

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

Calvert County Board of Appeals Affidavit of Sign Posting

Note: This form is to be provided to the Clerk to the Board of Appeals on the day of your hearing.

Case Number: 08-3506


Applicant(s): EDWARD B. HOWLW, JR.

Subject Property Address: 10100 WARD RD.
DUNKIRK, MD 20754

I have posted the Board of Appeals sign on the above-named property in accordance with Rule 3-101.0 of the Calvert County Board of Appeals Rules of Procedure, which has been provided to me. The sign was posted at least 14 days prior to the hearing date and has remained posted until the hearing date.

I solemnly affirm under penalty of perjury that the contents of this affidavit are true and correct to the best of my knowledge and belief.

JOHN A. COSGROVE JR
(Name: Please Print)

 2/6/08
(Signature and Date)

Notice to Applicant: This signed and dated Affidavit of Sign Posting must be presented to the Clerk to the Board of Appeals at the Public Hearing for the subject case. Failure to present the Affidavit may result in postponement of the case. If the case is postponed, rescheduling of the hearing for the case will require an additional fee.

BOARD OF APPEALS
PROJECT REFERRAL FORM

08-3506

The purpose of the preliminary project review is to determine the Board of Appeals action necessary for completion of the project you propose. You must have this form completed by the appropriate Planning and Zoning staff member before filing your application for review by the Board of Appeals.

Property Owner Howlin Investment Commerical Properties, LLC

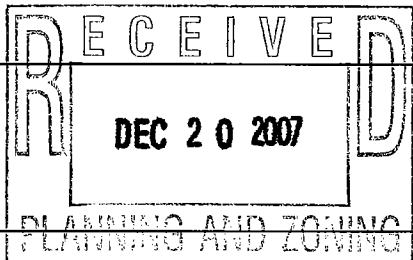
Property Address 10100 Ward Rd., Dunkirk, MD 20754

Property Location: Tax Map 6 Parcel 53-15 Lot Section Plat

Project Description Construct a shopping center with a privately owned sewer system

Zoning Town Center

The project described above requires the following Board of Appeals actions, in accordance with the Zoning Ordinance sections noted:

Board of Appeals Action Required	Zoning Ordinance Section
To grant to ability to install a drip irrigation wastewater treatment facility. <i>A SPECIAL EXCEPTION USE IN THE DUNKIRK TOWN CENTER</i>	11-1.02 A <i>CHAPTER 11.02 INSTITUTIONAL USE TABLE # 16 (PAGE 43, DTCZO)</i>
	
	BOARD OF APPEALS
	EXHIBIT NO <u>1</u>
	SUBMITTED BY <u>APPLICANT</u>

10:00 Am

This project was reviewed by the undersigned staff member:

[Handwritten Signature]
Name

12/19/2007
Date

Please contact Roxana Whitt or Pam Helie at 410-535-2348 for Board of Appeals information.

CALVERT COUNTY
BOARD OF APPEALS

150 Main St.
Prince Frederick, MD 20678
410-535-2348 * 301-855-1243
TDD 800-735-2258

(P&Z USE ONLY)	
FEES: PER FEE SCHEDULE	
Date Filed:	<u>12/20</u>
Fees Paid:	<u>\$300</u>
Receipt No.:	<u>0929</u>
Rec'd By:	<u>ph</u>
Case No.:	<u>08-3506</u>

APPLICATION FOR APPEAL

NOTE: IN SUBMITTING THIS APPLICATION, YOU GRANT THE BOARD OF APPEALS PLANNER THE RIGHT OF UNSCHEDULED ENTRY ONTO THE PROPERTY FOR PURPOSES OF OBTAINING INFORMATION AND PHOTOGRAPHS FOR A STAFF REPORT.

PROPERTY DESCRIPTION:

Tax Map No. 6 Parcel 534 15 Block _____ Section _____ Lot _____

Tax ID No. 03-138305 Property Zoning Classification TC

Property Address 10100 Ward Rd., Dunkirk, MD 20754

Has subject property ever been before the Board of Appeals? (yes) _____ (no)

If yes, give Case No. and date: 02-2852 October 3, 2002

PROPERTY OWNER(S):

PRINTED NAME(s): Edward B. Howlin Jr., Howlin Investment Commercial Properties II, LLC

MAILING ADDRESS: 2880 Dunkirk Way, Ste. 203, Dunkirk, MD 20754

TELEPHONE: HOME: 410-257-2500 WORK _____ CELL _____

EMAIL ADDRESS _____

Edward B. Howlin Jr.
Owner's Signature and Date

12/19/07

Co-Owner's Signature and Date

APPLICANT (if different from owner):

PRINTED NAME: _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

EMAIL ADDRESS _____

Edward B. Howlin Jr.
Applicant's Signature and Date

12/19/07

Co-Applicant's Signature and Date

PURPOSE OF APPEAL

REQUEST IS FOR: (check all items that apply)

- Variance Multiple Variances
- Revision to a Previously Approved Variance
- Special Exception
- To Extend Time Limit on a Special Exception
- Revision/Modification of a Special Exception
- Expansion or Revision of a Non-Conforming Use
- Reconsideration of Previous Decision by Board
- Re-Schedule a Case Previously Postponed
- Decision on an Alleged Error made by _____

Describe in specific detail the reason each item is requested. Building Restriction Line (BRL) variances must state which BRL is at issue (i.e., front/side/rear) and indicate distances required and proposed (Example: A variance in the front setback from 60 feet to 25 feet for construction of a garage). Impervious surface variances must state existing % impervious surface and % requested. Waterfront buffer variances must state the distance to the waterfront of the proposed structure.

A special exception is requested for the installation of a drip irrigation wastewater treatment facility at Shoppes @ Apple Green. Dunkirk, pursuant to the Dunkirk Master Plan & Zoning Ordinance.

DIRECTIONS TO PROPERTY FROM COURTHOUSE: (NOTE: FAILURE TO PROVIDE COMPLETE AND ACCURATE DIRECTIONS MAY RESULT IN A DELAY TO YOUR CASE)

North on Rte. 2&4 about 25 miles and make a right onto Ward Rd. Property located to the left of CVS and behind.

AFFECTED PROPERTY OWNERS LIST

YOU MUST LIST THE NAMES AND ADDRESS OF ALL ADJOINING PROPERTY OWNERS AND THE OWNERS OF THOSE PROPERTIES DIRECTLY ACROSS ALL ADJACENT STREETS AND/OR RIGHTS OF WAY. NOTE: FAILURE TO CORRECTLY LIST NAMES AND ADDRESSES OF ALL AFFECTED PROPERTY OWNERS MAY RESULT IN A DELAY TO YOUR CASE.

SAME AS FRANT

Name: Hawlin Investment Commercial Property
Address: 2880 Dunkirk Way, Dunkirk, MD 20754-9103

Name: Hawlin Investment Commercial Property
Address: 2880 Dunkirk Way, Dunkirk, MD 20754-9103

Name: Hawlin Investment Commercial Property
Address: 2880 Dunkirk Way, Dunkirk, MD 20754-9103

Name: Hawlin Investment Commercial Property
Address: 2880 Dunkirk Way, Dunkirk, MD 20754-9103

Name: Hawlin Investment Commercial Property
Address: 2880 Dunkirk Way, Dunkirk, MD 20754-9103

Name: Templeton, Victoria Beck
Address: 2601 Winesap Ct., Dunkirk, MD 20754-2600

Name: CVS Dunkirk Marketplace CVS# 0881-02
Address: P.O. Box 4900, Scottsdale, AZ 85261-4900

IF YOUR PROPERTY ADJOINS A PRIVATELY OWNED ROAD, YOU MUST LIST THE NAME AND ADDRESS OF THE OWNER BELOW:

Name: _____

Address: _____

AFFECTED PROPERTY OWNERS LIST

YOU MUST LIST THE NAMES AND ADDRESS OF ALL ADJOINING PROPERTY OWNERS AND THE OWNERS OF THOSE PROPERTIES DIRECTLY ACROSS ALL ADJACENT STREETS AND/OR RIGHTS OF WAY. NOTE: FAILURE TO CORRECTLY LIST NAMES AND ADDRESSES OF ALL AFFECTED PROPERTY OWNERS MAY RESULT IN A DELAY TO YOUR CASE.

- Name: Renwick Village LLC
Address: 2130 Priest Bridge Dr. Ste 6, Crofton, MD 21114
- Name: Renwick Village LLC
Address: 2130 Priest Bridge Dr. Ste 6, Crofton, MD 21114
- Name: Hall, Ronald K & Diane L
Address: 2711 Apple Way, Dunkirk, MD 20754-9786
- Name: Coffman, Marshall R & Teresita G.
Address: 9902 Jonathan Dr., Dunkirk, MD 20754-9722
- Name: Smith, William Bradley
Address: 9904 Jonathan Dr., Dunkirk, MD 20754-9722
- Name: Burles, Martin A. Jr. & Margaret A.
Address: P.O. Box 54, Dunkirk, MD 20754-0054
- Name: Ehrig, James H.
Address: 9908 Jonathan Dr., Dunkirk, MD 20754-9722

IF YOUR PROPERTY ADJOINS A PRIVATELY OWNED ROAD, YOU MUST LIST THE NAME AND ADDRESS OF THE OWNER BELOW:

Name: _____
Address: _____

AFFECTED PROPERTY OWNERS LIST

YOU MUST LIST THE NAMES AND ADDRESS OF ALL ADJOINING PROPERTY OWNERS AND THE OWNERS OF THOSE PROPERTIES DIRECTLY ACROSS ALL ADJACENT STREETS AND/OR RIGHTS OF WAY. NOTE: FAILURE TO CORRECTLY LIST NAMES AND ADDRESSES OF ALL AFFECTED PROPERTY OWNERS MAY RESULT IN A DELAY TO YOUR CASE.

Name: Adair, John V + Lorna D.
Address: 7003 Proant Rd., Friendship, MD 20758-9743

Name: Osborne Properties LLC
Address: 3150 West Ward Rd. Ste 401, Dunkirk, MD 20754

Name: Richardson, Bernard D + Irene Y.
Address: 9910 Jonathan Pl., Dunkirk, MD 20754-9722

Name: Poolo, Christopher W + Melissa L
Address: 2602 Winesap Ct., Dunkirk, MD 20754-2600

Name: Skullin, Robert F. + Rebecca A.
Address: 2604 Winesap Ct. Dunkirk, MD 20754-2600

Name: Kinslow, Jill C
Address: P.O. Box 174, Dunkirk, MD 20754-0174

Name: Germican, John T + Judy L.
Address: 9914 Jonathan Pl., Dunkirk, MD 20754-9722

IF YOUR PROPERTY ADJOINS A PRIVATELY OWNED ROAD, YOU MUST LIST THE NAME AND ADDRESS OF THE OWNER BELOW:

Name: _____

Address: _____

AFFECTED PROPERTY OWNERS LIST

YOU MUST LIST THE NAMES AND ADDRESS OF ALL ADJOINING PROPERTY OWNERS AND THE OWNERS OF THOSE PROPERTIES DIRECTLY ACROSS ALL ADJACENT STREETS AND/OR RIGHTS OF WAY. NOTE: FAILURE TO CORRECTLY LIST NAMES AND ADDRESSES OF ALL AFFECTED PROPERTY OWNERS MAY RESULT IN A DELAY TO YOUR CASE.

Name: Battec Inc.

Address: 10155 Ward Rd., Dunkirk, MD 20754-2717

Name: Shoppes at Dunkirk LLC + Country Plaza LLC

Address: 3701 St. Barnabas Rd, Suitland, MD 207463211

Name: Van Hoy, David M + Louraine H.

Address: P.O. Box 40, Huntingtown, MD 20639-0040

Name: J+k Investment Associate LLC

Address: 9845 Sea Maid Ct, North Beach, MD 20714-3048

Name: Wale, Leonard E.

Address: 2712 Apple Way, Dunkirk, MD 20754-9705

Name: _____

Address: _____

Name: _____

Address: _____

IF YOUR PROPERTY ADJOINS A PRIVATELY OWNED ROAD, YOU MUST LIST THE NAME AND ADDRESS OF THE OWNER BELOW:

Name: _____

Address: _____

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