

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, August 23, 2007**

Members present were George Hayden, Chairman; Greg Callaway, Wayne Miedzinski, Ronald Delahay, and Veronica Scriber. First alternate George Edmonds was also present. Department of Land Use & Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; and Jada Stuckert, Recording Secretary. Christy Holt Chesser, County Attorney 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 #05-3786 - Spore

The applicant is requesting to extend an approved variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to add new impervious surface in the expanded Critical Area Buffer to construct a single family dwelling and appurtenances. The property contains 1.37 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 16395 Ball Point Road, Piney Point Maryland; Tax Map 69, Block 09, Parcel 222.

Owner: David and Vickey Spore
Present: David Spore

The property was advertised in The Enterprise on August 8, 2007 and August 14, 2007.

Ms. Chaillet read the staff report which recommended approval. Mr. Spore did not provide the green certified mail receipts for the record. Mr. Hayden stated the Board could proceed with the public hearing and make a condition in the motion to have the green receipts provided for the record no later than close of business Friday, August 24, 2007. Mr. Spore gave an overview of the requested variance stating due to personal issues he would be unable to develop the property himself. Mr. Spore stated he would be selling the property for someone else to develop.

Mr. Hayden expressed his concern with the growth of vegetation on the parcel in question stating when the variance was originally approved there was only 32% vegetation and now there is well over 60% vegetation. Mr. Spore stated this is all natural growth. Mr. Hayden stated clearing the lot with this amount of vegetation would affect wildlife. Mr. Callaway stated this variance has already been approved in the past. Ms. Chaillet stated denying the variance now would be a taking of the property because this is a grandfathered recorded lot.

Mr. Hayden opened the hearing to public comment, hearing none, closed the hearing.

After further discussion, ***Mr. Miedzinski made a motion in the matter of VAAP #05-3786, Spore, having found 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 not been met, I move that the extension of the variance to disturb the Critical Area Buffer to construct a single family dwelling be denied and Ms. Scriber seconded. The motion passed by a 5-0 vote.***

CUAP #07-2446 – Chopticon High School Batting Cage

The applicant is requesting a modification of Conditional Use Approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance to construct a building for batting practice. The property contains 65.87 acres; is zoned Rural Preservation District (RPD); and is located at 25390 Colton Point Road, Clements, Maryland; Tax Map 18, Block 24, Parcel 112.

Owner: St. Mary's County Public Schools
Present: Jackie Meiser

The property was advertised in The Enterprise on August 8, 2007 and August 15, 2007.

Ms. Chaillet read the staff report which recommended approval. Ms. Meiser gave an overview of the batting cage stating the building would be a 1,700 sq. foot galvanized steel building. Ms. Meiser addressed each standard for conditional use.

Mr. Hayden opened the hearing to public comment. Nancy Botorf testified in favor of the batting cage stating it would give the team a place to practice batting during poor weather. Mr. Hayden closed the hearing.

After discussion, **Mr. Miedzinski made a motion to accept the staff report and adopt the findings of fact contained therein as the Board's findings in this matter and Ms. Scriber seconded. The motion passed by a 5-0 vote.**

Mr. Miedzinski asked about the utility services involved. Ms. Meiser stated the building would be lighted however no bathroom or kitchen facilities would be installed. Mr. Miedzinski stated he would like to see some plantings around the building to make it more attractive. After discussion, Ms. Kim Howe stated the boosters club would be willing to plant around the building.

After further discussion, **Ms. Scriber made a motion in the matter of CUAP #07-2466, having made a finding that the Standards for a Conditional Use pursuant to Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve a modification to the approved conditional use to construct a building for batting practice and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.**

ZAAP #06-110-152 – Matthews Subdivision Appeal

The applicant is requesting an appeal of the Planning Director's determination that only three equivalent dwelling units (EDUs) should be allocated to the property and a request for a determination that there should be at least 20 EDUs allocated to the property; Appeal of the Planning Director's determination that the use of the Mobile Home Park ceased to exist and that any remaining mobile homes became nonconforming uses at that point, and appeal of the Planning Director's denial of the Applicant's request to renew the Mobile Home Park License. The property contains 20 acres; is zoned Village Center Mixed Use (VMX) District; and is located at 45201 Shetland Acres Drive, Valley Lee, Maryland; Tax Map 57, Block 23, Parcel 155.

Owner: Joseph R. and Helen I. Matthews, Estate of Helen I. Matthews
Present: Brian T. Dugan

The property was advertised in The Enterprise on August 8, 2007 and August 15, 2007.

Mr. Dugan gave an overview of the chain of events leading up to the Director's decision. Ms. Chaillet read for the record the list of events as they appear in the staff report. "The Department began tracking the number of mobile homes, or trailers, in mobile home parks including Shetland Acres in 1995, although Department files contain a Health Department report dated August 12, 1993. This report indicated that there were 20 pads on site and 12 trailers. The number of mobile homes in Shetland Acres has varied over the years due to the failing shared septic system and the failing septic system that serves the house. A 1995 Health Department report indicated that the shared septic system was not functioning and that the property owner was pumping the system to prevent overflow. The report also stated that high water tables were common in this area and recommended that Shetland Acres connect to the nearby public sewer line. The Health Department denied approval of the license at this time. Following the 1995 denial of the license, Shetland Acres eventually obtained approval, subject to installing a curtain (French) drain system around the septic system to see if function could be restored to the drain fields. The

property owner was required to do this in 1996, but a 1997 Health Department report indicated that the sanitarian could not locate the curtain drain. The report also stated that nine trailers were found on the property during the inspection. An October 5, 1998 Health Department report is ambiguous as to whether or not the curtain drain was ever installed in Shetland Acres. However, the report stated that the property owner had reduced the number of trailers and, finding no violations, the Health Department recommended approval of the license. There were nine trailers in Shetland Acres at this time. Supplemental reports from the Health Department indicated 13 trailers on the property in June 2001 and 10 trailers in August 2001. Notes from this August report state that by restricting the park to half the capacity, no apparent septic problems (above ground) were evident. The Health Department noted the same number of trailers (i.e., 10) in a July 2003 report.

In April 2006 the Department received a brief letter from Joseph R. Matthews, Jr. stating that he was now the sole Executor of the Estate of Helen Matthews, which included Shetland Acres. Mr. Matthews also said in the letter that he was in the process of selling and closing Shetland Acres and was sending the license renewal fee of \$200.00. On May 2, 2006 Mr. Matthews hand wrote a note below the April 2006 letter, stating that he was closing Shetland Acres on June 30, 2006. Adam Knight, Deputy Code Official, added a second note this same date, saying that the Mobile Home Park License (#07-023) was returned to Land Use & Growth Management. Check #186 was returned to Mr. Matthews without processing. The current license was due to expire on June 30, 2006. In a letter to Joseph Matthews, dated May 5, 2005, Glynnis Schmidt, Health Department Sanitarian, stated that the soil on Shetland Acres were unsuitable for sewage disposal purposes due to an insufficient soil treatment zone. Ms. Schmidt included a copy of the letter she sent to Steven King, Director of MetCom, on May 5, 2006 asking for assistance in allowing Shetland Acres to connect to the "restricted use" force main in this area. Health Department approval is required before a mobile home park license can be issued. In response to Ms. Schmidt's letter, Mr. King sent a letter to Jeffery Jackman, Senior Planner with the Department of Land Use and Growth Management, requesting a Comprehensive Water and Sewer Plan Reclassification from "No Planned Service" to "S-3D." "Only the existing mobile homes may be connected to the public sewerage system. No additional mobile homes can be served by the initial connection or in the future." There were two mobile homes together with the existing house in Shetland Acres at the time the mobile home park license expired on June 30, 2006. Therefore, the Department determined that only three EDUs (Equivalent Dwelling Units) could be allocated for connection to public sewer. Mr. Matthews made it clear to the Department that he planned to close Shetland Acres and sell the property. Given that he chose not to renew the mobile home park license, the Department concluded that the nonconforming mobile home park would cease to exist once all of the existing tenants moved.

On November 30, 2006, the Department received a development review application and site plan for the Lands of Matthews Two Lot Minor Subdivision, Tracts No. 1 and No. 2, which is the Shetland Acres property. Following review by the Technical Evaluation Committee and additional perc tests by the Health Department, it was determined that the property should be allocated emergency EDU's based on the following: One (1) EDU on Tract 1 when the existing home's septic system fails and two (2) EDU's on Tract 2 for the existing trailers. This information was conveyed to Brian Dugan in a letter from Sabrina Hecht, Planner with the Department, dated March 26, 2007. Ms. Hecht also informed Mr. Dugan that the nonconforming use of the trailer park would expire June 30, 2007.

In late April 2007 the Department received a check in the amount of \$200.00 from Brian Dugan on behalf of the Estate of Helen I. Matthews. The check was dated April 25, 2007 and was intended to cover the mobile home park license fee. Although the license expired on June 30, 2006 and the Applicant failed to renew the license at that time, to keep the nonconforming use alive. Pursuant to Section 52.4 of the Ordinance: A nonconforming use, structure or any part thereof, that is discontinued or changed to a conforming use for a continuous period of one year or more shall not be reestablished and the use of the structure or site thereafter shall be in conformity with the regulations of the district which it is located.

After discussion, **Mr. Callaway made a motion to accept the staff report and adopt the findings of fact contained therein as the Board's findings in this matter and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.**

Mr. Hayden opened the hearing to public comment. Elfreda Mathis testified this property is adjacent to my family's property as cited on Tax map 57, block 23, parcel 270 and located on the east side of MD Route 249 in Valley Lee, Maryland. Ms. Mathis stated I have no problem with approved development or the right to appeal decisions. Ms. Mathis stated her concerns are about the impact on her family's property for present and future use such as sewage disposal, stormwater management, surface drainage, and the water supply. Ms. Mathis stated her biggest concern is the sewage and water drainage. Ms. Mathis stated she personally does not have confidence in the septic system for Shetland Acres because it has failed before. Ms. Mathis requested if another public system is being used to support the land use her family would like the opportunity to access the system along with the development. Ms. Mathis presented a letter to the Board of Appeals stating the above testimony for the record. Hereafter recorded as Exhibit A. Mr. Joe Matthews stated he was told by Ms. Chaillet he had 365 days to fill out an application for the mobile home permit and Equivalent Dwelling Unit (EDU's) expansion would be possible. Mr. Hayden closed the hearing for public comment.

Mr. Hayden asked Ms. Chaillet if Mr. Matthews was correct in his testimony. Ms. Chaillet addressed the nonconforming use standard in the Ordinance. Ms. Scriber asked if Mr. Matthews understood the information Ms. Chaillet gave him. Ms. Chaillet stated Mr. Matthews did understand the information and stated Mr. Matthews documented his understanding in a letter to the department.

After further discussion, Mr. Matthews stated for the record that the septic system for the house is not failing. **Mr. Miedzinski made a motion in the matter of ZAAP #06-110-052, Matthews Subdivision, I move that the Board of Appeals hereby uphold the administrative decisions of the Director of the Department of Land use & Growth Management to allocate only three Equivalent Dwelling Units (EDUs) to the subject property; to deny the license renewal for Shetland Acres Mobile Home Park; and to find that Shetland Acres mobile Home Park had ceased to exist and the remaining mobile homes were deemed nonconforming and Mr. Callaway seconded. The motion passed by a 5-0 vote.**

MINUTES AND ORDERS APPROVED

The minutes of August 9, 2007 were approved as recorded.

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

VAAP #07-0766 – Alley

VAAP #06-132-028 – Charlotte Hall Station

ADJOURNMENT

The meeting was adjourned at 8:20 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: September 13, 2007

George Allan Hayden
Chairman