

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, June 16, 2005**

Present: George Allan Hayden, Chairman
 Michael Hewitt, Member
 Wayne Miedzinski, Member
 Gertrude V. Scriber, 1st Alternate
 Walter Gillette, 2nd Alternate
 Heidi Dudderar, Deputy County Attorney
 Denis Canavan, Director, Department of Land Use &
 Growth Management
 Yvonne Chaillet, Zoning Administrator, LUGM
 Sharon Sharrer, LUGM Recording Secretary

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 #04-3129 – JOSEPH SATTERTHWAITE

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. The property contains 7,830 square feet; is zoned Residential Low-Density (RL) District, Intensely Developed Area (IDA) Overly District; and is located at 17448 Poplar Street in Piney Point, Maryland; Tax Map 65, Block 15, Lots 1-4.

Owner: Joseph Satterthwaite

Legal advertisements were published on June 1, 2005 and June 8, 2005. Receipts from certified mailing are in the file.

Mr. Satterthwaite explained that he would like to add a shed to his existing deck to provide storage space for lawn and crabbing equipment. He explained that no chemicals will be stored in the shed, and any gas would be stored on a high shelf. The shed will be elevated to allow drainage and air space underneath. Members expressed concerns that flooding on the property could reach the area where the shed would be located. Mr. Satterthwaite explained that the elevation of the shed would allow circulation below, and that drainage vents would be provided in the bottom of the shed itself for times when water levels were exceptionally high.

Ms. Chaillet explained that there is no impervious surface limit on properties with an Intensely Developed Area (IDA) Overlay. The Critical Area Commission does not oppose the variance request. Ms. Chaillet explained that, in addition to attaching an 80 square foot shed to his existing deck, Mr. Satterthwaite is planning to expand the driveway by 92 square feet. Commission members expressed concern that an exact height of elevation would need to be stipulated to make certain that the shed is elevated as discussed.

The Chair opened the hearing to public comment.

Area residents, James Nagy, Tom Ruthenberg, and John Shepard, all spoke in support of the requested variance. They explained that most of the area residents have sheds and that the property is very well kept.

George Edmonds, another area resident, spoke in opposition to the requested variance. He expressed concern that the number of crab pots on Mr. Satterthwaite's property could mean that this was a business, and not for personal use. He suggested that, if adding a shed was essential, constructing a shed on the opposite side of the property would remove the need for placing the shed on stilts. Commission members asked how often the requested location would be under water. Mr. Edmonds replied that it would be under water about 20-30% of the time.

Mr. Satterthwaite explained that high water does come in occasionally, but that it doesn't flood the property. He said that he is able to keep grass there year round. Mr. Satterthwaite explained that his house sits about nine (9) feet from the property line on the opposite side of the house from the location he like to use for the shed. Commission members asked what a good elevation height would be for the shed. Mr. Satterthwaite said that his walkway is elevated about 1½ foot. He suggested elevating the shed another 1 – 1½ feet above the walkway.

The Chair closed the public hearing.

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.

Ms. Chaillet explained since it appear that the property is located in the floodplain the property owner would be required to elevate the shed at least one foot above the floodplain elevation for the property, which is four feet. Mr. Hayden asked if that meant that the shed would be required to be on five foot stilts. Mr. Canavan suggested putting it in the record that the shed would be constructed on stilts and elevated out of the floodplain. Commission members expressed concern that elevating a shed to a height of five feet could take away its usability.

Ms. Dudderar suggested that it would be prudent to allow staff the time to further analyze the floodplain requirements. Mr. Satterthwaite told the Board that he did not have a problem allowing staff the time to do further analysis before a decision on his variance request is made by the Board. He explained that he does need a shed, but a shed elevated five feet off the ground would probably not be of any use to him.

Mr. Gillette made a motion that the Board continue the hearing until July 14, 2005 at 6:30 p.m. in Room 14 of the Governmental Center in Leonardtown to allow time for staff to analyze the requirements for new construction in the floodplain. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #05-0624 – LESLEY CAIN

The applicant is requesting variance from Section 72.3 of the St. Mary's Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation, variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer, and variance from Section 71.7.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb steep slopes. The property contains 0.23 acres; is zoned Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay District; and is located on Ridge Road in Mechanicsville, Maryland; Tax Map 15, Block E, Lot 2.

Owner: Lesley Cain

Certified mailing receipts were provided to staff for the file.

Ms. Chaillet said that the Critical Area Commission had recommended moving the house slightly closer to the road, but explained that staff had made a site visit and did not see any advantage to changing the location of the house due to the location of the well and septic system.

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

The Chair opened the hearing to public comment.

Kevin Krush, the applicant's brother and an area resident, explained that he will be building the house for his sister. He told that Board that he is aware of the concerns with steep slopes and highly erodible soils and will be acutely aware of what is being done for stormwater runoff and management.

Hugh Powell, an area resident, explained that he is neither for nor against the proposed variance requests. He said that his primary concern is that a good job is done on the site, and that previous problems with runoff at that site could happen again if extreme care is not taken.

The Chair closed the public hearing.

Mr. Miedzinski noted that he did not see a silt fence marked on the plans he had received. Mr. Canavan explained that the plan received in the Board's package might not be the same plan which was provided to the Soil Conservation District (SCD) for review. The plan reviewed and approved by SCD, showing the necessary silt fence as a part of the erosion control plan, was provided to Mr. Miedzinski for his review.

Ms. Scriber moved that having accepted the staff report, dated June 6, 2005; and having made a finding that the standards for variance in the Critical Area and the objectives of Section 71.7.3, Section 71.8.3, and 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 Buffer, the variance to disturb slopes of 15% or greater, and the variance to clear in excess of 30% of the existing woodland upon the condition that all requirements of the Planting Agreement are met. The motion was seconded by Mr. Gillette and passed by a 5-0 vote.

VAAP #05-0936 – KEITH & BONNIE DeMARR

The applicant is requesting after-the-fact variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing woodland. The property contains 13,372 square feet; is zoned Resource Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay District; and is located on Circle Drive in Mechanicsville, Maryland; Tax Map 5, Block 6, Parcel 340.

Owner: Keith & Bonnie DeMarr

Receipts from the certified mailings were provided to staff for the file.

Mr. DeMarr explained that he had made a mistake in clearing too much of the lot. Plantings already made include 37 Leyland Cypress trees, which are not included in the list of approved species, compiled by the Department of Natural Resource (DNR), that are native to the Coastal Plain of Maryland. He asked if the County could accept some of the trees already planted toward the requirements of the Planting Agreement. Mr. DeMarr explained that he had removed poison ivy from the lot, but the only trees on the lot were ones from Hurricane Isabel which were broken up or leaning toward his garage. He mentioned that SMECO had also taken out three or four trees which were

endangering the electric distribution lines. The lot had already been cleared, seeded, and straw covered when he applied for a permit.

Mr. Hewitt asked about the similar violation on the applicant's adjoining lot in 1995. Mr. DeMarr responded that they had never received anything on paper regarding a violation at that time. Mrs. DeMarr added that they were never aware of any actual violation at that time. She requested that, if the variance is approved, they be allowed to plant the shrubs after the garage is finished so they can be planted around the building to make the area look nicer.

Ms. Chaillet explained that the applicants had clear cut a lot which was 100% wooded. The Zoning Ordinance stipulates that trees used for reforestation must be species native to the Coastal Plain of Maryland chosen from a list created by DNR, and Leyland Cypress trees are not on this list. She explained that the required planting can be done on the applicants' adjoining lots, but fees in lieu of planting are not allowed for after-the-fact variances.

Ms. Chaillet explained that the applicants' proposed construction would require clearing approximately 47% of the lot. Calculations made by the Environmental Planner at LUGM estimated that, if the applicants reduce the size of the driveway to a standard driveway width for a two-car garage and eliminate the access to the adjoining lot, the minimum amount of clearing necessary would be approximately 35% of the lot. Staff believes that the minimum necessary, which is one of the standards for variance which must be met, to achieve the development of the garage and access to the garage from the street would be 35%.

Commission members asked what would happen if the request for variance was completely denied. Ms. Chaillet explained that the violation of clearing without a variance would have to be mitigated by completing the plantings required by the Planting Agreement. The applicants could then return to the Board of Appeals with a request for variance to add impervious surface in the Critical Area Buffer and to clear the amount of land necessary to construct the garage and driveway. Ms. Dudderar explained that a wait of two years is necessary before it would be possible for the applicants to reapply for the variance if denied completely now.

Mr. Hewitt asked for further information about the previous violation, which the applicant had stated they knew nothing about. Mr. Canavan explained that LUGM has documentation of the violation, and recommended discussing it further with the applicant. Mr. Hewitt asked how LUGM knows that the lot under consideration with this variance request was 100% wooded prior to being clear cut by the applicants. Ms. Chaillet explained that aerial photos from 2003 show the coverage. Mr. Canavan added that the photos show only the canopy, not the vines or understory growth. Ms. Chaillet explained that the environmental

regulations recognize that the clearing of mature trees on an existing wooded lot removes any habitat protection that was there, especially for birds.

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. Hewitt asked the applicants the purpose of the oversized garage which was being proposed. Mr. DeMarr responded that the garage will be for storage of a motor home and a boat. He explained that the large driveway is to facilitate turning the boat around on his property. Mr. Hewitt asked if the driveway to the adjoining lot was necessary. Mr. DeMarr verified that it was for convenience. He explained that the width of the driveway to the street would help him in backing a trailer into the garage without going off the driveway.

The Chair asked the applicants for their interpretation of the violation in 1995. Mrs. DeMarr explained that they did have a stop work order for a plumbing violation in the detached garage. Mr. Canavan explained that the same file has a copy of an inspection request to investigate unauthorized removal of vegetation in the Critical Area Overlay zone. He said that his concern is that the applicant is not in accord with applicable regulations. The applicant was cited in 1995, in terms of the plumbing code. Mr. Canavan explained that he had to assume that they were also notified in terms of the unnecessary removal of vegetation at the time. He said that he does support a variance to allow the applicant to develop his property, but is troubled by the removal of the trees in advance of the permitting process especially since the applicants did have a violation of the regulations in 1995 for acting in advance of permitting.

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

Mr. Hewitt moved that having accepted the staff report, dated June 7, 2005; 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 after-the-fact variance to clear 100% of the existing woodland, but approve a variance for clearing of the area necessary, to be approved by the Department of Land Use and Growth Management, for the proposed building and to provide a turning radius upon the condition that all requirements of the Planting Agreement are met. The motion was seconded by Mr. Gillette and passed by a 4-1 vote, with Mr. Miedzinski voting against the motion.

DISCUSSION

VAAP #03-0686 - THOMAS RUTHENBERG

The Chair explained that this item was added to the agenda to discuss the investigation of a question of compliance raised by the Board at their April 14, 2005 meeting. Information provided to the Board at the time this variance request was heard indicated that the house would be built on stilts, but a site visit to another property in the area brought it to the Board's attention that this had not been done.

Ms. Chaillet explained that the Facts section of the introduction to the Order signed in October of 2003 does make reference to the house being built on stilts. Mr. Canavan explained that the house is basically terraced, not built on stilts. The house, as constructed today, is in accordance with applicable building code and floodplain regulations. He explained that the house is also in compliance with the 2003 Board of Appeals' Order, since the conditions in the motion do not include a requirement that the house must be built on stilts. Mr. Canavan noted, for the record, that Mr. Ruthenberg was present at tonight's hearing.

Mr. Hewitt asked what the Facts section of the Order means, since it was stipulated there that the house would be built on stilts. Mr. Canavan explained that the Facts section shows the intent of the applicant at the time of application. Facts can change by the time the applicant gets to the stage of obtaining a building permit. Mr. Canavan said that, since the Board of Appeals Order was not explicit in saying that the house must be built in accordance with the applicant's factual evidence as presented through the testimony, he could not find that it was in violation of the Board's Order. Board members explained that they felt it was definitely a violation of spirit and facts. Ms. Dudderar explained that the motion that was made on the record when the case was heard and the actual language in the written Order does not include a requirement or condition for stilts. She said that she feels a court would look at the totality of the documents, the meeting minutes, and the Ordinance and not find a violation. She said that, while it is a debatable issue, she does not feel they would win the debate in court. Ms. Dudderar explained that the Department of Law will pursue the issue if asked to do so by the Board of Appeals. The Board asked if the hearing for the case would be available on tape, so members could hear exactly what was said at that time. Ms. Dudderar asked that copies of the video recording from the Board of Appeals' hearing on the case be provided to the members of the Board and to the Department of Law.

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

VAAP #04-132-014 – Potomac Land LTD – 2.38 acres – The applicant is requesting variance from Section 32.3.2 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the mandatory setback from the Critical Area Buffer and variance from Schedule 32.1 of the St. Mary's

County Comprehensive Zoning Ordinance to reduce the rear yard setback. **Variances approved.**

VAAP #05-0247 – Frank & Lisa Galioto – 1.68 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 with an addition to a single-family dwelling. **Variance approved with signed planting agreement.**

VAAP #04-132-027 – Ray Bernarcik – 0.82 acres – 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 approved.**

MINUTES AND ORDERS APPROVED

The minutes of May 12, 2005 were approved as recorded.

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

VAAP #05-0228 – Cropper
CUAP #04-141-074 – Zimmerman Pit
CUAP #04-141-075 – Medley's Neck Tract

ADJOURNMENT

The meeting was adjourned at 9:17 p.m.

Sharon J. Sharrer
Recording Secretary

Approved in open session: July
14, 2005

George Allen Hayden
Chairman