

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, July 9, 2009**

Members present were Howard Thompson, Chairman; Wayne Miedzinski, Veronica Neale, George T. Edmonds and Ronald Payne. Randy Guy was absent. Department of Land Use & Growth Management (LUGM) staff present were Yvonne Chaillet and Jenn Ballard. Attorney George Sparling 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

CUAP #09-131-012 – Brick House Pit 2

Mr. Thompson stated he will be excusing himself from voting on this conditional use application tonight. Mr. Thompson advised the applicant that without his vote there are only four (4) voting members and asked if the applicant would like to continue the case to a date when five (5) members could be present to vote. Mr. Trautman stated he would like to move forward tonight.

The applicant is requesting conditional use approval for an extractive industry involving mining more than five acres. The property contains 170.78 acres; is zoned Rural Preservation District (RPD) and Airport Environs (AE) Overlay; and is located at 23595 Lawrence Hayden Road, Hollywood, Maryland; Tax Map 33, Grid 10, Parcel 131.

Owner: Windward Land Development, LLC
Present: Robert E. Trautman

The property and conditional use request were advertised in The Enterprise on June 24, 2009 and July 1, 2009.

Ms. Chaillet read the staff report which recommended approval of the request for an extractive industry involving mining more than five acres. Mr. Payne asked how many truck loads per day can currently be hauled from the site. Ms. Chaillet stated there is no limitation on mining operations under five (5) acres.

Mr. Trautman submitted the certified mailing receipts hereby labeled Exhibit 1 by the Recording Secretary. Mr. Trautman gave a brief overview of the proposed mining operation stating the idea is to supply St. Mary's County with more gravel. Mr. Trautman referred to condition seven (7) which reads as follows: "No other raw/mining materials shall be brought from off-site and placed on the subject Property." Mr. Trautman stated in other mining jobs he has earth left over and would like to be able to place the excess earth from other jobs on this property to make it more level.

Ms. Neale asked if coming from Route 235 which road would be used to access the site. Mr. Trautman stated Airport Road would be utilized for access to the site. Mr. Miedzinski stated during his site visit he noticed a large pile of trees and asked if they were to be burned. Mr. Trautman stated the Maryland Department of the Environment (MDE) will allow trees from other sites be transported and burned at this site. Ms. Chaillet stated we do not allow this and it is her understanding that MDE does not allow this either.

Mr. Miedzinski stated he also noticed trash of some sort in this burn pile and a dump truck filled with concrete. Mr. Miedzinski stated he would like to see these issues addressed at some point. Mr. Trautman stated the Board can make this a condition of the approval and further stated he does not condone anything other than clean fill.

Mr. Trautman referred to condition six (6) stating some of the jobs will require night work be done on the property and asked that condition six (6) reflect this. Mr. Sparling stated when you work outside normal hours do you know about this in advance. Mr. Trautman stated yes, well in advance and he could notify the Board when this type of work comes along if necessary.

Mr. Miedzinski opened the hearing to public comment. Mr. Mike Thompson representing the heirs of Michael Thompson stated we share a common boundary line with this property. Mr. Thompson stated the public hearing sign was posted at the end of the driveway and most people do not go that far down the road, therefore the people being affected by this would not know until the truck traffic started. Mr. Trautman stated mailing notices were sent to adjacent property owners. Mr. Thompson stated a large area was clear cut very close to his boundary and the proposed mining will be very close to his property line. Mr. Thompson asked that the mining take place elsewhere on the property so not to infringe on his property.

Mr. Thompson asked about the required buffer. Ms. Chaillet stated the required setback is 200 feet and a 75 foot "B" buffer is also required. Mr. Miedzinski asked about the acres that have been clear cut. Mr. Trautman stated these acres are being used for farming. Mr. Miedzinski closed the hearing to public comment.

Mr. Miedzinski stated in lieu of the violations he saw on his site visit he is inclined to continue the case to a date certain so the violations can be remedied. Ms. Chaillet stated staff would be willing to work with the applicant to ensure any and all illegal activities cease.

Ms. Neale made a motion in the matter of CUAP #09-131-012, Brick House Pit 2, to continue the public hearing to August 13, 2009 and Mr. Edmonds seconded. The motion passed by a 4-0-1 vote with Mr. Thompson abstaining.

VAAP #08-2555 - Nicol

Mr. Sparling stated in reviewing the file he noticed several letters of opposition to this request. Mr. Sparling advised the Board that one of the letters is from a former client of his. Mr. Sparling stated he does not believe there is anything under Maryland law that creates a problem; however the record should reflect this.

The applicant is requesting variance to clear forest vegetation and place lot coverage in the Critical Area Buffer expanded for steep slopes to construct a single-family dwelling with attached garage, septic drain fields and well. The property contains 2.52 acres; is zoned Residential Neighborhood Conservation district (RCN), Limited Development Area (LDA) Overlay, Airport Environs (AE) Overlay; and is located at 44738 Joy Chapel Road, Hollywood, Maryland; Tax Map 27, Grid 9, Parcel 829.

Owner: Bruce F. Nicol
Present: Jerry Nokleby

The property and variance were advertised in The Enterprise on June 24, 2009 and July 1, 2009.

Ms. Chaillet stated the applicant has submitted the certified mailing receipts hereby labeled as Exhibit 1 by the recording secretary. Ms. Chaillet read the staff report which recommended approval to disturb the Critical Area Buffer to clear vegetation and to install a septic system, subject to conditions and to deny the request to disturb the Critical Area Buffer to clear vegetation to construct a well and add lot coverage to construct a single-family dwelling with attached garage.

Mr. Edmonds asked why the septic system is being placed in the buffer. Ms. Chaillet stated portions of the property outside the buffer will not perk. Mr. Edmonds stated there is plenty of room outside the buffer to place the house, is this correct? Ms. Chaillet stated yes, this is staff's opinion.

Mr. Nokleby gave a brief overview of the requests stating this is the expanded Critical Area buffer. Mr. Nokleby stated the building envelope is only 8,000 square feet due to steep slopes and the Critical Area. Mr. Nokleby stated he has read the letters of opposition and it seems the main issue is sediment run-off into Cuckold Creek. Mr. Nokleby stated to address this concern he offers the following:

1. Moving the house back another 63 feet towards the road.
2. Installing super silt fence.
3. Providing stormwater management.

Mr. Thompson opened the hearing to public comment. Mr. Bruce Newell submitted a petition signed by 35 residents for the record, hereby labeled as Exhibit 2 by the recording secretary. Mr. Newell stated the Critical Area law has been modified consistently since 2002. Mr. Newell stated approximately 85%

of the property is steep slopes, wetlands, and highly erodible soils. Mr. Newell stated he does not believe there is a hardship at all as the house can be moved out of the buffer. Mr. Newell stated asking Mr. Nicol to comply with existing laws that he knew were in place prior to purchasing the property does not constitute a hardship.

Mr. Robert Currie stated four (4) years ago he applied to expand his house by 400 square feet. Mr. Currie stated he was required to modify his original plan as well as have every tree on the property surveyed, update the septic system and remove 400 square feet of impervious driveway to compensate for the 400 square foot building being placed outside the buffer. Mr. Currie stated Mr. Nicol had to have known the implications of this lot being a Realtor. Mr. Currie stated he objects to 100% of the house and septic system being within the Critical Area. Mr. Currie asked that the Board consider moving the house out of the Critical Area.

Mr. Bruce Nicol stated his intent is to build a modest home outside the 100 foot Critical Area buffer. Mr. Nicol stated to make him build a home, garage, driveway, stormwater management pond, dry well, front and back yard all on 8,000 square feet is a hardship and very unreasonable. Mr. Nicol stated with these controls in place and a super silt fence in place he sees no harm in allowing him to build within the expanded Critical Area buffer. Mr. Nicol stated Land Use and Growth Management (LUGM) informed him that the property contained highly erodible soils and after hiring Taylor Engineering determined the property does not contain highly erodible soils. Mr. Nicol submitted a package of ten (10) photos for the record, hereby labeled as Exhibit 4 by the recording secretary. Mr. Nicol submitted a package of five (5) letters of support for the record, hereby labeled as Exhibit 5 by the recording secretary.

Mr. Sparling referenced "A" in the standards, stating the Board needs to decide weather or not limiting this development to 8,000 square feet building envelope is an unwarranted hardship. The Board agreed.

Mr. Miedzinski asked if the bulkhead at the bottom of the hill belongs to Mr. Nicol and if a permit was obtained for this bulk head. Mr. Nicol stated yes this is his bulk head and he did in fact obtain a permit.

Mr. Miedzinski stated he does not believe moving the house back towards the road is the best option in this situation. Mr. Miedzinski stated he believes restricting Mr. Nicols to the 8,000 square feet envelope is an unwarranted hardship. Mr. Thompson stated he disagrees; the house should be placed outside the Expanded Critical Area buffer. Mr. Edmonds stated he also believes the house should be placed outside the Expanded Critical Area buffer.

Mr. Miedzinski made a motion in the matter of VAAP #08-2555, having made a finding that the standards for granting a 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, I move to approve the variance request to disturb the Critical Area Buffer to clear vegetation and to install a septic system, subject to the following conditions:

- 1. The Applicant shall provide a Planting Plan prior to the issuance of the building permit, which shows the required 3:1 mitigation per square foot of the variance granted pursuant to Section 24.4.2.b of the Ordinance. The Planting Plan shall show which native species have been selected for planting, and where on the Property the Applicant proposes to plant the vegetation. Areas without forest vegetation must be planted first prior to planting under story trees and shrubs, or paying fees-in-lieu; and***
- 2. The Applicant shall comply with the Critical Area Planting Agreement and approved Planting Plan, and***
- 3. The Applicant shall install a septic system with Nitrogen Removing Technology.***

Ms. Neale seconded, the motion passed by a 5-0 vote.

Mr. Miedzinski made a motion to accept any and all finding of the staff report referring to the septic system as the Board's findings and Ms. Neale seconded. The motion passed by a 5-0 vote.

Mr. Miedzinski made a motion that restricting the building envelope to 8,000 square feet does in fact create an unwarranted hardship and Ms. Neale seconded. The motion passed by a 3-2 vote with Mr. Thompson and Mr. Edmonds opposed.

The Board reviewed the Critical Area Standards and made the following findings of fact based upon testimony and exhibits:

- a. Restricting the building envelope to 8,000 square feet does in fact create an unwarranted hardship.
- b. Other properties commonly enjoy variances to build in the Critical Area Buffer. Granting of the variance would not confer a right upon the Applicant that would be denied to other properties in the Critical Area.
- c. Other properties commonly enjoy variances to build in the Critical Area Buffer. Granting of the variance would not confer a right upon the Applicant that would be denied to other properties in the Critical Area.
- d. Variance is needed due to the shape of the lot and other restricting features of the lot.
- e. The Applicant has reasonably demonstrated there will be no impact to fish or wildlife.
- f. Based upon testimony the variance is the minimum necessary to achieve a reasonable use of the land.

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MINUTES AND ORDERS APPROVED

The minutes of June 11, 2009 were approved as recorded.

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

- VAAP #06-132-039 – Park Place
- VAAP #09-0633 – RSF&F, LLC

ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Valerie Joshway, Attending Recording Secretary

Jada Stuckert, Recording Secretary

Approved in open session: July 23, 2009

Howard Thompson
Chairman