

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, July 8, 2004**

Present: Marie Underwood, Chairperson
George Allan Hayden, Vice Chair
Greg Callaway, Member
Ronald C. Delahay, Sr., Member
Michael Hewitt, Member
John B. Norris, III, County Attorney
Denis Canavan, Director, Department of Land Use &
Growth Management
Yvonne Chaillet, Planner III, Department of Land Use
& Growth Management
Janice Blackistone, LUGM Fiscal Specialist (backup
for Recording Secretary)
April Bahner, Environmental Planner, Land Use &
Growth Management
Susan Mahoney, Planning Technician, Land Use &
Growth Management

A sign-in sheet is on file in the Department of Land Use & Growth Management. All participants in all cases were sworn in. The Chair called the meeting to order at 6:31 p.m.

PUBLIC HEARING

VAAP #03-1567 – THE WILKES

Requesting a Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to replace an existing single-family dwelling in the Critical Area Buffer. The property contains 27,007 square feet, is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District, and is located at 20765 Waterside Drive, Leonardtown, Maryland, Lots 6 through 9 and 160 through 161, Brubacher Subdivision; Tax Map 48, Block 13, Parcel 47.

Owner: Donald and Darlene Wilkes
Present: Jerry Soderberg, of DH Steffens Co.

Mr. Soderberg requested a continuance because of Health Department issues that have not been resolved due to vacation problems with Health Department employees.

Mr. Hayden moved to continue the meeting to September 9, 2004 because of Health Department issues that have not been resolved due to vacation problems with Health Department employees. The motion was seconded by Mr. Delahay and approved by a vote of 5-0.

VAAP #03-2779 – CARBONE PROPERTIES

Requesting a Variance from Section 72.3 of the Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation and a variance from Section 32.3 of the Comprehensive Zoning Ordinance to reduce the rear yard setback from the Critical Area Buffer. The property contains 3.76 acres, is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay District, and is located at the end of Scotland Beach Road on the Chesapeake Bay in Scotland, Maryland; Tax Map 73, Block 17, Parcel 60.

Owner: Carbone Properties, LLC
Present: Jerry Soderberg, of DH Steffens Co.

Withdrawn from agenda.

VAAP #04-0494 – RIPPLE BROTHERS

Requesting a Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to replace an existing single-family dwelling and appurtenances in the Critical Area Buffer. The property contains 2.34 acres, is zoned Residential, Low-Density District (RL), Limited Development Area (LDA) Overlay District, and is located at 46500 Short Acres Lane, Lexington Park, Maryland; Tax Map 43, Block 3, Parcel 524.

Owner: David and Carole Hanf
Present: Amos Ripple, of Ripple Brothers

Certified Receipts of notification to contiguous property owners

Ms. Chaillet stated the applicant is requesting approval to construct a single-family dwelling and appurtenances within the Critical Area Buffer.

Mr. Ripple stated he is building a house for Mr. and Mrs. Hanf and needs approval to build within the Critical Area Buffer due to steep slopes. He said the house would be 130 feet away from the waters edge.

The Board asked Mr. Ripple if there was a Road Maintenance Agreement. Mr. Ripple replied he was not sure.

The Board asked Ms. Chaillet if a Road Maintenance Agreement was required. Ms. Chaillet replied generally at the time of subdivision approval Land Use & Growth Management (LUGM) may see a Road Maintenance Agreement but we are not able to enforce the agreement. The Board asked Ms.

Chaillet with more people added to that subdivision road who would pay for road maintenance. Ms. Chaillet replied if it is a private road, in a subdivision, then the property owners would pay for the road maintenance.

The Board asked Ms. Chaillet if this subdivision is considered a minor subdivision. Ms. Chaillet replied no this is a major subdivision because there are more than five lots. The Board asked Ms. Chaillet does the major subdivision have a Road Maintenance Agreement. Ms. Chaillet replied at the time this was approved as a new major subdivision with private roads and part of the LUGM requirements. Mr. Canavan stated the variances in this situation following the recordation of the subdivision, are now a recorded lot. He said you would need to see what regulations were in effect at the time.

Mr. Delahay moved to accept the June 29, 2004 Staff Report; seconded by Mr. Hewitt and passed by 5-0.

The Chair opened to public comment.

Kenneth Bland, adjacent property owner, read a letter to the Board stating that he and his wife have no objections to the positioning of the house. He said all the neighbors, including him, are interested in upgrading the road when the Hanf's house and an additional house are built. He stated all the neighbors will go together to have the road upgraded.

The Chair asked Mr. Bland who fixes the road if there is a problem. Mr. Bland replied there are two neighbors; one has a tractor that scrapes the road and the other helps from time to time.

The Chair closed the hearing to public comment.

Mr. Delahay moved that, having adopted the June 29, 2004 Staff Report and making a finding 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 approved a Variance to construct a single-family dwelling within the expanded Critical Area Buffer with the recommended condition to adhere to the Planting Agreement, as requested. The motion was seconded by Mr. Callaway and approved by a vote of 5-0.

VAAP #03-0607 KUHSTOSS

Requesting a Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to construct a single-family dwelling in the Critical Area Buffer; Variance from Section 71.7.3 of the Comprehensive Zoning Ordinance to disturb slopes of 15 percent or greater in the Critical Area; Variance from Section 32.3 of the Comprehensive Zoning Ordinance to reduce the setback from mandatory buffers; and Variance from Schedule 32.1 of the Comprehensive Zoning Ordinance to reduce the side yard setback. The property contains 1.58 acres, is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District, and is located at the

end of Whiskey Creek Road on St. Thomas Creek, Hollywood,
Maryland; Tax Map 21, Block 7, Parcel 144.

Owner: Blynn and Linda Kuhstoss
Present: Robert Heier, of Ben Dyer Associates, Inc.

Certified Receipts of notification to contiguous property owners

Ms. Chaillet stated the applicant is requesting approval to construct a single-family dwelling, approval to disturb slopes of 15 percent or greater in the Critical Area, approval to reduce the setback from mandatory buffers and approval to reduce the side yard setback.

Robert Heier said the lot was recorded in 1986 after the adoption Maryland Critical Area Regulations but prior to the County's Critical Area program. He stated the lot is encumbered by the Critical Area Buffer and expanded Critical Area Buffer to the extent that there is no place to build a home on the lot unless it is built in the Critical Area Buffer.

The Board asked how long the owner has owned the property. Mr. Kustoss replied they have owned the property for two years.

The Board asked if the applicant thought about reducing the size of the house. Mr. Heier replied the house is of a modest size.

The Board asked Mr. Heier why the Health Department wants the well dug before the building permit is issued. Mr. Kuhstoss stated he was told by the Health Department that the well would need to be drilled prior to the foundation going in because they would have problems getting the equipment onto the lot due to steep slopes.

Mr. Hayden moved to accept the June 29, 2004 Staff Report; seconded by Mr. Callaway and passed by 5-0.

The Chair opened to public comment.

Michael Adams, who lives on Whiskey Creek Road, said he has several concerns about the water flow coming down the hill, waivers on steep slopes and the curator of the woods. He stated the property has been subdivided a couple of times, and it was poorly subdivided and obtained several waivers. He showed the Board a copy of the original plat.

The Chair asked Mr. Adams if he would be able see the house, once it is built, from his house. Mr. Adams replied yes he would be able to see house once it is built.

Patrick Sardo, who lives on Whiskey Creek Road, said the Kuhstoss' lot is a basically a mirror image of his lot with the same space and he built his house on his lot with no problems.

The Chair asked Mr. Sarido about the subdivision of the lot. Mr. Sarido said he purchased the lot 12 in 2001 and purchased the second lot a later date. He stated the property was subdivided into two buildable lots in 1986. He said the two lots are situated on a flat knoll with a ravine between the Adams and Kuhstoss', and one lot was actually in the ravine. He further stated the owner before him re-subdivided the two lots and moved the property line to accommodate two houses on the knoll. The Chair asked when the previous owner re-subdivided. Mr. Sarido replied he believed it was re-subdivided in 1986.

The Chair asked Mr. Sarido how big was the foot print of his house. Mr. Sarido replied the foot print of his house is more than 50 feet long by 46 feet wide.

The Chair closed the hearing to public comment.

The Board asked Mr. Heier if they tried to do a perc test in more than one spot in the back of the lot. Mr. Heier replied the approved perc tests were in the front of the lots and only one in the back of the lot.

Mr. Hayden moved that, having adopted the June 29, 2004 Staff Report and making a finding that the general standards for granting a Variance and the Standards for Variance in the Critical Area have been met, the Board approved the Variance to construct a single-family dwelling within the expanded Critical Area Buffer with the recommended condition to adhere to the Planting Agreement for planting of 38,250 square feet, which represents a three-to-one (3:1) mitigation for 12,750 square feet of clearing within the Critical Area Buffer, as requested. The motion was seconded by Mr. Delahay and approved by a vote of 4-1.

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

VAAP #04-0900 – Ritter – 15,000 square feet – variance to increase the amount of impervious surface in the Critical Area Buffer with additions to a single-family dwelling.

VAAP #04-1070 – Reich – 1.0 acre –Variance to increase the amount of impervious surface in the Critical Area Buffer with the addition of a replacement porch and Variance to exceed the overall impervious surface on the property.

MINUTES AND ORDERS APPROVED

The minutes of June 10, 2004 were approved as recorded.

Mr. Delahay moved to authorize the Chair to review and sign the orders. The motion was second by Mr. Callaway and passed by a vote of 5-0.

The Chair reviewed and approved as submitted the following Orders:

ZAAP #98-1128 – Myrtle Point Partnership, LLP

DISCUSSION

The Chair suggested scheduling a Board of Appeals Retreat at the end of September.

ADJOURNMENT

The meeting was adjourned at 7:41 p.m.

Janice C. Blackistone
Fiscal Specialist

Approved in open
session: August 12, 2004

Marie E. Underwood
Chairperson