DECISION
TALBOT COUNTY BOARD OF APPEALS
Administrative Appeal No. 16-1657

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Route 50, Easton, Maryland , beginning at 7:00 p.m., December 12, 2016 on the Administrative Appeal Application of **KATHARINE L. GRISWOLD**, (the Applicant). The Applicant is appealing the Talbot County Planning Commission's (the Commission) approval of Site Plan SP575 (approved September 7, 2016, and amended October 5, 2016) to Saint Michaels Ventures LLC for a cottage industry involving construction, landscaping and excavation. The application was made in accordance with Chapter 190, Zoning, Article I, §190-179 and Chapter 20 §§ 20-10 and 20-11 of the *Talbot County Code* (the *Code*). The property is located at 8400 Lee Haven Road, Easton, MD 21601 in the Rural Conservation/Western Rural Conservation (RC/WRC) Zone. The property owner of the land subject to the site plan approval was the First Baptist Church of Easton at the time of the initial approval, but the property has subsequently been purchased by the principals of Saint Michaels Ventures, LLC. The property is shown on Tax Map 34, Grid 1, Parcel 53.

Present at the hearing for the Board of Appeals were: Paul Shortall, Jr., Chairman; members John Sewell, Margaret Young and Louis Dorsey, Jr. and alternate member Jeffrey Adelman. Anne C. Ogletree served as attorney for the Board of Appeals. Anthony Kupersmith, Assistant County Attorney, Jeremy Rothwell, Planner I, and Mary Kay Verdery, Planning Director, were in attendance.

FACTS

The events that set the current appeal in motion began when Richard and Jane Leonard, owners and operators of Saint Michaels Ventures, LLC received written notification from the Talbot County Enforcement Officer that their business was not in compliance with the mandates of the Talbot County Zoning Ordinance governing Cottage Industries, *Code*, §190-39. (Several other small business owners not here relevant received similar notifications.)

The Leonards were faced with several alternative courses of action -- they could remain non-compliant and be at risk to be cited for additional enforcement actions that might jeopardize their business; they could seek administrative variances that would allow their non-conforming Pea Neck property to continue to be used for the business; or they could seek a more suitable property.

Opting for the latter choice, for reasons cited in the Planning Commission Decision Summary[1], the Leonards became aware of a 24.48 acre parcel located south of the St. Michaels Road (Md. Rt. 33) and west of Lee Haven Road not far from Easton. The property (hereinafter referred to as the Church Property) was owned by the First Baptist Church of Easton, and was improved by an existing four thousand (4,000) sq. ft. building originally permitted and constructed as an agricultural building[2] T-3-4. The Leonards thought that the building would be suitable for the storage of machinery. The building, originally compliant with setbacks as an agricultural structure, was located ninety two (92) feet from the western property line, and would violate the one hundred fifty foot (150') zoning setback established by *Code*, § 190-39(B)(8)(a), as well as exceeding the three thousand (3,000) sq. ft. maximum size footage permitted for a cottage industry accessory structure. *Code*, § 190-39(B)(2). Both anomalies would require variances from the Board of Appeals should the site plan be approved.

Recognizing that the use of the property for "cottage industry" purposes required that the proposed use be used in conjunction with a primary residence, §190-39(B)(6), the Leonards proposed to construct a home on the Church Property, then relocate the business, assuming the necessary zoning approvals could be obtained. T-22-23; 33.

Major site plan approval is required for a "cottage industry". *Code*, § 190-39(B)(4). The Leonards made a timely application for site plan review, and the matter came before the Commission on September 7, 2016.

ISSUES AT THE PLANNING COMMISSION HEARING SEPTEMBER 7, 2016

[1] The Planning Commission Decision Summary is hereinafter cited as PC Decision at _____. The reasons stated can be found in PC Decision at 3, l. 139 *et seq.* and at 5, l. 217.

[2] The transcript of the September 7, 2016 Planning Commission hearing is hereinafter cited as T-___

The full Commission was present for the St. Michaels Ventures, LLC hearing on September 7. Mr. Rothwell, Planner I, gave a synopsis of the application, acquainting the members with the history of the Church property and its development.

Mr. Leonard then explained the necessity for the relocation of his business. He described the business' equipment including two (2) six-wheel single axle dump trucks, several small one ton trucks used to pull the equipment trailers, two (2) backhoes, a skid loader, a small bulldozer and two (2) small excavators, as well as pickups and lawn equipment. The business has five (5) employees and does mostly residential work in the local area. There are no plans to increase the workforce. T-36-37. The business stockpiles about a truckload of three-quarter inch (3/4) wash gravel for septic systems and mulch at its current location. Mr. Leonard would like to add a small stockpile of topsoil. There is no room for that at the current location. T-16-18.

In response to a question from Mr. Councell, Mr. Leonard indicated that he was prepared to move forward with the construction of a residence immediately upon approval. T-18. He understood that only a foundation might be required, as Mr. Rothwell had indicated, but he reiterated he would not relocate the business until the home was ready for occupancy. T-30, 33. Mr. Spies commented that the existence of a residence was, in his opinion, merely an issue of timing. If the use was permitted, as excavation and landscaping were by Code, § 190-39 (A)(2), then one could not operate the business until the residence was in place, as the *Code* required that the owner of the business reside on the property. *Code,* § 190-39 (B)(6). He felt the existing vacant building would be put to good use, and that the location was much more favorable than retaining the business in a more densely populated area.

The Chairman commented that putting the house on the property after the site plan approval was counter to what he considered to be the appropriate process for establishing a cottage industry. He also noted that during the approval process the Commission could and should take the traffic concerns into consideration.

Mr. Spies questioned the possible expansion of the outdoor storage area. Mr. Rothwell explained that the Commission had before it a major site plan asking for

designated approvals. Those designated approvals were all that could be permitted without returning to the Commission for additional approvals.[3]

Mr. Bill Stagg of Lane Engineering discussed the requested street tree waiver, and also suggested that the major traffic concerns were caused by the dimensions of Lee Haven Road.[4] He suggested that the traffic issues might be alleviated by constructing pull offs on the Church property so that cars could pass the business vehicles leaving the Church Property. T-40-42.

Mr. Showalter appeared in opposition representing "... Jeff Moran, who is present, and a number of other residents on Lee Haven Road". T-45. Ms Griswold, the Applicant, was not specifically named, nor did she send a letter to the Commission for their consideration as did many of her neighbors. There is nothing in the Commission record to indicate that she was a 'party' to the Commission proceedings other than Mr. Showalter's vague statement that he represented a number of 'other' residents on Lee Haven Road.

Mr. Showalter made several legal arguments. Although a cottage industry is permitted accessory use in the RC/WRC zoning district subject to site plan approval. *Code,* § 190-16, Table III-1, (as amended), Mr. Showalter interpreted the requirement that the business occupy no more that three thousand (3,000) square feet in a single accessory structure or combination of structures to mean that the scale of the ***use*** had to be incidential to and subordinate to the residence on the property for which approval was sought[5]. While he acknowledged that the Leonard's business was one authorized as appropriate for a "cottage industry", he felt that the business proposed was more commercial in nature and too large or intense and therefore inappropriate for the cottage industry designation. He referenced three cases, each with different factual scenarios, one

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[3] See, *Code,* ' 190-39(B)(10) requiring site plan approval of any "change, enlargement or alteration of a cottage industry use or of the structure and facility occupied by the use"..."

[4] Lee Haven Road is twenty (20) feet wide at it's junction with Route 33. For most of its length it is approximately fourteen feet eight inches (14' 8") in width. The shoulders vary from about eighteen inches (18") to forty inches (40") in width; and the ditches vary from twelve inches (12") to thirty-six inches (36") in depth. T-48-49.

[5] The *Code* originally provided that the cottage industry was authorized as of right. *Code,* ' 190-16, Table III-1. The table of uses was subsequently amended and the cottage industry use was changed to an accessory use by Bill no. 1259 effective May 24, 2014. That bill also amended the text of the ordinance and required the cottage industry use to be "**incidental and secondary** to the use of the residential dwelling." *Code,* ' 190-39(B)(3).

Maryland, one from Pennsylvania and one from New Hampshire to support his interpretation.

Mr. Showalter next took careful aim at the proposed access to the Church property on Lee Haven Road. After providing the road measurements, he noted that the prior application some years earlier had required the Applicant to obtain access off St. Michaels Road (Route 33)[6]. He felt that public safety required that Lee Haven Road not be used, and suggested that the Leonards be required to obtain sole access to the site from the state road. T-48-50.

A resident living on Lee Haven Road, Ms. Crabbe, also commented about the difficulty of traversing the road in normal conditions, and expressed her concerns about meeting truck traffic generated by the business entering or leaving Lee Haven Road. She asked that the Leonards approach the State Highway Administration for an entrance to avoid Lee Haven Road.

There being no other verbal testimony, the members of the Commission expressed their opinions. Mr. Fisher felt that the process was being stretched to fit a set of facts that did not follow the normal procedure. He was uncomfortable that the residence was not in existence, as the Commission was being asked to approve a use that required the Applicant to live on the property. He felt that the residential use had to exist prior to site plan approval. He was not in favor. T-53.

Mr. Spies opined that the cottage industry use in the ordinance was intended to do just what the Leonards were asking. He understood the intent of the section to allow the small businesses listed in the ordinance to operate from their owner's home property if the business and property met the standards of the section. He commended the Leonards for going about their search properly -- for finding a suitable property, coming before the Commission and obtaining approval prior to purchasing. He felt that the Commission could fashion conditions to deal with the residence issue, as well as the entrance issue, and would recommend approval. T-53-55.

Mr. Sullivan partially agreed with each of his fellow Commissioners. On balance, he felt that if the existing building was smaller, and the parcel itself was smaller and in a

[6] Route 33 access was denied in 2004. Mr. Mertaugh opined it would be unlikely in 2016.

five acre community the use would be unexceptional. He believed the timing issue -- the construction and occupation of the residence could be made a condition. T-55-56.

Mr. Councell felt that the county should support the entrance on to Route 33 as a partial solution to the traffic issues on Lee Haven Road. He also believed that the timing issue could be handled with a condition that the residence must be completed before the business could relocate. He would approve the site plan. T-57-58.

Mr. Fisher commented that he found the ordinance confusing as it seemed to require that the business use be incidental or subordinate to the residential use. He suggested that the cottage industry section be looked at in the coming ordinance revisions in an effort to alleviate some of the confusion and concerns that were expressed.

The Chairman noted that the intent and extent of the cottage industry legislation was unclear. He believed the Leonard's request was stretching it beyond that which was intended, and would vote against the site plan. T-58-59.

Mr. Spies moved for approval of the major site plan with the conditions recommended by staff, the widening of the entrance of Lee Haven Road and the condition that the Leonards receive an occupancy permit for the new residence prior to relocating the business. Following a request from the Chairman, he amended the motion to restate the road condition as either obtaining the approval of an entrance on Route 33 or the widening of the Lee Haven - St. Michaels Road intersection. Mr. Councell seconded the motion . It passed with 3 affirmative votes.

Following the initial Planning Commission hearing, the Leonards applied for both the State Highway access permit for direct access to Md. Route 33 and two (2) area variances -- the first to allow the use of the existing four thousand (4,000) sq. ft. building in the cottage industry although it exceeded the limitation of *Code*, § 190-39(B)(2); and the second to allow a setback variance from the required one hundred fifty feet (150') *Code*, § 190-39(B)(7)(a) to ninety two feet (92') to permit the use of the existing metal building in the business. The variance requests were heard by the Board of Appeals on October 3, 2016 and approved. The written decision in Board of Appeals case 16-1654 dated December 2, 2016 granting the variances was submitted by Mr. Showalter as Applicant's exhibit 1, a supplement to the case record, as it was not available when the matter was initially filed.

At the October 5, 2016 Commission meeting, the Commission was advised that the State Highway Administration was willing to permit the business to establish an entrance directly on to Route 33. Mr. Showalter asked that the business be prohibited from using Lee Haven Road and only access Route 33 by the newly approved entrance. The Commission agreed, and amended its decision accordingly.

On October 7, 2016, Mr. Showalter filed an appeal of the Commission Decision approving the site plan on behalf of the Applicant, Katharine Griswold. This is the first time Ms. Griswold's name appears in the record.

ISSUES PRESENTED

A. *The Standard of Review*

A charter county is authorized by *Md. Code*, Art. 25A §5(U) to enact local law establishing a Board of Appeals and authorizing it to review the decisions of "an administrative officer or agency". *Monkton Preservation Ass'n* v. *Gaylord Brooks Realty Co.*, 107 Md. App. 573, 575 (1996). *Code*, § 20-3 (A)(3)(d) authorizes the Board to hear and decide administrative appeals concerning "final decisions by the Planning and Zoning Commission concerning major subdivisions and commercial and industrial site plan review"[7]. *Id.*

When exercising its appellate jurisdiction pursuant to *Code*, § 20-3 (A)(3)(d), the Board's review is not to become a *de novo* fact finding expedition. Its review "... **shall be** by written statement and oral argument based solely on evidence submitted and received in the proceedings before the Planning Commission." *Code,* § 20-6(C).

The standard of review the Board must employ is similar to that of a trial court reviewing the actions of an administrative agency -- *i.e.* the Board must determine if there was substantial evidence before the Commission that supported the Commission's decision. This analysis requires that the Board first determine if "a reasoning mind could have reached the same factual conclusion the agency reached, ... "reviewing the evidence in the light most favorable to the agency..." *County Council of Prince George's County v. Zimmer Dev. Co.*, 217 Md. App. 310, 321 (2014).

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[7] A major site plan review is required by Code, ' 190-39 (B)(4). The site plan is arguably for a commercial use. It does not fit squarely within the authorized appeals referenced in *Code*, ' 20-3(A)(3)(d) the charter, but is authorized by Art. IX of *Code*, Ch. 190 - 184(A)(2)(a).

The Board may be less deferential when reviewing the legal conclusions made by the Commission and may reverse them when it finds there is an erroneous interpretation or application of the ordinance by the agency. *Id.* at 321-322.

B. *Standing*

The Board is mindful that it may only hear and decide administrative appeals initiated by "any person aggrieved" by a final order or determination of the Commission. *Code*, § 20-6 (B)(1). The Board doubts that the Applicant, Katharine Griswold, has standing to challenge the site plan.

In *Kendall v. Howard County*, 431 Md. 590 603-604 (2013) the Court of Appeals, reiterated existing Maryland Law regarding standing stating:

> "The doctrine of standing is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution." [citations omitted] S*ee*, *Maryland State Admin. Bd. of Election Laws v. Talbot County*., 316 Md. 332, 339, 558 A.2d 724 (1988) (observing that "[j]usticiability encompasses a number of requirements," including that "the plaintiffs must have standing to bring suit"). "Under Maryland common law, standing to bring a judicial action generally depends on whether one is 'aggrieved,' which means whether a plaintiff has 'an interest such that he [or she] is personally and specifically affected in a way different from . . . the public generally.'" *Jones v. Prince George's Cnty.*, 378 Md. 98, 835 A.2d 632 (2003) [citations omitted] ...A]n individual or an organization has no standing in court unless he has also suffered some kind of special damage from such wrong differing in character and kind from that suffered by the general public." (quoting *Medical Waste Assoc., Inc. v. Maryland Waste Coalition, Inc.*, 327 Md. 596, 612, 612 A.2d 241 (1992)) (internal quotation marks omitted)).

Maryland has long recognized that there is a difference between standing at the administrative level, *i.e.* before the Board of Appeals, and standing before a court. In *Sugarloaf Citizens' Ass'n v. Department of the Environment*, 344 Md. 271, 285-286 (1996) the court opined:

> The cases in this Court, and the language of the Administrative Procedure Act itself, § 10-222(a)(1) of the State Government Article, recognize a distinction between standing to be a party to an administrative proceeding and standing to

> bring an action in court for judicial review of an administrative decision. Thus, a person may properly be a party at an agency hearing under Maryland's "relatively lenient standards" for administrative standing but may not have standing in court to challenge an adverse agency decision. *Maryland-Nat'l v. Smith*, 333 Md. 3, 11, 633 A.2d 855, 859 (1993). *See Medical Waste v. Maryland Waste*, 327 Md. 596, 611-614, 612 A.2d 241, 248-250 (1992) (organization was a party at the administrative proceeding but lacked standing to maintain a judicial review action.)

Generally if one attends an administrative hearing either in person or by counsel, or sends a letter expressing one's concerns, one is deemed a party for administrative purposes. As previously noted, Mr. Showalter did not disclose Ms. Griswold's interest in the proceeding at the Commission hearing -- he referenced one client, Jeff Moran, ... "and a number of other residents on Lee Haven Road". No list of those "other residents" was provided. The record does not contain a letter from Ms. Griswold. In short, the record does not disclose that she was involved in the Commission hearing in any way.

Even if the Board were to conclude that she was one of the "other residents" she would have to have alleged some special damage. to be aggrieved -- an interest that was affected in a different way than the interests of the public generally. *Jones v. Prince George's Cnty., 378 Md. 98 (2003).*

According to her counsel, Ms. Griswold lives a half mile from the Church property farther down Lee Haven Road. Property owner standing is based on proximity. *Bryniarski v. Montgomery County Bd. of Appeals 247 Md. 137, 143 (1967).* Those properties adjoining the subject of the site plan application, those facing it or kitty-corner across from it have standing under *Brynarski.* There is also standing for properties not quite as close, where they exhibit a "plus factor" which gives them special damage. There is no reported case in Maryland that finds special damage a half mile distant from the subject of the application. ***See***,, *Anne Arundel County v. Bell*, 442 Md. 539 (2015) (discussing the forms of standing and the requirement for special damage).

The Board concludes that even if Ms. Griswold is a party to the Commission proceeding based on Mr. Showalter's statement that he represented a number of "other residents" she is not aggrieved and therefore does not have property owner standing. Taxpayer standing has not been alleged.

C. ***Did the Commission Properly Approve the Leonard Major Site Plan?***

Code, ' 190-208 defines an accessory use as" A use of land or of a building or portion thereof, which is **incidental to and subordinate to, and customarily found in connection with the principal use** of the land or building and which is located on the same lot with the principal use" [emphasis added]

Mr. Showalter argues that the Leonard site plan cannot be properly approved because the Commission did not take into consideration the scale of the Leonard's business. He argues that the wording "incidental and secondary to" the use of the residential dwelling (the principal use of the land) requires that the Commission must disapprove the plan if the accessory use is not smaller in size than the residential use and must be customarily and necessarily related to or dependent on the residential use.

If one examines the list of uses permitted as cottage industries, two things become immediately apparent: either the employees of the permitted use come to the site and work on the premises, *Code*, § 190-39 (A)(1) and (A)(7); or they come to the site, pick up business vehicles and leave the site to conduct the permitted activity off premises. *Code*, § 190-39 subsections (A)(2); through (A)(6) and (A)(8). In both cases, the neighbors would not be severely impacted by multiple comings and goings during the day.

It is the County Council, Talbot's legislative body, that determines what uses are appropriate as accessory uses. It is also the arbiter of all conditions regarding cottage industries. The Council added excavation and landscaping to the list of permissible cottage industry uses in 2014. At the same time it changed the definition in §190-39 (B)(3) adding " The use shall be incidental and **secondary**[8] to the use of the residential dwelling". [emphasis added] Conforming amendments were made to the table of uses *Code,* ' 190-16, Table III-1 to make all cottage industries accessory uses, as opposed to uses permitted as of right. Additional conforming amendments were made to the text of the variance section, *Code*, § 190-182 (A)(3)(a) and (A)(3)(b) to provide that minimum lot size for cottage industries and bulk requirements could be varied, although the number

[8] The words secondary and subordinate denote something of lesser importance. The requirement of a primary residence on site is the primary use. .

of employees could not. The definition of Bulk Requirements in *Code*, § 190-208 was clarified as well.[9]

To paraphrase Judge Harrell *in People's Counsel for Balt. County v. Loyola College*, 406 Md. 54, 94-5 (2008)

> *** The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed *as accessory uses* in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. In that sense, the local legislature puts on its "Sorting Hat" and separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, *or accessory uses*, not permitted uses. *Id.* at 94-5, [italicized language substituted or added]

By listing excavation and landscaping as an accessory use, the Council has legislatively acknowledged that it conforms to the definition of accessory use in *Code*, § 190-208. It has, in essence, 'sorted' and permitted the use provided that it meets the standards of *Code*, § 190-39 (B).

Mr. Showalter candidly recognized both before the Commission and before the Board that the ordinance permitted excavation and landscaping as a cottage industry. However, he then attempts to further limit the application of the section by engrafting additional size requirements -- something the Council declined to do when it amended the *Code* in 2014. He offers three cases in support of his position:

In *County Commissioners of Carroll County v. Zent, 86 Md. App. 745 (1991).* a zoning administrator's attempted to classify the storage of 'parts vehicles' on the property of a non-conforming milk delivery business as a junkyard. The court was required to determine if storage of 'parts vehicles' used to repair the business' delivery vehicles was an allowable accessory use to the non-conforming milk delivery business.

In holding that the storage of 'parts vehicles' was allowable the Court of Special Appeals discussed accessory uses in connection with non-conforming uses. Unlike the case before this Board, *Zent* did not involve a legislative determination establishing a use as an appropriate accessory use, but dealt with inferred accessory uses predating zoning.

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[9] Bill 1259, as amended and enacted is attached hereto as an appendix.

In the Pennsylvania decision, *County of Fayette v. Blount et al,. 35 Pa. Commonwealth 523 (1978)* Blount obtained a permit for a residential garage. Blount subsequently permitted a contracting company to store commercial vehicles in the garage. The county sought and obtained an injunction. The decision was affirmed as the chancellor in the trial court found that the storage of commercial vehicles was not the use permitted for the structure.

Blount does involve a permitted structure which was intended to be used as an accessory to the residence on the property. The court correctly determined that the housing of a third party's commercial vehicles, together with the third party employee's use of the site for parking their personal vehicles while driving the commercial vehicles was an impermissible use of the accessory structure.

The New Hampshire decision, *Becker v. Town of Hampton Falls, 117 N.H. 437 (1977)* involves the interpretation of that town's zoning ordinance. A property owner built a barn on a lot adjoining his home property for the storage of industrial equipment. The neighbors complained. The property owner argued that the use was permitted as a storage facility since the ordinance defined accessory uses as "those customarily appurtenant to a principal permitted use such as incidental storage facilities".

The neighbors argued that the barn was not on the same lot as the principal residence and that it was not "customarily appurtenant". The court decided that the storage of heavy equipment was not customarily appurtenant to the residential use. That decision differs from the case before this Board as the Talbot County Council has decided that excavation and landscaping businesses are appropriate accessory uses in certain districts provided they meet the standards in Code, § 190-39 (B).

The evidence before the Commission was that:

1. The lot is 24.47 acres and exceeds the minimum lot size. T-2, *Code*, § 190-39 (B)(1)

2. The proposed business is expressly permitted as an accessory use in the RC and WRC zones. *Code,* § 190-16, Table III-1. T-13-16.

3. Although the four thousand (4,000) sq. foot building exceeds the maximum size permitted, a variance was required and has been granted to permit use of the building; *Code,* § 190-39(B)(3); Applicant's exhibit 1, Decision in Board of Appeals Case no. 16-1654.

4. The Leonards will construct a single family residence on the site prior to relocating the business. They will reside in the residence on a full time basis. *Code*, § 190-39(B)(6), T 18-33.

5. The proposed site complies with most of the setbacks. The Leonards have received a variance to allow the use of the building which is closer to the westerly property line than that permitted by *Code*, § 190-39 (B)(8)(a); Applicant's exhibit 1, Decision in Board of Appeals Case no. 16-1654, T-5.

6. The business has five employees and does not seek to expand. T. 36-37; *Code*, § 190-39 (B)(12).

7. The six thousand (6,000) sq. ft. outdoor storage area will be screened. *Code*, § 190-39 (B)(9), site plan, Commission Record.

There was sufficient evidence before the Commission to support the decision made.

For the reasons set out above Ms. Young made a motion that the Board affirm the site plan approval granted by the Planning Commission on September 7, 2016 as amended by its decision on October 5, 2016 and deny the Applicant's appeal. Mr. Sewell seconded the motion. There was no further discussion on the motion. The Chairman called for a vote. The motion passed, 5-0 with all members voting to affirm the Planning Commission and deny the Applicant's appeal..

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Administrative Appeal of KATHARINE L. GRISWOLD (Appeal No. 16-1657) is DENIED, and the approval of the site plan by the Planning Commission is affirmed.

GIVEN OVER OUR HANDS, this 14th day of February, 2017.

TALBOT COUNTY BOARD OF APPEALS

Paul Shortall, Jr., Chairman

John Sewell -- Member

Margaret Young -- Member

Louis Dorsey, Jr. -- Member

Jeffrey Adelman -- Alternate Member.

COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2014 Legislative Session, Legislative Day No. : January 28, 2014

Bill No.: 1259 *AS AMENDED*

Expiration Date: April 3, 2014

Introduced by: Mr. Hollis, Mr. Pack, Ms. Price

A BILL TO AMEND CHAPTER 190 OF THE *TALBOT COUNTY CODE* TO ALLOW COTTAGE INDUSTRY AS AN ACCESSORY, SECONDARY USE TO A RESIDENTIAL USE IN THE AC, CP, WRC, RC, TC, VC1, VC2, VC ZONING DISTRICTS AND TO REQUIRE MAJOR SITE PLAN APPROVAL AND BIENNIAL USE CERTIFICATES

By the Council: January 28, 2014

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, February 25, 2014 at 6:30 p.m. at the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By Order _____
Susan W. Moran, Secretary

A BILL TO AMEND CHAPTER 190 OF THE *TALBOT COUNTY CODE* TO ALLOW COTTAGE INDUSTRY AS AN ACCESSORY, SECONDARY USE TO A RESIDENTIAL USE IN THE AC, CP, WRC, RC TC, VC1, VC2, VC ZONING DISTRICTS AND TO REQUIRE MAJOR SITE PLAN APPROVAL AND BIENNIAL USE CERTIFICATES.

KEY

Boldface .....Heading or defined term.
Underlining .....Added to existing law by original bill.
~~Strikethrough~~.....Deleted from existing law by original bill.
Double Underlining.....Added to Bill by amendment
~~Double Strikethrough~~.....Deleted from Bill by this amendment
Double Underlining.....Added by Planning Commission recommendation on March 19, 2014
~~Double Strikethrough~~.....Deleted by Planning Commission recommendation on March 19, 2014
* * *.....Existing law or bill unaffected.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 190 of the *Talbot County Code*, be amended as follows:

* * *

§190-39. Cottage Industry

See also Home Occupation

A. Uses appropriate as cottage industries

The following list indicates uses that would be appropriate as cottage industries.

(1) Craftsman (cabinetmaker, furniture maker, saddler, etc.);

(2) Excavationor and landscaping contractors;

(3) ***

B. Standards for cottage industries

(1) Minimum lot size: five-acres.

(2) The cottage industry shall not occupy more than 3,000 square feet in a single accessory structure or in a combination of accessory structures.

(3) No more than one cottage industry per residence or lot is permitted. The use shall be incidental and secondary to the use of the residential dwelling.

(4) Major Ssite plan approval is required. See Article IX.

~~(4)~~(5) A use certificate is required for continued operation of all cottage industries. Cottage Industry use certificates shall be renewed every two years. The County ~~may~~, shall conduct a site inspection to ensure compliance with the terms and conditions of the original approval, including any amendments, as a condition of renewal.

~~(5)~~(6) The property used for the cottage industry shall contain the primary residence of the proprietor.

~~(6)~~(7) If the proprietor is not the property owner, evidence of permission of the property owner to use the property for the cottage industry must be provided to the Planning Director.

~~(7)~~(8) Setbacks:

(a) From neighboring property lines: 150-feet

(b) From neighboring residences: 200-feet

(c) From tidally influenced waters: 100-feet for work, storage, and vehicle parking areas.

~~(8)~~(9) All outdoor storage associated with the cottage industry, equipment, and work areas shall be screened from adjacent properties and public ways. Equipment does not include properly licensed and tagged vehicles.

~~(9)~~(10) Any change, enlargement or alteration of a cottage industry use, or of the structure and facility occupied by the use, shall require ~~special exception~~site plan approval.

~~(10)~~(11) New accessory structures for cottage industries:

(a) Proprietors who desire to construct a new accessory structure for a cottage industry must own and reside on the property.

(b) Proprietors of a cottage industry operated on land owned by an immediate family member may be allowed to construct a new accessory structure.

(c) Proprietors who rent their primary residence on property that contains the cottage industry must operate the cottage industry using existing accessory structures only.

(d) New accessory structures shall be limited to a roof ridge height of not greater than 25 feet.

~~(11)~~(12) No more than five nonresident employees shall report to a cottage industry site.

~~(12)~~(13) In the VC district employees shall not report prior to 7:00 a.m. or leave after 9:00 p.m.

~~(13)~~(14) No use shall require internal or external construction features or the use of electrical, mechanical, or other equipment that would change the fire rating of the structure or in any way increase the fire danger to neighboring structures or residences.

~~(14)~~(15) Sale of any manufactured item related to a cottage industry shall occur off premises.

~~(15)~~(16) Cottage industries on lots less than five acres and approved prior to adoption of this chapter:

(a) All work associated with the cottage industry must be carried out in an accessory structure.

(b) All materials and equipment associated with the cottage industry shall be stored inside the accessory structure.

§ 190-182. Variances.

A. Authority.

(1) The Board of Appeals or the Planning Director may authorize a variation or modification from the bulk requirements or numerical parking standards of this chapter subject to the standards given in this section.

(2) The Planning Director shall make decisions on minor variances and administrative variance as described in this section. All other variances shall be heard and decided by the Board of Appeals.

(3) A variance may not be granted to the following:

(a) Density~~, minimum lot size and minimum lot width requirements~~, minimum lot width requirements and, except for cottage industries, minimum lot size.

(b) ~~Requirements not related to the location or dimensions of structures~~ Provisions other than bulk requirements or numerical parking standards, such as number of employees and time of operation.

(c) ~~Requirements that are conditions~~ Regulations or conditions under which a ~~particular~~ special exception may be or has been granted by the Board of Appeals.

* * *

§ 190-183. Use certificates.

***

C. Procedures.

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(3) The Planning Director shall issue the certificate if:

(a) The proposed use complies with all requirements of this chapter.

(b) The proposed use complies with Health Department requirements.

(c) The proposal does not require changes to site improvements such as structures, parking, access and buffering, and does not require site plan review in accordance with § **190-184**. If a site plan is required, the site plan process shall be followed instead of the use certificate process for the initial approval.

(d) The proposed use received site plan approval and is required to obtain a use certificate for initiation and continuation of use.

D. Revocation. The Planning Director may revoke a use certificate if requirements of this chapter or conditions of approval are violated.

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§ 190-184. Site plans.

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C. Development not requiring site plan approval. ~~A~~Unless specified in Article III, Land Uses, a site plan shall not be required for the following:

***

§ 190-208. Terms Defined.

* * *

BULK REQUIREMENTS – Numerical regulations that govern the size or dimension of lots and the location or dimensions of uses or structures within a certain zoning district or for a certain land use. Bulk requirements include setback, height, area, ~~lot size,~~ lot coverage, ~~and~~ lot width requirements, and, for cottage industries only, minimum lot size. Density requirements and regulations for specific land uses requiring a special exception are not bulk requirements.

* * *

Insert Land Use Table 190 Attachment 2:5 this page

SECTION TWO: BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter § 213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION THREE: AND BE IT FURTHER ENACTED, that if any provision of this Bill or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of the Bill which can be given effect without the invalid provision or application, and for this purpose the provisions of this Bill are declared severable.

SECTION FOUR: AND BE IT FURTHER ENACTED, that the Publishers of the *Talbot County Code* or the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, may make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation included in this Bill, as finally adopted, that are incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION FIVE: AND BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

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PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1259 having been published, a public hearing was held on Tuesday, February 25, 2014 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the third time.

ENACTED: **March 25, 2014 AS AMENDED**

By Order _____
Susan W. Moran, Secretary

Pack - Aye

Hollis - Aye

Bartlett - Aye

Price - Aye

Duncan - Aye

EFFECTIVE DATE: **May 24, 2014**

Land Use	Agricultural Conservation	Countryside Preservation	Western Rural Conservation	Rural Conservation	Rural Residential	Town Conservation	Town Residential	VC 1	VC 2	Village Center	Limited Commercial	General Commercial	Limited Industrial
Community and cultural facilities Includes public and quasi-public buildings and structures for recreation, conservation, cultural, museum, library and public service uses. See regulations for specific land uses in this article.	S	S	S	S	S	S	S	S	S	P	P	P	S
Compounding industries (permanent) Includes concrete and asphalt plants. See regulations for specific land uses in this Article. See temporary uses for temporary compounding of paving material.													S
Conservation areas (public or private) Includes arboretums, bird sanctuaries, demonstration forests, hunting preserves, reforestation areas, wildlife reservations and regulated hunting areas.	P	P	P	P	P	P	P	S	S	P	P	P	P
Contracting and maintenance Includes air conditioning, building, electrical, excavation, floor covering, glass repair, heating, landscaping, plumbing and tree trimming. See regulations for specific land uses in this article.											P	P	P
Cottage Industry See regulations for specific land uses in this article.	A	A	A	A		A		A	A	A			
Day-care center, group	S	S	S		S	S	S			S	P	P	P