

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, September 8, 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  
Jean Wathen, Senior Office Specialist, LUGM  
Sharon Sharrer, LUGM Recording Secretary

The Board of Appeal's 1<sup>st</sup> 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 6:30 p.m.

**PUBLIC HEARING**

**VAAP #05-132-011 – TOYOTA OF SOUTHERN MARYLAND**

The applicant is requesting variance from Section 63.4.3 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the required buffer yard. The property contains 6.9 acres; is zoned Corridor Mixed Use District (CMX); and is located at 22466 - 22498 Three Notch Road in Lexington Park, Maryland; Tax Map 43, Blocks 9 & 10, Parcels 44, 45, 157, 281, and 426.

Owner: 235 Realty, LLC  
Applicant: Toyota of Southern Maryland

**This case was withdrawn from the agenda by the Applicant.**

**CUAP #05-132-029 – STOLTZFUS PROPERTY**

The applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance for an extractive industry involving the mining of more than five (5) acres. The property contains 125 acres; is zoned Rural Preservation District (RPD); and is located at 28575 Thompson Corner Road in Mechanicsville, Maryland; Tax Map 8, Blocks 2 & 3, Parcels 40 & 69.

Owner: Samuel & Magdalena Stoltzfus

Applicant: Howlin Concrete, Inc.  
Agent: Daniel Ichniowski, of NG&O Engineering  
Joseph Penn, President, Howlin Concrete, Inc.  
Tom DeMarr, Operations Manager, Howlin Concrete,  
Inc.

Legal ads were published on August 24, 2005 and August 31, 2005. The property was posted and receipts from the certified mailings were submitted.

Mr. Ichniowski asked the Board of Appeals to consider allowing the applicant to haul 150 truckloads daily and permitting a larger area of operation due to the size of the site and its proximity to the plant, to allow the mining and reclamation of the property to be completed in a shorter amount of time. The completion of the mining operation is expected to take five to ten years and the use of the property after the reclamation process is completed is expected to be agricultural.

The Chair expressed concern that the proposed entrance to the mine area could impact the Fire Department Resource Pond. Mr. Ichniowski explained that the location of the drive would be adjusted due to the location of the pond.

**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.

Tom Longobardi, an area resident, explained that he was concerned that water might back up onto his property if the buffer between the properties was reduced. He also expressed concern with the number of different gravel pits and sawmills which could be approved in the area in the future, and the cumulative amount of additional traffic which could result from these operations. He asked that the Board consider adding restrictions staggering the hours of operation for these different operations.

The Chair closed the public hearing.

Mr. Miedzinski expressed concern that the applicant could haul fill materials back to the site. Mr. Ichniowski explained that material hauled onto the site would not be debris, and that the applicant would not want to make this site either a sanitary landfill or a rubble landfill. Mr. DeMarr explained that some big rocks, or other materials on the haul trucks which could not be used, might be returned to the site to help in reclamation of the site.

**Mr. Hewitt moved that having accepted the staff report, dated September 1, 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 Conditional Use for an extractive industry involving the mining of more than five (5) acres pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning be approved, 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 75.3 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 6:30 a.m. to 5:00 p.m., Monday through Friday, and from 6:30 a.m. to 12:00 noon on Saturday. Hauling shall be prohibited on Saturdays. Operations are prohibited on Sundays and holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day).**
- 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. Clean fill may be brought onto the property as necessary for reclamation.**
- 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 a maximum of 100 truckloads per day.**
- 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. The final decision on the entrance to the property shall not affect the Fire Department water reserve.

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

**VAAP #05-132-029 – SAMUEL & MAGDALENA STOLTZFUS**

The applicant is requesting variance from Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the required setback from external property lines. The property contains 125 acres; is zoned Rural Preservation District (RPD); and is located at 28575 Thompson Corner Road in Mechanicsville, Maryland; Tax Map 8, Blocks 2 & 3, Parcels 40 & 69.

Owner: Samuel & Magdalena Stoltzfus  
Applicant: Howlin Concrete, Inc.  
Agent: Daniel Ichniowski, of NG&O Engineering, Inc.

Legal ads were published on August 24, 2005 and August 31, 2005. The property was posted and receipts from the certified mailings were submitted.

Mr. Ichniowski explained that a letter was sent to each of the adjacent property owners asking them to consider and support a setback reduction from 200 feet to 100 feet. He explained that a positive response was received from 12 of the 18 adjacent property owners. Mr. Ichniowski said that those 12 property owners represent 85-90% of the perimeter around the subject property. Negative responses were received from two property owners, who requested that the setback be maintained at 200 feet.

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

The Chair opened the hearing to public comment.

Tom Longobardi and Richard Wood, adjoining property owners, requested that the 200 foot setback be maintained on the property. They both expressed concern that the area is very low-lying and drainage problems could occur if the setback were reduced. Mr. Wood explained that the larger setback could also help with noise reduction from an operation of this size.

**Mr. Hewitt moved that having accepted the staff report, dated September 1, 2005; and having made a finding that the variance standards of Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the variance from Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the setback from external property lines from pursuant to Chapter 51 of the Ordinance from 200' to 100' except where the property adjoins Tax Map 8, Grid 9, Parcel 201, Lot 1 and Tax Map 8, Grid 9, Parcel 221, Lot 4, where the setback will remain 200'; subject to the conditions stated in the staff report. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #05-1798 – LEVERINGS, Lot 64**

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 District (RNC), Limited Development Area (LDA) Overlay; and is located at 24170 North Patuxent Beach Drive in California, Maryland; Tax Map 35, Block 3, Parcel 3.

Owner: Peter Ide

Legal ads were published on August 24, 2005 and August 31, 2005. Receipts from the certified mailings were submitted.

Cases VAAP #05-1798 and VAAP #05-1798 were heard at the same time due to the similarities of the properties and variance requests by one applicant.

**Mr. Callaway made a motion that the staff reports for both VAAP #05-1798 and VAAP #05-1799 be accepted. The motion was seconded by Mr. Hewitt and passed by a 5-0 vote.**

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

**Mr. Callaway moved that having accepted the staff report, dated August 29, 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 variance to clear in excess of 30% of the existing vegetation and to construct a single-family dwelling and appurtenances in the Critical Area be approved, 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 #05-1799 – LEVERINGS, Lot 65**

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 District (RNC), Limited Development Area (LDA) Overlay; and is located on North Patuxent Drive in California, Maryland; Tax Map 35, Block 3, Parcel 3.

Owner: Peter Ide

Legal ads were published on August 24, 2005 and August 31, 2005. Receipts from the certified mailings were submitted.

**Mr. Callaway moved that having accepted the staff report, dated August 29, 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 variance to clear in excess of 30% of the existing vegetation and to construct a single-family dwelling and appurtenances in the Critical Area be approved, 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 #05-0111 – LEVERINGS, Lots 42 & 43**

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 single-family dwelling and appurtenances. The property contains 7,854 square feet; is zoned Residential Neighborhood Conservation District (RNC), Limited Development Area (LDA) and Best Management Overlay (BMO) Districts; and is located at 45999 Clark's Road in California, Maryland; Tax Map 35, Block 2, Parcel 4.

Owner: Nancy Wathen

Legal ads were published on August 24, 2005 and August 31, 2005. Receipts from the certified mailings were submitted.

Ms. Chaillet explained that the original house was built years before St. Mary's County had any zoning regulations and that the existing house is non-conforming by today's regulations. Any new development must comply with the requirements of the Comprehensive Zoning Ordinance even if the existing footprint is utilized, so the applicant must seek a variance from the current setback requirements of the Zoning Ordinance.

**Mr. Hewitt 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 comments.

**Mr. Hewitt moved that having accepted the staff report, dated August 24, 2005; and having made a finding that the standards for variance in Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the variance to reduce the front yard setback more than 50% be approved. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #05-1042 – WILDWOOD, Lot 8**

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, variance from Section 71.7 of the Ordinance to disturb slopes of 15% or greater, and variance from Section 71.8.3 of the Ordinance to construct a single-family dwelling and appurtenances in the Critical Area Buffer. The property contains 0.48 acres; is zoned Residential Neighborhood Conservation District (RNC), Limited Development Area (LDA) Overlay; and is located at 26359 Cherry Lane in Hollywood, Maryland; Tax Map 20, Block 5, Parcel 183.

Owner: William J. Barker  
Present: James Spindler, for the Applicant

Legal ads were published on August 24, 2005 and August 31, 2005. Receipts from the certified mailings were submitted.

Mr. Spindler, the Applicant's son-in-law, explained that he had done his best to place the house in the best location to cause as little disturbance as possible. He expressed a willingness to work with the Critical Area Commission's recommendation to change the driveway from a circular driveway to a straight driveway. Mr. Spindler explained that he also shortened the driveway, removed the deck, and limited the size of the house. Ms. Chaillet explained that the applicant has worked with the Environmental Planner to come up with a plan which allows him to build a house with minimal disturbance to slopes, and with a minimal amount of clearing.

**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 public comment.

**Mr. Miedzinski moved that having accepted the staff report, dated August 24, 2005; and having made a finding that the standards for variance in the Critical Area and the objectives of Sections 71.7.3, 72.3, and 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the variances to clear in excess of 30% of the existing vegetation, to disturb slopes of 15% or greater, and to construct a single-family dwelling and appurtenances in the Critical Area Buffer be approved, 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.**

**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

Legal ads were published on August 24, 2005 and August 31, 2005. Certified mailings were completed by LUGM staff and receipts from the certified mailings are in the file.

The Chair explained that this case was being reheard in its entirety due to audio problems during the original hearing of the appeal on July 14, 2005. Mr. Staiger confirmed that the audio system was working for this re-hearing of the appeal.

Mr. Staiger explained that he was trying to show the Board that the zoning regulations were misapplied when the administrative decision to approve the variance was made. He said that if the regulations do not support the variance, it should be denied.

Mr. Staiger cited Section 24.4.1.a of the Comprehensive Zoning Ordinance, explained that he did not feel that any evidence had been presented to support that denial of the variance would cause unwarranted hardship to the property owner, or any hardship at all. Mr. Staiger explained that he felt that some evidence should be submitted to provide proof of this unwarranted hardship, and said that he had never found any evidence that would support this.

Mr. Staiger explained that he felt the requirement shown in Section 24.4.1.f of the Comprehensive Zoning Ordinance that the variance is the minimum necessary to achieve a reasonable use of land or structure had also not been met. He said that there was only a need for him to prove that one of the standards for variance had not been met, and that he felt this was one standard which was clearly not met. Mr. Staiger explained that a porch that wraps completely around a house is not the minimum, even though it may be the desirable porch for the applicant.

Mr. Leopold explained that his house was built in its current location prior to the adoption of the Zoning Ordinance. If the house were built at this time, it could not have built in the same location. He said that his understanding of the requirement that the variance be the minimum necessary to achieve a reasonable use of land or structure is that the variance itself is the minimum process which must be followed to increase the amount of impervious surface in the Critical Area Buffer with an addition to a single-family dwelling. Mr. Leopold explained that the plantings required by the Critical Area Planting Agreement will be more of a help to the area wildlife than the harm that would be caused by the increase of impervious surface.

Mr. Staiger said that most of the expanded area of the house will be within the first 100 foot back from the Potomac River. He urged the Board members to read Section 24.4.1.f of the Zoning Ordinance, so they could draw their own view of the meaning of "the variance is the minimum necessary to achieve reasonable use of land or structure".

Ms. Chaillet explained that the applicant met the standards for granting a variance. The existing house on the property is a minimum of 50 feet from the mean high water. She explained that the law allows the applicant to use that existing structure and add onto it, as long as the addition does not go closer to the water than the existing footprint.

The Chair asked for staff's interpretation of the standard which requires that a variance is the minimum necessary to achieve a reasonable use of land or structure. Ms. Chaillet explained that any new impervious surface on a grandfathered lot requires a variance. The law does not prohibit someone from building a certain type of structure as long as the applicant can meet the requirements for the impervious surface limit and clearing. Ms. Chaillet explained that the applicant meets all of the regulations of the Critical Area provisions of the Ordinance.

**Mr. Hewitt 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 comments.

Mr. Staiger explained that the correct variance would be the minimum variance. With a variance, some impervious surface could be added to the Leopold house. He said that this is not the only variance that could be requested to add impervious surface to the property. Mr. Staiger explained that a smaller variance would meet his argument of the minimum, and would allow Mr. Leopold to add some impervious surface. He explained that his objection was to the quantity of the impervious surface.

**Mr. Callaway moved that in the matter of application VAAP #04-3249, the Board of Appeals uphold the decision of the Director of the Department of Land Use & Growth Management, finding that his decision was not clearly erroneous, illegal, unconstitutional, or arbitrary and capricious and that all of the requirements of Sections 22.5.4 and 24.4 of the St. Mary's County Comprehensive Zoning Ordinance have been met. The motion was seconded by Mr. Hewitt and passed by a 5-0 vote.**

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

**VAAP #05-1035 – Michele & Ronald Pressley – 0.96 acres – The applicant is requesting 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 a single-family dwelling and appurtenances. Variance approved with signed planting agreement.**

**VAAP #05-1515 – Victoria & Frederick Nelson** – 1.0 acre – 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 and a variance from Section 71.7 of the Ordinance to disturb slopes of 15% or greater to construct a deck. **Variance approved with signed planting agreement.**

**VAAP #04-1512 – James Krilich & Frances Iacoboni** – 0.69 acres – 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 to construct additions to a single-family dwelling. **Approved with signed planting agreement.**

## **MINUTES AND ORDERS APPROVED**

The minutes of August 11, 2005 were approved as recorded.

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

**CUAP #05-132-027 – Ingrid Swann**  
**VAAP #05-132-027 – Ingrid Swann**  
**VAAP #05-1705 – Vaughan Property**  
**VAAP #04-2963 – Sullivan Property**  
**VAAP #04-0047 – Zimmerman**  
**VAAP #05-0031 – Buckler**  
**VAAP #05-0654 – Pulliam**  
**VAAP #03-1688 – Earnshaw**  
**VAAP #05-0968 – Harris**

## **DISCUSSION – FALL RETREAT DATES**

The Board made the decision to schedule their retreat on Friday, October 14, 2005 at the Harry Lundeberg School of Seamanship.

## **ADJOURNMENT**

The meeting was adjourned at 9:30 p.m.

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Sharon J. Sharrer  
Recording Secretary

Approved in open session:  
October 13, 2005

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George Allen Hayden  
Chairman