

MINUTES OF THE MEETING APRIL 12, 2012
CHINCOTEAGUE BOARD OF ZONING APPEALS

MEMBERS PRESENT:

Mr. Arthur Leonard
Mr. Robert Cherrix
Mr. Jack Gilliss
Mr. Edward Moran
Mr. Jesse Speidel
Mr. Donald Thornton

MEMBERS ABSENT:

Mike McGee

Kenny L. Lewis, Staff Support

1. Call to Order

Mr. Leonard called the meeting to order at 7:30 pm and reconvened the meeting from March 8, 2012.

2. Appeal 03-12-3 A request from Daniel Grosse, 5389 Main Street, for a special use permit from Article 3, section 3.5.1 of the Town of Chincoteague zoning ordinance. The petitioner wishes to operate a "Light Waterfront Seafood Industry" business. Current zoning allows such use by a special use permit. This property is located in Residential District R-2.

3. Public Comments on Appeal

Mr. Grosse spoke on his behalf. Mr. Grosse advised that in 2000, he and his wife purchased a lot on Main Street. There we built a house, a dock and a garage. We plan to make this our permanent home in 3-4 years.

I'm a marine biologist, and for many years, I helped others learn about all the advantages of growing oysters and even taught others how to do it. As soon as our dock was built, I started an oyster garden. I grew the oysters in floating cages off our dock.

We grow the oysters in Toby Island Bay, near the Maryland border. You can't see our growing area from Chincoteague. At most, we go there once a day by boat in a 19'10" Sundance with an extremely quiet Honda 4-stroke engine.

We raise oysters exclusively for the "high-quality half shell market". That means several things. It means that we must harvest each oyster by hand to ensure that it is the proper size and shape for the market. It also means that we always sell our oysters live, never shucked.

We wash off the oysters, and then pack them in bags of 100. Next, we drive them in our pick-up truck to Toms Cove Aqua Farms on Ridge Road or Little Bay Oyster Co. on Chicken City Road where they are placed in a refrigerated truck. We do not sell any oysters from our property, nor does anyone pick them up from there. Sometimes I may pack oysters in a cooler and bring them back in my car with me to DC, but that's all.

We are certified by the Virginia Department of Health as a "Boat Operation". That allows us to use our boat to harvest and bring them to our dock.

Washing off and bagging the oysters on a boat got to be a bit of a hassle, so we looked for a place to do it on land. For a while, we used some property on Leonard Lane, with the approval of the VDH. Then, the property owner changed his mind and decided to use the property for another purpose. So we went looking again for a place to wash off and bag the oysters on land.

That's when we thought of using our garage. We decided to build a small room inside our garage where the oysters could be washed and packed. The VDH approved our plans, but required the Town's approval to sign off on the completed room. That's when we learned that we needed a Special Use Permit from the Town of Chincoteague.

We knew all along that our property was zoned R-2 and that light seafood industry is permitted there. What we didn't know was that you had to ask for a special use permit. Everyone connected with the operation including folks born and raised on Chincoteague thought we were in complete compliance with all applicable laws and regulations. As soon as we realized we weren't, we applied for the special use permit.

Our operation has a very low profile, we have 5 acres of land, largely screened from Main Street by pine trees and phragmites. Some people have said they didn't even know there was a house there. Even in the winter, you don't see the oyster operations in or around the garage from the water or Main Street. The oysters around our dock can't be seen unless you are standing on our dock looking directly down on them, or unless there's an extreme low tide.

We have 3 part-time helpers. They usually work from 10am to 4pm during the week. We use our boat to bring the oysters from Toby Island to our dock. We hand harvest the oysters off our dock. We use wheelbarrow to move the oysters from our dock to our garage and we wash off the oysters with a pressure washer that is no louder than a lawn mower. No neighbor has ever complained to us about noise, traffic, or any other thing relating to the oyster business. In fact, most neighbors weren't even aware of the activity.

Daniel Williams spoke to the Board. I am part owner of the property adjoining Mr. Grosse's property along the northern property line and one of the most impacted by this request. Mr. Williams advised that he comes from five generations of family that has worked in the seafood industry. He is not opposed to the industry, He is opposed to the location. The neighborhood has been developed as a beautiful, peaceful, waterfront community. The business does not belong in the middle of it.

Mr. Williams advised he is here tonight to request your disapproval for granting of a special use permit for several reasons;

1. In Mr. Grosse's letter to Mr. Lewis dated December 26, 2011, he refers to harvesting and refrigerating oysters between May 1 and September 15. In Mr. Grosse's letter to the neighbors dated January 10, 2012 he indicates he will not shuck, harvest or sell oysters between June 15 and September 15. The letter to the neighbors mentions shucking, harvesting, and selling oysters. The letter to Mr. Lewis does not.
2. In Mr. Grosse's December 26th letter , he refers to an existing garage room, 270 square feet in area, that was built for his operation. Again , in his January 10th letter, he refers to the existing room built for his operation. As of March 5, according to Mr. Lewis, there is no permit for this 270 square foot room.
3. In Mr. Grosse's December 26th letter, he indicates he will drive to an established commercial seafood site to deliver his oysters for pickup by a commercial refrigerated trucking company. However, if he receives his special use permit, he will also be a commercial seafood site with the capability to receive the same refrigerated trucks to pick up his oysters.
4. In Mr. Grosse's December 26th letter to Mr. Lewis, he refers to Chincoteague Code Section 2.178, however, Mr. Grosse fails to reference that same code when addressing his neighbors in the January 10, February 1 and March 18th letters. I believe I have spoken to every neighbor that Mr. Grosse was required to notify. Once they read the Code by which Mr. Grosse would be allowed to operate, 24 out of 27 people changed their minds. Also, this Code section indicates that all such uses shall be contiguous to the waterfront, and Mr. Grosse's garage operation is not contiguous to the waterfront and is located farthest from the waterfront.
5. In Mr. Grosse's December 26 and January 10 letters, he leads you to believe that the only oysters harvested will be from waters adjacent to his dock. In fact, Mr. Grosse is part of a much larger operation called Toby Island Bay Oyster Company. Mr. Grosse states in his March 18th letter, he grows oysters in Toby Island to bring to his Main Street location which is

different from what he previously stated in his January and February letters. Mr. Gross neglects to indicate that he purchases oysters from other companies for processing. This would require a business license which he does not have.

Toby Island is approximately a 20 minute boat ride north from Mr. Grosse's Main Street location and is the home of many home grown oysters. Each oyster cage could hold 20,000 seeds or 300-400 ready for sale oysters. By using a previous picture that was taken on February 27th, you could estimate one to two million oysters could be home-grown at Toby Island. Mr. Grosse had previously been processing these oysters at another location, but has stopped processing there and moved it to his residence for a couple of years now. According to the VMRC, no permit or lease of land has been issued for growing oysters at 5389 Main Street for Mr. Grosse, his partners or his business. And, one is required. Also, when Mr. Grosse built his residence in the R-2 Zone, he applied to the Corp of Engineers for a personal/private dock. The neighbors had to approve this application. Now, he is using his private dock for commercial use.

6. In Mr. Grosse's December 26 and January 10 letters, he states that the will be washing oysters in his garage. According to Virginia Department of Health Shellfish Division, Accomac Field Office, if you wash one oyster in your garage that will be sold, you have to obtain a certificate of inspection. Mr. Grosse does not currently have a certificate to wash oysters at the 5389 Main Street location. There was a certification to wash oysters at the Leonard Lane location, which was not renewed. Mr. Grosse does currently possess a boaters certificate which allows him to wash and bag oysters on his boat. However, he can not transport those oysters to his private dock with this certification as he states in the March 18 letter. Also, according to other oyster processing operation owners, there are additional requirements that they will have to meet, such as a mud pit and a dead shell pile. I also have great concerns about the water runoff from washing the oysters, as well as the sink and gravel filled trench as shown in Mr. Grosse's garage drawing. Mr. Grosse's septic system is located to the north side of his garage which joins my property.

7. In Mr. Grosse's January 10 letter, he leads you to believe that he is environmentally conscious. However, pictures taken on February 27 of stored and abandoned oyster cages show his destruction of the marsh by killing the grass and contributing to the erosion process. These pictures are from Mr. Grosse's personal/private dock and enclosure and pictures of Toby Island location.

Mr. Grosse's application has failed to comply with all of the requirements as follows:

1. Mr. Grosse has failed to submit scaled drawings with the setbacks and septic requirements as the process demands. Additionally, the aerial photograph submitted with Mr. Grosse's package is labeled incorrectly. The aerial photograph obtained from the Accomack County Online Mapping Service is dated 2009 and accurately reflects the roads and right of ways in the area. Additionally, you will notice several oyster cages at the end of his dock, indicating the business has been in operation at least since that time.

2. Mr. Grosse has failed to post the appeal notice on his property as required in the application process.

In closing, Mr. Williams stated; As I have said before, I have spoken to every neighbor that Mr. Grosse was required to notify, and they, like me, don't want the smell, the noise, the traffic, the damage to the environment. This is not what they "bought" when they decided to live in this neighborhood. We have zoning for a reason.

As Mr. Grosse continues to grow his operation, this causes even greater concern for our neighborhood. Presently, there are at least three employees who are working at the operation. Who knows what the future will bring? How many employees will there be, and where will restrooms for his employees be located? Will there be portable toilets lining the property line? As the operation continues to grow, power washing will occur on a daily basis for hours at a time. When your neighborhood is power washing their house, it's annoying but you know the end is near and they won't be doing it again tomorrow. In this case, power washing will be an every day event.

Mr. Grosse's garage would be approximately 60 feet away from my kitchen window as you can see from the picture I gave you. I don't understand how Mr. Grosse could justify disturbing this peaceful environment based on a bit of a hassle from his current operation. The denial of this special use permit request will not put Mr. Grosse out of business as he has a current boaters certificate that allows him to continue his oyster growing business. Recently, due to the stop work order at the Main Street location, Mr. Grosse has found an alternate location to process his oysters.

One day I would like to live on my family's land and enjoy the many memories I have from growing up in this location. I think it's disrespectful that Mr. Grosse is even considering establishing a light waterfront seafood industry and ruining this neighborhood.

Mr. William advised the Board that he appreciated the time the Board gave to try to protect my heritage of my family's land.

Mrs. Juanita Williams Baier spoke on her behalf. She advised that her and her husband live on the south side of the subject property. Mrs. Baier also stated the following:

We are located at 5371 Main Street south of the entire area proposed for rezoning from the cleaning and processing facility and along the entire length of his dock to the bay. The driveway that the trucks will use are just outside my property line. The building is about 65 feet from my bedroom window.

My. Family and I also own the family homestead property located at 5415 Main Street on the north side of the subject property. This is where I grew up.

Comments concerning this property have already been addressed, or soon will be. I will however point out that the garage where this activity is to take place is about 60 feet from the kitchen window.

My comments will address primarily my personal residence at 5371 Main Street. I was born on the island, raised here, left for awhile and returned to entire in the 1980's.

My father was Pete Williams, a waterman all his life. Our existence was tied to the waters around the bay and ocean. We depended on it to eat, to learn from and to have fun in. For many years my father shucked oysters. I am aware of the sacrifices it takes to be a waterman and applaud those that wish to continue that heritage.

My father would be proud that the seafood industry is starting to make a comeback and were he still alive, I sure he would be involved in it in some manner. However, I am sure that he would not take kindly to having an oyster house next door.

My problem is not with the recovery of an industry, nor the people that wish to participate in it, my problem is where this industry is located. The area I live is zoned R2. It is residential and has been for as long as I can remember. It is peaceful, quite, without street lights, home to lots of birds, waterfowl and deer. It is perfect just the way it is.

The operation next door is not new, it's been going on for more than 2 years. This past summer, my husband and I expressed out concern about it to the Chief of Police.

The proposal will have a significant negative impact on our quality of life. Last fall we were subjected to the very loud noises of a power washer and loud hammering coming from the garage area evidently part of the cleaning process. We had to leave our outside deck to escape the noise. We tried sitting in the sunroom, which we also vacated even after closing the windows. When we decided to spend the

rest of our lives on Chincoteague, we did not expect to have a commercial oyster house next door.

There are now two large boats using the dock. The noise and activity on the dock and surrounding area during planting and harvesting is a major impact not only to those living close by, but to nesting waterfowl and disturbance of the marsh land. As a result of this increased activity at the dock area, erosion is becoming a concern.

The need to operate a Light Waterfront Seafood Industry in the middle of a residential area is not a good idea. There are numerous areas zoned for that purpose, both in the existing and proposed Town Plan. There are also many sites already available. Why can't he process his oysters at the same facility he currently uses for Toby Bay?

There is no hardship nor justification for putting this in the middle of a residential zone impacting the lives of so many people.

Another major concern is that this would not be a local operation, but controlled and managed from Washington, DC. Even the certified letter requesting our approval was mailed from Washington.

This is not a typical mom and pop operation but big business. Mr. Grosse is already processing thousands of oysters from Toby Bay.

Finally, property values have already dropped a great deal and having a commercial zone in the middle of a residential neighborhood will only decrease values more.

In conclusion, I respectfully request that Mr. Grosse be denied a special use permit.

Mr. Chuck Ward spoke regarding the appeal. Mr. Ward advised that the most that comes in and out of the lane is two cars.

He advised that he mostly does not hear anything from the Grosse property.

Mr. Ward advised that Mr. Grosse has recommended self imposed restrictions, he felt that the Board should consider them.

Mrs. Bier advised that this morning there were 5 vehicles there and 5 yesterday.

Mrs. Bier advised that Mr. & Mrs. Ward both work all day. They are not aware what goes in and out in a day's time.

4. Board Action on Appeal

Mr. Leonard questioned Mr. Grosse, when the oysters are washed off, where does the runoff go and has the health department approved the method? Mr. Grosse advised that he had dug a French drain on the west side of the garage. This was recommended by the health department.

Mr. Leonard questioned if the pressure washing is in the garage or outside? Mr. Grosse advised that the washing is done inside the garage however the power washer is located outside of the garage. He advised that he could build a shield around the power washer if needed.

Mr. Speidel questioned what psi is needed to wash the oysters? Mr. Grosse advised he uses 3,600 psi.

Mr. Gilliss advised that Mr. Bier, his neighbor advised that two boats have been observed at his dock. Mr. Grosse advised that there was a pontoon boat that he barrowed when his boat was not working.

Mr. Cherrix questioned Mr. Grosse if his business is a sole proprietorship? Mr. Grosse advised he is an LLC, he is partners with Carroll Burt Cherrix. Mr. Cherrix questioned if he has all the necessary permits to operate his business. Mr. Grosse advised he had permits when operated out of Leonard Lane, at the current location he is not licensed.

Mr. Moran questioned if any complaints have been submitted for the Grosse operation. Mr. Lewis advised not prior to his appeal.

Mr. Leonard questioned Mr. Grosse how many oysters is he growing a year. Mr. Grosse advised that the first year was about 50,000, last year was about 100,000. It is his goal to get to about a 1,000,000 a year. Mr. Gilliss advised that the operation of this facility will be longer days if he processes 1,000,000 oysters a day.

Mr. Speidel read a portion of the comprehensive plan that states the seafood industry is important to our community and that it should be encouraged provided it does not cause conflict with the neighborhood.

Mr. Thornton motioned to approve the special use permit with the following conditions:

1. Board to review the case in 3 years.
2. 7 a.m. 5 p.m. five days a week.
3. June 15th through September 15th no power washing.
4. No trucks except pickup trucks.
5. No retail sales on property.
6. No shucking of oysters on property.
7. Must use an electrical motor for washing of oysters.

8. Obtain all required permits before he begins operation.
9. Shall not process any seafood other than oysters on property.
10. Shall not operate a mechanized process for sorting oysters on property.
11. Refrigerated trucks shall not pick up oysters from the property.
12. Special Use Permit is not transferable if parcel is sold.
13. Additional impervious surface area, widening of any existing vehicular access or improve such with pavement, or create any additional vehicular access is prohibited.
14. Special use permit is null and void if owner change, modify the use on or subdivide the property.

Second by Mr. Speidel. All in favor. Motion carried.

5. Adjournment

Mr. Leonard adjourned the meeting.

Arthur Leonard, Chairman
