

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, February 9, 2006**

Present: George Allan Hayden, Chairperson
 Greg Callaway, Vice Chair
 Ronald Delahay, Member
 Gertrude V. Scriber, Member
 Wayne Miedzinski, Member
 Heidi Dudderar, Deputy County Attorney
 Denis Canavan, Director, Department of Land Use &
 Growth Management
 Yvonne Chaillet, Planner, Zoning Administration
 Keona Courtney, LUGM Recording Secretary

The Board of Appeals' 2nd Alternate, Brian Werring, was present in the audience. A sign-in sheet is on file in the Department of Land Use & Growth Management (LUGM). All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARING

VAAP #05-2761 - WINDSOR

The applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add impervious surface in the expanded Critical Area Buffer to construct a replacement dwelling and appurtenances. The property contains 0.51 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 16431 Thomas Road in Piney Point, Maryland; Tax Map 69, Block 8, Parcel 68.

Owner: Brenda Windsor
Present: Denise Cherington, 3D Construction

All cases being heard at this meeting were advertised in *St. Mary's Today* on January 22, 2006 and January 29, 2006 and *The Enterprise* on January 25, 2006 and February 1, 2006. The properties were posted and certified mail receipts were submitted to staff for the files.

Ms. Cherington explained that the property overlooks the Potomac River but does not border it. She explained that the applicant is proposing to remove the existing impervious surface on the property that lies within the 100 foot Buffer to construct the proposed two story house. The house will be built above the flood plain and the garage will be located underneath it. Mr. Hayden asked Ms.

Cherington how the house will be elevated. Ms. Cherington replied that the house will have a concrete foundation.

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

The Chair opened and closed the hearing to public comment. There were no comments from the public.

Mr. Callaway moved that having accepted the staff report and having found that the standards for variance in the Critical Area and the objectives of Section of 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the variance to add new impervious surface in the expanded Critical Area Buffer with the recommended condition to adhere to the Critical Area Planting Agreement. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

VAAP #05-3121 - HUTCHINSON

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 percent of the existing vegetation to construct a single-family dwelling and appurtenances. The property contains 20,000 square feet; is zoned Residential Neighborhood Conservation (RNC), Limited Development Area (LDA) Overlay; and is located at 24204 North Patuxent Beach Road in California, Maryland; Tax Map 35, Block 8, Parcel 3.

Owner: Sheryl Hutchinson
Present: Bill Higgs, Little Silences Rest, Inc.

Mr. Higgs explained that the property was formerly two lots in the Leverings Subdivision prior to the adoption of the Maryland Critical Area regulations, and that the two lots were recently combined and recorded as one. He explained that the septic system is located in the front of the property, which is clear. The applicant is proposing to construct the house at the back of the property, which is wooded. Mr. Higgs explained that the applicant will need to clear more than 30 percent of the trees in order to be able to construct the house. He also mentioned that there is a 54 inch oak tree that was preserved on the property. The Board agreed that it was a good measure to preserve the oak tree. Mr. Miedzinski asked if the house will be two stories and Mr. Higgs replied that it would.

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

The hearing was opened and closed to public comment. There were no comments from the public.

Ms. Scriber 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 72.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the variance to develop in the Critical Area to clear in excess of 30 percent of the existing woodland subject to the Applicant adhering to the Critical Area Planting Agreement. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

VAAP #05-2540 - WITTENBERG

The applicant is requesting an after-the-fact variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer, variance from Section 71.5.2 of the St. Mary's County Comprehensive Zoning Ordinance to disturb non-tidal wetlands and hydric soils to construct a mound system, and variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer with an addition to a single-family dwelling. The property contains 12.77 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 40330 Old Breton Beach Road in Leonardtown, Maryland; Tax Map 48, Block 19, Parcel 148.

Owner: Dan and Janet Wittenberg

Ms. Chaillet explained that the applicant is proposing to add a second story addition to the house which will include a wrap-around deck, and that the top overhang of the new roof will create more impervious surface.

Mr. Wittenberg explained that the request for an after-the-fact variance is necessary because his contractor constructed the septic system without the proper permits. He explained that the Health Department required that the septic system be a mound system, and advised him as to where it should be placed on the property and what trees needed to be removed in order to construct it. Mr. Wittenberg explained that, even though the proper variances and approvals were not obtained before constructing the mound system, the current location of the system is the only place it can be located on the property. He said that he has since received approval from the Maryland Department of the Environment (MDE) and the Army Corps of Engineers. He explained that he plans to use the existing cinder block structure of the house to support the second floor

Mr. Miedzinski and Mr. Hayden expressed concern about the standing water in the road and in the wooded area of the property. Mr. Wittenberg explained that the land near the house stays dry, and that the house will be eight

feet high above the cinder block foundation. Mr. Hayden stated that the Board may want to consider a condition that would require elevation of the house. Ms. Chaillet explained that the property is in a flood plain, and that the living space has to be elevated. She explained that Mr. Wittenberg's intent to use the second story as living space and the first story as storage space is acceptable. She stated that a building code official will work with Mr. Wittenberg on his living space plans.

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

The Chair opened and closed the hearing to public comment. There were no comments from the public.

Mr. Hayden explained that it would not be advantageous to move the existing mound system, and that the variance to add impervious surface on the property seems minor. He reiterated that he would like the Board to add a condition that would require the first story of the house to be used as storage space only, and not as living space. The Board agreed to the condition.

Ms. Scriber 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 71.8.3 and Section 71.5.2 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the variances to construct a mound septic system in the Critical Area Buffer, and the variance from Section 71.8.3 to add new impervious surface in the Critical Area Buffer with the conditions that the Applicant adhere to the Critical Area Planting Agreement to mitigate at a ratio of 3:1 per square foot of the variances granted and that the first floor of the home be used as storage space only and not as living space. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

NEW BUSINESS

ORDER OF THE COURT FOR GOLLAHON DECISION

The Board received copies of the Order of the Court for the Gollahon Decision prior to this meeting. Mr. Hayden asked Ms. Dudderar what the Board needs to look for, and what the next step will be. Ms. Dudderar explained that the appeal time has not started yet, but that either party can appeal the Order to the Court of Special Appeals during the next week. She explained that in the meantime the Circuit Court for St. Mary's County has remanded the case back to the Board. The Order conveys that the Board can choose whether or not to hold additional hearings but that the Board must follow the standards set forth in the Order and create a new Order. Ms. Dudderar said that the Board's next step

should be to wait until the appeal time runs and then consult with their legal counsel and with staff as to how to proceed. Mr. Hayden asked if the Board should consult with their legal counsel in an open meeting. Ms. Dudderar explained that the Board is subject to the County's Open Meetings Act and has the ability to go into an executive session to discuss litigation. She explained that the discussion could be conducted in an executive session. Mr. Hayden asked about the procedure for holding an executive session. Ms. Dudderar explained that the Board would hold an open session first, read the comments aloud, and then proceed with the executive session. Mr. Miedzinski asked whether or not the case could be heard at a regularly scheduled meeting along with other cases. Ms. Dudderar agreed that it could be heard at a regularly scheduled meeting. Mr. Canavan stated that the case will be heard at the next meeting with legal counsel present. He suggested that the Board conduct the meeting as an open session, allowing enough time to go into the executive session, and then to go back into the open session. Ms. Chaillet explained that the Board could hear all cases first, while in open session, and then go into the executive session. The Board agreed to the recommendations. Ms. Dudderar explained that if either party appeals the case, then the Board would not have to take any action until further notice.

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

VAAP #05-2812 – Kraugh – 1.05 acres – The applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer to construct an elevator and ramp to an existing house. **Variance approved with conditions.**

VAAP #05-3140 – Liebler – 11, 365 square feet – The applicant is requesting variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the front yard setback. **Variance Denied.**

MINUTES AND ORDERS APPROVED

The minutes of December 8, 2005 were approved as recorded.

The Board authorized the Chairman to review and sign the following orders:

VAAP #05-3007 - Simon
VAAP #05-3181 – Erb

ADJOURNMENT

The meeting was adjourned at 7:12 p.m.

Keona L. Courtney
Recording Secretary

Approved in open session: March
9, 2006

George Allan Hayden
Chairman