

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

Present: George Allan Hayden, Chairman
Greg Callaway, Vice Chair
Ronald C. Delahay, Member
Michael Hewitt, Member
Wayne Miedzinski, Member
Heidi Dudderar, Deputy County Attorney
Denis Canavan, Director, Department of Land Use & Growth Management
Yvonne Chaillet, Zoning Administrator, LUGM
Sue Veith, Environmental Planner IV, LUGM
Sharon Sharrer, LUGM Recording Secretary

The Board of Appeal's 1st Alternate, Gertrude V. Scriber, was present in the audience. 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 6:31 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) Overlay; 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.

A public hearing was conducted and closed on June 16, 2005. The staff report was accepted at that hearing. At that time, the Board continued the hearing until their July 14, 2005 meeting to allow time for staff to analyze the requirements for new construction in the floodplain.

Ms. Veith explained that she has reviewed the floodplain maps for this site, and the floodplain in this area is at an elevation of four feet NAVD 1988. The mapping provided with the plans shows that the first floor elevation of the structure, using the same scale as is currently used, is about 4.6 feet above the floodplain currently. She explained that the structure met all of the floodplain requirements at the time of construction, and would meet the current floodplain

requirements as well. Under the floodplain regulations, an enclosed shed that is not used for living space could be constructed at grade as long as a non-conversion agreement is executed. Ms. Veith explained that execution of this agreement will be required as a part of the permitting process if the variance request is approved. This agreement means that the structure can never be anything other than storage space, and can not be converted to anything else for living space purposes.

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 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the variance to add impervious surface in the Critical Area Buffer upon the conditions that the applicant signs a non-conversion agreement and all requirements of the Planting Agreement are met. The motion was seconded by Mr. Miedzinski and passed by a 3-0 vote, with Mr. Callaway and Mr. Delahay abstaining from the vote since they were not present at the previous hearing to hear all of the testimony.

ZAAP #04-3249 – STEVE LEOPOLD

The appellant is appealing the Planning Director's decision, on March 24, 2005 to approve a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to increase the impervious surface in the Critical Area Buffer with an addition to a single-family dwelling. The property contains 0.58 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 14265 Riverside Drive in Scotland, Maryland; Tax Map 74, Block 2, Parcel 102.

Owner: Steve Leopold
Appellant: Roger Staiger

Due to subsequent discussions, this case will be reheard in its entirety by the Board of Appeals during their meeting on September 8, 2005.

VAAP #05-0778 – LANEDON SUBDIVISION, Lot 5

The applicant is requesting variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains 20,000 square feet; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 43915 Main Way in Leonardtown, Maryland; Tax Map 57, Block 19, Parcel 123, Lot 5.

Owner: Joseph Wood
Present: William Higgs, of Little Silences Rest, Inc.

The receipts from the certified mailings are in the file.

The Chair explained that the three cases for the Lanedon Subdivision were very similar and could be presented together, although individual motions must be made for each case.

Mr. Higgs explained that all three of the properties being discussed are of similar size, with the same footprint for development. The driveways and sidewalks vary based on the approved septic location, and where the house had to be placed on the property.

Mr. Callaway made a motion that the staff reports for all three properties be accepted. The motion was seconded by Mr. Miedzinski and passed by at 5-0 vote.

The Chair opened the hearing to public comment.

Bill Bartlett, a Valley Lee resident, explained that these lots did not perc at the time they were laid out, and asked if regulations had changed since that time. Ms. Chaillet explained that the Health Department had approved these septic locations, but that any details on their requirements would have to be directed to the Health Department. Mr. Bartlett explained that there is a large watershed area at the back of the properties which feeds into a tidal pond, and that he did not like the regulations which allow houses to be squeezed into the area.

The Chair closed the public hearing.

Mr. Callaway moved that having accepted the staff report, dated June 28, 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 been met; the Board approve 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. Hewitt and passed by a 5-0 vote.

VAAP #05-0779 – LANEDON SUBDIVISION, Lot 6

The applicant is requesting variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains 20,000 square feet; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 43925 Main Way in Leonardtown, Maryland; Tax Map 57, Block 19, Parcel 123, Lot 6.

Owner: Joseph Wood
Present: William Higgs, of Little Silences Rest, Inc.

The receipts from the certified mailings are in the file.

Mr. Callaway moved that having accepted the staff report, dated June 28, 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 been met; the Board approve 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. Miedzinski and passed by a 5-0 vote.

VAAP #05-0780 – LANEDON SUBDIVISION, Lot 7

The applicant is requesting variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains 20,154 square feet; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 43935 Main Way in Leonardtown, Maryland; Tax Map 57, Block 19, Parcel 123, Lot 7.

Owner: David Wood
Present: William Higgs, of Little Silences Rest, Inc.

The receipts from the certified mailings are in the file.

Mr. Callaway moved that having accepted the staff report, dated June 28, 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 been met; the Board approve 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. Hewitt and passed by a 5-0 vote.

VAAP #05-0489 – LISA IDE

The applicant is requesting variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains 10,000 square feet; is zoned Residential Neighborhood Conservation (RNC), Limited Development Area (LDA) Overlay; and is located on North Patuxent Beach Road in California, Maryland; Tax Map 35, Block 3, Parcel 3, Lot 3.

Owner: Lisa Ide
Present: Pete Ide

Legal ads for all cases heard by the Board of Appeals on July 14, 2005 were published on June 29, 2005 and July 6, 2005. Receipts from the certified mailings were provided to staff.

Mr. Ide explained that there is currently a termite infested house on the property. He said that they would like to remove the old house and put a new septic system and house on the property. Ms. Chaillet explained that the removal and replacement of the old house will actually create a reduction in the amount of impervious surface on the property.

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

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

Mr. Hewitt moved that having accepted the staff report, dated July 6, 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 been met; the Board approve 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. Callaway and passed by a 5-0 vote.

CUAP #05-132-027 – INGRID SWANN

The applicant is requesting conditional use approval in accordance with Chapter 51 to operate an extractive surface mine. The property contains 220 acres; is zoned Rural Preservation District (RPD); and is located at 36350 Davis Road in Mechanicsville, Maryland; Tax Map 16, Block 18, Parcel 11.

Owner: Ingrid E. Swann
Applicant: Howlin Concrete
Present: Dan Ichniowski, of NG&O Engineering
Joseph Penn, President, Howlin Concrete

Receipts from the certified mailing were provided to staff.

Mr. Ichniowski explained that the concept plan for this application has gone through the Technical Evaluation Committee (TEC) with no detrimental comments. A wetlands delineation has been done along all of the intermittent streams on the property, and a 50 foot buffer protecting those areas will be maintained. Material from the mine will be transported to the Howlin Concrete wash plant along MD Route 5 in Mechanicsville. The property owner will timber the property prior to the commencement of the mining operation.

Board members expressed concern with the early morning hours, as well as the hauling operations on Saturdays. They noted that there is currently a great deal of Amish buggy traffic, as well as truck traffic, in that area. Mr. Penn explained that Howlin Concrete requires all drivers, including contractors, to attend the safety meetings. Driving records, as well as insurance, for drivers are constantly monitored by Howlin.

The Chair expressed concern with the Saturday operations due to the fact that a new park has recently been opened in the area, with eight or ten soccer fields in the complex. He noted that the addition to the amount of truck traffic in that area, during the same hours that traffic would be entering and leaving the park, could cause safety problems on the roads.

Ms. Chaillet noted that the staff report should show a request for 130 daily truckloads, instead of the 150 daily truckloads shown.

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

The Chair opened the hearing to public comment.

Tom Hamilton, a resident of Wicomico Shores in Mechanicsville, explained that he felt the addition of the mine would be an extreme change to the spirit and nature of the area. He asked if there had been a study done to analyze the impact to the water. Ms. Chaillet explained that Soil Conservation District (SCD) does require the applicant to submit an erosion and sediment control plan to be approved, and that Maryland Department of the Environment (MDE) will also monitor the use of the property as a mining operation. Mr. Hamilton asked about the timbering of the area, and if the restoration will be done with approved native species. Ms. Chaillet explained that the restoration will be in accordance with MDE requirements.

Ms. Swann explained that she is very environmentally conscious, and would not be doing this if it would mean ravaging the property or a major disturbance to the area wildlife. She explained that she didn't think it would even be feasible to timber the entire area to be mined at one time, and that she would like the timbering to be done one area at a time.

The Chair closed the public hearing.

Mr. Hewitt moved that having accepted the staff report, dated July 8, 2005; and having made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the conditional use application for an extractive industry involving the mining of more than five acres, subject to the following conditions:

- 1. The mining operation shall be in accordance with State regulations in effect of the date of this approval. Where the Board of Appeals' conditions are more restrictive than the State requirements, the Board of Appeals' conditions shall apply.**
- 2. The final site/reclamation plan shall be approved by the Department of Land Use and Growth Management prior to commencement of site development.**

- 3. The total acreage to be mined shall be 155 acres. The total acreage disturbed at any given time shall be no more than (15) acres (which includes (5) acres in open mining, (5) acres in preparation for mining, and (5) acres in reclamation). Each area mined shall be clearly staked for easy inspection. Markers shall be established throughout the property in accordance with the site plan for excavation and reclamation.**
- 4. Hours of operation shall be from 7:00 a.m. to 5:00 p.m., Monday through Friday, and from 7:30 a.m. to 12:00 p.m. on Saturday. Operations are prohibited on Sundays and holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). Hauling shall be prohibited on Saturdays.**
- 5. The Property shall not be used as a landfill or salvage yard; i.e. no debris of any type will be hauled onto the Property.**
- 6. No topsoil shall be removed from the site. All topsoil shall be stockpiled for reclamation purposes as shown on the reclamation plan subject to the Board of Appeals' approval.**
- 7. The Applicant shall abide by the standards set forth in Section 51.3.80 (Extractive Industry) of the Comprehensive Zoning Ordinance. The number of truckloads of material to be hauled offsite shall be limited to an average of 75 truckloads per day, not to exceed 350 truckloads per week.**
- 8. Signs shall be maintained to alert traffic that there are trucks entering and exiting the Property pursuant to requirements of the Department of Public Works and Transportation. Signs shall be maintained at the entrance of the residential access roads to indicate the roads are for private access only and no trucks are permitted.**
- 9. The internal haul road and operations area shall be maintained and treated with water on a weekly basis to effectively minimize dust.**
- 10. All of the conditions approved in this application shall be listed on the approved site plan. Any additions, changes, or modifications on this site shall require Board of Appeals approval.**
- 11. Prior to the extraction of any natural resources, all applicable approvals shall be obtained by the Applicant, with copies submitted to the Department of Land Use and Growth Management.**
- 12. The conditions imposed by this approval and all other applicable federal, state and local ordinances, regulations and laws, shall be binding on the owners of this property, their partners, lessees, heirs and assigns. Should the applicant not obtain the above mentioned approval, the approval granted hereby shall forthwith cease and expire.**
- 13. The Department of Land Use and Growth Management, its employees and agents, are authorized and permitted to make official onsite inspections in accordance with the St. Mary's County Comprehensive Zoning Ordinance. If the applicant refuses entry to**

the operation, such action (refusal) shall be deemed a violation of the conditions of approval.

14. Any violation of the conditions of this approval or violation of any federal or state laws, rules, regulations, codes or ordinances may result in the suspension or revocation of the conditional use approval after a show cause hearing and decision by the Board of Appeals.
15. The natural flow of water through the surrounding properties shall not be altered or restricted by the Applicant as a result of this conditional use.
16. There shall be no burning onsite except for trees and other wood products derived from site clearing and grubbing operations derived from this conditional use.
17. Tree removal shall be performed one phase at a time, as needed.

The motion was seconded by Mr. Delahay and passed by a 5-0 vote.

VAAP #05-132-027 – INGRID SWANN

The applicant is requesting variance from Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the required 200-foot setback from external property lines. The property contains 220 acres; is zoned Rural Preservation District (RPD); and is located at 36350 Davis Road in Mechanicsville, Maryland; Tax Map 16, Block 18, Parcel 11.

Owner: Ingrid E. Swann
Applicant: Howlin Concrete
Present: Dan Ichniowski, of NG&O Engineering

The receipts from the certified mailings were provided to staff.

Due to the lateness of the hour, the Board of Appeals opened the hearing on the variance request and then continued the hearing until the Board's meeting at 6:30 p.m. on August 11, 2005 in Room 14 of the Governmental Center in Leonardtown, Maryland.

DISCUSSION

VAAP #03-0686 - THOMAS RUTHENBERG

The Chair explained that the Board members received a copy of the video tape from the hearing of Mr. Ruthenberg's variance request in 2003. Mr. Hewitt and Mr. Hayden noted that the tape spoke of building the house on piers, as is found in the Carolinas, with the living space starting on the second floor and open space underneath. He asked if the lower level had ever been converted to living space. Ms. Chaillet explained that the lower level could not be converted to living space at any time, because Mr. Ruthenberg was required to elevate the living space at the time of construction by the floodplain regulations.

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

VAAP #05-132-007 – Century 21 New Millinnium – 2.38 acres – The applicant is requesting variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to reduce the front yard setback. **Variance approved.**

MINUTES AND ORDERS APPROVED

The minutes of June 16, 2005 were approved as recorded.

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

VAAP #05-0624 – Cain

VAAP #05-0936 – Golden Beach Subdivision, Parcel 340

ADJOURNMENT

The meeting was adjourned at 10:19 p.m.

Sharon J. Sharrer
Recording Secretary

Approved in open session:
August 11, 2005

George Allen Hayden
Chairman