

COUNTY OF YORK

MEMORANDUM

DATE: August 29, 2014 (BOS Mtg. 9/16/14)
TO: York County Board of Supervisors
FROM: James O. McReynolds, County Administrator 
SUBJECT: Application No. UP-849-14, Riggins Enterprises, LLC

ISSUE

This application requests a Special Use Permit, pursuant to Sections 24.1-283(d) and 24.1-283(e) of the York County Zoning Ordinance, to authorize seafood harvesting as a home occupation with up to three non-resident employees on a 2.56-acre parcel of land located at 1818 Calthrop Neck Road (Route 606) and further identified as Assessor's Parcel No. 30-255.

DESCRIPTION

- Property Owner: Lee Riggins Rich
- Location: 1818 Calthrop Neck Road (Route 606)
- Area: 2.56 acres
- Frontage: 70 feet along Calthrop Neck Road
- Utilities: Public water and sewer
- Topography: Flat
- 2035 Land Use Map Designation: Low Density Residential
- Zoning Classification: RR – Rural Residential
- Existing Development: Single-family detached home
- Surrounding Development:
 - North: None
 - East and South: Single-family detached home
 - West: Single-family detached home and parcel with a shed and pier
- Proposed Development: Oyster harvesting as a home occupation (growth and propagation of harvestable shellfish and storage of oyster cages) with up to three (3) non-resident employees

CONSIDERATIONS/CONCLUSIONS

1. The subject property is a waterfront parcel located at the end of Calthrop Neck Road near the intersection of the Poquoson River and Lamb's Creek. The site is served by an approximately 550-foot private driveway off Calthrop Neck Road. The property has approximately 450 feet of shoreline on its northern side, but currently no pier, and the nearest single-family home is over 500 feet to the east of the applicant's home. The adjacent property to the west is primarily undeveloped except for a shed and pier. The property is zoned RR (Rural Residential) and is designated Low Density Residential in the Comprehensive Plan, as is the surrounding area.
2. The applicant has leased from the Virginia Marine Resources Commission (VMRC), 60 acres of oyster grounds in the waters adjacent to her property and has submitted this application to authorize establishment of a commercial aquaculture operation as a home occupation. According to the applicant's narrative, she began raising oysters in 2013, using bottom cages (cages placed on the river bottom) and oyster bags to grow the oysters in the waters of the Poquoson River. As the oysters grow, they are separated and placed in different cages so they do not become overcrowded. The cages can be moved from one area to another if the expected growth is not occurring. This is a labor-intensive method because the cages need to be cleaned regularly for optimal growth.

The operation will be conducted mainly from a pontoon boat that is docked and unloaded in the City of Poquoson. The boat will not be moored on the shoreline of the subject property. According to the narrative, activities on the property will be limited to storage and washing of 10 to 20 cages (three feet by four feet by six inches each) in a 10-foot by 10-foot area on the western side of the property and the loading of oyster seeds into bags. Once loaded into bags, the oysters would be walked out to the oyster grounds to be placed in the cages. No loading or off-loading between the shore and the boat will take place and no harvestable oysters will be brought onto the property, except for the applicant's personal use. New cages would be delivered periodically to the property by pick-up truck and would be walked to and from the oyster grounds either for initial placement or periodic on-shore cleaning.

3. While the VMRC has regulatory jurisdiction over the state-owned bottomlands, the use of the uplands for commercial aquaculture is subject to the County's zoning authority, as are any land-based activities associated with the commercial aquaculture operation, such as off-loading cages, bags or oysters onto the piers or land, cleaning of cages, and storage of equipment. The County has no jurisdiction to restrict the number of oyster cages the applicant can place on the bottomlands beyond the mean low-water mark, as the permitting for such activity is exclusively the Commonwealth's prerogative (administered by the VMRC).
4. The Zoning Ordinance defines a home occupation as "an accessory use of a dwelling unit by the occupant of the dwelling for or with the intent of gainful employment involving the provision of goods and services." In addition, the general re-

quirements for home occupations spelled out in Section 24.1-281(b) of the Zoning Ordinance state that home occupations “shall be clearly incidental and subordinate to the residential use of the property.” Compatibility with the surrounding area is an important consideration for every use permit application, but especially with home occupations since they involve the introduction of a commercial use in a residential area. Accordingly, the overriding purpose of the home occupation provisions of the Zoning Ordinance is to prevent home-based businesses from adversely affecting the residential character of both the subject property and the surrounding area. Typical considerations are traffic, off-street parking, noise, visibility, and the overall size and scale of the business.

- **Traffic.** Section 24.1-281(e) of the Zoning Ordinance requires that home occupations “shall not generate traffic, parking, sewerage, or water use in excess of that which is normal in the residential neighborhood.” The applicant has stated that there would be up to three (3) part-time non-resident employees at any one time, potentially adding up to six (6) vehicle trips per day in addition to the trips generated by the residential use (typically ten trips per day for a single-family detached home, according to the Institute of Transportation Engineers (ITE) *Trip Generation* manual). Compared with other home occupations that have been approved in the County, I do not consider the amount of traffic that would be generated by the proposed use to be excessive.
- **Parking.** Section 24.1-281(g) of the Zoning Ordinance specifies that any parking demand generated by the home occupation that is in addition to the spaces required for the residential use must be accommodated off the street in a suitably located and surfaced space and must be at least ten feet (10’) from any property line. The property has sufficient space to accommodate the three parking spaces for the non-resident employees and the two spaces required for the existing home. There are a one-car garage, one-car carport, and several parking areas on the western side of the property, as well as a circular driveway with a circumference of roughly 200 feet, all of which are approximately 550 feet from the nearest home.
- **Noise.** Section 24.1-281(h) prohibits “the use of machinery, or equipment that creates noise, odor, smoke, dust or glare...detrimental to persons residing in the home or on adjacent property” in connection with any home occupation. Unlike the waterman businesses that have been previously approved, the proposed operation would not involve workboats with noisy diesel engines starting up early in the morning. There would, however, sometimes be cages to be cleaned, possibly using a pressure washer. The applicant proposes to wash most of the cages on the pontoon boat; however, some the cages would be washed in an area on the western side of the shoreline approximately 100 feet from the nearest property line and 400 feet from the adjacent property owner’s pier to the west. The surrounding area is heavily wooded.

In accordance with Section 24.1-281(i) of the Zoning Ordinance, which states that “No equipment or process used as a part of the occupation or activity shall disrupt residents of nearby dwellings,” I believe it would be appropriate to establish a lim-

it on the hours and days during which pressure washing can occur. A proposed condition has been included in the resolution limiting pressure washing or operation of any gas-powered equipment to the hours between 10:00 AM to 4:00 PM, Mondays through Saturdays. In addition, notwithstanding the provisions set forth in Section 16-19.3(a) of the York County Code, which allow a maximum outdoor A-weighted sound pressure level of 65 dB on residential property between the hours of 7:00 AM and 11:00 PM and 55 dB between 11:00 PM and 7:00 AM, I recommend a condition that no shellfish growing/harvesting activity exceed the maximum indoor daytime sound pressure level standard of 50 dB 24 hours a day.

- **Visibility.** Section 24.1-281(c) of the Zoning Ordinance specifies that “There shall be no change in the outside appearance of the building or premises or other evidence of the conduct of such home occupation visible from the street or adjacent properties.” The property is heavily wooded and any activity would only be noticeable from the Poquoson River.
 - **Size and Scale.** Section 24.1-281(b) of the Zoning Ordinance limits the size of home occupations to 400 square feet or 25% of the floor area of the home, whichever is less, unless a greater area is deemed appropriate and authorized by the Board of Supervisors through a Special Use Permit approval. However, the terms of Section 24.1-283(d), discussed in paragraphs that follow, provide an opportunity for outdoor storage associated with seafood harvesting home occupation to cover up to 1,000 square feet. The combined area of the oyster cage storage and table where most of the work would be conducted is approximately 200 square feet. It should be noted that at 2.56 acres, the subject property is larger than typical residential parcels and is isolated from nearby residences by the heavily wooded area.
5. In 1991 as part of its review of the ten use permit requests submitted by watermen and sponsored by the Board in 1991, staff developed the following evaluation criteria for gauging the compatibility of this type of home occupation with their respective surroundings:
- Size of the property
 - Width and/or dimensions of the shoreline
 - Distance and screening of the operation from adjacent property and residences
 - Location of outdoor storage facilities
 - Number of boats to be used
 - Size of pier/docking facility
 - Hours of operation
 - On-site maintenance of equipment
 - Character of the surrounding community
 - Site access

Using these criteria as a guide, I believe that in a number of respects this application compares favorably with previously approved applications in terms of the intensity of use and potential impacts on surrounding properties. Lot sizes for the

previously approved waterman businesses ranged from 0.44 to 3.2 acres so the applicant's property is toward the upper end of that range. The three properties surrounding the subject property (excluding the 1.7-acre parcel owned by the applicant) are 11.4, 0.96, and 10.3 acres. The adjacent property to the east is occupied by a single-family detached home over 470 feet away from the applicant's shoreline. The adjacent property to the west has a dock, which is approximately 170 feet away, but no single-family detached home. By comparison, several of the properties approved for watermen's use permits in 1991 were surrounded by more intensive residential development.

Pursuant to Section 24.1-283(d) of the Zoning Ordinance, any workboat maintenance would be limited to minor tune-ups, oil changes, wash-down and drainage, winterizing (draining lines, etc.) – commonly associated with waterman operations. The applicant indicates that the pontoon boat will not be moored or docked at the property.

Permissible hours of operation for waterman-type home occupations are not specified in the Zoning Ordinance or in any of the use permit conditions that were established for the nine applications approved in 1991. The 1991 staff report to the Board noted the impracticality of establishing such limits:

“In certain locations the channel conditions may be such that access to docking space (at the applicant's property) is available only during high tide. As such, many watermen set their operating hours to coincide with high tides and, therefore, they may vary considerably [from] time to time. It is important to understand that the establishment of hours of operation as a use permit condition could, depending on tidal conditions, cause a waterman to have to delay departures or arrivals to the next available high tide condition or simply to stay at the dock on certain days. In some cases, if certain hours of operations are deemed essential to granting approval of a request, outright denial of the application may be more appropriate – and more easily enforced.”

In this case, I am proposing a restriction on the hours during which power washing can occur. For any other aspects of this proposed operation, I see no reason to deviate from the standard hours of operation for home occupations set forth in the Zoning Ordinance (8:00 AM to 8:00 PM, Mondays through Saturdays).

It has already been noted that site access is adequate and can accommodate the additional traffic generated by the home occupation with little impact on the safe ingress and egress of other residents who travel Calthrop Neck Road.

6. One feature of the proposed home occupation that would be more intensive than other approved home-based waterman operations is the presence of up to three (3) non-resident employees. Pursuant to Section 24.1-283(e) of the Zoning Ordinance, home occupations, whether permitted as a matter of right or by Special Use Permit, can be authorized to include one (1) or more non-resident employees, but only with a use permit. In accordance with the Zoning Ordinance, the standard term of

any use permit for non-resident employees is two (2) years unless the Board specifies some other time period, either lesser or greater. At the end of the specified term, the operator of the home occupation can request an extension of the non-resident employee term, which can be authorized by the Board without public hearings and Planning Commission review, provided that the request is accompanied by written statements from all adjacent property owners (there are two in this case) indicating that they have no objection to continuation of the non-resident employee authorization. If the applicant cannot provide such a statement of approval, the request for an extension would be processed and reviewed as if it were an original use permit application.

The request for up to three non-resident employees at a time is unusual but not unprecedented. The Board has approved a total of eight home occupations with non-resident employees, five of which were limited to a single employee – or one employee at a time – on the premises. The remaining three home occupations were all contracting businesses and were limited to two (2), five (5), and 25 non-resident employees respectively¹; however, the contractor employees were typically engaged in work at a job site rather than on the home occupation property. Terms of authorization have varied and have included the standard two (2) years, four (4) years, and ten (10) years in the case of a recent renewal. Non-resident employees are typically clerical or other support workers who assist the proprietor/homeowner in the conduct of the home business; this case is unusual in that it appears most of the labor will be conducted by the non-resident employees.

7. Specific performance standards for home-based watermen's businesses are set forth in Section 24.1-283(d) of the Zoning Ordinance. Those standards that would be applicable to the proposed home occupation are summarized below:

- On-premises wholesale or retail sale of seafood is prohibited.
- Outdoor storage of goods, equipment, or materials is limited to a total of one thousand (1,000) square feet, and cannot be located in any front or side yard or within 20 feet of any property line, except the shoreline, and must be screened from view from all public streets and adjacent properties.
- All federal, state, and local requirements must be met and the necessary permits must be obtained.
- Seafood unloading operations must be conducted in such a manner as to prevent potentially offensive odors from being produced. No overnight storage of seafood waste shall be permitted on the property.
- Any outdoor or security lighting shall be shielded so that glare is not directed onto adjacent property.
- No heavy trucks may be operated from the property.
- Other conditions deemed necessary by the Board to ensure that the use will be compatible with adjoining properties and the environment of the area.

¹In 1999, the Board of Supervisors granted a Special Use Permit for an existing home-based contracting business with 25 non-resident employees on a 100-acre parcel in the Skimino area in order to allow it to continue operating for 3 to 5 more years while it looked for a new, more appropriate location in a commercial area.

The applicant is not proposing to have any workboat docking, on-premises oyster sales, nor customers coming to her property to pick up oysters and that commitment is reflected in the proposed SUP conditions.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered this application at its August 13 meeting and, subsequent to conducting a public hearing at which two citizens spoke in favor of the application and four citizens spoke in opposition, voted 5:0 (Mr. Brazelton absent) to recommend approval. Those that spoke in favor cited the benefits of oysters to cleaning the water and the ease of cage cleaning with a brush in the river without the use of pressure washing. Those speaking in opposition cited water hazard concerns with oyster cages in or near the sandbar in the Poquoson River and setting a precedent for allowing larger commercial operations for seafood in the river. Mr. McCulloch, who operates an oyster harvesting business, recused himself from this case and did not participate in either the discussion or the vote.

COUNTY ADMINISTRATOR RECOMMENDATION

This application is unlike many other home occupation requests that have come before the Board such as home beauty or barber shops or other personal services (e.g., massage therapy, day care, health and nutritional counseling) in which the service is provided directly by the homeowner/home occupation owner. Even the nine applications for home-based waterman-type businesses that were approved in 1991 are not directly comparable; none of them involved aquaculture or non-resident employees, which the home occupation provisions of the Zoning Ordinance did not provide for at the time. There have been two other Special Use Permit requests for authorization to conduct an aquaculture business as a home occupation, one of which was proposed in York Point and the other in Dandy. The York Point application, which was proposed on a small subdivision lot, was denied by the Board. The Dandy application, which involves a larger property, was considered on July 9, 2014 by the Planning Commission and was withdrawn by the applicant on August 7, 2014.

What all approved home occupations have in common is that they are, by definition, “accessory use[s] of a dwelling unit by the occupant of the dwelling for or with the intent of gainful employment involving the provision of goods and services” and that each is to be “clearly incidental and subordinate to the residential use of the property.” For that reason, the home occupation provisions are intended to allow homeowners to make reasonable use of their property for certain business purposes subject to guidelines and restrictions designed to limit the intensity of commercial activity and preserve the residential character of the surrounding area. In this case, the size and configuration of the subject property, as well as its distance from other residential properties, make it well-suited – under certain conditions – for oyster harvesting, as long as it does not interfere with neighboring residents’ quality of life. This is, after all, a residentially-zoned property in a residential area; preserving the residential character should take priority over any homeowner’s desire to operate a commercial venture in his or her home.

The applicant is proposing to do most of the oyster harvesting operation on a pontoon boat, which can be done without a Special Use Permit over state waters, outside of the County's jurisdiction and not subject to the County's regulatory authority as long as the activity or product is not brought onto the land in York County not zoned for that purpose (the on-land activities and off-loading shellfish could, of course, be conducted on commercially zoned waterfront property). The actual on-land activities will be limited in land coverage and very low intensity and unobtrusive in nature and would be subject to conditions limiting noise, traffic, and activity levels. Therefore, based on the considerations and conclusions as noted, and in accordance with the Planning Commission, I recommend that the Board approve the application for the proposed home occupation subject to the conditions set forth in proposed Resolution No. R14-107.

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Attachments:

- Planning Commission minutes excerpts, August 13, 2014
- Zoning Map
- Narrative
- Sketch Plan
- Proposed Resolution No. R14-107