

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
ROOM 14 \* POTOMAC BUILDING \* LEONARDTOWN, MARYLAND  
Thursday, June 12, 2008**

Members present were George Hayden, Chairman; Wayne Miedzinski, Ronald Delahay, and Veronica Neale. George T. Edmonds and Alternate Ronald Payne were also present. Department of Land Use & Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; and Jada Stuckert, Recording Secretary. 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 #02-0969 - Hart**

The applicant is appealing the Planning Director's determination that the property owners did not have a vested right to construct the single-family dwelling on the subject property and appeal of the Planning Director's determination that the single-family dwelling was built without a valid building permit.

Ms. Chaillet explained if the Board decided the Hart's did in fact have a vested right in the property an after-the-fact variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer to construct a single-family dwelling and appurtenances would need to be discussed. The property contains 2.39 acres; is zoned Residential, rural Preservation district (RPD), Limited Development Area (LDA) Overlay; and is located at 45216 Clarkes Landing Road, Hollywood, Maryland; Tax Map 27, Block 17, Parcel 154.

Owner: Roy and Jane Hart  
Present: Chris Longmore

The property was advertised in The Enterprise on May 28, 2008 and June 4, 2008.

Mr. Longmore gave an overview of the case stating the Hart's purchased the property in 1985 and removed the existing structure on the property with plans of replacing the structure with a single-family home and detached garage. Mr. Longmore stated the construction of the home was delayed due to financial costs therefore the Hart's constructed the garage first and added a small apartment in 1987. Mr. Longmore stated in 2002 Mr. Hart requested an inspection from MDIA who in turn recommended Mr. Hart have his permit extended and in turn an extension request was placed with the Department of Planning & Zoning. Mr. Longmore stated MDIA completed five inspections of the property all of which were approved. Mr. Longmore stated no Stop Work Order was ever placed on the home. Mr. Longmore stated in the fall of 2006 when the home was very close to completion there was a problem with the 2002 permit which apparently was not approved. Mr. Longmore stated this is a very unique timeline and explained the Hart's did not abandon the property or construction of the home at any time which gives them a vested right in the property. Mr. Longmore asked that the Board consider the effects of their decision.

Mr. Canavan requested that the applicant be allowed to present his case prior to the staff report.

Mr. Longmore questioned the witness, Roy Hart, and the following testimony was given during this questioning. Mr. Longmore submitted AP Exhibit #1 – Deed dated October 17, 1985. Mr. Hart stated he has lived on the property since 1989 with his wife and child until the child moved out. Mr. Longmore referenced the staff report attachment #10 and stated this permit was approved March 14, 1986. Mr. Longmore submitted AP Exhibit #2 – Building Permit Placard. Mr. Hart stated he acted as his own contraction in the construction of the home. Mr. Hart stated excavation

and placement of the footings were completed during the summer of 1986. Mr. Longmore submitted AP Exhibit #3 – Photo of Foundation & 6 Courses of Block and AP Exhibit #4 – Letter dated June 8, 2008 from Elmo Bates. Mr. Hart stated Mr. Elmo Bates recalls digging and pouring the footings during the summer of 1986 and that no additional work was completed at this time.

Mr. Longmore asked about the financial difficulties of the project. Mr. Hart stated he underestimated the construction costs for the house and the garage so he had to subdivide a portion of the property and sell the land to build the garage. Mr. Longmore referenced the staff report attachment #8, Hart Subdivision 2.2122 acres. Mr. Longmore referenced staff report attachment #9 zoning permit for garage with apartment. Mr. Hart stated Mr. Elmo Bates constructed the garage. Mr. Longmore asked if there were any other difficulties. Mr. Hart stated there were shoreline issues therefore they had to install bulkheading. Mr. Longmore submitted AP Exhibit #5 – Request for Authorization of Work under Department of the Army General Permit dated April 15, 1988. Mr. Hart stated the bulkheading was expensive which took away money for continuing work on the house.

Mr. Hayden asked if Mr. Hart could give better dates for the work that was completed. Mr. Hart stated the other six courses were done mid 1988 and the drain fields were done six or seven months later. Mr. Longmore submitted AP Exhibits #6 – Photo of exterior and interior basement and AP Exhibit #7 – Photo of interior basement with six inches of gravel spread, AP Exhibit #8 – Photo of block foundation as seen from the water, and AP Exhibit #9 – Photo of grandson at 3 years old noting foundation in background. Mr. Hart stated the plumbing and electrical work was done in 2002. Mr. Longmore submitted AP Exhibit #10 – Photo of Taylor Plumbing preparing basement for rough plumbing and AP Exhibit #11 – Photo of basement slab poured in 2002.

Mr. Hart stated in 2002 he went to MDIA to request an inspection of the plumbing work and was informed to contact LUGM to request an extension on the permit. Mr. Hart stated he went to LUGM to request the extension. Mr. Longmore referenced the staff report attachment #6 – Permit Application dated April 16, 2002 for the house as a second dwelling unit. Mr. Longmore asked if LUGM gave Mr. Hart any indication that there was something wrong with the 2002 permit. Mr. Hart stated no there were no issues to his knowledge.

Mr. Longmore referenced the staff report attachment #7 – affirmation of landowner building a home on their property and attachment #2 – Letter from Theresa Dent. Mr. Hart stated the first time he saw the letter from Ms. Dent was in Mr. Longmore's office of this year. Mr. Longmore submitted AP Exhibit #12 – MDIA Application for Inspection. Mr. Hart stated MDIA inspected the footing, foundation, slab, and progress drains and no indication of the permit denial was ever given. Mr. Hart stated from 2002 to 2007 four courses of block were added, transoms for light over the doors, concrete was filled and rebar was placed. Mr. Hart stated hurricane Isabel knocked down the steel girders and part of a wall which needed to be fixed. Mr. Hart stated this was fixed in the fall of 2003.

Mr. Hart stated he received a letter from the Health Department asking for the septic system to be upgraded to allow for the fourth bedroom in the house. Mr. Longmore submitted AP Exhibits #13 – Photo of hurricane Isabell damage, AP Exhibit #14 – Photo of gravel, AP Exhibit #15 – Four Photos of laid bricks. AP Exhibit #16 – Health Department site plan, AP Exhibit #17 – Health Department soil evaluation, and AP Exhibit #18 – Health Department letter dated January 4, 2008.

Mr. Hart stated the Erosion Plan was done by Nokleby Surveying in December of 2007 however it was not sent to the department until June 9, 2008 because the fee was not paid. Mr. Longmore submitted AP Exhibit #19 – As-built Critical Area Site Plan & Sediment/Erosion Control Plan, AP Exhibit #21 – 15 Photos of surrounding houses, AP Exhibit #22 – Handmade Color Site Map, AP Exhibit #23 – 35 letters of support, AP Exhibit #24 – Letter dated June 10, 2008 from Roy Hart to the Board of Appeals.

Mr. Hart stated from 2002 till now the only work that has been done is above ground furnishings. Mr. Longmore submitted AP Exhibit 20 – 13 Photos of house. Mr. Longmore asked approximately how much Mr. Hart has spent on the house to date. Mr. Hart stated \$557,000 which is all his savings and retirement money. Mr. Hart stated he never received any calls or letters informing him that the permit was invalid. Mr. Hart stated he is willing to work with staff to mitigate for the environmental effects.

Mr. Miedzinski asked when the garage was completed and how this was paid for. Mr. Hart stated the garage was completed in December of 1989 and was paid for by the selling of 2.5 acres of the lot for \$100,000. Mr. Delahay asked when the original permit was issued. Mr. Hart stated the permit was approved in March of 1986. Mr. Delahay asked about the Therese Dent letter. Mr. Hart stated he did not receive this letter.

Mr. Longmore stated Mr. and Mrs. Hart did not abandon the property which is the issue. Mr. Longmore stated the Hart's lived on the property and continued to work on the house with the understanding that the permit was valid. Ms. Neale asked at what point was the permit denied. Mr. Hart stated he learned of the denial in 2007 after the house was 80% complete. Mr. Hayden referenced exhibits 9 and 10 asking what work was done between 1988 and 2002. Mr. Hayden stated it looks like only four courses of block were placed during these 14 years. Mr. Longmore stated as long as the Hart's built to where the neighbors knew what they were doing or building it would give the Hart's a vested right. Mr. Longmore stated the Hart's never abandoned the property. Mr. Sparling stated "vested rights" are a very gray area and abandonment is defined regardless of the intent to abandon. Mr. Longmore stated abandonment is not an issue in this case because the Hart's already had a vested right and they lived on the property.

Mr. Delahay stated Mr. Hart stopped working on the house for 14 years. Mr. Canavan stated the building permit was received and building commenced in 1986 however building ceased in 1989. Mr. Canavan stated there was no activity relevant to the foundation from 1989 to 1998. Mr. Canavan stated the MDIA inspections were done on the house but only when the basement was there. Mr. Canavan stated the permit was never extended for the house. Mr. Canavan asked if Mr. Hart had spoke with Ms. Dent on the phone. Mr. Hart stated, no. Mr. Canavan asked if you could see the foundation from the road. Mr. Hart stated, no.

Ms. Chaillet read the staff report which recommended to uphold the Planning Director's determination that the property owners did not have a vested right to build the single-family dwelling on their property and that the property owners did not have a valid building permit. Mr. Miedzinski asked what needed to be done to keep the permit active. Ms. Chaillet stated continuous construction would have kept the permit active. Ms. Chaillet informed the Board that staff is not asking that the house be removed they are asking that the house be moved out of the 100 foot buffer. ***Mr. Miedzinski made a motion to accept the staff report and adopt the findings of fact contained therein as their findings in this matter and Ms. Neale seconded. The motion passed by a 5-0 vote.***

***Mr. Miedzinski made a motion to continue the hearing to June 19, 2008 at 6:30 p.m. to begin with public testimony for the appeal and Ms. Neale seconded. The motion passed by a 5-0 vote.***

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

The minutes of May 22, 2008 were approved as recorded.

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

**VAAP #07-0245 – Whittaker**

**VAAP #08-132-002 – Phillip Bean Center Expansion**

**ADJOURNMENT**

The meeting was adjourned at 10:15 p.m.

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Jada Stuckert, Recording Secretary

Approved in open session: June 26, 2008

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George Allan Hayden  
Chairman