

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, August 13, 2009**

Members present were Wayne Miedzinski, Vice-Chairman; Randy Guy, Veronica Neale, George T. Edmonds and Ronald Payne. Howard Thompson was excused. Department of Land Use & Growth Management (LUGM) staff present were Yvonne Chaillet, Zoning Administrator; Kelly Palmer, Critical Area Planner; Jenn Ballard, Environmental Planner and Jada Stuckert, Recording Secretary. 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

VAAP #07-2857 - Errington

The certificate of property posting was submitted for the record, *hereby labeled as Exhibit 1 by the Recording Secretary.*

Mr. Errington submitted the certified mailing receipts for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.*

The applicant is requesting a variance to place new lot coverage in the Critical Area Buffer and to trade more than 1,000 square feet of lot coverage in the Critical Area Buffer to replace an existing single-family dwelling and appurtenances. The property contains 37,500 square feet (25,543 square feet of fastland); is zoned Residential, Low-Density District (RL), Intensely Developed Area (IDA) Overlay; and is located at 45112 Lighthouse Road, Piney Point, Maryland; Tax Map 65, Grid 17, Parcel 225.

Owner: Robin P. Errington and Jeffery L. Errington
Present: William Higgs and Jeff Errington

The property and variance were advertised in The Enterprise on July 29, 2009 and August 5, 2009.

Ms. Chaillet read the staff report which recommended denial of the request to trade more than 1,000 square feet of lot coverage in the Critical Area Buffer to replace an existing single-family dwelling and appurtenances. The staff report and attachments were submitted for the record, *hereby labeled as Exhibit 3 by the Recording Secretary.*

Mr. Guy asked if anything could be moved to meet the standards. Ms. Chaillet stated the house could be constructed with an attached garage in the front of the house. Ms. Chaillet stated the Applicant could place the house outside the buffer and seek a variance for the attached garage. Ms. Chaillet stated there is a lot of paved surfaces i.e. driveway and walkways that could be reduced or removed. Mr. Guy asked if the driveway would be gravel. Ms. Chaillet stated even if it was gravel, water cannot flow freely through gravel therefore it counts towards the impervious surface limit.

Mr. Higgs submitted a response to the ordinance standards dated 8-13-09, *hereby labeled as Exhibit 4 by the Recording Secretary* and a letter from Greg Kolarik, *hereby labeled as Exhibit 5 by the Recording Secretary.* Mr. Higgs stated 22,538 square feet or 88.2% of the land is encumbered by the expanded critical area buffers with 3,005 square feet or 11.8% between the buffers. Mr. Higgs stated the IDA critical area designation does not have any lot coverage maximum. Mr. Higgs stated the proposed lot coverage is 7,257 square feet or 28.4% of the lot.

Mr. Higgs stated Mr. Errington has already removed 1,874 square feet or 24.6% of the original lot coverage and is proposing to remove all the lot coverage located within the original 100 foot buffer and replace it with marsh vegetation. Mr. Higgs stated an additional 900 square feet of existing gravel driveway and deck located in the 100 foot buffer will also be removed and planted in vegetation.

Mr. Higgs stated it is the intent to establish a home occupation on the property. Mr. Higgs stated Mr. Errington is a homebuilder and will need storage and garage space to protect vehicles and essential tools. Mr. Higgs read into the record Exhibit 4.

Mr. Sparling asked that the PowerPoint presentation be labeled as an exhibit, *hereby labeled as Exhibit 6 by the Recording Secretary.*

Mr. Errington referred to Exhibit #5 stating he has discussed in detail the restoration of the marsh features with Mr. Kolarik. Mr. Errington stated the impervious surface on the property was an attraction and a good reason to purchase the property. Mr. Errington stated he has worked closely with staff to try and meet the requirements for this variance. Mr. Errington stated this lot is 75 feet wide while others on this street are only 50 feet wide. Mr. Errington stated he has kept all the side buffers where other properties have not. Mr. Errington stated what he is asking for is not out of character with what is already in area.

Mr. Miedzinski opened the hearing to public comment. Mary-Ann Dyson, Legal Council for the Critical Area Commission interviewed Ms. Mary Owens of the Critical Area Commission for the record. Ms. Owens stated she reviewed all the information in the file and did a sight visit. Ms. Owens reviewed the project utilizing State and County standards. Ms. Owens stated the goal is to minimize the amount of development on the property. Ms. Owens stated in this case, where everything is being removed we have the utmost flexibility to minimize the development on the property. Ms. Owens stated the garage is large and can be reduced, a lot of the pavement can be removed, and the 980 square foot deck can be reduced. Ms. Owens stated most decks are only 300 to 400 square foot decks.

Ms. Owens submitted an aerial image for the record, *hereby labeled as Exhibit 7 by the Recording Secretary.* Ms. Owens stated unwarranted hardship is determined by what is a reasonable use of the property. Ms. Owens stated if the property is developed as proposed it will most definitely affect the fish and wildlife in and around the Bay. Ms. Owens stated due to the constraints of the property she would not recommend this much development take place on the property.

Mr. Edmonds asked if the applicant could develop on the same footprint. Ms. Owens stated no, the applicant would have to apply for a variance for this as well. Mr. Edmonds stated he has reduced this by 1,874 square feet. Ms. Owens stated we look at the reasonable use of the property and there is still over 7,000 square feet of developed property most of which is in the buffer.

Mr. Miedzinski asked about the photo of the marsh land shown in the PowerPoint presentation and how Ms. Owens felt about this being done on the property. Ms. Owens stated this would be wonderful; however, it would be very hard to effectively plant this marsh. Ms. Owens stated the pavement will runoff quicker than other surfaces. Mr. Miedzinski stated he feels a house could be built here, but it seems it can be reduced. Mr. Miedzinski asked if Mr. Errington would be willing to change the configuration of the development. Ms. Owens stated a formalized stormwater management system would be needed. Ms. Owens specified other mechanisms that could also help.

Ms. Chaillet asked the applicant to clarify the two story garage and clarify if there would be an accessory apartment on the second floor. Mr. Errington assured the Board there would not be an

accessory apartment above the garage, rather it will be an area for his business. Ms. Owens recommended 2,500 square feet of impervious surface in the buffer only.

THE BOARD TOOK A 5 MINUTE RECESS

Mr. Miedzinski stated the applicant has offered to reduce the lot coverage by an additional 500 square feet and asked if this is acceptable to the Critical Area Commission. Ms. Owens stated no, the Critical Area Commission is opposed and recommended further reducing the lot coverage in the buffer.

Ms. Owens submitted the Ferat Buffer Management Plan for the record as an example, *hereby labeled as Exhibit 8 by the Recording Secretary*. Ms. Owens stated the Ferat property is comparable to the property at hand however the Ferat property was able to reduce their lot coverage in the buffer to approximately 2,400 square feet.

The Board reviewed each of the standards for variance and made findings for the record. ***Mr. Edmonds made a motion to adopt the findings of fact and Ms. Neale seconded. The motion passed by a 5-1 vote with Mr. Payne opposed.***

Ms. Neale made a motion in the matter of VAAP #07-2857, Errington, 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 request to add new impervious surface in the Critical Area Buffer; and having found that the objectives of Section 41.5.3 of the Comprehensive Zoning Ordinance have been met I move to approve the request to trade more than 1,000 square feet of impervious surface in the Critical Area Buffer to replace an existing single-family dwelling and appurtenances and Mr. Edmonds seconded. The motion passed by a 5-1 vote with Mr. Payne opposed.

CUAP #09-131-012 – Brick House Pit 2 - Continuation

Mr. Sparling advised the applicant that one of the members here tonight was not at the original hearing. The Applicant recommended informing the member of the happenings of the case at the previous hearing and allowing him to stay and vote on this matter tonight.

The applicant is requesting a 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), 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 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 to mine an additional 26.26 acres, subject to conditions in the staff report.

Mr. Miedzinski thanked Mr. Knott for cleaning up the property. Mr. Trautman gave a brief overview of the project stating the requests made by the Board at the last hearing have since been met. Mr. Trautman stated in lieu of statements by a neighboring property owner the entrance has since been moved. Mr. Trautman stated the Maryland Department of the Environment visited the property yesterday and found no issues with the pits.

Mr. Miedzinski referenced staff report attachment 1 which refers to clear cutting of a buffer. Mr. Trautman stated he is unaware of a portion of the property that is not buffered or has been clear cut.

Mr. Sparling reiterated two additional concerns from the last meeting including the request for extended hours of operation and bringing materials onto the property from other sites.

Mr. Payne asked if MDE has any restrictions on the hours of operation. Mr. Trautman stated they do not regulate our hours of operation.

Ms. Neale made a motion to accept the staff report as findings of fact in this case and Mr. Guy seconded. The motion passed by a 6-0 vote.

Ms. Neale made a motion in the matter of CUAP #09-131-012, having made a finding that the standards for granting a conditional use and the objectives of Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to mine an additional 26.26 acres, subject to the conditions stated in the staff report and as recorded tonight and Mr. Edmonds seconded. The motion passed by a 6-0 vote.

VAAP #09-0904 - Elrod

The certificate of property posting was submitted for the record, *hereby labeled as Exhibit 1 by the Recording Secretary.*

Mr. Vukmer submitted the certified mailing receipts for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.*

The applicant is requesting a variance to clear more than 30 percent of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains 18,000 square feet; is zoned Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay; and is located at 29767 Prince Road, Mechanicsville, Maryland; Tax Map 5A, Grid 2, Parcel 56.

Owner: James G. Elrod, Jr.
Present: Barry Vukmer

The property and variance were advertised in The Enterprise on July 29, 2009 and August 5, 2009.

Ms. Chaillet read the staff report which recommended approval to clear more than 30 percent of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The staff report and attachments were submitted for the record, *hereby labeled as Exhibit 3 by the Recording Secretary.*

Mr. Vukmer gave a brief overview of the request stating we are having trouble mitigating between the Critical Area Commission and the Soil Conservation District. Mr. Vukmer referenced staff report attachment 5 in regards to the percentage of clearing.

Mr. Miedzinski opened the hearing to public comment. Mary Owens stated she recommends reducing the clearing to a maximum of 50% or 9,000 square feet as stated in her letter. Ms. Owens recommended moving the mound system further to the left.

Ms. Ballard submitted a series of eight (8) photos on five (5) pages for the record, *hereby labeled as Exhibit 4 by the Recording Secretary* and a colored version of Attachment 6 dated 8-13-09 for the record, *hereby labeled as Exhibit 5 by the Recording Secretary.*

Ms. Neale made a motion to accept the staff report as findings of fact in this case and Mr. Guy seconded. The motion passed by a 6-0 vote.

Mr. Edmonds made a motion in the matter of VAAP #09-0904, having made a finding that the standards for granting a variance in the Critical Area and the objectives of Section 72.3.1.c of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to clear more than thirty percent of the vegetation on the lot, 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 paying fees-in-lieu; and**
- 2. The Applicant shall comply with the Critical Area Planting Agreement and approved Planting Plan, and**
- 3. The proposed clearing shall not exceed 60.6 percent of the existing vegetation.**

Mr. Guy seconded and the motion passed by a 6-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of July 23, 2009 were approved as recorded.

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

VAAP #08-2555 – Nicol
ZAAP #02-0969 – Hart
VAAP #09-0717 – River Bay Townhomes, LP
VAAP #07-2594 – Leonard/Baluss
VAAP #07-3528 – Siegfried

ADJOURNMENT

The meeting was adjourned at 10:07 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: August 27, 2009

Howard Thompson
Chairman