

**Application No. UP-849-14, Riggins Enterprises, LLC:** Request for a Special Use Permit, pursuant to Sections 24.1-283 (d) and (e) of the York County Zoning Ordinance, to authorize seafood harvesting as a home occupation with up to three non-resident employees on 2.56 acres located at 1818 Calthrop Neck Road (Route 606), abutting the Poquoson River and Lambs Creek, and further identified as Assessor's Parcel No. 30-255. The applicant proposes to conduct various activities on the property that are associated with a commercial oyster-farming business. The property is zoned Rural Residential (RR) and designated Low Density Residential in the Comprehensive Plan.

**Mr. McCulloch** stated that he has consulted with the County Attorney, and that even though he is not legally required to recuse himself, he is concerned that there may be some perception of impropriety as a result of media reports and therefore would be recusing himself from participating as a Planning Commissioner in the consideration of the application. Mr. McCulloch left the dais and took a seat in the audience.

**Earl Anderson**, Planner, summarized the staff report to the Commission dated July 31, 2014, stating that staff recommends that the Commission forward the application to the Board of Supervisors with a recommendation of approval subject to the conditions set forth in proposed Resolution No. PC14-22.

**Mr. Myer** asked Mr. Anderson to confirm that there is no pier on the property, that no pier is planned, that two of the three non-resident employees are grown members of the applicant's family, and that the County does not control the oyster grounds in the water.

**Mr. Anderson** responded in the affirmative.

**Mr. Myer** said he has received some emails from residents regarding the locations of leasing grounds and he asked if it is correct that York County has no jurisdiction over leasing grounds.

**Mr. Anderson** responded that leased oyster grounds are controlled by the state.

**Mr. Jons** asked if the tumbler falls within the proposed 50 dBA noise limit.

**Mr. Anderson** responded that it is located on a boat over state waters and is outside the County's jurisdiction.

**Mr. Jons** asked if pressure washing would be done on land.

**Mr. Anderson** responded that it would, or it could be done with a hose, and that it would be subject to the proposed 50 dBA noise limit.

**Chair Magowan** asked if the estimated six daily vehicle trips would be generated only by the employees arriving and leaving.

**Mr. Anderson** said that is correct.

**Chair Magowan** opened the public hearing.

**Lee Riggins Rich**, 1818 Calthrop Neck Road, spoke as the applicant, thanking Mr. Anderson for his help in guiding her through the application process. She spoke about her family's heritage as shellfish growers and explained that she has decided to try to continue that legacy by rebuilding their oyster stock on their leased bottom land. She stated that her oyster grounds are in uncontaminated water, lying

between two bodies of water that have been condemned by the Virginia Department of Health for the taking of shellfish. The three non-resident employees, she stated, are her son, her son-in-law, and a graduate student at Virginia Commonwealth University, all of whom have attended training seminars at the Virginia Institute of Marine Science. She added that there will occasionally be additional vehicle trips as new cages and oyster seed are brought to the property. Ms. Rich described the operation and noted that it would not be visible from her neighbors' property, and she displayed photographs of the operation.

**Mr. Myer** asked Ms. Rich if her son and son-in-law would continue to work with her for the next few years.

**Ms. Rich** responded that she hopes so.

**Mr. Myer** noted that with the wave action and the sandbar in this location, it is not necessary to clean the cages as much as it would be if the cages were on a muddy bottom, and he asked if this is correct.

**Ms. Rich** responded that they will require some cleaning but much less than if they were on mud or silt.

**Mr. Myer** asked how much of the product goes back to the Chesapeake Bay Foundation.

**Ms. Rich** responded that it would be about a thousand oysters per year.

**Mr. Jons** asked the applicant if she has any plans to install lighting.

**Ms. Rich** responded that she does not.

**Chair Magowan** asked if a pressure washer would be used to clean the oysters and/or cages.

**Ms. Rich** responded that the cleaning is being done in the water with a toilet brush.

**Chair Magowan** asked what she would use to clean the oysters and/or cages if she were to do it on her land.

**Ms. Rich** responded that they would probably just use a garden hose.

**Fred O'Brien**, 220 Olde Pond Lane, stated that he is strongly opposed to the application, stating that placing oyster cages on a sandbar in shallow water where there is a lot of personal watercraft activity will create a safety hazard for children in the area. He stated that the home occupation would create noise and odors and would not increase property values.

**Elizabeth Shirley**, 214 Olde Pond Lane, stated that she opposes the application. She stated that the leased oyster grounds can accommodate a lot of cages, which would interfere with the significant amount of boating, kayaking, waterskiing, etc. that takes place in this area. She stated that the business is likely to grow and is not like other home-based business that take place indoors without disturbing the neighbors.

**Robert Carlon**, 1816 Calthrop Neck Road, spoke on behalf of the trustees of the Ruth B. Riggins Trust, which owns the adjacent parcel to the east. He complimented Mr. Anderson and Ms. Rich on their presentations, which he said cleared up a lot of issues. He said he has a little concern about the noise and the three employees. He stated that the trustees feel aquaculture in the Poquoson River is good for the

Chesapeake Bay and that the height of the cages should not cause a problem. Mr. Carlon stated that the trustees do not oppose the application and that they wish her well.

**Martha Graham**, 105 Oyster Cove Road, stated that she lives across the Poquoson River from the subject property. She stated that while she agrees that oysters are good for the water, she is concerned that approval of this application will set a precedent, opening the door to other commercial oyster harvesting operations in the Poquoson River where seafood businesses have either leased oyster grounds or applied for leases. She expressed concern about the potential for extensive commercial oyster harvesting in the area as the industry becomes more profitable. She noted that the Zoning Ordinance makes a distinction between agriculture, which is permitted, and aquaculture, which is not permitted, and she asked how the County would distinguish between recreational harvesting for personal use and harvesting for commercial use.

**Scott Dinning**, 2210 West Grace Street, Richmond, stated that he is the graduate student who works for the applicant. He explained that it is a low-impact operation and they want to keep it that way. He stated that no pressure washing is done and that he uses a toilet brush to clean the cages.

**Christine O'Brien**, 220 Olde Pond Lane, stated that she uses a hose to clean her oyster cages, and she expressed skepticism that cleaning will continue to be done with a toilet brush. She expressed concern that eventually the applicant could have strangers rather than family members working for her. In addition, she expressed concern that the business will grow into a large commercial venture that is not appropriate in a residential area.

There being no one else present wishing to speak on this matter, **Chair Magowan** closed the public hearing and opened the floor for discussion among the Commissioners.

**Mr. Suiter** stated that the subject property is a large parcel that is shielded from nearby properties. He added that he likes the proposed limit on the number of man-hours and the two-year review. He noted that the Commission has no control over what is done on the water and that he plans to support the application.

**Mr. Myer** noted that this is the third or fourth application of this nature in the last four years, but he added that each application is different. He noted that the sandbar has a lot of wave action, which greatly reduces the need for cleaning of cages. He added that he has some concern about safety and suggested that VMRC could be consulted to find out the best way to prevent conflicts with personal watercraft.

**Mr. Mathes** stated that the operation would have a minimal impact on the neighborhood, noting that most of the activity will be conducted offshore. He added that floats can be used to mark the locations of the cages

**Mr. Jons** stated that the residents' concerns are legitimate and that preserving the residential character of the area is important. He stated that the proposed conditions are intended to prevent the commercial activity from growing to a level that would not be appropriate in a residential area. In addition, he noted that the application will come back for review in two years unless the adjacent neighbors express no objection to renewal of the use permit for non-resident employees. Mr. Jons stated that a lot of thought has gone into this proposal and he is confident that it will be operated conscientiously.

**Chair Magowan** stated that aquaculture is a new and growing industry however she stated that a lot of the concerns are outside the Commission's purview and that the proposed operation appears to be non-invasive.

**Mr. Myer** moved the adoption of proposed Resolution No. PC14-22.

**A RESOLUTION TO RECOMMEND APPROVAL OF AN APPLICATION FOR A SPECIAL USE PERMIT TO AUTHORIZE SHELLFISH HARVESTING AS A HOME OCCUPATION WITH UP TO THREE NON-RESIDENT EMPLOYEES AT A TIME AT 1818 CALTHROP NECK ROAD**

WHEREAS, Riggins Enterprises, LLC has submitted Application No. UP-849-14, which 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 2.65-acre parcel of land located at 1818 Calthrop Neck Road (Route 606) and further identified as Assessor's Parcel No. 30-255 (GPIN U05b-4813-4368); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 8th day of August, 2014 that Application No. UP-894-14 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval for 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 2.65-acre parcel of land located at 1818 Calthrop Neck Road (Route 606) and further identified as Assessor's Parcel No. 30-255 (GPIN U05b-4813-4368) subject to the following conditions:

1. This Special Use Permit shall authorize seafood harvesting as a home occupation with up to three non-resident employees on a 2.65-acre parcel of land located at 1818 Calthrop Neck Road (Route 606) and further identified as Assessor's Parcel No. 30-255 (GPIN U05b-4813-4368).
2. All permitted activities shall be conducted in accordance with all applicable provisions set forth in Sections 24.1-281, 24.1-283(d), and 24.1-283(e) of the Zoning Ordinance, except as modified herein.
3. All permitted activities shall be established and conducted as depicted on the Sketch Plan and as described in the Narrative submitted by the applicant, copies of which shall remain on file in the office of the Planning Division.
4. Permitted activities associated with the home occupation shall consist of growth and propagation of harvestable shellfish, and cleaning of shellfish, cages, floats, and bags in accordance with the standards set forth herein.
5. On-premises wholesale or retail sale of seafood, docking of workboats, offloading of produce onto the subject property or any piers attached thereto, and transporting the produce to market from the property shall be prohibited.

6. Up to three (3) non-resident employees shall be permitted in conjunction with the home occupation at any one time, and they shall work a cumulative total of no more than thirty (30) man-hours per week. Pursuant to Section 24.1-283(e)(3) of the Zoning Ordinance, this authorization of non-resident employees shall expire two years from the date of approval of this application. Any request to reauthorize the approval of non-resident employees shall be in accordance with the procedures set forth in Section 24.1-283(e) of the Zoning Ordinance.
7. Pressure washing or the operation of any gas-powered equipment on the property shall be limited to the hours of 10:00 AM to 4:00 PM, Mondays through Saturdays.
8. No permitted activity shall generate noise, measured at or outside the property boundary of the noise source or at any point within any other property affected by the noise, that exceeds a maximum A-weighted sound pressure level standard of 50 dB at any time.
9. All permitted activities shall be conducted in such a manner as to prevent potentially offensive odors from being produced which are detectable at or beyond any property boundary by a person of ordinary sensitivity. No overnight storage of seafood waste shall be permitted on the property.
10. Outdoor storage of goods, equipment, or materials shall be limited to a total of one thousand (1,000) square feet, located a minimum of 100 feet from the western, southern, and eastern property lines, and adequately screened with landscaping, supplemented as necessary by fencing, from view from all public streets and adjacent properties. Any outdoor storage, structures, or impervious cover associated with the activity shall be subject to all applicable requirements of Chapter 23.2, Chesapeake Bay Preservation Areas, of the York County Code.
11. Any outdoor or security lighting shall be shielded so that glare is not directed onto adjacent property.
12. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this Special Use Permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court.

BE IT FURTHER RESOLVED that this Special Use Permit is not severable and invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

Yea: (5) Mathes, Myer, Jons, Suiter, Magowan  
Nay: (0)

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**Mr. McCulloch** returned to the dais.