

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * POTOMAC BUILDING * LEONARDTOWN, MARYLAND
Thursday, June 19, 2008**

Members present were George Hayden, Chairman; Wayne Miedzinski, Ronald Delahay, Veronica Neale, and George T. Edmonds. Alternate Ronald Payne was also present. Department of Land Use & Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; and Gloria Bailey, Recording Secretary. George Sparling, 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 6:35 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. The property contains 2.39 acres; is zoned Residential, rural Preservation district (RPD), Limited Development Area (LDA) Overlay; and is located at 45216 Clarke's Landing Road, Hollywood, Maryland; Tax Map 27, Block 17, Parcel 154.

Owner: Roy and Jane Hart
Present: Chris Longmore, Attorney

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

Mr. Hayden opened the hearing to public comment. Mr. Mike Wickers stated that he has known the applicants since 1977 while associated with Hart & Lytle Realty. Mr. Wickers stated Mr. Hart has always wanted the house completed and was continuously working on the property. Mr. Wickers stated he helped Mr. Hart with the garage insulation and reiterated you can see the house from the public road across the street.

Mr. James Ashby stated he has known the applicant since 1976 and was an agent for Hart & Lytle. Mr. Ashby read a letter submitted by Ms. Lytle (PR Exhibit #1) for the record. Mr. Ashby stated this is an injustice and the Hart's built the house as money came in so they would not go into debt. Mr. Ashby stated Mr. Hart believed the permit was valid which is why he continued working on the house throughout the years. Mr. Ashby stated the demolition or moving of the house would cause an undue hardship on the Harts.

Ms. Suzanne White stated the applicants are true assets to the community who are honest and always had the house construction on their minds. Ms. White asked that the applicants be granted some relief.

Let the record show that the witness referred to the Plat attached to the Staff Report for clarity. Mr. Roy Hart III stated this parcel has lot restrictions which would prohibit the moving of the house. Mr. Hart stated there is a 20 foot deep gully with a 20-25 foot grade. Mr. Hart stated untouched trees would have to be completely cut down if the house is moved.

Ms. Sandy Raley Tippett stated her mother, Ms. Marie Burch, submitted a withdrawal letter which was entered as PT Exhibit #2. Ms. Tippett testified she supports Staff's decision and stated the applicant is knowledgeable of all legal aspects of the County's rules and regulations as he was a realtor for many years. Ms. Tippett stated from June 1993 through September 2001 construction activity was suspended. Ms. Tippett stated she could provide photographs to support her

testimony and she believes the applicant has asked for an after-the-fact variance for an unjust reason.

Mr. Miedzinski made reference to the staff report of June 12, 2008 and asked Ms. Tippet how much land she purchased from the applicant and for what price. Ms. Tippet stated she purchased 2.3 acres of land for \$100,000. Mr. Longmore asked if there were courses of block on the foundation in 1993. Ms. Tippet stated yes and offered photographs as PT Exhibits 3A, 3B, and 3C.

Mr. Hayden closed the hearing to public comment. Mr. Longmore referred to AP Exhibit 1A and AP Exhibit 1B as rebuttal. Let the record show the reference to AP Exhibit 1B is incorrect; the proper labeling of this exhibit is AP Exhibit 2A, As Built Critical Area Site Plan, Sewage Easement Plat and Sediment/Erosion Control Plan. Mr. Longmore submitted AP Exhibit 3A, Survey of a Parcel of Land per part of Liber 219 Folio 218.

Mr. Miedzinski asked if the deck was on the original building permit. Mr. Longmore stated no. Ms. Chaillet stated the microfiche containing the original building permit is not legible but can be provided if the need arises.

Mr. Sparling stated the findings of fact need to be decided prior to the adoption of the staff report. Mr. Sparling stated if the staff report is accepted as finding of fact it would effectively dispose of the appeal since the staff report indicates there is no existence of vested rights which is the critical issue.

Mr. Longmore stated that the applicant cannot stand to lose his retirement. Mr. Longmore stated the Board does not have the right to take away the Applicant's constitutionally protected vested rights and stated there are three vested rights requirements: (1) show actual physical commencement significant and visible construction; (2) commencement in good faith; (3) commencement made pursuant to valid building permit. Mr. Longmore stated vested rights last beyond the building permit and legal theories are on point with the original permit that was issued under the 1977 rule. Mr. Longmore stated the County cannot take vested rights without giving compensation and in this case the County is not offering compensation. Mr. Longmore stated the property was not abandoned for twelve months, in fact it was maintained and the applicant lived on the property.

Mr. Canavan concurred that the permit was valid, until the construction ceased for more than twelve months. Mr. Canavan stated reasonable use of the property has not been denied because the applicant is already living on the property. Mr. Canavan cited, Ordinance Section 41.2.1, "...such use for structure, however, may not be reconstructed, intensified or expanded except in accordance with the ordinance." Mr. Canavan stated the Ordinance states very clearly; there was abandonment in accordance with the law. Mr. Canavan stated having the outdated permit does not change the law nor does it trump what the law states is abandonment.

Mr. Sparling stated the issue now is abandonment and inactivity alone is not abandonment. Mr. Sparling stated the terms "permit" and "vested rights" are two different items. Mr. Sparling stated the intent to abandon is when you give up your vested rights. Ms. Chaillet stated the neighbors could see the foundation on the property therefore, neighbors could see the intent to build a house however when the house sat for years without further construction the neighbors could contend construction was abandoned.

Mr. Hayden gave an overview of the testimony stating there is no evidence of continued construction during the years of 1993-2001 and due to the lack of activity the permit expired. Mr. Miedzinski agreed that 2002 was the turning point. Mr. Miedzinski stated the applicant had the opportunity to attend scheduled meetings with Planning & Zoning but did not. Ms. Neale agreed. Mr. R. Delahay stated he believes once construction ceased the vested rights were removed. Mr.

Edmonds stated he believes the vested rights were not abandoned and the Board has no right to take them away.

Mr. Miedzinski made a motion to accept the 6/5/08 memorandum comments #1-17 as findings of fact in this case with special attention to #8 where applicants re-applied for a building permit, #11 where Ms. Dent denied the building permit, #12 where she called Mr. Hart twice and found him at work, #13 where the 9/19/02 file was returned to the department pending a revised site plan, #15 where it says the permit shall become invalid if suspended for a period of 12 months, #17 where it says no valid building permit, as well as all testimonies heard on 6/12/08 and 6/19/08 and Ms. Neale seconded. The motion passed by a 5-0 vote.

After further discussion, ***Mr. Miedzinski made a motion in the matter of VAAP #02-0969, Hart, I move that the Board of Appeals hereby uphold the Planning director's determination that the property owners did not have a vested right to continue building the single-family dwelling on their property and Ms. Neale seconded. The motion passed by a 3-2 vote with Mr. Hayden and Mr. Edmonds opposed.***

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. The property contains 2.39 acres; is zoned Residential, rural Preservation district (RPD), Limited Development Area (LDA) Overlay; and is located at 45216 Clarke's Landing Road, Hollywood, Maryland; Tax Map 27, Block 17, Parcel 154.

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Ms. Chaillet stated all testimonies and exhibits will count for this record as well. Mr. Hayden and Mr. Longmore agreed.

Mr. Longmore gave an overview of the variance request asking the Board to consider the ramifications of moving the house. Mr. Longmore addressed the geographical constraints of the property. Mr. Longmore stated the applicants were acting in good faith and are here before the board to avoid financial ruin. Mr. Longmore asked the Board to remember the considerable amount of support for this project. Mr. Longmore assured the Board that the applicant would work with staff for planting agreements and mitigation for the house. Mr. Longmore explained the applicants just want a reasonable use of the property and house that was built in good faith.

Ms. Chaillet read the staff report which recommended denial stating the applicant has a reasonable use of the land with the 1,500 square foot apartment above the garage. Ms. Chaillet stated in 2002 Ms. Dent tried helping the applicant to become compliant however the applicant refused by not showing up for any of the appointments. Ms. Chaillet read Ms. Dent's ledger notes into the record.

Mr. Hayden opened the hearing to public comment. Ms. Kate Schmidt of the Critical Area Commission "CAC" stated for a variance every standard must be met and the CAC does not feel this has been done. Ms. Schmidt stated the Critical Area Buffer is very important which is why we have such strict laws surrounding them. Mr. Canavan stated the original foundation is legal and asked if the house structure on top of the foundation adds to the impervious cover. Ms. Schmidt stated it did not add to the impervious cover.

Mr. Hayden closed the hearing to public comment. **Mr. Miedzinski made a motion to accept the staff report as findings of fact in this case with special attention to "D" "The variance request is based on actions by the Applicants" and "F" "The foundation was abandoned for years before the Applicant sought a building permit to continue construction" and Ms. Neale seconded. The motion passed by a 5-0 vote.**

Mr. Miedzinski stated he is against the request however agrees with Mr. Canavan stated the house on top of the existing foundation does not count as impervious cover and is not detrimental to the environmental health of the buffer.

Mr. Miedzinski made a motion in the matter of VAAP #02-0969, Hart, having found that the objectives of Section 71.8.3 of the Comprehensive Zoning Ordinance have not been met and that the standards for granting a variance in the Critical Area have not been met, I move to deny the variance request to add impervious surface in the Critical Area Buffer to construct a single-family dwelling and appurtenances, also that the approved foundation and eight courses of block installed by 1988 could remain and Mr. Delahay seconded. The motion passed by a 3-2 vote with Ms. Neale and Mr. Edmonds opposed.

ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: July 24, 2008

George Allan Hayden
Chairman