protection measures will be implemented on-site. For security, the Facility will be gated and monitored when not in operation.
7. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic. The Facility proposes on-site parking and circulation. The entrance has been improved with paved shoulders to avoid vehicle conflicts and handle the truck traffic more efficiently. No pedestrian or marine traffic will be impacted.
8. The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. According to §134-12 D.(2)(a)[1], an impact study is not required if a proposed development creates fewer than 50 daily trips (one way). Public Works and the State Highway Administration are reviewing the project for additional impacts.
9. Any vehicle access to proposed off-street parking areas and drive-in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private

roads. In addition, any resulting commercial and truck traffic should not use a residential street nor create a hazard to a developed residential area. The site has a large gravel area for ample parking and circulation. No traffic from this use will create travel on the neighboring residential streets except by the contractors who are removing the waste from properties to supply the Facility. No more bicycle or pedestrian traffic impacts than what already exists are anticipated.

10. The use will not significantly adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. The Property is located entirely outside the Critical Area and is not located near any environmentally sensitive features. Water quality and runoff will be addressed when the Applicant addresses stormwater management. The existing nontidal wetlands will not be impacted. More than 70 acres of the Property remains forested.
11. The use will not significantly adversely affect adjacent existing agricultural uses. No impacts to agricultural lands are anticipated.
12. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that the literal enforcement of the provisions of this chapter would result in a practical difficulty or unreasonable hardship in enabling the applicant to develop or use this property. The Board finds that the topographical conditions are unique to the Property because of the dredge containment areas. The environmental features, including forest and nontidal wetlands, make the existing cleared gravel parking area the best place on the Property to operate the repurposing facility.

13. The need for the variance is not based upon circumstances which are self-created or self-imposed. The Board finds that the need for the variance is based solely on the location and configuration of the existing layout of the Property and the cleared area, and is not self-created or self-imposed.
14. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. The request is not based upon greater profitability or lack of knowledge of restrictions.
15. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The Board finds that the granting of the variance will allow for the reasonable and appropriate expansion of the Property to accept and recycle certain waste materials and sell recycled byproducts. The new use would not be contrary to the public interest nor a detriment to neighboring properties. The adjacent western property is forested and under a conservation easement. The Applicant indicated that the forest and earner berms will minimize impacts and dust-control measures will be implemented.
16. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. Based upon the site plan and the testimony of Applicant's representative, the Board finds that the request is based on the existing cleared area on the Property and is the minimum adjustment necessary.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY
THE TALBOT COUNTY BOARD OF APPEALS,


RESOLVED, that the Applicant, **TALBOT COUNTY ROADS DEPARTMENT** (Appeal No. 20-1716) is **GRANTED** the requested modification of special exception and variance consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

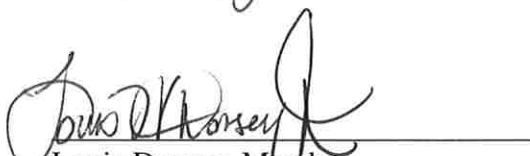
1. The Applicant shall address the conditions of the Major Site Plan approval as required by the Planning Commission approval granted November 4, 2020, and shall take all required steps and acquire all necessary approvals, including any additional waivers necessary, required for a Major Site Plan and Landscaping Plan as spelled out in the Code.
2. The Applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures and construction timelines as outlined regarding new construction.
3. The Applicant shall commence construction of the proposed Facility within eighteen (18) months of the date of this Decision.

GIVEN OVER OUR HANDS, this 21st day of January 2021.

TALBOT COUNTY BOARD OF APPEALS


Phillip Jones, Chairman


Frank Cavanaugh, Vice-Chairman


Louis Dorsey, Member


Paul Shortall, Member


Zakary Krebeck, Member