

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, March 8, 2007**

Members present were George Allan Hayden, Chair; Greg Callaway, Vice Chair; Ronald Delahay; Wayne Miedzinski; and Gertrude Scriber. Department of Land Use and Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; Susan Mahoney, Planning Technician; and Amanda Sivak, Recording Secretary. George Edmonds, Board of Appeals First Alternate; Christy Holt Chesser, County Attorney was also present.

A sign-in sheet is on file at LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARINGS

**VAAP #06-1618 - Walker
(Continued from November 30, 2006)**

The Applicant is requesting a variance from Section 72.3 of the 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 14,900 square feet; is zoned Residential Neighborhood Conservation District (RNC), Limited Development Area Overlay District (LDA); and is located at 40225 Waterview Drive, Mechanicsville, Maryland; Tax Map 5A, Block 10 Parcel 1.

Owner: Douglas Walker
Present: Bill Higgs, Little Silences Rest, Inc.; and Joe Boling, Builder; Joan Walker, Owner

This case was advertised in the *St. Mary's Today* on 11/12/06 and 11/19/06. The property was posted and certified mail receipts were submitted to staff for the files.

Mr. Higgs explained the lot is a grandfathered lot in Golden Beach and is 14,900 square feet. The septic system is a mound septic system and will be adding 3,485 square feet of impervious surface. The builder needs to exceed 30 percent clearing to build the house and install the well and mound septic system. Mr. Miedzinski questioned how much clearing had actually taken place on the property the last time Mr. Higgs visited the property. Mr. Higgs explained the clearing that has been done is still within the regulations. Ms. Chaillet confirmed this.

Ms. Chaillet explained the development includes the house, mound system, and driveway is well within the limits of impervious surface for this size lot. The property is constrained by its small size and more than half forested. Mr. Hayden asked if a fine was imposed on this property after the stop work order was issued. Ms. Chaillet explained she was not sure if one was issue. Mr. Hayden asked if there is a set procedure for fines. Mr. Canavan explained there wasn't a set procedure. The fines vary from case to case.

Mr. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair opened the hearing to public comment. The hearing closed with no comments

Mr. Callaway asked Ms. Walker what it has cost them in time for the delays. Ms. Walker explained financially it hadn't cost them much but in time, the home was to be completed in November. Mr. Callaway asked Mr. Boling if he understood why the Board is having the hearing.

Mr. Boling explained he understood the reasons and that the fines were to be levied against him and not the Walkers.

Mr. Miedzinski moved that having accepted the staff report, dated March 2, 2007, 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 grant approval of the variance to clear in excess of 30 percent of the existing woodland be approved with the recommended condition to adhere to the Critical Area Planting Agreement. The motion was seconded by Mr. Callaway and passed by a 4-1 with Mr. Hayden objecting.

CUAP #07-0127 - Chopticon High School

The Applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance to construct a concession building. The property contains 65.87 acres; is zoned Rural Preservation District (RPD); and is located at 25390 Colton Point Road, Clements, Maryland ; Tax Map 18, Block 24, Parcel 112.

Owner: St. Mary's County Public Schools
Present: Jackie Raley Meiser, P.C., Attorney for the Applicant; Kim Howe, Board of Education; Daryal Barklow; Nancy Bottorf

All remaining cases heard tonight were advertised in the *St. Mary's Today* on 2/18/07 and 2/25/07 and in the *Enterprise* on 2/21/07 and 2/28/07. The properties were posted and certified mail receipts were submitted to staff for the files.

Ms. Meiser explained the applicant is requesting a variance of the existing conditional use. The variance is for a concession stand to service the soccer and baseball fields on the left side of the school. An existing shed is on the site, but it is an unsecured portable shed. The new concession stand will have a kitchen area and windows, men's and women's restrooms and a secured storage area. There will be no impacts or additional traffic to the community. The building is merely to serve existing school functions. Mr. Hayden asked where the septic was for this building and if it accessible for fire and rescue. Ms. Meiser explained the building will tie into the existing sewer and well and the fire and rescue access is just past the ball field fence. Mr. Miedzinski asked if the existing gravel path would be improved. Mr. Barklow explained the gravel path is an old construction entrance that will be allowed to grow over to preserve the field area. Mr. Miedzinski questioned how utilities will be provided to the building. Mr. Barklow explained it would hook into the back of the school along with the water and sewer.

Ms. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair opened the hearing to public testimony.

Ms. Bottorf explained they are requesting the concession facility, that has taken 10 years to put together, to better serve the players and spectators that come to see the games at the High School. Players from home and visitors, have to be sent through the busy parking lot and into the school often without adult supervision to use the restrooms. There are no restroom facilities for grandparents and the handicapped. There is limited secured storage, limited areas to sell snacks, usually the small shed or parents vehicles, and there is no place to have the players go during inclement weather.

The Chairman closed the hearing to public testimony.

Mr. Callaway moved that having accepted the staff report, dated February 28, 2007, and having made a finding that the Standards for a conditional use pursuant to Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant approval for a modification to the approved conditional use to construct a concession building. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

VAAP #06-3086 – Kaper

The Applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to construct an addition to a single family dwelling in the expanded Critical Area Buffer. The property contains 1.65 acres; is zoned Residential Neighborhood Conservation (RNC) and Resource Conservation Area (RCA) overlay districts; and is located at 29798 Hiawatha Circle, Mechanicsville, Maryland; Tax Map 2, Block 23, Parcel 97.

Owner: Robert Kaper

Mr. Kaper explained he wants to build an addition on his home for his parents. It would be the same level as his existing house. The extension would open up in to the existing house so that his parents can easily move through the home. Mr. Miedzinski questioned if the elevation will stay the same as the house. Mr. Kaper explained it would match floor for floor. Mr. Miedzinski questioned if the stakes were placed correctly because the outline does not look connected to the house and what is the proximity of the existing septic tank to the addition. Mr. Kaper explained the house would be continuous into the new expansion. Mr. Kaper explained his septic is approved, but the addition may be too close to the tank. Mr. Hayden explained there is a minimum required set-back that the tank must be away from the foundation. Mr. Kaper question what the required set-back is. Mr. Hayden stated he wasn't sure, but at least 10 feet. Ms. Chesser asked Ms. Chaillet if the foundation is too close to the septic, will the building inspectors require the owners to change it. Ms. Chaillet explained the issue will be resolved before the permit is issued.

The applicant will have 8% of impervious surface on the property following construction. The property is in a flood zone; however, the property is on steep slopes, so the flood zone is at the lower end of the property. The critical area variance is expanded for steep slopes and highly erodible soils, which is why the variance is needed. The applicant will be clearing 4400 square feet or 6% of the existing vegetation. The applicant is to adhere to the proposed Planting Agreement.

Mr. Hayden explained the Critical Area Commission did not oppose this variance; however, they have a few recommendations for the property. One is the Planting Agreement and the other is that the applicant reduces the area of disturbance. Mr. Kaper explained he was unsure of how staff came up with 4400 square feet of clearing. Ms. Chaillet explained they take the square footage of the actual vegetation that is disturbed and the limits of disturbance. The eleven trees in the buffer that are to be removed is how the area is calculated. Mr. Hayden is concerned about the runoff from the construction site. Mr. Miedzinski suggested a drywell. Mr. Hayden was in support of that idea. Mr. Kaper explained he would do what is required. Ms. Chaillet explained they could make that a condition of approval that staff can consult with Soil Conservation and the Department of Public Works to research what would be best to prevent stormwater runoff on a property of this nature.

Ms. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair opened the hearing to public comment. The hearing closed with no comments

Ms. Scriber moved that having accepted the staff report, dated February 26, 2007, and having made a finding that the standards for variance in the Critical Area and the objectives of Section 71.8.3 in the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant approval of the variance to add new impervious service in the expanded Critical Area Buffer to construct an addition to a single family dwelling with the recommended condition to adhere to the Critical Area Planting Agreement and also that staff works with DPW, Soil Conservation, and the Applicant as to appropriate measures to control Stormwater runoff from the addition. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

VAAP #05-2671 - Lewis

The Applicant is requesting an After-the-Fact variance from Section 71.8.3 of the St. Mary's Comprehensive Zoning Ordinance to increase the impervious surface in the Critical Area Buffer. The property contains 30,673 square feet per plat; is zoned Rural Preservation District (RPD) Limited Development Area (LDA) Overlay ; and is located at 17809 River Shore Drive, Tall Timbers, Maryland; Tax Map 65, Block 03, Parcel 228.

Owner: Charles C. Lewis, Sr.
Present: Joseph Mitchell P.C. Attorney for the applicant, Charles C. Lewis, Sr.;
Charlene Lewis.

The applicant is seeking an after-the-fact variance. The Lewis' purchased the property in 2005 to build a home for retirement. Mr. Lewis planned to hire a competent builder to build his house while he supervised in abstention only coming down one or two days a week. Mr. Lewis applied for a building permit to replace the existing house that was built in 1965 with a new house using the existing foot print. He then modified his permit to add a garage and parking area outside the 100 foot buffer. The site plan was revised to show the garage and parking area to be built outside the buffer. He met with the environmental planner and it was approved on October 3, 2005. The site plan was revised again on February 17, 2006 to show a 24 by 36 attached garage. The site plan at this point did not show the new house with the dimensions. On March 29, 2006 the permit was revised again and Mr. Lewis thought he was applying to build a sunroom on the house; a portion would be in the critical area buffer. There was no site plan submitted at that time to show the encroachment into the buffer. Mr. Lewis picked-up the permit and started construction using what was thought to be the approved plan even though there was not an approved site plan on record.

Bob Taylor Engineering was hired to perform soil testing and MDIA had not been contacted for their inspections. The builder had not paid for the MDIA inspections for the house. When Mr. Lewis learned that MDIA was the inspection agency, he paid their fees. After the construction had started, LUGM reviewed the site plan on file and realized the construction did not match the site plan; a stop work order was issued. During this time, Mr. Lewis thought he could improve the drive way and laid bluestone chip down outside the critical area. Mr. Lewis contacted LUGM to inquire what was needed to start working on the home again. Under the suggestion of Ms. Chaillet, they prepared an as-built site plan.

LUGM has indicated that there are two issues on this property. One is the construction in the Buffer and the other is the total impervious surface is more than 15 percent. Mr. Lewis had decided to landscape his property and will do what is required to be in compliance. His original plan was to put a row of trees on the property line to create a hedge row, blocking the garage view from his neighbors. Mr. Mitchell explained Mr. Lewis would like to be able to put in a small flight of stairs on the exit from the sunroom.

Mr. Lewis explained he contracted Victor Thomas and George Matamores to build his home thinking they had the knowledge needed for construction in the area. Mr. Hayden questioned where the contractor was from. Mr. Lewis explained he met them in St. Mary's County, but found out they are from the Prince Georges and Crofton areas. Mr. Mitchell

questioned if the process had been expensive. Mr. Lewis explained it has been expensive since the stop work order was placed and the bank has been calling about the withdrawal schedules that he is not adhering to. Mr. Mitchell questioned how much had been done to the house before the stop work order. Mr. Lewis explained the outside framing and sheathing is finished, but the interior has not been completed. Mr. Mitchell also questioned if there was an existing pier on the property. Mr. Lewis explained there was and he had added sides to it for safety and the pier needs to be repaired from the storm. Mr. Lewis explained this was his first waterfront property and they had discussed remodeling the house, but concluded that it wouldn't have worked. Mr. Mitchell questioned if they had removed any of the existing vegetation on the property. Mr. Lewis explained they did remove some and they are going to be replacing more than what was removed.

Ms. Chaillet explained the property is a grandfathered lot. At the time of purchase, it contained a two story dwelling that was built in 1965. The property is constrained by the critical area buffer and flood plain though the flood plain is in two different zones and the house does not require elevation. The applicant obtained a building permit from the Department of Land Use and Growth management on March 29, 2006 to remove the existing house and construct a two-story house with an attached garage and parking area. The permit application and site plan submitted on August 22, 2005 requested a two-story replacement dwelling only.

The Applicant later met with the Environmental Plan Reviewer at the time to discuss adding a garage and parking area to the proposed house. The Environmental Plan reviewer agreed that a garage and parking area could be added as long as they were built outside the critical area buffer, and the plan was approved by the Environmental Plan Reviewer on October 3, 2005.

The building permit application was then revised on February 17, 2006 to show a 24-foot by 36-foot (864 square feet) attached garage. The application was revised again on March 29, 2006, the date the permit was issued, to show an increase in the square footage of the house. The permit had not been issued prior to March 29, 2006. The Environmental Reviewer gave approval, as well as Soil Conservation and Health Department Approval. It is not uncommon for property owners to revise their permits before they are issued. Each time the applicant revised his permit application it was approved by the permit section but the permit section failed to require a new site plan and have it reviewed by the environmental planner.

A Stop Work Order was posted on September 7, 2006 following an inquiry with the Department of Land Use and Growth Management. Mr. Lewis contacted the LUGM office immediately after receiving the Stop Work Order. He did have a permit and it was posted. The permit was for what he constructed but it did not have the proper environmental reviews. LUGM requested an as-built site plan that was prepared by a professional surveying firm and Soil Conservation asked for an erosion control plan. Soil Conservation approved the erosion control plan. Mr. Mitchell met with Ms. Chaillet, Mr. and Ms. Lewis, and Sue Veith to determine how to reduce the impervious surface on the property. Ms. Chaillet discussed reducing the drive way and parking area and using a material that is approved by the Critical Area Commission.

The Critical Area Commission reviewed the site plan, and proposed reduction of the driveway, parking areas, and new sunroom. The Critical Area Commission is not denying the request, recognizing this is a grandfathered lot and there was an existing older home on the property. Mr. Lewis used the existing footprint and block foundation for the new home. The old patio was enclosed and the 525 square foot sunroom is considered a modest improvement to an existing structure in the critical area buffer. The staff finds the property is constrained by the critical area buffer and any improvements to the property would require a variance. None of the new impervious surface is any closer to the water than the previous house. The variance is for the sunroom in the critical area buffer, in addition the applicant is asking for the Board to approve steps coming from the back door. Staff supports this request. Mr. Lewis would work with the staff to reduce the impervious surface in the driveway.

Mr. Hayden asked if the after-the-fact request is the fault of the applicant. Ms. Chaillet explained that it wasn't. Mr. Miedzinski asked if they were just suggesting replacing the blue chip in front of the garage area and not all of it. Ms. Chaillet explained they are reducing the driveway and replacing with gravel pave. Mr. Miedzinski asked if Mr. Lewis reduces the driveway what size deck or stoop is Mr. Lewis going to be building to access his waterfront. Ms. Chaillet explained they need to discuss that tonight. Mr. Hayden suggested two 4 by 8 foot decks coming from the doors which would be a total of 64 square feet. Mr. Lewis stated he could use those for his doors.

Ms. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair opened the hearing to public comment.

Mr. Author Beauverd explained he has seen violations of the Building Code many times and it concerns him that someone licensed in the construction business can go into a project without the proper permits. It also concerns him that St. Mary's County keeps making exceptions. He sympathizes with the Lewis' but the impervious surface should be kept at the original square footage. Mr. Hayden explained he understands Mr. Beauverd's concerns, but that the staff had said Mr. Lewis is replacing the impervious surface with the proper amount. Mr. Beauverd explained he doesn't understand why after the fact variances always get approved.

Mr. Edward Dowgiallo explained he had several points he would like to make; the first is the large four-car garage that was built too close to the road with no variance, if the size can not be reduced, will others be allowed to do the same. Number two is the two bump outs and the 12 x 36 foot sunroom that was built with apparently no approval. If they are allowed to stand, what will be the cumulative effect on the pollution in the river due to the loss of pervious area and what can be done now at this location and in future county wide. Lastly is that the recent landscaping raised the level of the property and is affecting my property causing water to accumulate when it rains. What can be done to correct this now and avoid repeating this in the future? The cement pad that was placed in the back of the Lewis' garage for a possible heating or cooling unit will need to be sound proof.

Mr. Dowgiallo pulled two comments from Mr. Barney Wheeler's letter the first is the granting of a variance will not confer any special privileges that would be denied to others. Mr. Wheeler writes that if you do grant the variance, it sets a precedent so that you have to allow others to have the same privilege. The second was that the variance is not based upon conditions that are the result of the applicant. Mr. Wheeler's comment is that variances should be hard to get if they are after-the-fact.

Mr. Hayden asked if Mr. Lewis realized that inspections were to be conducted by MDIA and at what point did Mr. Lewis contact MDIA. Mr. Mitchell explained that it was right after the stop work order as the structure is sitting now. Mr. Hayden also asked if there were any footers poured for this structure. Mr. Lewis explained that they were poured for the sunroom only. Mr. Hayden asked if they were inspected by MDIA. Ms. Chaillet explained that Bob Taylor Engineering made the after-the-fact inspections to determine if the foundation could support the structure and all the inspections had passed. Mr. Hayden asked if Mr. Lewis was in compliance with the 15 percent of impervious surface. Ms. Chaillet explained that he was either just at or just below the 15 percent. Mr. Hayden explained the concern raised by Mr. Dowgiallo about the raised landscaping was causing damage to his property. Mr. Dowgiallo explained there is a pile of dirt that is along the property line that Mr. Lewis and he share and there is water accumulating it rains. Mr. Lewis explained the pile of dirt will be removed. Mr. Miedzinski asked about the heat pump and the noise from it, and if there is a way to enclose it. Ms. Chaillet explained that enclosing it would create more impervious surface. Mr. Callaway asked what height the Leyland

Cyprus would be when they are planted. Mr. Lewis explained that they would be 5 to 6 feet high and around the heat pump there would be shrubbery surrounding it to reduce the noise. Mr. Callaway asked how close the Cyprus' would be planed to each other. Mr. Lewis explained Wentworths said the usual is 6 feet but he would prefer 5 feet so they would grow together.

The Chair opened the hearing to public testimony.

Mr. Beauverd explained he did not understand why there needs to be a variance if Ms. Chaillet says he is in compliance. Ms. Chaillet explained there is an extra 525 square feet of impervious surface in the Critical Area Buffer. While Mr. Lewis had the permit for the sunroom, it was not properly reviewed by the environmental planner to determine the additional impervious surface in the buffer to determine if there was a variance needed for it. If the variance was reviewed before construction, staff would have supported the sunroom's construction because it was deemed a reasonable improvement to the footprint of the original house.

The Chairman closed the hearing to public testimony.

Mr. Miedzinski moved that having accepted the staff report, dated March 1, 2007, and having made a finding that the standards for granting a variance in the Critical Area, pursuant to Section 24.4 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant approval of the After-the-fact request to construct a replacement single-family dwelling in the Critical Area Buffer, subject to the following conditions:

1. the applicant shall construct the driveway and parking area with a building material containing a pervious factor of 35 percent or greater as approved by the Maryland Critical Area Commission; and
2. the applicant shall adhere to the Critical Area Planting Agreement which requires mitigation at a ratio of three to one (3:1) per square foot of the variance granted pursuant to Section 24.4.2.b of the Comprehensive Zoning Ordinance; and
3. the Applicant shall construct two 4x8 decks with steps that service the two waterfront doors.

The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of February 22, 2007 were approved as recorded.

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

**VAAP #05-132-046 - Potomac Land Lodge and Restaurant
CUAP #06-132-032 - Kronlund Pit #2
VAPP #06-132-032 - Kronlund Pit #2
CUAP #05-135-001 - Dillow Tower Site
ZAAP #05-3465 - B. Larry and Catherine Jenkins**

ADJOURNMENT

The meeting was adjourned at 8:45 p.m.

Amanda Sivak, Recording Secretary

Approved in open session:

George Allan Hayden
Chairman