

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
THURSDAY, JUNE 8, 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; Susan Mahoney, Planning Specialist; and Keona Courtney, Recording Secretary. George Edmonds, Board of Appeals First 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 #06-0330 – CONLON**

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 16,350 square feet; is zoned Residential Neighborhood Conservation (RNC), Limited Development Area (LDA) Overlay; and is located at 40171 Waterview Drive in Mechanicsville, Maryland; Tax Map 5A, Block 1, Parcel 54.

Owner: Jeanette Conlon  
Present: Barry Vukmer, Chesapeake Trails Surveying, LLC

All cases being heard at this meeting were advertised in *St. Mary's Today* on 5/21/06 and 5/28/06 and in *The Enterprise* on 4/24/06 and 4/31/06. The properties were posted and certified mail receipts were submitted to staff for the files.

Mr. Vukmer explained that it was recently brought to his attention that he was not allowing enough cleared area for the well, and requested that the Board allow an additional 250 square feet of clearing around the well. The total amount of clearing necessary to include the area around the well will be 9,730 square feet.

Ms. Chaillet explained that the Critical Area Commission does not oppose the request. Staff recommends mitigation at a ratio of three to one (3:1) per square foot of the variance granted in accordance with Section 24.4.2.b of the St. Mary's County Comprehensive Zoning Ordinance.

**Mr. Miedzinski made a motion 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, the Board adopt the findings of fact contained therein as their findings in this matter, and that the request to clear an additional 250 square feet of vegetative cover are found to be facts in this matter. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

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

**Ms. Scriber moved that having accepted the staff report, dated May 26, 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 been met; the Board approve the variance to clear in excess of 30 percent of the existing**

**woodland with the following recommended conditions: 1) to adhere to the Critical Area Planting Agreement, and 2) to clear an additional 250 square feet around a well. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**ZAAP #03-110-091 – BOATWRIGHT**

The Applicant is appealing the Planning Director's decision to deny an application to permit subdivision of a lot for an immediate family member pursuant to Section 32.1 footnote 8, of the St. Mary's County Comprehensive Zoning Ordinance. The property contains 4.59 acres; is zoned Rural Preservation District (RPD); and is located at 27720 Mechanicsville Road in Mechanicsville, Maryland; Tax Map 8, Block 24, Parcel 199.

Owner: Valerie Boatwright  
Present: Chris Longmore, Attorney representing the Applicant  
Robin Guyther, Land Use Consultant

Mr. Canavan's Exhibit 1: Mr. Shire's Staff Review/Referral dated 12/5/03 to Applicant regarding Residential Density  
Mr. Canavan's Exhibit 2: Schedule 32.1 Development Standards  
Mr. Canavan's Exhibit 3: Memo dated 10/21/03 regarding TEC Items on October 2003 Agenda  
Mr. Canavan's Exhibit 4: Second page of memo dated 10/21/03 regarding TEC Items on October 2003 Agenda

Ms. Boatwright explained that staff informed her that she could subdivide the nine acre parcel into three parcels and she did so at that time. Mr. Longmore asked Ms. Boatwright if she still owns all three parcels. Ms. Boatwright explained that she sold two of the lots and retained Lot 1, where she built a new house. Mr. Longmore asked Ms. Boatwright if she read General Note #16 on the recorded subdivision plat that states, "No further subdivision is allowed on the property shown hereon". Ms. Boatwright explained that she was informed to disregard the note and that it is standard on all plats. She said that she had never subdivided property prior to that time, and relied solely on what she was told. Mr. Longmore asked Ms. Boatwright if anyone advised her that by creating the three lots, it might prevent her from taking further action with her property in the future.

Mr. Longmore asked Ms. Boatwright to describe her intentions for Lot 1, the property under consideration with this request. Ms. Boatwright explained that she wishes to subdivide this lot and give her daughter a portion of it, so that she and her children can live in the County with the rest of their family. She explained that it is too expensive for her daughter to live elsewhere in the County, and it did not occur to her to subdivide a portion of the property for her daughter in 2004. Mr. Longmore asked Ms. Boatwright if her daughter has ever received property through a family conveyance. Ms. Boatwright replied that her daughter has not.

Mr. Longmore asked Ms. Boatwright if it is her intention to subdivide Lot 1 into only one new lot. Ms. Boatwright said that this is her intention. Mr. Longmore asked Ms. Boatwright if she is willing to add a restriction to her deed which states that the new lot can not be conveyed by her daughter for five years. Ms. Boatwright agreed. Mr. Longmore asked Ms. Boatwright if she is willing to ensure that there is access to and from the new lot. Ms. Boatwright agreed.

Mr. Longmore asked Ms. Boatwright to describe the steps that she has taken to try to subdivide this property into one new lot. Ms. Boatwright explained that she applied for a perc test, and the first application was denied. She said that she obtained approval for a perc test the second time, and that the property satisfactorily percs. The Planning Director later informed her in writing that her request to subdivide the property to convey a lot to her daughter was denied. She said that she then sought help in this matter from Robin Guyther.

Mr. Delahay asked Ms. Boatwright if her surveyor read General Note #16. Ms. Boatwright said that she believes that he did, and explained that he had a copy of the plat. She stressed that General Note #16 was never an issue until now.

Mr. Longmore asked Mr. Guyther to describe his educational background and work experience with the Department of Planning and Zoning. Mr. Guyther explained that he was employed at the Department of Planning and Zoning from 1980 to 1988, and served as both the acting Director and Deputy Director during that time. He said that he also served as the Director of the Permits and Inspections division from 2000 to 2003. Mr. Guyther explained that he has a Master's degree in Planning from the University of Virginia.

Mr. Guyther explained that Ms. Boatwright initially contacted him when she was denied permission to subdivide her property based on the date the parcel was created. He explained that he read through the Ordinance and found no written policy that would prevent her from subdividing the property for a family member. Mr. Longmore asked Mr. Guyther if he has ever seen any other written policy that would disallow this type of subdivision during his work or personal experiences. Mr. Guyther replied that he had not. Mr. Longmore asked Mr. Guyther for his comments regarding General Note #16, and the effect it may have on this property. Mr. Guyther explained that he feels that the note is incorrect and does not belong on the plat. He explained that a subdivision is not just the creation of a new lot, and can involve moving a boundary line or trading land. He noted that Ms. Boatwright's request is an exception to the normal regulations, and General Note #16 is not applicable in this matter. Mr. Guyther stressed that any policy should be in writing and part of public documents. If there is a policy that conflicts with the Zoning Ordinance, then the Zoning Ordinance should be changed. He explained that there have been times when notes on plats were determined to be a problem, and later removed. He said that the Planning Commission has re-approved plats with certain notes changed or removed.

Mr. Canavan explained that the RPD has a density of one dwelling unit per five acres. During the initial review of the nine acre parcel, staff recognized that there were already three dwellings on the property and approved the three lot subdivision, although this exceeded the density of the RPD zone. Mr. Canavan agreed with Mr. Guyther's comments regarding boundary line adjustments, explaining that a property owner may request a boundary line adjustment plat (BLAP). He explained that staff had to consider the subdivision plat from 2004 that was recorded following the adoption of the current Zoning Ordinance. He explained that if the Board approves a fourth lot then this will intensify an existing nonconforming density, and he does not believe that footnote 8 was intended for this purpose. Mr. Canavan explained that he believes that footnote 8 is intended to allow property owners to subdivide their property when they do not have the acreage necessary to create another lot. He stressed that it was not intended to allow further subdivision of a previously recorded subdivision. Mr. Canavan explained that General Note #16 may need more clarification in the future to state that, "No further lot for residential purpose is allowed." He stated that this case simply emphasizes the fact that footnote 8 either needs to be clarified or deleted.

Mr. Canavan explained that Exhibit 3 further addresses the density of this property. The memo states that in accordance with Schedule 32.2, Modifications to Development Standards, It appears the existing 9.08 acres is currently developed at a density of one (1) dwelling per three (3) acres (i.e. one existing house and one existing duplex) which is the maximum density achievable in the RPD (Rural Preservation District). Density cannot be increased, even with the use of TDRs (Transferable Development Rights). Ms. Chaillet explained that Exhibit 4 states, Please replace General Note #16 with "No further subdivision is allowed". She said that this is proof that General Note #16 was not erroneously placed on the recorded plat.

Mr. Longmore explained that the Applicant is not trying to take advantage of the regulations. If this request is approved, it will provide the Applicant with something that she could have received if she had requested a family conveyance prior to this time. Mr. Longmore

explained that footnote 8 anticipated that a property owner may have one additional lot per land owner to convey to a family member, and that this additional lot may increase the density beyond one dwelling unit per three acres. He disagreed with Mr. Canavan's comments regarding the subdivision process being able to continue; explaining that footnote 8 is very clear and states, "Parcels of at least two acres in size but less than 10 acres in size may be subdivided into one additional lot for transfer to a family member." Mr. Longmore explained that the Applicant has a parcel that is over two acres in size and she should be able to subdivide it in accordance with the footnote. He noted that the Applicant has the right to build an accessory apartment and is willing to give up that right on both lots to ensure that the density remains. Mr. Longmore stressed that the Applicant's request is in compliance with footnote 8 and that it will not be a nonconforming density.

The Chair opened the hearing to public comment.

Bruce Bridgett, a local resident, explained that he owns Lot 3 in the subdivision. Considering the location where he wishes to locate his house on the lot, Mr. Bridgett explained that he does not want to look at another house through his front yard. He added that the Applicant had previously subdivided the property. Ms. Scriber asked Mr. Bridgett if he purchased his property from the Applicant. Mr. Bridgett said that he purchased it from someone else.

The Chair closed the hearing to public comment.

Ms. Scriber asked Ms. Boatwright if any of her family members received property during the subdivision of the property in 2004. Ms. Boatwright said that no family members received property at that time. Mr. Hayden noted that the Applicant had an opportunity to convey a lot to her daughter during the earlier subdivision of the property. Mr. Delahay explained that it is unfortunate that the Applicant was misled regarding General Note #16. He stressed that any information contained in a legal document should be seriously considered, and stated that he agrees with staff's decision. Mr. Callaway explained that he agrees with staff's decision; however, but does feel that the Applicant's request is for the benefit of her daughter, not for personal profit. Mr. Miedzinski explained that he agrees with the Applicant's intention; however, he feels that property owners must think ahead about their future needs when they decide to subdivide property. He explained that he does not want to set precedence by approving this particular subdivision since it was already subdivided in the past.

Mr. Longmore explained that staff comment #5 which states, "Footnote 8 was intended to ease the transition and perhaps should have contained a sunset clause" not be considered as a fact in this matter because it is staff's opinion only. Mr. Hayden agreed.

**Mr. Hayden moved that having accepted the staff comments, the Board adopt the findings of fact contained therein as their findings in this matter; and further moved that additionally:**

- 1. Staff comment #6 which states, "No further subdivision is allowed on the property shown hereon"; and as stated on Nokleby Surveying's Minor Subdivision Plat, dated 2/17/04 and by reference as Librofolio 57/1,**
- 2. Exhibit 3, bullet A, #1 which states, "Density cannot be increased, even with the use of TDRs (Transferable Development Rights),**
- 3. Exhibit 4, bullet B, letter e which states, "Please replace General Note #16 with "No further subdivision is allowed",**
- 4. Staff comment #2 which states, "...the density was considered nonconforming", and**
- 5. Staff comment #1 which states, "The Subdivision is a minor subdivision consisting of three lots, which was recorded in March 2004**

are all found to be facts in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

Mr. Miedzinski moved that the Applicant's request to resubdivide a lot for an immediate family member pursuant to Schedule 32.1, footnote 8, of the St. Mary's County Comprehensive Zoning Ordinance be denied. The motion was seconded by Ms. Scriber and passed by a 4-1 vote. Mr. Callaway was opposed.

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

**VAAP #06-0138** – Bacon – 23,100 square feet – 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 replacement single family dwelling and appurtenances. **Variance approved with signed planting agreement.**

**VAAP #06-0508** – Gass – 1.18 acres – The applicant is requesting a variance from Section 41.5.3 of the St. Mary's County Comprehensive Zoning Ordinance to exceed the impervious surface to construct an addition to a single family dwelling. **Variance denied.**

**VAAP #06-0102** – Frischholz – 15.37 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 with additions to a single family dwelling. **Variance approved with conditions.**

#### **MINUTES AND ORDERS APPROVED**

The minutes of May 11, 2006 were approved as corrected.

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

**ZAAP #99-0093 – McIntosh Subdivision (Gollahon)**  
**VAAP #04-3124 – Blazer**  
**VAAP #05-3840 – Sweeney**  
**VAAP #05-3786 – Spore**  
**VAAP #05-3752 – Ecker – upon revision**

#### **GENERAL DISCUSSION**

Mr. Canavan suggested that the Chairman consider hosting a fall retreat since there are new members to the Board. The Chairman agreed to work with staff to select a date.

#### **ADJOURNMENT**

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

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Keona L. Courtney  
Recording Secretary

Approved in open session: July 13, 2006

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George Allan Hayden  
Chairman