

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, January 13, 2005**

Present: George Allan Hayden, Chairman  
Greg Callaway, Vice Chair  
Ronald C. Delahay, Member  
Michael Hewitt, Member  
Wayne Miedzinski, Member  
John B. Norris, III, County Attorney  
Denis Canavan, Director, Department of Land Use & Growth  
Management  
Yvonne Chaillet, Planner III, LUGM  
April Bahner, Critical Area Plans Reviewer, LUGM  
Sharon Sharrer, LUGM Recording Secretary

Present as an observer was the Board's 2<sup>nd</sup> Alternate, Walter Gillette. A sign-in sheet is on file in the Department of Land Use & Growth Management (LUGM). All participants in all cases were sworn in. Mr. Hayden called the meeting to order at 6:30 p.m.

Mr. Hayden welcomed Wayne Miedzinski, previous Board of Appeals 2<sup>nd</sup> Alternate, as a permanent Board member and Walter Gillette as a new Alternate to the Board.

**PUBLIC HEARING**

**CUAP #87-1824 – BIG FOOT HUNT CLUB, INC.**

The applicant is requesting amendment to an approved Conditional Use pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01). The property contains 21.1 acres, is zoned Rural Preservation District (RPD), and is located at 24450 Pincushion Road in Loveville, Maryland; Tax Map 24, Block 18, Parcel 173.

Owner: Big Foot Hunt Club, Inc.  
Present: Joe Mitchell, representing Big Foot Hunt Club, Inc.

Mr. Hayden explained that a noise complaint has been received, and that the Maryland Department of the Environment (MDE) has been contacted to look into the complaint. He explained that he felt that this information was important for the Board to have prior to making a decision in this case.

Mr. Mitchell explained that he had spoken to MDE regarding the noise complaint. He thinks that there is a slight misunderstanding, on the part of MDE, on a number of issues. He said that his understanding of the conversation with MDE was that if they thought this was a valid complaint, they would do some investigation and report back. If worse came to worse, MDE would write a letter to the offender indicating that he failed to comply and would then work with the offender to try to mitigate the issue. He explained that this would have nothing to do with the local Board approving, or denying, the Applicant's requests. Mr. Mitchell explained that St. Mary's County does not have a local noise ordinance in the RPD. He explained that the Applicant will not object to a continuance of the hearing until this issue is resolved.

**Mr. Hewitt moved that the Board continue the hearing until February 10, 2005 at 6:30 p.m. in Room 14 of the Governmental Center in Leonardtown to allow time for MDE to look into the excessive noise complaint which was received. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #04-1551 – HOSTERLER**

The applicant is requesting a variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation and a variance from Section 71.7.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb slopes of 15% or greater to construct a single-family dwelling and appurtenances in the Critical Area. The property contains .23 acres, is zoned Residential Neighborhood Conservation (RNC) Limited Development Area (LDA) Overlay District, and is located on Skyview Drive approximately 800 feet from its intersection with Jones Wharf Road in Hollywood, Maryland; Tax Map 20B, Lot 10 of Block G in Hollywood Shores Subdivision.

Owner: Dorothy Hosterler  
Present: James Glenn Elrod, Jr., contract purchaser on property and the Applicant  
Barrett Vukmer, land surveyor, Chesapeake Trails Surveying, LLC

Ms. Chaillet explained that this case was continued from the Board of Appeals' November 18, 2004 meeting to allow time for the Critical Area Commission (CAC) to address the variance request for disturbance of steep slopes. She explained that CAC does not have a problem with the steep slopes. The staff report was heard and accepted at the previous hearing, and the hearing was opened to the public at that time.

Mr. Norris explained that Mr. Miedzinski did attend the hearing on November 18, 2004, and is eligible to vote in this case.

Mr. Delahay reminded the Board that this case was one which had caused Board members to have concerns about erosion on the steep slopes during their previous hearing on the case. Board members expressed a desire to have super silt fencing installed, where needed, as a requirement for the approval of the variance request.

**Mr. Callaway moved that having accepted the staff report, and having made a finding that the standards for variance in the Critical Area and the objectives of Section 71.7.3 and Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board of Appeals grant the variance to clear in excess of 30% of the existing vegetation and the variance to disturb slopes of 15% or greater with the recommended conditions to adhere to the Planting Agreement and to install super silt fencing, where needed. The motion was seconded by Mr. Hewitt and passed by a 5-0 vote.**

**VAAP #04-0213 – ADAMS**

The applicant is requesting reconsideration of the Board of Appeals' November 18, 2004 denial of the request for a variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation and a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to construct a single-family dwelling and appurtenances in the Critical Area Buffer. The property contains 21,763 square feet, is zoned Residential Neighborhood Conservation (RNC) Limited Development Area (LDA) Overlay District, and is located in Section 2 of Golden Beach Subdivision on Duke Road in Mechanicsville, Maryland; Tax Map 6, Block 2, Parcel 56, Lot 498.

Owner: R.J. Adams Construction

Present: Chris Longmore, of Dugan, McKissick, Wood, and Longmore

This case was heard at the Board of Appeals meeting on November 18, 2004. At that time the Board voted to deny the applicant's request. The applicant is now requesting reconsideration of the Board's decision for denial of the variances.

Mr. Norris explained that the Board could accept a motion for reconsideration of the Board's previous decision on this variance request. If there is a motion for reconsideration, pursuant to Section 18 of the St. Mary's County Board of Appeals Rules of Procedures, the case will need to be advertised, and adjoining property owners notified of the hearing. He explained that it is possible that the hearing could be scheduled for the February Board of Appeals meeting, if advertising deadlines permit.

Mr. Longmore, on behalf of the Applicant, explained that they had submitted the written request for reconsideration within the required time period. He said that the Board's decision to deny the request for variance was based on a report from the Critical Area Commission (CAC), which the Applicant had not seen prior to the hearing. Mr. Longmore explained that the Applicant had not seen the recommendation of CAC to change the dimensions of the proposed single family home from a 24 x 24 foot home to a 20 x 30 foot home until after the hearing was closed to public comment. He explained that Mr. Adams did not have the opportunity to speak about this recommendation at that time. Mr. Longmore said that the Applicant has been working since he found out about the CAC recommendation, and is now able to address any concerns that the Board may have. He explained that the Applicant is requesting reconsideration in light of the fact that they had not received this information prior to the last meeting.

Ray Hastings, of Holly Drive in Mechanicsville, asked to be allowed to speak before the Board made a decision on the request for reconsideration. Mr. Norris explained that there was no reason not to allow Mr. Hastings to make a comment, but that anything said would not be part of the record for any decision on a possible future hearing. Mr. Hastings said that the entire lot is in the Critical Area buffer. He said that the Board of Zoning Appeals rules state that the decision of the Board of Appeals is final unless it can be proved that there was a mistake of fact or law, or to correct a clerical error. He continued that the rules say that the Board shall not re-hear a matter unless evidence is submitted which could not reasonably have been presented at the original hearing, unless some mistake or misrepresentation was made at the original hearing. He explained that he felt it was the responsibility of the builder to minimize the environmental impact of the proposed construction and the builder should have checked the file for any information available. Mr. Hastings asked that the Board deny this request for reconsideration.

Mr. Hewitt asked if Mr. Hastings was an adjoining property owner. Mr. Hastings replied that he was not; he was simply a concerned citizen with an interest in the environmental impact of development. Mr. Hewitt said that he felt that Mr. Adams was not opposed to reconfiguring the house, and that the reason Mr. Adams had not discussed changing the dimensions of the house to minimize the environmental impact was that he had not seen the report recommending that change prior to the hearing.

**Mr. Hewitt moved that the decision for denial on the variance request be reconsidered. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #03-0830 – MARSHALL LUDLOW**

The applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to construct a replacement single-family dwelling and appurtenances in the Critical Area Buffer and a variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation. The property contains 2.2 acres, is zoned Rural

Preservation District (RPD) Limited Development Area (LDA) Overlay District, and is located at the end of St. Jerome's Neck Road in Dameron, Maryland; Tax Map 46, Block 8, Parcel 14.

Owner: Marshall Ludlow  
Present: Jerry Soderberg, of DH Steffens Company

A hearing of this case began at the Board of Appeals meeting on November 18, 2004. At that hearing, the Board granted a continuance of the case until their January 2005 meeting to allow time for the applicant to amend his variance application, and to have the amended application reviewed. Staff has requested that the Board grant a further continuance on this case since the revised plans were not submitted by the applicant until December 21, 2005 and staff has not yet received comments on the revised plans from the Critical Area Commission. Mr. Soderberg explained that the Applicant concurs with staff's request for a continuance.

**Mr. Callaway moved that the Board continue the hearing until February 10, 2005 at 6:30 p.m. in Room 14 of the Governmental Center in Leonardtown to allow time for the Critical Area Commission to provide comments on the revised application. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.**

**CUAP #04-131-044 – DYNARD ELEMENTARY SCHOOL**

The applicant is requesting Conditional Use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to construct a classroom addition. The property contains 14.93 acres, is zoned Rural Preservation District (RPD), and is located at 23510 Bushwood Road in Bushwood, Maryland; Tax Map 30, Block 11, Parcel 81.

Owner: St. Mary's County Board of Education  
Present: Billy Mehaffey, of Mehaffey & Associates  
Brian Stills, representing Facilities Construction

The property was posted, and legal advertisements were published on 12/29/04 and 1/5/05. Receipts of Certified mailings were presented to staff.

Mr. Mehaffey explained that he was representing St. Mary's County Public Schools, and that Mr. Stills was representing Facilities Construction. He explained that schools are a Conditional Use in the RPD.

Ms. Chaillet explained that the school was originally constructed in 1963-1964 and that the classroom addition is now necessary due to a mandate by the State of Maryland for all-day kindergarten by the 2007-2008 school year.

Mr. Hewitt moved that the staff report be accepted. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

Mr. Hayden opened the hearing to the public. The public hearing closed with no comments.

**Mr. Miedzinski moved that having accepted the staff report, dated January 5, 2005, and having made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board of Appeals grant Conditional Use approval to construct a single classroom addition to Dynard Elementary School, as requested. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**CUAP #02-130-029 – MCINTOSH PIT – EXTRACTIVE INDUSTRY**

The applicant is requesting amendment to an approved Conditional Use pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to modify the size of the area approved for Extractive Industry. The property contains 95.34 acres, is zoned Rural Preservation District (RPD), and is located on the west side of Burnt Mill Road approximately two miles north of its intersection with McIntosh Road; Tax Map 25, Block 16, Parcel 249.

Owner: Raymond Woodburn  
Present: Butch Bailey, of Nokleby Surveying, Inc.

Receipts of Certified mailings were given to staff prior to the hearing. The property was posted, and legal advertisements were published on 12/29/04 and 1/5/05.

Mr. Bailey explained that Mr. Woodburn received Conditional Use approval for a 95 acre mining operation on his property in 2003. Since that time, due to failing health, Mr. Woodburn has decided that he is getting out of the construction business. He would also like to get rid of the mining operation. Mr. Bailey explained that Mr. Woodburn would like to maintain 15 acres of his property, so he can leave this property to his grandchildren. He would like to sell the remaining 80 acres. Approval of the request to reduce the existing approved use from 95 acres to 80 acres would allow Mr. Woodburn to retain a portion of the property when he sells the mining operation.

Board members asked about the condition of the road, and the new location of the entrance to the mine. Mr. Bailey explained that the road must be tarred and chipped, and maintained per the conditions of the original Conditional Use approval. He said that the new entrance to the pit is shown as a 50 foot right of way, across the 15 acres Mr. Woodburn will retain, on the plans submitted for approval.

Mr. Hayden opened the hearing to the public. The public hearing closed with no comment.

Ms. Chaillet explained that all of the conditions of the original approval will remain the same. Nothing about the mining operation itself will change.

**Mr. Hewitt moved that having accepted the staff report, dated January 5, 2005, and having made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant the Applicant's request to amend the approved conditional use and reduce the area approved for Extractive Industry of the parcel from 95 acres to 80 acres, as designated in the application. The following conditions, established with conditional use approval on July 10, 2003, shall remain in effect:**

1. The subject mining operation shall be carried out in accordance with all federal, state, and local regulations that are in effect as of the date of this approval. Where the Board of Appeals' conditions are more restrictive than federal or state requirements, the Board of Appeals' conditions shall apply.
2. This conditional use approval shall expire five years from the date of the Board of Appeals Order approving the subject application, July 10, 2003.
3. Applicant shall limit the number of truckloads to fifteen (15) truckloads per day during peak operational periods.
4. Hours of operation shall be from 7:00 a.m. to 5:00 p.m. Monday through Friday and from 7:00 a.m. to 12:00 p.m. on Saturdays. The proposed conditional use shall not operate on standard holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).

5. There shall be no burning on site except for wood products derived from site clearing and grubbing areas from the site.
6. There shall be no structures or processing on the site.
7. No topsoil shall be removed from the site. All topsoil shall be used on site for reclamation purposes.
8. Only materials extracted on site shall be stockpiled on site.
9. The site shall be stabilized and seeded within six months following cessation of operations in accordance with final Soil Conservation District and Maryland Department of the Environment approvals.
10. The property shall not be used as a salvage yard or landfill operation. No concrete, asphalt, or other debris shall be stored on the site.
11. The mining area shall be posted and an entry gate installed at the entrance of the site, which shall be locked during all non-working hours of mining operations. "No Trespassing" signs shall be erected at the gate.
12. The applicant shall abide by the extractive industry standards contained in Section 51.3.79 of the St. Mary's County Zoning Ordinance.
13. Signs shall be erected at the entrance to the mining operation off Burnt Mill Road, to the satisfaction of the Department of Public Works and Transportation, to alert traffic that there are trucks entering and exiting the property.
14. All of the conditions approved in this application shall be listed on the site plan submitted for approval.
15. The Board of Appeals shall approve any additions, changes, or modifications of the approved conditional use on this site.

The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

#### **ACTIONS TAKEN BY PLANNING DIRECTOR ON VARIANCE APPLICATIONS RECEIVED FOR ADMINISTRATIVE REVIEW**

**VAAP #04-1859 – Mark & Phyllis Minik** – 0.93 acre – Variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to construct a single-family dwelling in the expanded Critical Area Buffer and variance from Section 71.7.3 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to disturb slopes greater than 15%. **Variance approved with conditions.**

**VAAP #02-131-018 – Maryland Bank & Trust of Callaway** – 1.45 acres – Variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to reduce the required 50-foot front yard setback to 30-feet. **Variance approved.**

#### **ELECTION OF OFFICERS**

George Allan Hayden was elected Chairperson and Greg Callaway was elected Vice Chair.

#### **RETREAT DATE**

Board members requested that staff schedule a retreat for 9:00 – 3:00 on either Friday, March 11, 2005 or Friday, March 18, 2005, if possible. Staff will make the arrangements and notify Board members of the final details. Mr. Norris explained that the final details for the retreat will be posted at the Governmental Center and at the Department of Land Use and Growth Management.

## **MINUTES AND ORDERS APPROVED**

The minutes of December 7, 2004 and December 8, 2004 were approved as recorded.

## **ADJOURNMENT**

The meeting was adjourned at 7:20 p.m.

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Sharon J. Sharrer  
Recording Secretary

Approved in open session: February  
10, 2005

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George Allan Hayden  
Chairperson