

MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, September 10, 2009

Members present were Howard Thompson, Chairman; Wayne Miedzinski, Randy Guy, Veronica Neale, and George T. Edmonds. Alternate Ronald Payne was also present. Department of Land Use & Growth Management (LUGM) staff present were Derick Berlage, Director; Yvonne Chaillet, Zoning Administrator; Jenn Ballard, Environmental Planner; Mary Russell, Inspector; and Jada Stuckert, Recording Secretary. County Attorney Christy Chesser and Attorney George Sparling were 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 6:32 p.m.

PUBLIC HEARINGS

CUAP #06-132-030 – St. Andrews Landfill Transfer Station

VAAP #06-132-030 – St. Andrews Landfill Transfer Station

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

The applicant is requesting to extend the Conditional Use Approval to construct a processing / transfer facility and a Variance to reduce the required setback from the nearest home or institutional building and to reduce the required setback from a potable water supply or wellhead. The property contains 210.7 acres; is zoned Rural Preservation district (RPD); and is located at 44825 St. Andrews Church Road, California, Maryland; Tax Map 42, Block 4, Parcel 104.

Owner: St. Mary's County Commissioners
Present: Mr. Gary Whipple

The property conditional use and variance requests were advertised in The Enterprise on August 26, 2009 and September 2, 2009.

Ms. Chaillet read the staff report which recommended the conditional use and variance extensions be granted. The staff report dated September 2, 2009 and attachments were submitted for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.* Mr. Edmonds stated it is his understanding that the monies for this project have been put off. Ms. Chaillet stated the Department of Public Works and Transportation is hoping to begin construction when funding is available through the County. Mr. Berlage stated the current Capital Budget allows for construction in July 2011. Mr. Edmonds stated he wants to make sure we allow enough time.

Ms. Chaillet submitted a letter dated 9/4/09 from John Norris Jr. for the record, *hereby labeled as Exhibit 3 by the Recording Secretary.*

Chairman Thompson opened the hearing to public comment. Mr. John Norris III stated there are other concerns listed in this letter. Mr. Norris stated item three (3) has not been complied with by the Department of Public Works and Transportation and the traffic study are of major concern. Mr. Whipple stated the traffic impact study and access to and from the property will not create any hardship as traffic will remain the same and will provide for minor improvements to the right hand turning lane. Mr. Thompson asked when this work would be completed. Mr. Whipple stated it would be completed closer to the time of construction. Mr. Whipple stated there was a traffic impact analysis update done in April 2008.

Chairman Thompson closed the hearing to public comment. Mr. Whipple clarified funding would be available July 1, 2011 rather than in the 2010 budget. Mr. Miedzinski asked if the Park Place development would affect this project. Ms. Chaillet stated if Park Place is approved and built it

includes sufficient improvements to the Route 4 and Route 235 intersection as well as portions south on Route 4.

Mr. Thompson stated if there are any changes in the traffic analysis that this come back before the board.

Ms. Neale made a motion to accept the staff report as findings of fact in this case and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

Ms. Neale made a motion in the matter of CUAP #06-132-030, having found that the Applicant has demonstrated just cause pursuant to Section 25.9 of the St. Mary's County Comprehensive Zoning Ordinance, I move to extend the Conditional Use Approval to December 31, 2012 to construct and operate a municipal solid waste transfer station and processing facility with the condition that the traffic study be reviewed by the Maryland Department of Transportation and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

Mr. Guy made a motion in the matter of VAAP #06-132-030, having found that the Applicant has a building permit in effect pursuant to Section 24.8 of the St. Mary's County Comprehensive Zoning Ordinance, I move to extend the Variance approval to December 31, 2012 to reduce the required setback from the nearest home or institutional building and to reduce the required setback from a potable water supply or wellhead and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

Vergheze Zoning Appeal

Mr. Sparling stated due to a possible conflict County Attorney Christy Chesser would be advising the Board. Mr. Thompson agreed and excused Mr. Sparling.

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

The applicant is requesting an appeal of the administrative decision of the Planning Director regarding the bounds of a legal nonconforming use known as Mattingly's Auto Racing and Repair. The property contains 20,800 square feet; is zoned Residential Neighborhood Conservation District (RNC); and is located at 22237 Bayside Road, Compton, Maryland; Tax Map 39B, Grid 23, Parcel 10.

Owner: Kannarkat P. Vergheze
Present: John Norris, III

The property and appeal request were advertised in The Enterprise on August 26, 2009 and September 2, 2009.

The staff report dated September 2, 2009 and attachments were submitted for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.* Ms. Chaillet submitted a 2007 aerial photo of the property for the record, *hereby labeled as Exhibit 3 by the Recording Secretary* and seven (7) 2009 photographs of various portions of the property, *hereby labeled as Exhibit 4 by the Recording Secretary.* Ms. Chaillet read the staff report which recommended Board uphold the Planning Director's decision.

Mr. Thompson stated attachment 7 and Exhibit 3 do not match. Ms. Chaillet stated Exhibit 3 is the actual aerial photograph of the property. Mr. Miedzinski asked for the size of the lots. Ms. Chaillet stated they are approximately 20 feet by 100 feet.

Mr. Thompson asked if there was a difference in inspections over the years. Ms. Mary Russell stated there are cars on every lot, approved and not approved.

Mr. Norris referenced an aerial photo of the property and submitted it for the record, *hereby labeled as Exhibit 5 by the Recording Secretary*. Mr. Norris gave an overview of the request stating there were scrap cars on the property back in 1972. Mr. Norris stated the first time zoning was adopted in St. Mary's County was in 1973. Mr. Thompson asked who owns the property. Mr. Norris stated Dr. Verghese owns the property.

Mr. Verghese stated a foreclosure sale took place in early 2000 at which time he purchased the property. Mr. Verghese stated he owns the property but Mr. Mattingly runs the racing and auto repair business on the property. Ms. Neale asked if letters requesting the clean up of the property were sent to Mr. Verghese or Mr. Mattingly. Mr. Verghese stated the letters were sent to both persons. Mr. Thompson asked how many persons are living on the property at this time. Mr. Verghese stated there are three separate families living on the property.

Mr. Mattingly testified lots 6-10 were being utilized in 1968-1970 and lots 160-164 were being utilized in 1970. Mr. Mattingly marked on Exhibit 5 to show the area where cars were pushed into the woods in 1967-1968. Mr. Norris asked when these cars were removed. Mr. Mattingly stated the cars in the woods were removed in 1972-1973.

Mr. Norris presented a zoning permit application dated 2/22/1991 for the record, *hereby labeled as Exhibit 6 by the Recording Secretary*. Mr. Norris stated this application is not marked denied. Mr. Norris presented a second copy of the zoning permit application dated 2/22/1991 which clearly states the permit is approved for the record, *hereby labeled as Exhibit 7 by the Recording Secretary*. Mr. Norris presented a Maryland Sales & Tax Use License dated 12/31/1992 for the record, *hereby labeled as Exhibit 8 by the Recording Secretary*. Mr. Norris presented a Notice of Assignment of New Address dated 5/30/1996 for the record, *hereby labeled as Exhibit 9 by the Recording Secretary*.

Mr. Mattingly testified all the lots in question have been utilized for automobile racing and repair since before 1973. Mr. Mattingly referenced a plaque from Potomac Speedway dated 1973 to prove his involvement in the racing industry. This plaque was not taken into evidence due to its memorabilia status. Mr. Norris presented a General Scrap Tire Collection Facility License Application for the record, *hereby labeled as Exhibit 10 by the Recording Secretary*. Mr. Norris presented 28 Affidavits for Mattingly Auto Repair and Racing, Inc. for the record, *hereby labeled as Exhibit 11 by the Recording Secretary*. Mr. Norris presented a black and white aerial photo of the property in which Adam Knight, LUGM Inspector outlined the unapproved property for the record, *hereby labeled as Exhibit 12 by the Recording Secretary*. Mr. Norris presented a Physical Examination Verification for the record, *hereby labeled as Exhibit 13 by the Recording Secretary*. Mr. Norris presented a BWD Automotive Corporation Fuel Injection Certificate for the record, *hereby labeled as Exhibit 14 by the Recording Secretary*. Mr. Norris presented a Tax Map marking access to the property for the record, *hereby labeled as Exhibit 15 by the Recording Secretary*.

Mr. Thompson asked if a license is needed for the business of racing or repair of automobiles. Mr. Mattingly stated no. Mr. Thompson asked if more vehicles would be removed from the lot in the near future. Mr. Mattingly stated yes and 15 have already been removed within the past year.

Mr. Thompson opened the hearing for public comment.

Mr. Chris Norris stated he has known Mr. Mattingly since 1969. Mr. Norris testified the property has been used as an auto racing and repair business since the late 60's. Mr. Norris testified non-racing cars were on the property as well. Mr. Norris stated there has not been a period of 12 or more months where the property has not been utilized as an auto racing and repair business.

Ms. Jessica Hunt, property resident, testified many cars have come and gone on the property since she moved in May 2009. Ms. Chaillet asked if Ms. Hunt paid Mr. Mattingly for the repair of

her vehicle. Ms. Hunt stated yes. Ms. Chaillet asked if Ms. Hunt was given a receipt or invoice for the work. Ms. Hunt stated no.

Mr. Alan Cecil submitted his written testimony for the record, *hereby labeled as Exhibit 16 by the Recording Secretary*. Mr. Cecil testified he had his vehicle repaired by Mattingly in 1972 on lot 162. Mr. Cecil stated he met Zack Mattingly in 1991 when Mr. Mattingly changes his oil on this same property.

Mr. Edmonds made a motion to continue the case to October 8, 2009 at 6:30 p.m. and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of August 27, 2009 were approved as recorded.

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

- ZAAP #08-200-003 – Mill Cove Manor
- ZAAP #08-200-004 – Mill Cove Harbor

ADJOURNMENT

The meeting was adjourned at 9:35 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: October 8, 2009

Howard Thompson
Chairman