

IN THE MATTER OF	*	CASE NO. SPEX-24-2
JOHN NICHOLAS AND	*	SPECIAL EXCEPTION
CHELSEA HARGROVE,	*	
WITTMAN WHARF SEAFOOD	*	

The Board of Appeals (the “Board”) held a hearing on February 24, 2025, in the Bradley Meeting Room, Court House, South Wing at 11 N. Washington Street, Easton, Maryland to consider the application of John Nicholas and Chelsea Hargrove / Wittman Wharf Seafood (the “Applicants”). The Applicants requested a Special Exception for a property located at 8768 Howeth Rd., Wittman, Maryland (“Property”). Chairman Frank Cavanaugh, Board Members Patrick Forrest, Keith Prettyman, Jeff Adelman, Zakary Krebeck, and Board Attorney Lance M. Young were present. Board Secretary Christine Corkell and Elisa Deflaux, Planner, appeared on behalf of the County.

Applicants are seeking approval of a Special Exception to expand the existing Fisheries Activities Facility, consistent with 190-25.2. F, Marine Uses.

## SUMMARY OF TESTIMONY

Applicants first state, in support of the special exception expansion, that the use will not be vastly expanded. The proposal is modest. It will maintain the existing structures on the Property and will add three new spat (juvenile oyster) tanks. One smaller spat tank will be removed.

The history of the Property is also important in analyzing its continued use and minor expansion. The Property has been used for seafood purposes since 1966. It was operated by Ray J. Jones Seafood Company from 1966 to 1989. The adjacent Wittman Landing was obtained by Talbot County in 1983, which supports commercial waterman activities. The Property has been used as a boat supply store and boat storage and has historically been used for a variety of water dependent uses. It utilizes many of the structures today that it has utilized for decades. The Applicants provided picture exhibits showing the Property used for oyster and other related historic uses.

The expansion is for an increased spat and shell operation. Applicants wish to expand the oyster operation and oyster pile, not to exceed 3,089 sf at its largest capacity as shown on the site plan exhibit. Applicants shuck oysters on the Property and pile the shells until they are removed from the Property, primarily, to be returned to the Chesapeake Bay and its tributaries to support future oyster growth. Juvenile oysters must attach to oyster shells along the water bottom to develop into mature oysters. The shucked oysters are sold to local seafood and restaurant businesses.

The spat tanks are used to grow oysters for the aquaculture industry. The Applicants pump creek water through the tanks, which the oysters filter for food, and the filtered water is then returned to the creek. Applicants have contracts with multiple Counties and government entities to place the oysters on natural oyster beds. For every oyster that the facility shucks, approximately 40 spat are attached to a single oyster shell to be returned to the waters of the State. It is intended that the spat tanks will be in operation approximately two ½ months of the year.

The Applicants addressed a letter received by the Board from an interested party stating that the facility produced unwanted noise, smell, and was receiving oysters from other places as far as Washington State.

Exhibits 4a and 4b, submitted by Applicants, demonstrate the equipment used for the operation. There is no major industrial equipment. After a complaint from a neighbor in recent years, the Applicants replaced a larger fork lift with a smaller and quieter lift that provides little noise. The operation also utilizes a hopper. The County landing is adjacent to the Property and produces more noise and activity throughout the day than the Applicant's operation. The County landing has 7-10 slips used for commercial purposes. Applicants routinely clean up trash left from County Landing use (on County property), which includes use by hunters during the winter months.

Applicants testified that the oyster shell pile does not have a strong odor or attract seagulls more so than the surrounding area. The meat is completely removed from shells during the shucking process.

The spat tanks will not have a large presence. They are only nine feet wide. The Applicants have imported oysters from other places for restoration purposes but have not stored those oysters at this facility. The operation at the facility, in sum, receives oysters from local

watermen, shucks those oysters, facilitates use of the shucked oysters for local consumption, uses the shells to cultivate spat, and returns the spat to the waters of the State.

Applicants testified that parking is more than adequate for the facility and that the private parking of the facility is often used by those utilizing the adjacent County landing.

Resident Henry Snively testified on behalf of the Applicants. He has lived in the neighborhood for 12 years. He testified that most homes in the neighborhood were built and existed along side the Property, used for marine purposes, for decades. Before Applicants purchased the Property it was, at that time, a junk yard. The Applicants have cleaned up and revitalized the Property. The presence of the facility has made it safer. Applicant's camera caught a theft on the County landing and there have been no thefts since. He testified that any unpleasant smells around the neighborhood emanate from the nearby marsh and that noise and smell from the Property are not problematic.

Talbot County Director of Economic Development Cassandra Vanhooser also testified on behalf of the Applicants. She testified that Nick Hargrove is a star of the Talbot County business community and that her office is supportive of the application. She testified that the Applicant's use of the Property is essential to preserving Talbot County's history and is consistent with both agricultural and water dependent uses that the Comprehensive plan supports. She testified that Applicant employs people in the County and provides essential support to local restaurants and commercial watermen.

The Applicants submitted written responses to the criteria for the grant of Special Exception use and those written responses were accepted by the Board for their consideration of this decision.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Board finds that the Application for Special Exception is beneficial to the community and Talbot County. The Applicants have utilized the Property in a manner that preserves the heritage and industry of the past and implements new practices to ensure that the heritage and industry are sustainable for the future.

All of the Board members visited the site and the decision to grant a special exception, in part, is by the Members satisfaction that the Applicants are mindful of neighboring properties and that the Property itself brings tremendous value to the community. Board members, during their site visit, did not notice strong odors from the oyster shell pile. Although there was a distant odor in the air, it seems more likely to come from marshy area (mud) nearby. The Property is well kept and noise emanating from the Property is minimal. Hours of operation are also reasonable. The practice of cultivating spat for use in the Chesapeake Bay and its tributaries is a benefit to the entire community and surrounding communities.

Talbot County's Right to Farm Law, set forth in Chapter 128 of the Talbot County Code, includes aquaculture. Aquaculture is an agriculturally related commercial use by the Talbot County Code, and the Fisheries Activities definition includes the aquaculture operations to include the packing, processing, and distribution of seafood.

The Property is also a traditional maritime use. It preserves a traditional way of life in Talbot County, while providing several of the County's economic development initiatives. It provides oyster stock in the form of larvae to be seeded, raised and harvested to support the seafood industry.

The Board finds by a preponderance of the evidence that the request satisfies the requirements of the Talbot County Code, § 190-56.2.

1. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan.

*Chapter 7* (of the Comprehensive Plan), *Economic Development and Tourism* states, "The County should encourage development of modern aquaculture industries in keeping with our maritime heritage, taking advantage of our coastal geography to create employment and support the local economy."

Besides replenishing seafood stock for the seafood industry, oysters contribute to the improvement of water quality. Oysters feed by filtering algae and other nutrients from the water, which in turn improves the quality of the waterways in which they are located. Under certain conditions, a single oyster can filter up to fifty gallons of water per day. The raising of these oysters to be placed on the river bottom will provide an increase in overall oyster populations which would aid in improving local waterways which is one of the major goals laid out in the Natural Resource Conservation Section of the 2016 Comprehensive Plan.

Talbot County's present and future land use standards will always need to be mindful of the integration of Maritime Uses, as the waterfront areas in certain parts of the County are mixed uses of marine and residential. Similar to the Gravel Pits and Agriculture in the County, the placement of oyster aquaculture operations depends on the site conditions and the natural environment. Oyster aquaculture needs a certain salinity and water depths to grow oysters.

As stated herein *supra*, the Talbot County Office of Economic Development supports this Application for its benefit to the County agriculture, maritime industry, and overall economy, which are all priorities of the Comprehensive Plan.

2. 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 RC zoning district incentivizes agriculture, fisheries, and aquaculture as desired land use. The current proposal is working its way through the review process to comply with the standards required for a Major Site Plan.

3. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses, with existing and potential uses in its general area, and will not be detrimental to the economic value of the neighboring property.

The packing house on the Property was constructed in 1954 and has been utilized for maritime uses since it was constructed. On the property adjacent to the site is the Wittman Landing, a public landing that is often congested with trucks with trailers and is utilized by commercial watermen on daily basis.

Much of the exterior activity associated with the Wittman Wharf is contained to the area south and west side of the building. The scale, bulk and general appearance of the business is dictated by the location of the block building. The applicant intends to keep the shell pile to a manageable size based on the need of the shell. The applicant is providing screening for the parking area and has consolidated the operation to the area around the building.

4. 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 features (resulting from the structure).

The Board has received a letter from one neighbor concerned about noise and odor impacts. Based on the Board Member's site visits, and testimony at the hearing, the Board is satisfied that noise and odor impacts are very minimal.

The applicant's proposal will enhance the existing operational function of the site. There does not appear to be any additional trash or glare from the facility. The oyster aquaculture operation should improve the water quality in Cummings and Harris Creek because of the shellfish filtration.

Chapter 92, Noise, regulates and exempts certain noise with the County. It places limitations on some uses by way of providing hours that machinery can be used. Agricultural operations are exempt from most noises in Section 92.5.C.6.

5. The use will not have significant impact on public facilities or services, including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services.

The applicants are required to work with the Environmental Health Department for a determination of whether the proposal would necessitate an enlargement to the existing septic system or a new SDA. The existing building is on a holding tank that is under review from the Environmental Health Department.

Marine Traffic associated with the use consists of the offloading of seafood and the loading of oyster stock for placement in designated areas. Other than employee traffic, the applicant will receive and deliver stock by box truck. The Board finds these impacts to be minimal.

6. The use will not have a significant, if any, adverse effect upon marine, pedestrian, or vehicular traffic.

The use generates both marine and, to a much smaller degree, vehicle traffic. To date, there have been no concerns about the marine traffic. The Applicants intend to use a box truck for two trips a day during operations from October to April, which the Board finds to have a nominal amount of impact.

7. 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, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity.

Vehicular traffic volumes are seasonal with the little traffic other than the oyster harvesting seasons. Even during the oyster harvesting seasons, vehicular traffic is nominal.

8. 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.

The Property has adequate existing parking areas. No bicycle or pedestrian traffic is anticipated with the use.

9. 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.

Because the facility operation includes filtering the creek water, the facility is positively impacting water resources and wildlife. The site will be required to mitigate for the new lot coverage in the buffer and provide plantings in the Buffer for the establishment of the expansion to the water dependent facility. The buffer management plan proposes approximately 14,000 square feet of new plantings in the Buffer. Stormwater management will be addressed for the new impervious area.

10. Nearby agricultural uses will not be impacted.

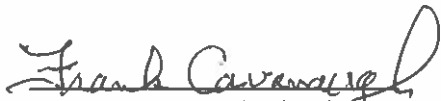
Documents on Record

1. Application for Special Exception.
2. Tax Map with subject property highlighted.
3. Notice of Public Hearing for Advertising.
4. Newspaper Confirmation.
5. Notice of Public Hearing with List of Adjacent Property Owners attached.
6. Special Exception Standards.
7. Staff Report, prepared by Elisa Deflaux.
8. Planning Commission's Recommendation.
9. Sign Maintenance Agreement/Sign Affidavit.
10. Comments from Critical Area Commission, Annie Sekerak, dated 05/16/24.
11. Authorization Letter from David Nagel, Chief Operating Officer.
12. Independent Procedures Disclosure and Acknowledgement Form.
13. Aerial Photo.
14. Maryland Department of Natural Resources Fishing & Boating Services Shellfish Nursery Permit.
15. Assessment of Civil Penalty, issued on 03/20/2024 from James Mullikin.
16. Board of Appeals Decision No. 855.
17. Maryland Department of the Environment, dated 04/14/2023.
18. Photos of the property (8 Photos).
19. Email from Ruta Norkus, dated 10/15/2024.
20. Email from John Nafziger, dated 10/17/2024.
21. Letter from Henry Snively.
22. Letter from Captain Dave Jones.
23. Letter from Stephan Abel, dated 12/16/24.
24. Email from John Nafziger, dated February 5, 2025.
25. Letter from Elisa Deflaux, dated 03/20/2024.
26. Floor Plan, 2 pages.
27. Plat by Fink, Whitten & Associates.
28. Photos submitted by Lyndsey Ryan on 02/21/24, Exhibit 1 thru 4F.
29. Revised site plan (submitted at hearing as Ex. 5).

Mr. Adelman moved to grant the Special Exception subject to the conditions set forth herein. The motion was seconded by Mr. Forrest. Based upon the foregoing, the Board, by unanimous vote, grants the Special Exception subject to the following conditions:

1. 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.
2. The Applicant shall take all of the required steps and acquire all necessary approvals, including any additional waivers necessary, required for Site Plan and Landscaping Plan as spelled out in the Talbot County Code.
3. This approval is only for the requested improvements and additions in this application and does not cover or permit any other changes or modifications. Items not specifically addressed in this application may require additional approvals.

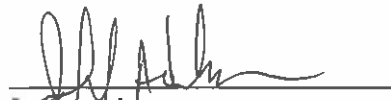
**IT IS THEREFORE**, this 3rd day of March 2025, **ORDERED** that the Applicant's request for modification of the special exception is GRANTED.

  
Frank Cavanaugh, Chairman

  
Patrick Forrest

  
Keith Prettyman

  
Zakary A. Krebeck

  
Jeff Adelman