

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, August 11, 2005**

Present: George Allan Hayden, Chairman
Ronald C. Delahay, Member
Michael Hewitt, Member
Wayne Miedzinski, Member
Gertrude V. Scriber, 1st Alternate
John B. Norris, III, County Attorney
Denis Canavan, Director, Department of Land Use & Growth Management
Yvonne Chaillet, Zoning Administrator, LUGM
Susan Mahoney, Planning Technician, LUGM
Janice C. Blackistone, Fiscal Specialist IV, LUGM

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 6:35 p.m.

PUBLIC HEARING

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, Inc.
Agent: Dan Ichniowski, of NG&O Engineering

This case was continued from the Board's July 14, 2005 meeting.

The County Attorney explained that he would not participate in the discussion or public hearing on this case due to a possible conflict of interest, and left the room for the entire hearing of this case.

Mr. Ichniowski explained that the applicant is requesting a variance to reduce the required 200-foot setback to a 100-foot setback due to the unusual topography of the property. He said that they would like to extend the buffer along the property lines. Mr. Ichniowski explained that there will be no equipment or processing done on site, and the only equipment that will be on the property is excavating equipment. He said that no building structures will be placed on site.

Ms. Chaillet explained that there are several streams on the property, and

that a 50-foot buffer is required from the bank of each stream. A 200-foot setback from the house will be maintained. She explained that staff believes the reduction of the external property lines will not add any congestion to MD Route 234. The applicant will maintain the dense buffer that is currently along MD Route 234.

The Chair asked if there were any comments from any of the neighbors regarding the reduction of the buffer. Ms. Chaillet replied that LUGM had received a letter dated July 13, 2005 from Edward Middleton stating that the mining operations would be negative to their property and reduce its value.

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

Mr. Hewitt stressed his concern that reducing the 200-foot buffer to a 100-foot buffer would impact noise on nearby properties. He asked if the noise would affect the Middleton property. Mr. Ichniowski explained that the Middleton's property is not next to this property and the noise of the mining would not affect his property.

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

Ms. Scriber moved that having accepted the staff report, dated July 8, 2005; and having made a finding that the standards for variance and the objectives of section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance had been met; the Board approve the variance to reduce the required 200-foot setback from external property lines. The motion was seconded by Mr. Hewitt and passed by a 5-0 vote.

The County Attorney returned to the hearing room for the remaining cases on the agenda.

VAAP #05-1705 – VAUGHAN PROPERTY

The applicant is requesting variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the front yard setback to construct a detached garage. The property contains 10,000 square feet; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) and Best Management Overlay (BMO) Districts; and is located at 18357 River Road in Tall Timbers, Maryland; Tax Map 61, Block 14, Parcel 248.

Owner: Edwin C. and Judith H. Vaughan

Legal ads for all cases heard by the Board of Appeals on August 11, 2005 were published on July 24 and August 3, 2005. Receipts from the certified mailings were provided to staff.

Mr. Vaughan explained that he intends to put the garage on existing impervious surface, which is now being used as his driveway and parking area.

He said that he can not move the structure further back onto the property because of an existing shed, which he intends to keep. Mr. Miedzinski asked if the garage would open to the street. Mr. Vaughan explained that he is proposing to purchase a 25-foot right-of-way beside his property, and would enter the garage from the River Road side using some of that right-of-way. Mr. Miedzinski asked if he currently owns the right-of-way, but Mr. Vaughan replied that it is in litigation.

Mr. Hewitt asked if fire equipment could get between these buildings in the event of a fire. Ms. Chaillet replied that the setback between structures is not designed to get vehicles between them, and that if there was a setback there would probably be less chance of a fire jumping from one structure to the next.

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

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

Mr. Hewitt asked Mr. Vaughan if this would be used as living space. Mr. Vaughan replied his shed has a shower and toilet, which he would like to move that to the garage once built.

Mr. Hewitt moved that having accepted the staff report, dated August 5, 2005; and having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the variance to reduce the required front yard setback from 25 feet to five (5) feet to construct a detached garage which will be used for storage only and not for living space. The motion was seconded by Ms. Scriber and passed by a 3-2 vote, with Mr. Delahay and Mr. Miedzinski opposing.

VAAP #04-2963 – SULLIVAN PROPERTY

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 1.54 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at the end of Camp Merryland Road in Piney Point, Maryland; Tax Map 69, Block 21, Parcel 223.

Owner: Angela Sullivan

Receipts from the certified mailings were provided to staff.

Frederick Sullivan, husband of owner, explained that the property has been in the family for about 35 years and was seriously eroding, so they put up a 210-foot seawall. He said that Hurricane Isabel took out a lot of the buffer

vegetation, and the area now has very spotty vegetation. Mr. Miedzinski asked if they were intending to tear down the shed. Mr. Sullivan replied that they were.

The Chair said the Critical Area Commission recommended that the applicant implement an appropriate Stormwater Management Plan. Ms. Chaillet said that the Environmental Planner will speak to someone at Critical Area Commission to see if a drywell would be a satisfactory solution to the Critical Area Commission's concerns. Mr. Hewitt asked if this property is located in the floodplain. Ms. Chaillet replied that it was, and that the applicant would be required to build to flood evaluation.

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

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

Mr. Miedzinski moved that having accepted the staff report, dated August 4, 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 the requirements of the Planting Agreement are met. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #04-0047 - ZIMMERMAN

The applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to develop in the expanded stream buffer. The property contains 74.92 acres; is zoned Rural Preservation District (RPD); and is located at 24630 Maypole Road in Leonardtown, Maryland; Tax Map 25, Block 9, Parcel 310.

Owner: Joseph and Heidi Zimmerman
Agent: Barrett Vukmer, of Chesapeake Trails Surveying, LLC

Receipts from the certified mailings were provided to staff.

Mr. Vukmer said that the applicants are trying to build a house for their daughter and son-in-law on their working farm. He explained that the new requirements for buffering and drainage severely impacted the applicants, and that the proposed site is out of the steep slopes and erodible soils.

The Chair asked about the Planting Agreement, and if additional planting should be recommended. Ms. Chaillet replied that staff will work with the applicants on the requirements of the Planting Agreement.

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

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

Ms. Scriber moved that having accepted the staff report, dated August 5, 2005; and having made a finding that the standards for variance and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance had been met; the Board approve the variance to construct a single-family dwelling and appurtenances within the expanded stream buffer, upon the condition that the applicants adhere to the Planting Agreement that requires three-to-one (3:1) mitigation for 2,024 square feet of impervious surface in the expanded stream buffer and three-to-one (3:1) mitigation for clearing of 3,000 square feet of woodland in the expanded stream buffer in order to maintain natural vegetation in stream buffers areas. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

VAAP #05-0031 - BUCKLER

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 17,340 square feet; is zoned Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay; and is located on Wolfe Drive in Mechanicsville, Maryland; Tax Map 5A, Block 19, Parcel 1.

Owner: George E. Buckler
Agent: Barrett Vukmer, of Chesapeake Trails Surveying, LLC

Receipts from the certified mailings were provided to staff.

Mr. Vukmer explained that this lot was recorded in 1953 in Golden Beach, and is entirely vegetated. He said that the applicant is proposing to build a modest house. Ms. Chaillet explained that this property is a grandfathered lot, and is entirely wooded. In order for the applicant to construct a house, he will need to clear 63.5% of the existing woodland.

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

Mr. Miedzinski asked if the sewage easement was in the back, and why the septic system could not be closer to the house. Ms. Chaillet replied that the Health Department requires a distance of 10 feet from the principal structure. Mr. Vukmer explained that they put the first line as close to the perc test as possible, while still meeting the Health Department's requirements.

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 27, 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 had been met, the Board approved the variance to clear in excess of 30% of the existing woodland, upon the condition that the requirements of the Planting Agreement are met. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

VAAP #05-0654 - PULLIAM

The applicant is requesting after-the-fact variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the front yard setback. The property contains 0.34 acres; is zoned Rural Preservation District (RPD); and is located at 19751 Three Notch Road in Lexington Park, Maryland; Tax Map 59, Block 16, Parcel 196.

Owner: Glenn and Sandra Pulliam

Receipts from the certified mailings were provided to staff.

Ms. Pulliam apologized for the after-in-fact variance, and explained that they did go first to the LUGM to get a setback variance because they were within the 50-foot setback, and were approved for an 8 foot by 36 foot porch on the front of their house. She said that family members had constructed the porch, but had not understand that the proposed porch was not supposed to go across the house instead of stopping at 36 feet. She explained that she and her husband were staying at Children's Hospital while their daughter was in critical condition for a month and a half. When they arrived home and saw that the porch was across the house, they called LUGM find out what they needed to do and were told it would require an after-the-fact variance.

Mr. Hewitt moved that the staff report be accepted. 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 comment.

Ms. Chaillet explained that staff could not approve after-the-fact variances, but would approve an administrative variance. She explained that no comments were received by adjoining property owners.

Mr. Hewitt moved that having accepted the staff report, dated August 1, 2005; and having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance had not been met, the Board deny the after-the-fact variance to increase the size of the porch from 288 square feet to 384 square feet. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

Mr. Hewitt moved that having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance had been met, the Board approve the variance to reduce the front yard setback by expanding the front porch by 12 feet, for a total of 384 square feet. The motion was seconded by Ms. Scriber and passed by a 5-0 vote. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

VAAP #03-1688 - EARNSHAW

The applicant is requesting after-the-fact variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to place impervious surface in the Critical Area Buffer with the addition of a shed. The property contains 0.66 acres; is zoned Rural Preservation District (RPD) and Limited Development Area (LDA) Overlay; and is located at 16638 St. Jerome's Neck Road in Dameron, Maryland; Tax Map 71, Block 4, Parcels 454, 507, 15, 6, and 547.

Owner: Jeffrey Wade & D. Natalie Earnshaw

Receipts from the certified mailings were provided to staff.

Exhibit S-1 Site Plan Map with new drawings of pipe and electrical lines from applicant.

Mr. Earnshaw said he had a permit to put a retaining wall and shed on the property. He explained that he had surveyors mark the location for the shed, and his neighbor reminded him that he could not put the shed where it was marked due to the location of his mound system. Mr. Earnshaw said that when he originally built his house, he was told to leave an opening or passage/road way to work on his mound system and the adjoining neighbor's mound system. With that in mind he found a more practical place to put the shed and started building the shed with the permit. It took several years to build the shed, and he said he was at the point of putting the roof on the shed when he received the Stop Work Order from LUGM.

Mr. Miedzinski asked how many trees were removed. Mr. Earnshaw replied he had not removed any trees, and that he has pictures of the area from before Hurricane Isabel showing there was nothing there at all.

Ms. Chaillet explained that the standards of variance have not been met, and that there is no unwarranted hardship on this property. She explained that there was another area on the property to locate the shed. Mr. Hewitt asked Ms. Chaillet about the argument Mr. Earnshaw had to access his own mound system. Ms. Chaillet replied Mr. Earnshaw would need to show staff why he can not access the mound system. Mr. Hewitt asked how he would be able to access the mound system if he had his shed in the approved location. Ms. Chaillet replied he could access it from St. Jerome's Neck Road because his septic easement is right on the road.

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

The Chair opened the hearing to public comment.

James Krilich, a neighbor of Mr. Earnshaw, said he was in favor of Mr. Earnshaw building a shed. He said Mr. Earnshaw cleared the tree from the road when Hurricane Isabel hit their area and the electric company could not get electricity to their homes without clearing the road.

Fowler Earnshaw, representing F&T Home Builders who owns lots 2, 3, 14 and 15, said they have no problems with the shed.

The public hearing closed.

Mr. Earnshaw asked Mr. Canavan if he could show him the alternative location for the shed. Mr. Canavan showed Mr. Earnshaw on the site plan (Exhibit S-1), and stated that when Mr. Earnshaw was in his office he placed a template of the proposed building in the side yard of the house and at the adjoining wall indicating that by adjoining it to the house he then satisfies a location for the shed that would be no closer to the front or side property lines. He said it would not encroach into the 1500 gallon septic tank. Mr. Earnshaw said he would have to build the shed over top the existing pipes and electrical lines that run out to the tanks. Mr. Canavan stated those pipe and electrical lines are not shown on that exhibit that was provided to LUGM. Mr. Earnshaw replied that was correct.

Mr. Canavan asked Mr. Earnshaw to draw on the exhibit where the pipe and electrical lines were located. Mr. Canavan stated Mr. Earnshaw demonstrated on the east of the house one line particular to the side wall of the house and connecting the 1500 gallon tank meaning the side wall could not be used for the shed because the shed would be on top of the utility lines. Mr. Earnshaw said this was correct. Mr. Canavan explained that the utility lines information was not brought to his attention in the conference with Mr. Earnshaw at LUGM. Mr. Canavan asked Mr. Earnshaw why the shed could not be located on the west side of the house. Mr. Earnshaw replied that the electrical lines come out about 5 to 6 feet underground down the side of the house then out and over to the corner to the telephone pole. Mr. Earnshaw said in the center of the house the well comes out and comes over to the well and unto the adjoining property.

The Chair stated that this new information which was presented to staff and the Board was important to this case. Mr. Canavan agreed that this new factual information was important to the case, and that he does not want to impede any construction code requirements with his two alternative locations, so he would now return to the original recommendation for the location of the shed. Mr. Earnshaw replied that the approved location of the shed would not allow him to get through there with machines, equipment, or dump trucks to work on the

mound system. Mr. Earnshaw stated he did not think he was doing anything wrong moving the shed to the opposite side of the house, and that he was not putting the shed any closer to the water.

Mr. Miedzinski stated would like to find a way to leave the shed there. The Chair agreed he would like to leave the shed there because this way the soil will not be disturbed.

The Board addressed the Standards for Variance of Section 71.8.3 of the Zoning Ordinance, finding that:

- That there are special conditions and circumstances that are peculiar to the Property and those circumstances are the underground buried facilities which service the electric and septic utilities to the house.
- For the Applicant to have reasonable use of this property will require a variance to allow impacts to the Buffer for the construction of the shed.
- The requested variance would not confer upon the Applicant a special privilege because sheds have been approved in the Critical Area before and there is not a reasonable area where the shed could be relocated.
- The variance originates from the location of the utilities which are not necessarily conditions in the result in the actions of the Applicant.
- The granting of a variance will be in harmony with the spirit and intent of the Critical Area law and regulations because allowing the access for the mound system in the current area where the propose shed had been approved is more beneficial to the wildlife then building a shed and not allowing access to the mound system.
- There was not sufficient amount of remaining land to place the shed outside of the Buffer. Therefore, the variance is necessary to achieve a reasonable use of their land.

Mr. Canavan explained that these new facts were not brought to the attention of the staff, and that he understands the Board concluding that primary access to the mound system, underground utilities and the possibility of demolishing or impacting the underground utilities lines to gain access to a potential repair of a mound system dictates that the original proposed shed location is no longer a viable option. He agreed that the existing location of the shed is the preferred location in light of the unique circumstances, location of the utilities, access to the mound system, and access to the septic reserve area of the adjoining property owner.

Mr. Hewitt moved that having accepted the staff report, dated July 25, 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 had not been met, the Board deny the after-the-fact variance to add impervious surface in the Critical Area Buffer with the addition of the shed. However, having made a finding that the standards for variance and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance had been met, the Board approved the variance to add impervious surface in the Critical Area Buffer with the addition of the shed subject to the following conditions:

- 1. Before the stop work order can be lifted, the Applicant must submit engineered drawings to the Department of Land Use**

and Growth Management showing the location of the underground utilities.

- 2. Mitigation is required at a ratio of three-to-one (3:1) for new disturbance in the Critical Area Buffer pursuant to Section 24.4.2.b of the Ordinance. A Critical Area Planting Agreement must be signed and notarized.**

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

VAAP #05-0968 - HARRIS

The applicant is requesting after-the-fact 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 0.546 acres; is zoned Residential Neighborhood Conservation District (RNC), Limited Development Area (LDA) Overlay; and is located at 46125 River Hill Road in Lexington Park, Maryland; Tax Map 35, Block 14, Parcel 7.

Owner: Michael Harris
Applicant: Nancy Montano O'Connor

Receipts from the certified mailings were provided to staff.

Exhibits A-1 – A-10 Pictures of lot cleared and graded.

Tim O'Connor, husband of applicant, explained that he had made the assumption that when you have an approved permit from LUGM you are able to do enough grading around the structure to have a positive grade away from the foundation. He said that a lot of vegetation remained from the front porch to the road. He stated that the big item is that the construction entrance into the site was made about 30 feet wide instead of the 24 foot width that is on the site plan. Mr. O'Connor explained that the reason for wider entrance was to make it possible to get the equipment on and off the site without driving onto the neighbor's property, destroying their lot and driveway. He said they did not clear anything outside what was needed to construct the house properly, and that buffers were left around all the borders. Ms. O'Connor explained that they live next to this lot and want to continue the buffer. She said that much of the vegetation was cleared by Hurricane Isabel, and more in a microburst which came through in 2004. Ms. O'Connor stated that the clearing done was minimal because they tried to locate the house on the property where the storms already had taken out a good amount of vegetation.

The Chair opened the hearing to public comment.

Mr. Delahay asked if they were the property owners. Ms. O'Connor replied that the property is owned by Mr. Harris, and that they are neighbors. She explained that they are managing the building of the home on this lot. Mr.

Delahay asked Mr. O'Connor if this was his first project of building a home. Mr. O'Connor replied that it was not, but it was his first project in the Critical Area. Although he knew it was in the Critical Area, he thought that it meant to keep the building and clearing to a minimum and not to go outside the buffers.

Mr. Hewitt expressed concern about the 30 foot driveway. Mr. O'Connor explained that they will not keep the 30 foot driveway, but will reduce it to the proposed 24 foot driveway. He said they made the driveway 30 feet wide as a construction entrance only, so they could get equipment in and out. Mr. Hewitt asked if they could scale the driveway down to 12 foot. Ms. O'Connor replied they could do that, but the driveway would need to be 24 feet wide when it reached the garage to match the width of the garage.

Ms. Chaillet stated that the lot was cleared and graded before a building permit application was submitted. Mr. O'Connor said when the microburst came through it ripped up 20 to 30 trees. He explained that the trees were laying down everywhere, and they were under the assumption after the storm that when a tree falls down on your property you could remove it. He stated LUGM told him he should have pictures of the trees that had fallen down after the storm damage. He explained that he does not have any pictures, but he does have about 10 neighbors that can verify the trees that had fallen after the storm. He said when they removed the trees with heavy equipment, it disturbed the soil where the proposed house would be located, and that the grading was basically smoothing out the tire and equipment tracks.

Ms. Chaillet explained that the Environmental Planner had looked at the site plan when the application for a permit was received, and saw an area that was cleared. Aerial photos from March 2003 showed that the area was a fully wooded lot. Two inspectors were sent to the site who reported that the lot was graded and cleared. Ms. Chaillet and the Environmental Planner then did a site visit and took pictures (Exhibit A-1 through A-10) which confirmed the Inspectors' report.

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

Mr. Hewitt asked Ms. Chaillet if a building permit is required when there is a natural disaster. Ms. Chaillet explained that fallen trees can be removed, but not other vegetation; and the lot can not be graded without an Environmental Permit. Mr. Canavan explained that LUGM conducted community meetings throughout St. Mary's County immediately after Hurricane Isabel. The meetings informed property owners that piers damaged by the storm could be replaced with pier in-kind without a permit and trees that were leaning or knocked over could be removed. Homeowners were told to take pictures before doing the work to show exactly what was being done for the benefit of the Army Corps of Engineers, Department of Natural Resources, and the Inspection Division. He explained that this did not authorize unnecessary grading. Ms. O'Connor said she spoke with Mr. Knight regarding a tree down on their property after the storm

and asked if they could remove or burn the tree. She said she was never told about the community meetings, or that she would need any sort of permit. She stated all of this was done about one year before applying for this permit. Mr. O'Connor said this was a microburst, not Hurricane Isabel, and that the microburst came sometime after the hurricane so he is not sure anything was posted in the newspaper about cleaning up property.

The public hearing closed.

The Board addressed the Standards for Variance of Section 72.3 of the Zoning Ordinance, finding that:

- Nearly the entire lot had been covered in vegetation prior to clearing. Approval was granted for clearing 29.9% of the existing vegetation, and the Applicant agreed that this amount of clearing was all that was necessary to construct the proposed single-family dwelling and appurtenances. However, the Applicant exceeded the limits of disturbance and cleared 43.7% of the existing woodland, a difference of 12.7% or about 3,000 square feet. The Board finds that special conditions or circumstances do not exist that are peculiar to the land and that strict enforcement of the Critical Area provisions of the Ordinance would not result in unwarranted hardship.
- A strict interpretation of the Critical Area provisions of the Ordinance would not deprive the Applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County. The Applicant received approval to clear 29.9% of the Property and went beyond this to clear 43.7% of the Property. The Board finds that the Applicant has not met this standard.
- The granting of a variance would confer upon the Applicant a special privilege that would be denied by the Critical Area provisions of the Ordinance to other lands within the Critical Area. Clearing in excess of 30% of the existing forest or woodland cover is prohibited. An applicant must seek a variance in order to clear more than 30% and approval must be obtained prior to issuance of a permit. The clearing must be the minimum amount necessary for the proposed development. The Applicant was approved to clear 29.9% of the existing vegetation.
- The Board finds that the variance request is based upon conditions or circumstances that are the result of actions by the Applicant. The Applicant cleared more than 30% of the existing vegetation without authorization.
- Pursuant to Section 72.1 of the Ordinance, the intent of the forest and woodland resource protection standards is to conserve forests and developed woodlands and to maintain, to the extent possible, the protective values of wildlife, water quality, timber, and recreation and other resources.

Mr. Hewitt moved that having accepted the staff report, dated August 4, 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 had not been met, the Board deny the after-the-fact variance to clear in excess of 30% of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

Mr. Hewitt moved that having made a finding that the standards for variance and the objectives of Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance had been met, the Board approve the variance to clear in excess of 30% of the existing woodland, subject to the following conditions:

1. Driveway is returned to its 24 foot width.
2. Mitigation is required at three-to-one (3:1) for clearing in excess of 30% of the existing woodland.
3. Clearing does not exceed the current 43%.

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

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

VAAP #05-1072 – Judy Nacincik – 14.5 acres – The applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to increase impervious surface in the Critical Area Buffer to construct an addition to a single-family dwelling and wrap-around covered porch. **Variance approved.**

MINUTES AND ORDERS APPROVED

Mr. Norris stated there has been a Human Relations Commission appeal on the Steve Leopold case - ZAAP #04-3249. He explained that case will need to be reheard in it's entirety at the next meeting. **Mr. Hewitt moved to accept the minutes of July 14, 2005 as recorded with removal of ZAAP #04-3249 – Steve Leopold, which will be reheard in it's entirety at the next meeting.** The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

Mr. Miedzinski moved that the Order for Steve Leopold – ZAAP #04-3249 not be approved. The motion was seconded Ms. Scriber and passed by a 5-0 vote.

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

VAAP #04-3129 – Satterthwaite
VAAP #05-0778 – Lanedon Subdivision, Lot 5
VAAP #05-0779 – Lanedon Subdivision, Lot 6
VAAP #05-0780 – Lanedon Subdivision, Lot 7
VAAP #05-0489 – Leverings Subdivision
CUAP #05-132-007 – Swann Property

DISCUSSION

The Board requested that a retreat be scheduled with discussion topics to include after-the-fact approvals, road maintenance agreements, overbuilding on small lots, and the time allowed to replace an existing structure that has been condemned.

ADJOURNMENT

The meeting was adjourned at 10:25 p.m.

Janice C. Blackistone
Fiscal Specialist, Backup for
Recording Secretary

Approved in open session:
September 8, 2005

George Allen Hayden
Chairman