

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, May 11, 2006**

Members present were George Allan Hayden, Chair; Greg Callaway, Vice Chair; Ronald Delahay; Gertrude Scriber; and Wayne Miedzinski. Department of Land Use and Growth Management staff present was Denis Canavan, Director; Yvonne Chaillet, Zoning Administration; Sue Veith, Environmental Planner; Susan Mahoney, Planning Specialist; and Keona Courtney, Recording Secretary. George Edmonds, Board of Appeals 1st Alternate was also present. Christy Holt Chesser, County Attorney, and Colin Keohan, Deputy County Attorney, were present.

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

PUBLIC HEARING

VAAP #04-3124 – BLAZER (continued from April 13, 2006)

The Applicant is requesting an after-the-fact 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. The property contains 5.76 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 17630 Shady Maple Road in Drayden, Maryland; Tax Map 66, Block 9, Parcel 30.

Owner: John & Cheryl Blazer
Present: Chris Longmore, Attorney representing the Applicants

The case was advertised in *St. Mary's Today* on 2/19/06 and 2/26/06 and in the *The Enterprise* on 2/22/06 and 3/1/06. The property was posted and certified mail receipts were submitted to staff for the files.

Ms. Chaillet explained that a Planting Agreement is complete for lot #1, the subject of the variance; and mitigation is at a three-to-one (3:1) ratio for clearing in the Critical Area Buffer. Lot #1 has a farm plan and includes farmstead #1. A Planting Agreement is also complete for the farm plan. If farming ceases on any of these properties, then the Applicant must mitigate at a three-to-one (3:1) ratio. The Applicants may also allow the property to revegetate and regenerate after farming ceases, before planting the property. Bonds were posted to cover the Planting Agreements and the Applicants were issued their certificate of use and occupancy today.

Mr. Longmore explained that the Applicants and staff have worked hard to reach a fair resolution for this matter, and that the Applicants are pleased to report that it is finished. Regarding the variance request, he reminded the Board that the Applicants previously requested to withdraw the request and that a denial of the request should include the fact that Planting Agreements have been signed prior to the Board's decision.

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

Mr. Miedzinski moved that having accepted the staff report, dated February 28, 2006, 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 not been met, the Board deny the variance to clear in excess of 30 percent of the existing woodland. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #05-3840 – SWEENEY (continued from April 13, 2006)

The Applicant is requesting a variance from Section 71.9.6.h of the St. Mary's County Comprehensive Zoning Ordinance to reduce the lateral line setback to renovate and add

onto an existing pier. The property contains .41 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 24571 Little Creek Lane in Hollywood, Maryland. Tax Map 27, Block 18, Parcel 888.

Owner: William Sweeney

All remaining cases were advertised in *St. Mary's Today* on 3/26/06 and 4/2/06 and in *The Enterprise* on 3/29/06 and 4/5/06. The properties were posted and certified mail receipts were submitted to staff for the files.

Mr. Sweeney's Exhibit 1: Picture of current pier

Mr. Sweeney explained that he was advised by his engineer that it would be better to move the pier farther out into the water due to the shallowness of the creek. Mr. Sweeney explained that his boat measures approximately 32 feet in length and that he only has moorings as far as 15 feet out in the water. He explained that in order to bring his boat to the pier, he has to drive it down to where the creek narrows and turn around. The creek is even shallower in that area than where the pier is located.

Mr. Miedzinski asked if the moorings will stay in the same location. Mr. Sweeney explained that the two moorings that are located 15 feet out in the water will be removed; the pier will extend out 13 feet and eight inches, and there will be moorings on the left side of the pier. Mr. Miedzinski asked how deep the creek is at low tide. Mr. Sweeney said that the creek normally measures four feet in depth. Mr. Miedzinski asked if the boat lift will be covered. Mr. Sweeney said that the boat lift will not have a roof.

Ms. Chaillet explained that the Applicant received a variance in September 1999 to construct a pier within 25 feet of the lateral line setbacks, with the condition that the pier be limited to 40 feet in length with a five foot by 15 foot "T" end. Staff supports Mr. Sweeney's request to extend the pier due to the circumstances and the fact that the pier will not encroach any further into the lateral line setbacks. Maryland Department of the Environment (MDE) has approved his request for an extension of the pier.

Mr. Hayden asked Ms. Veith to explain the lateral line setbacks. Ms. Veith explained that lateral lines are perpendicular to shorelines and are based on the shape of the properties; the setback is 25 feet on either side of the property line. She said that you can extend as far as the lateral line, and if you go beyond the lateral line a recorded easement agreement is required from the adjacent property owner. She said that the Ordinance does not require the easement agreement if the variance is granted by the Board of Appeals.

Mr. Delahay asked about the rights of a property owner regarding lateral line setbacks and site views, and also stressed that there should be a simpler way to convey this information to the public. Ms. Veith explained that lateral line setbacks are to provide at least 50 feet between piers to allow safe access, and they do not extend more than 25 percent of the width of the water or channel. Lateral line setbacks are not intended to protect site views. Ms. Veith also explained that there are harbor line rights that are governed by the State, and they provide bottom rights and water column rights to property owners.

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

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

Mr. Sweeney explained that his neighbor, Mr. Scott, would prefer for the boat to go on the opposite side of the pier. Mr. Sweeney explained that he is only concerned about the safety of the boat. Mr. Hayden asked Mr. Sweeney if he plans to park the boat so that it faces the

shoreline. Mr. Sweeney explained that he is willing to park it this way, but would prefer to be able to see the back of the boat from his house for safety purposes. Ms. Veith explained that the physical structure of the pier must comply with the Ordinance, and there is nothing prohibiting the Applicant from parking the boat this way. Mr. Hayden asked if Mr. Sweeney can park on the opposite side of the pier. Ms. Veith said that he can park there as long as the structure is within the lateral lines.

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 71.9.6.h of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the variance to encroach into the lateral line setback. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #05-3786 – SPORE (continued from April 13, 2006)

The Applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the expanded Critical Area Buffer to construct a single family dwelling and appurtenances. The property contains 1.33 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 16395 Ball Road in Piney Point, Maryland. Tax Map 69, Block 9, Parcel 222.

Owner: David Allen & Vickey M. Spore
Present: Robin Guyther, Land Use Consultant

Ms. Chaillet's Exhibit 1: Jeff Reed's comments on how to address possible drainage problems

Mr. Guyther explained that the property is classified as non-tidal wetlands and the Applicants received authorization from Maryland Department of the Environment (MDE) to clear up to 5,000 square feet of woodland to construct a house and well. The property will have a private well; however, it has a sewer allocation and will connect to public sewer.

Ms. Chaillet explained that the property is in a flood plain and the living space will have to be elevated one-foot above flood elevation. The footprint of the proposed house and garage is approximately 2,000 square feet. Ms. Poe, an adjoining property owner, is concerned about possible drainage problems if the property is developed because she currently experiences run-off from another property. Jeff Reed, of Department of Public Works and Transportation (DPW&T), reviewed the site plan. Ms. Chaillet explained that Mr. Reed provided recommendations for ways to address possible drainage problems.

Mr. Hayden asked why a culvert is needed on the northeast side of the site. Ms. Chaillet said that she can verify with Mr. Reed why it is needed. Ms. Chaillet explained that the Applicants plan to clear 700 square feet, or 3.7 percent, of the existing woodland to construct the house. Mr. Hayden expressed concern about the land being marsh-like, and about the foundation of the house. Mr. Guyther explained that there is no freestanding water on the property. He said that the house will be elevated approximately six feet, and will have a brick foundation. The bottom of the house is going to be open space, with openings to allow water to flow through.

Mr. Hayden asked if a compaction test is required for the footers of the house. Ms. Veith explained that there are engineered tests that can be performed, and that the Board may want to consider that the house have an engineered foundation for support. Mr. Miedzinski asked how much disturbance the machinery will cause to perform the engineered tests. Ms. Veith explained that fill will be placed on the site, and the amount of disturbance to the land will have to be considered prior to coming onto the site to perform the tests. Mr. Hayden asked if Mr. Reed's

recommendations will satisfy Ms. Poe's concerns. Ms. Chaillet said that her understanding is that Ms. Poe will be satisfied if Mr. Reed's recommendations are implemented.

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

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

Mr. Guyther explained that he and the Applicants want to meet with Mr. Reed to receive a better understanding of his recommendations. He explained that the final site plan is not complete and his recommendations can be incorporated.

Mr. Miedzinski explained that he feels that the request will adversely affect the fifth standard for variance. He said that the site was covered in water after the first ten to twelve feet at the time of his site visit. He added that there is wildlife in the area. Mr. Hayden agreed with Mr. Miedzinski, and noted that conditions should be considered to address run-off and protect the foundation of the house. Ms. Chaillet explained that if Mr. Reed's comments are a condition of approval, the Applicant must return to MDE to make sure that a drainage plan will not interfere with their prior authorization. Mr. Hayden said that he wants to take the proper measures to protect the neighbors.

Ms. Scriber moved that having accepted the staff report and having found that the standards for variance in the Critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the variance to disturb the Critical Area Buffer to construct a single family dwelling with the following conditions: 1) to adhere to the Planting Agreement, 2) to construct an engineered foundation that is adequate to support the dwelling on non-tidal wetlands, and 3) to adhere to the Department of Public Works and Transportation's recommendations to prevent run-off to adjacent properties as follows:

1. **Add a culvert to the north east side of the site**
2. **Provide a drainage analysis verifying the adequacy of the pipe**
3. **Provide a culvert and calculations for a drainage pipe at the driveway**
4. **Detail how the Applicant proposes to address stormwater management for the site to avoid flooding of the parcels to the east of the site**
5. **Show the streams located on the site**

The motion was seconded by Mr. Callaway and passed by a 4-1 vote. Mr. Miedzinski was opposed.

VAAP #05-3752 – ECKER (continued from April 13, 2006)

The Applicant is requesting an after-the-fact variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the Critical Area Buffer to construct a patio. The property contains 26,681 square feet; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 24305 Mariner Lane in Hollywood, Maryland. Tax Map 27, Block 23, Parcel 886.

Owner: Dunlop & Carolyn Ecker
Present: Chris Longmore, Attorney representing the Applicants

Mr. Callaway removed himself due to a conflict of interest.

Applicant's Exhibit A-1: Copy of Deed
Applicant's Exhibit A-2: Real Property Search – Individual Report

Applicant's Exhibit A-3:	Site plan showing proposed flagstone patio and walls laid on crushed stone base, proposed flagstone wall - variable height, and proposed flagstone wall - variable height
Applicant's Exhibit A (4-13):	Photos (3) of back yard area of property, overall view from rear of property, and slope toward patio area of property; Photos (7) of structures within Critical Area on other properties in neighborhood
Applicant's Exhibit A-14:	Letter dated 12/21/05 from Sanitarian to Applicants regarding ZP #05-3752 – HD file #360-04 and septic system
Mr. Pugh's Exhibit 1:	Letter dated 5/8/06 to Board of Appeals regarding Application VAAP #05-3752, Ecker

Mr. Longmore explained that the Applicants moved to the County in October 2005 and did not realize that a variance was required for the patio. The Applicants contacted a contractor to construct the patio and were informed by the contractor that a permit was not required. Mr. Longmore noted that staff from various agencies had been on the property during the construction of the patio, prior to the issuance of the stop work order, and the Applicants were never informed that the patio was in violation of the regulations. He explained that the lower patio is completely installed but the upper, larger patio is not complete due to the stop work order being issued at that time. The property has a steep slope and other topographical features that make it difficult to use and develop. He noted that the Applicants have done several plantings to shore up the property. Mr. Longmore explained that the Applicants received the appropriate approvals from the Health Department for a septic system.

Mr. Longmore explained that the Critical Area Commission does not oppose a variance for a smaller patio on the property. He said the Applicants want to retain the smaller, lower patio that is complete and turn the upper patio area into a grass area. Mr. Hayden asked how much this change will reduce the amount of impervious surface. Mr. Longmore said that he does not know the exact square footage; however, each patio measures less than 500 square feet.

Mr. Longmore addressed the standards for variance, explaining that the lot and the environmental factors make it so that the location of the patios is the most suitable and that there are other properties in the neighborhood that have structures in the Buffer. The neighborhood is an older one, with homes constructed prior to the Critical Area regulations. He explained that erosion has always taken place on the property, and that there are mosquitoes in the back yard due to standing water. The Applicants feel that the variance will help to improve these conditions. Mr. Longmore explained that the Applicants are willing to do plantings to help the erosion and staff is willing to work with them on a Planting Agreement. Loiederman Soltesz Associates, the Applicants' consultant, believe that there are appropriate devices that will help with stormwater management and they are willing to work with staff on a stormwater management plan. Water currently runs off of the property, and they feel that the stormwater management devices will help this issue. Mr. Longmore explained that the proposed patio will not exceed the amount of impervious surface permitted on a lot of this size by Section 41.5.3 of the Ordinance. He said that there is a retaining wall that was already on the property and the Applicants want to reconstruct it and staff does not oppose this.

Mrs. Ecker explained that she and her husband installed two patios while they lived in Montgomery County, and were shocked to find out that they were in violation of the regulations by doing so at their present home. She said that they decided to build a patio because the backyard was swampy and they thought that it would be a way to stabilize the yard and provide entertainment space. She explained that they asked the builder who constructed the patio if a permit was required, and he informed them that one was not required. Ms. Ecker stated that if they had known that a permit was required, then they would have obtained one prior to

constructing the patio. Mr. Hayden asked Ms. Ecker if they knew that their home is located in the Critical Area. Ms. Ecker said that they did not know.

Mr. Ecker explained that he is sensitive to the environment, and is therefore upset that they have violated a law that was intended to protect the environment. He stated that they were misled by the builder, and that they did not intentionally violate the Critical Area regulations. He explained that they are willing to work with staff to resolve any problems. Mr. Hayden asked Mr. Ecker if he deals with land use issues in his work as a lawyer. Mr. Ecker explained that he is a hospital administrator, and does not practice law now.

Ms. Chaillet explained that staff has calculated the lower patio to be 1,000 square feet in size. The Critical Area Commission opposes the request for the lower patio, as initially requested. She explained that staff has been in communication with the Critical Area Commission regarding a smaller patio on the property, and they are not opposed to this. She said that during a recent meeting with the Critical Area Commission, they informed staff that any accessory structure over 500 square feet is excessive in the Critical Area. Ms. Chaillet explained that the Board can consider that the lower patio be reduced to 500 square feet. She said that staff believes that adding impervious surface in the Buffer will not help address run-off, but will create more run-off into the creek because it prevents the land from absorbing water. Ms. Chaillet explained that staff supports a smaller, lower patio; explaining that plantings will be the best solution to prevent erosion of the property. Dry wells and other stormwater management devices may also help address this problem. Staff will work with the consultant on this.

Mr. Hayden asked if the dry wells would be for the house or the patio. Ms. Chaillet explained that they would address run-off from the house. The steep slopes on the property have created a gully, and dry wells may not be the best solution. Ms. Veith viewed the site plan and explained that the lower patio appears to be approximately 400 square feet, and therefore under the 500 square foot impervious surface limit. Mr. Hayden asked about the percent of impervious surface allowed on the property. Ms. Chaillet explained that 5,445 square feet or 20 percent of impervious surface is allowed on this property. Mr. Hayden asked how the Applicants can maintain a patio and comply with this requirement. Ms. Veith explained that by removing the upper patio, the Applicants will reduce the amount of impervious surface by approximately 600 square feet, and their total impervious surface will be less than 5,000 square feet.

Mr. Hayden asked about the slope of the property, and Ms. Chaillet explained that it is greater than 15 percent. Mr. Hayden asked if staff recommends a retaining wall along the slope to help prevent run-off to the creek. Ms. Veith explained that staff recommends plantings with shrubs and smaller plants, since this will be less evasive to the slope of the property.

Mr. Miedzinski moved that the staff report be accepted. The motion was seconded by Ms. Scriber and passed by a 4-0 vote.

The Chair opened the hearing to public comment.

John Pugh, a neighbor, explained that he has lived in the area since 1993 and that he and the Applicants share the same driveway. He feels that the patio helps to slow down the run-off from the property. He explained that he is a member of the Chesapeake Bay Foundation and an advocate of safe environmental practices, and feels that the Applicants have improved the property. Mr. Hayden asked him if he is aware of the Critical Area regulations. Mr. Pugh said that he is aware that his property is in the Critical Area. Mr. Hayden asked him if he is aware that a permit is required to do the type of work that the Applicants had done. Mr. Pugh said that he is aware that a permit is needed. Mr. Hayden asked him if he shared this information with the Applicants. Mr. Pugh said that he did not because he was never asked prior to the work, and that the Applicants had not lived there very long before starting the work.

The Chair closed the hearing to public comment.

Mr. Longmore explained that by adopting the appropriate conditions discussed, this property will be improved. He said that this is not suggesting that other properties in the Critical Area will be improved by adding impervious surface. He explained that he would like the Board to consider the request as amended. Mr. Hayden asked if the consultant indicated any ways to address run-off from the house or the patio. Mr. Longmore explained that the consultant has not done any design work; however, the consultant feels that dry wells or French drains may be appropriate to address the problem.

Ms. Veith explained that if the Board decides to grant the variance for a smaller, lower patio, then they should also include the retaining walls and stairs because they are necessary to negotiate the grade of the land. Ms. Veith looked at Exhibit A-3 and said that she recommends what is shown on the site plan.

Mr. Miedzinski moved that having accepted the staff report and having found that that the standards for variance in the Critical Area and the objectives of Section 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 following conditions: 1) the Applicant shall adhere to the Planting Agreement provided by LUGM, 2) that only the lower patio be maintained with the retaining walls and stairs, and 3) the Applicant shall work with staff and an engineer to design stormwater management and install the approved best management practices. The motion was seconded by Ms. Scriber and passed by a 4-0 vote.

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

VAAP #05-2834 – Carruth – 1.126 acres – The applicant is requesting an after-the-fact variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the Critical Area Buffer to construct a detached garage and parking area. Variance denied.

MINUTES AND ORDERS APPROVED

The minutes of April 13, 2006 were approved as recorded.

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

**CUAP #06-0224 – Banneker Elementary School – as revised
CUAP #06-0222 – Lexington Park Elementary School – as revised
CUAP #06-0223 – Leonardtown Middle School – as revised
CUAP #06-0225 – Leonardtown High School – as revised
VAAP #05-1302 – Downey**

ADJOURNMENT

The meeting was adjourned at 8:25 p.m.

Keona L. Courtney
Recording Secretary

Approved in open session: June 8, 2006

George Allan Hayden
Chairman

