

**FREDERICK COUNTY BOARD OF APPEALS**  
**STAFF REPORT FOR October 24, 2019 @ 7pm**

**Case Number:** B-19-31 (AP# 19829)

**Applicant:** Joseph Osborne, Carolyn Hayden

**Appeal:** Requesting a Special Exception for a Limited Agricultural Activity in the Residential Districts.

**Location:** 4404 Highboro Drive, Mt. Airy, MD 21771, Tax Map 90, Parcel 154, Tax ID# 18381311, 1.25 acres, Zoned Low Density Residential (R1)

**Planning Region:** New Market

**Zoning District:** Low Density Residential (R1)

**Comp. Plan Designation:** Rural Residential

**Applicable Ordinances:** Sec. 1-19-3.210 Special Exceptions  
Sec. 1-19-8.325 Limited Agricultural Activity in the Residential Districts  
Sec. 1-19-11.100 Definitions

**Background:**

The subject parcel is zoned Low Density Residential (R1) and contains 1.25 acres. Ordinance Section 1-19-11.100 defines **AGRICULTURAL ACTIVITY, LIMITED** as “The keeping of farm animals in residential districts on lots with less than 3 acres. Apiaries are excluded from this definition.”

Ordinance Section 1-19-11.100 defines **FARM ANIMALS** as “Those animals ordinarily found on a farm, including but not limited to: horses, ponies, sheep, goats, bulls, buffalo, cows, steers, rabbits raised for commercial purposes, turkeys, pigs, ducks, geese, chickens and guinea hens.”

**Proposal:**

The Applicant is requesting Special Exception approval for a Limited Agricultural Activity for the purpose of keeping up to 8 chickens, on a residential lot that has less than 3 acres.

The Applicant has submitted a site plan showing that the proposed pen area will meet the 50 foot setback requirement.

### **§ 1-19-3.210. SPECIAL EXCEPTIONS.**

- (A) An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.
- ***The applicant is the owner of the property.***
- (B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:
- (1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and
- ***The hens will live primarily in an 8x8 coop and run within the designated 50' required setback and will not be near the septic and well. They will be locked in at night.***
  - ***The hens will be fed a balanced diet of grains and greens.***
  - ***There are NO ROOSTERS and the coop/run will be located at least 50' from all property lines.***
  - ***The coop/run is aesthetically pleasing.***
- (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and
- ***The property is in an older development with most homes owning 1 acre or more.***
  - ***The hens are quiet and should not disturb any neighbors. There are NO ROOSTERS.***
  - ***The coop/run will be at least 50' away from all property lines.***
  - ***The coop/run is cleaned weekly to maintain a clean environment.***
- (3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and
- ***The hens are quiet and should not disturb the neighbors.***
  - ***The coop/run will be at least 50' away from all property lines.***
  - ***The coop/run is cleaned weekly to maintain a clean environment.***
  - ***The coop is opened approximately at 7 am and closed at dusk.***
  - ***No employees are associated with the proposed use.***

- ***No equipment is associated with the proposed use.***

- (4) Parking areas will comply with the off street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

- ***The property is a private residence and as such no further parking is required.***

- (5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

- ***Highboro Drive is adequate to serve for the intended use.***

- (C) In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in §§ 1-19-8.320 through 1-19-8.355 of this Code.

- ***Applicant understands this.***

- (D) A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under this chapter and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of this chapter and may be grounds for termination of the special exception.

- ***Applicant understands this.***

- (E) The Board of Appeals shall not grant a special exception unless and until:

- (1) A written application for a special exception is submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested; and

- ***Applicant understands this.***

- (2) A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

- ***Applicant understands this.***

- (F) The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.

- *Applicant understands this.*

- (G) No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.

- *Applicant understands this.*

- (H) If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.

- *Applicant understands this*

- (I) A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

- *Applicant understands this.*

#### **§ 1-19-8.325. LIMITED AGRICULTURAL ACTIVITY IN THE RESIDENTIAL DISTRICTS.**

A limited agricultural activity shall be permitted in the residential districts where the following provisions are met:

- (A) The keeping of farm animals in conjunction with a single family residence, on lots less than 3 acres, shall be permitted in residential districts provided that no pens, stalls, or runs will be located closer than 50 feet of any lot line (see also § 1-19-8.240).

- *The coop/ run will be located at least 50' away from all property lines.*

- (B) All criteria in § 1-19-3.210 and all other provisions of this chapter shall be met.

- *We have studied the codes and zoning ordinances and this proposal meets the minimum requirements of a limited agricultural activity special exception.*

(C) The limited agricultural activity shall not cause any odor, dust, smoke, vibration or unreasonable noise which can be detected at or beyond the property line.

- *The coop/ run will be located 50' from all property lines.*
- *The hens will not raise dust beyond coop/run and are quiet. The coop is cleaned weekly.*
- *Operations consist of feeding, cleaning, and activity during daylight hours only. The coop is opened around 7 am and closed night.*
- *Feeding/watering is done as needed.*
- *No employees are associated with the proposed use.*
- *No equipment is associated with the proposed use.*

**Action Required:**

Staff requests that the Board review the general and specific criteria for Special Exception under Section 1-19-3.210 (*Special Exceptions*) and Section 1-19-8.325 (*Ltd Ag Activity in the Residential Districts*) and render a decision on the applicant's requests.



## Site Maps:





