

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, July 13, 2006**

Members present were George Allan Hayden, Chair; Ronald Delahay; Gertrude Scriber; and Wayne Miedzinski. Greg Callaway was excused. Department of Land Use and Growth Management staff present was Denis Canavan, Director; Yvonne Chaillet, Zoning Administration; and Keona Courtney, Recording Secretary. George Edmonds, Board of Appeals First Alternate, was also present. Christy Holt Chesser, County Attorney, and Colin Keohan, Deputy County Attorney, were present.

A sign in sheet is on file in LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARING

VAAP #06-1782 – DECORATOR'S TRADING COMPANY

The Applicant is requesting an after-the-fact variance from Section 65.3 of the St. Mary's County Comprehensive Zoning Ordinance to increase the size of a permanent wall sign. The property contains 29.17 acres; is zoned Corridor Mixed Use (CMX) District; and is located at 22599 Macarthur Boulevard in California, Maryland; Tax Map 43, Block 2, Parcel 20.

Owner: San Souci Associates, LLC
Present: Richard Shin, Business Owner

All cases heard at this meeting were advertised in *St. Mary's Today* on 6/25/06 and 7/2/06. The properties were posted and certified mail receipts were submitted to staff for the files.

Mr. Shin's Exhibit 1: Presentation Packet regarding VAAP #06-1782

Mr. Shin explained he applied for a change of use and occupancy permit at LUGM to begin operating the business and inquired about a sign permit in February 2006. The Permits Coordinator informed him a sign permit was not required if he was refacing or replacing an existing sign; therefore Mr. Shin proceeded to hire a sign company to design and install a sign for the business that was similar to the signs displayed by two neighboring businesses. Mr. Shin was later informed by staff that the sign was in violation of the Ordinance and that he needed to apply for a sign permit. Mr. Shin stressed he was provided erroneous information and there needs to be better communication between the LUGM divisions. He also noted the sign is 32 inches in height and not 35 inches in height as stated in the staff report.

Mr. Miedzinski asked Mr. Shin about the cost of the sign. Mr. Shin explained the sign cost \$13,000 and this matter presents a financial liability for him as a newly established local business.

Ms. Chaillet explained regulations in Section 65.3 of the Ordinance provide buildings located in mixed use and commercial districts located more than 50 feet from the nearest public road, can have wall signs that measure one and one-half (1.5) square feet times the width of the building. The total square footage of the applicant's sign exceeds the allowable square footage by more than 50 percent and is visible from MD 235. Ms. Chaillet explained staff must square off signs containing individual letters in order to calculate the total square footage instead of measuring the square footage of each letter and adding them together.

Mr. Miedzinski inquired how large of a sign would be permitted. Ms. Chaillet explained based on the 66 feet of building frontage, a sign totaling 99 square feet would be allowed.

Mr. Shin explained based on his calculation, the height of the sign at 32 inches and length of the sign at 59 feet and 9 inches, the sign is 159 square feet in size as opposed to 175 square feet in size.

Mr. Hayden inquired about the difference between refacing and replacing signs. Ms. Chaillet explained if you are replacing an existing sign then it must be a one-on-one replacement. If you are refacing an existing sign, the basic structure and size of the sign must remain unchanged.

Mr. Delahay inquired about the size of the CVS sign that existed on the building years ago compared to the size of Mr. Shin's sign. Ms. Chaillet explained that the CVS sign did not extend the full width of the building frontage and Mr. Shin's sign would be larger than the CVS sign on a one-on-one replacement.

Mr. Miedzinski moved that having accepted the staff report with an amendment to change the total square footage of the sign to 159 square feet as opposed to 175 square feet, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

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

The Board asked Mr. Shin if he would be willing to remove the letters "CO" and the period from the sign to help reduce its total square footage. Mr. Shin explained he would prefer to reduce the size of the letters "CO" as opposed to removing them.

Mr. Canavan recommended that the Board leave the record open and continue the case at their next meeting to allow staff to meet with the Applicant and obtain more information from the sign company.

Mr. Miedzinski moved that the Board leave the record open and continue the case at their meeting on August 10, 2006 at 6:30 p.m. in Room 14 of the Governmental Center in order to allow staff to meet with the Applicant and obtain more information from the sign company. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

CUAP #03-131-062 – BIG FOOT HUNT CLUB, INC.

The Applicant is requesting modification of an approved conditional use pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance. The property contains 21.1 acres; is zoned Rural Preservation District (RPD); and is located at 24450 Pin Cushion Road in Mechanicsville, Maryland; Tax Map 24, Block 18, Parcel 173.

Owner: Big Foot Hunt Club, Inc.
Present: Joseph Mitchell, Attorney representing the Applicant
Spencer Whalen, President of Club

Ms. Scriber removed herself from the case due to a possible conflict of interest.

Applicant's Exhibit A-1: Letter dated 7/13/06 from Maryland State Sportsmen's Association Inc.
Mr. Hansen's Exhibit 1: Letter dated 1/12/05 from John Hill, Maryland Noise Investigator regarding sound measurements; (3) graphs depicting sound level of gunshots; aerial view of the property of both the complainant and Club; Dept. of the Environment regulations regarding control of noise pollution; Staff report dated 9/16/02;

Mr. Mattingly's Exhibit 1:

Excerpts of publications from the National Rifle Assoc.; Commercial General Liability Policy Declarations for Club Pictures (20) taken on 7/10/06 of Big Foot Hunt Club property

Mr. Mitchell explained the Club's operating hours are currently limited to Monday through Saturday during daylight hours and on Sundays from 1:00 p.m. to one-half hour before sunset. He explained the Sunday hours make it especially difficult for participants who travel to the Club from outside of the County; therefore, the Club desires to amend its hours of operation on two Sundays each month to allow the shooting to start at 9:00 a.m.

Mr. Mitchell explained the Club is expected to host the National Sportsmen's event once every three years and these fundraising events serve as the Club's main revenue source. Mr. Mitchell explained many of the participants carpool to the Club so there will not be a significant increase in the number of vehicles and traffic on the road. He stated the Club is also willing to change their operation hours during the week if necessary.

Mr. Hayden inquired if the change in hours on Sundays is required for the Club to maintain membership in the Maryland State Sportsmen's Association. Mr. Whalen stated it is a requirement.

Mr. Miedzinski inquired if the shoots can be held on Saturdays. Mr. Whalen explained participation is poor on Saturdays. Mr. Miedzinski inquired if anything else needs to be changed in order to host the National Sportmen's event. Mr. Whalen explained nothing else needs to be changed.

Mr. Delahay inquired about the cost of dues charged by the Association for membership. Mr. Whalen explained the Club must pay \$100 per year. Mr. Hayden inquired if the Club must pay the Association a portion of the revenue from the shoots that are held. Mr. Whalen explained the Club pays the Association a percentage of the revenue.

Joseph Lee Somerville, a local resident, explained his property borders the Club's property on the west side and he and other family members are satisfied living next to the Club's property. Mr. Somerville explained he feels the Club has been a good neighbor to the community.

Ms. Chaillet explained a modification of the conditional use approval was granted in April 2005 to upgrade the on-site sewage system and to permit the establishment of a sporting clays course. She explained a request for an amendment to the hours of operation was denied last year; however, staff finds that the request meets the standards for conditional use approval and does not have any adverse impacts.

Mr. Miedzinki made a motion that the staff report be accepted. The motion was seconded by Mr. Edmonds and passed by a 4-0 vote.

The Chair opened the hearing to public comment for those who support the request. The hearing closed with no comments.

The Chair opened the hearing to public comment for those who oppose the request.

Troy Hansen, a legal representative for Warren Farr, explained the Club's request conflicts with Sections 25.8 and 25.6 of the Ordinance and asked the Board to dismiss their application. He said the request will interfere with neighbors who reserve Sunday as their day of tranquility. He explained a Mennonite Church conducts open-air services on Sundays is located nearby and their horse-drawn buggies travel on Pin Cushion Road and will be impacted by

increased traffic. Mr. Hansen explained Mr. Hill determined a gunshot fired from 1003 feet produces a sound level of 67 decibels (dB); however, the noise standard in residential areas is only 60 decibels (dB). Mr. Hansen explained it is wrong for the Club to place the burden of its membership on the County's residents and adjacent property owners.

Ms. Chaillet explained the property is located in the RPD and there are no noise regulations in that district. Mr. Canavan explained the two year stipulation applies to denied variances and not modifications to conditional uses.

Julie Mattingly, resident of Pin Cushion Road, asked the Board to consider the wildlife, children playing outside, direction of the gunshots, and number of Club members that will be shooting. She stressed she does not want to give up her Sundays because she and her husband rest on that day. Ms. Mattingly expressed concern about a potential increase in traffic on the road which may trigger the need for road improvements that taxpayers will have to pay. She inquired if the Club can continue to ask for changes in their hours of operation because concerned neighbors do not always receive notification of the request.

Warren Farr, resident of Pin Cushion Road, explained he would like to give a parcel of land to his children and granddaughter. He explained he recently walked across his property line onto one of the pits and there was nothing to stop him; therefore a child would be able to walk directly onto one of the pits too. He stated the noise generated by the shooting is terrible. Mr. Hayden inquired about where the nearest pit is located in proximity to his property. Mr. Farr explained the nearest pit is approximately 100 feet from his property. He stated the Board needs to visit the property.

Roger Mattingly, resident of Pin Cushion Road, explained his property line is approximately 200 feet from the Club's property line. He explained the Club's letter to the Board lists several features of the property that do not exist such as: a 230-foot by 400-foot gravel parking lot, "no trespassing" signs along a fence that surrounds the property, and a buffer of trees and shrubs along the property line to lessen the noise. Mr. Mattingly explained there is only one "no trespassing" sign located at the front gate; therefore his brother-in-law posted a "no trespassing" sign in the woods so people will know not to go beyond that point. He explained the fence is lying on the ground and is covered by dirt in some spots. He mentioned there is a place on the property where ammunition cartridges are dumped.

Karen Farr, resident of Pin Cushion Road, explained Sunday is the only day her family has to spend together and they have family cook-outs whenever the Redskins play football. They do not want to hear the shooting or put anyone at risk.

Melissa Higgs, resident of Pin Cushion Road, explained although her husband is a police officer who owns a gun and likes to hunt, he is very respectful of their neighbors. She explained 9:00 a.m. is too early for shooting to start on Sundays because churches are open and people are resting and enjoying time with their families.

Mary Buono, resident of Pin Cushion Road, explained two family members with small children live nearby and she has a grandson that is scared of the gunshots. She stated neighbors should not have to listen to gunshots on Sunday morning. Ms. Buono explained she subdivided a portion of her property and gave it to her son who has a small child and they live closer to the Club's property. She said that he, too, feels it is unfair for the Club to start shooting at 9:00 a.m.

Warren A. Farr, resident of Pin Cushion Road, explained his property is adjacent to the Club's property and approximately 200 feet from the first pit. He explained his five year old daughter is frightened by the gunshots and no longer likes to play outside as a result of hearing them. Mr. Farr mentioned his neighbor's child is also frightened by the gunshots.

The Chair closed the hearing to public comment.

Mr. Delahay explained the Board approved an on-site septic system in the past and inquired about the portable potties on the property. Mr. Whalen explained the Health Department advised him that they are needed in case they experience overcrowding. Mr. Hayden inquired if the property has on-site sewage. Mr. Whalen replied it does.

Mr. Hayden expressed concern about the testimony received regarding fencing on the property. Mr. Whalen explained if the fence is knocked down in certain places, then the trees must have knocked it down. He explained small trees were planted along the back property line. Mr. Hayden explained children can wonder and they need a barrier to protect them. Mr. Whalen stated there is a fence around the entire property.

Mr. Hayden inquired about how many shooters normally participate on Sundays. Mr. Whalen said there are normally 25 to 30 shooters present. Mr. Hayden inquired about how many shooters would participate if the hours were changed to 9:00 a.m. on Sundays. Mr. Whalen explained he estimates there will be 40 to 45 shooters at any given time. Mr. Hayden inquired about how late the shooting lasts. Mr. Whalen stated the shooting lasts until 3:30 p.m. or 4:00 p.m. and doesn't last as long in the winter.

Mr. Delahay inquired about how many shooters there will be overall between 9:00 a.m. and 1:00 p.m. on Sundays. Mr. Whalen estimated there will be between 65 to 70 shooters during that time period; however, groups of shooters come and go so there may not be that many shooters there at one time.

Mr. Mattingly referred to the pictures of the property, explaining the fence consists of one thin string of wire and an adult can walk over it and a child can walk under it. He explained he has served on the Fire Department for over 30 years and he is not sure if the road leading to the property is adequate for ingress and egress of a fire truck. He stressed the Board members need to visit the property so that they can see the condition of it.

Mr. Miedzinski moved that Big Foot Hunt Club does not meet standard "b" for a modification of conditional use as requested due to the endangerment of public health, safety, convenience, morals, order, and general welfare. The motion was seconded by Mr. Edmonds and passed by a 4-0 vote.

Mr. Miedzinski moved that Big Foot Hunt Club does not meet standard "c" for a modification of conditional use as requested because it will interfere with the use and enjoyment of other property in the vicinity. The motion was seconded by Mr. Edmonds and passed by a 4-0 vote.

Mr. Miedzinski moved that Big Foot Hunt Club meets standards "a" and "d" through "h" for a modification of conditional use as requested. The motion was seconded by Mr. Edmonds and passed by a 4-0 vote.

Mr. Miedzinski moved that having made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, the Board deny conditional use approval to amend the hours of operation on two Sundays per month from 1:00 p.m. to 9:00 a.m. to allow for special events. The motion was seconded by Mr. Delahay and passed by a 4-0 vote.

VAAP #06-1127 – PATUXENT RIVER NAVAL AIR MUSEUM

The Applicant is requesting a variance from Section 65.2.6.a of the St. Mary's County Comprehensive Zoning Ordinance to increase the size of a temporary construction sign. The property contains 3.83 acres; is zoned Corridor Mixed Use (CMX) District; and is

located at 22156 Three Notch Road in Lexington Park, Maryland; Tax Map 43, Block 16, Parcels 51 & 54.

Withdrawn from the agenda.

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

VAAP #06-0715 – Floyd – 2.43 acres – The applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the Critical Area Buffer to construct additions to single-family dwelling. **Variance approved with signed planting agreement.**

MINUTES AND ORDERS APPROVED

The minutes of June 8, 2006 were approved as recorded.

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

VAAP #06-0330 – Conlon
ZAAP #03-110-091 - Boatwright

GENERAL DISCUSSION – FALL RETREAT

Ms. Chaillet reminded the Board that a date needs to be selected. Board members agreed to contact Ms. Chaillet and provide a preferable date. Mr. Hayden mentioned he wants to discuss the conflict of information between LUGM divisions at the retreat.

ADJOURNMENT

The meeting was adjourned at 9:15 p.m.

Keona L. Courtney
Recording Secretary

Approved in open session: August 10, 2006

George Allan Hayden
Chairman