

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, September 14, 2006**

Members present were George Allan Hayden, Chair; Greg Callaway, Vice Chair; Ronald Delahay; and Wayne Miedzinski. Gertrude Scriber was excused. Department of Land Use and Growth Management (LUGM) staff present were Denis Canavan, Director; Phil Shire, Deputy Director; Yvonne Chaillet, Zoning Administrator; Susan Mahoney, Planning Specialist; and Cindy Koestner, Recording Secretary. George Edmonds, Board of Appeals First Alternate, was also present. Christy Holt Chesser, County Attorney, and Colin Keohan, Deputy County Attorney, were present.

A sign-in sheet is on file in LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:35 p.m.

**PUBLIC HEARINGS**

**VAAP #06-1311 – BECKER**

The Applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to construct a replacement single family dwelling and appurtenances in the Critical Area Buffer and to clear vegetation in the Buffer. The property contains 0.67 acres; is zoned Rural Preservation District (RPD), Limited Development Area Overlay District (LDA); and is located at 16144 Thomas Road, Piney Point, Maryland; Tax Map 69, Block 15, Parcel 99.

Owner: Katherine L. Becker and Paula A. Johnson

All cases heard at this meeting were advertised in *St. Mary's Today* on 8/27/06 and 9/3/06. The properties were posted and certified mail receipts were submitted to staff for the files.

Ms. Becker explained they are requesting a variance to replace a home on St. George's Island that was damaged by hurricane Isabel and tropical storm Ernesto. She stated renovation of the current house is not a viable option because it is at least 100 years old. In addition, the current house is only 10 feet to 12 feet from the seawall of Island Creek; but, the proposed house will be moved back to 50 feet or 60 feet from the seawall. Ms. Becker explained the proposed dwelling will be their retirement home.

Ms. Chaillet explained the property is a grandfathered lot and moving the house is the best option considering the environmental constraints of the land. The relocated house will make use of an existing driveway and will be constructed on piers to raise it above the five-foot flood elevation. The existing garage will be retained and the impervious surface on the property will increase by only 352 square feet.

Mr. Hayden asked if the Critical Area Commission suggested locating the new house entirely outside of the Critical Area Buffer. Ms. Chaillet replied that would require removal of additional mature, vegetative cover. Mr. Hayden asked if the house will have a concrete foundation to allow a garage below the floodplain. Ms. Becker replied the space below the elevated home will likely be used for storage, but not for a garage or living area.

**Mr. Miedzinski moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. 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. Callaway moved that 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 have been met, the Board approve the variance to redevelop in the Critical Area Buffer to construct a replacement single-family dwelling and appurtenances with the following recommended conditions:**

- 1. The Applicants shall adhere to the Planting Agreement that requires mitigation at a ratio of three to one (3:1) per square foot of the variance granted pursuant to Section 24.4.2.b of the Ordinance.**
- 2. The Applicants shall elevate all living space in accordance with Section 76.6 of the Ordinance.**

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

**VAAP #06-0264 – LONG**

The Applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to construct a detached garage and driveway in the expanded Critical Area Buffer. The property contains 9,000 square feet; is zoned Rural Preservation District (RPD), Resource Conservation Area Overlay District (RCA); and is located at 14617 C Way, Scotland, Maryland; Tax Map 73A, Block 00, Parcel 38.

Owner: John and Patricia Long

Mr. Long explained he and Patricia currently live in Prince George's County but plan on retiring to a home they own on Scotland Way. The house is modest in size at 28 feet by 32 feet so an additional structure is needed for a garage and storage space. The lot is 200 feet from Tanner Creek and the garage will be constructed an additional 30 feet from the lot line. A gravel driveway will be constructed to access the garage.

Ms. Chaillet explained the lot is grandfathered and located across from the Applicants' house across a gravel drive. It is the most logical location for a garage because the lot the house sits on is too small to allow for any improvements. The structure will create 2,216 square feet of additional impervious surface in the expanded Critical Area. Ms. Chaillet stated the property is in a floodplain; but, because no living space is proposed, the structure does not need to be elevated. The Applicants must afforest the property to increase vegetative cover to the required 15 percent minimum.

Mr. Miedzinski inquired about the size of the garage. Mr. Long replied the garage will be 32 feet deep by 40 feet wide with a 10-foot by 40-foot apron. Mr. Miedzinski asked if the 2nd floor has any overhangs or decks. Mr. Long replied the structure will not have any overhangs or decks.

**Mr. Callaway moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. 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 comments.

Mr. Miedzinski asked who owns the lot and house adjacent to the proposed garage site. Mr. Long replied Brad Bates owns the neighboring lot. Mr. Miedzinski expressed concern Mr. Bates is not present to object to construction of a garage in front of his house. Ms. Chaillet confirmed Mr. Bates was notified regarding the proposed structure and is not present to oppose its approval.

**Mr. Callaway moved that 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 been met, the Board approve the variance to construct a two-story detached garage and driveway in the expanded Critical Area Buffer with the following recommended conditions:**

- 1. The Applicants shall adhere to the Planting Agreement that requires mitigation at a ratio of three to one (3:1) per square foot of the variance granted pursuant to Section 24.4.2.b of the Ordinance.**
  - 2. The Applicants shall afforest the Property to meet the minimum forest cover of 15 percent of the property pursuant to section 72.3.5 of the Ordinance.**
  - 3. The Applicants shall sign a non-conversion agreement with the Department of Land Use and Growth Management.**
- The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.**

**ZAAP #06-30 – GRADING PERMIT FOR WOODS AT MYRTLE POINT SUBDIVISION**

The Appellants are requesting an appeal of the decision by the Department of Public Works Director to issue grading permit #060-30 for Lots 3, 10, 11, 19, 20 and 54, which are part of Section 1, Phase 1 of Myrtle Point Subdivision. The property contains 42.37 acres; is zoned Residential Low-Density District (RL), Airport Environs Overlay District (AE); and is located on the west side of Patuxent Boulevard, approximately 1,600 feet north of its intersection with MD Route 4 in California, Maryland; Tax Map 34, Block 11, p/o Parcel 525, Lots 3, 10, 11, 19, 20 and 54.

Owner: PF Summers Myrtle Point L.L.C., Applicant  
Present: Christopher Longmore, Attorney for the Applicant; Douglas Clark Hollmann, Attorney for the Appellants; For the Department of Public Works & Transportation (DPW&T): George Erichsen, Director; and John Groeger, Deputy Director; For the Soil Conservation District (SCD): Bruce Young, District Manager

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| Appellants' Exhibit 1: | Aerial photograph marked with the locations of Mill Creek, the Woods at Myrtle Point and properties owned by the Appellants |
| Appellants' Exhibit 2: | Pictures of Mill Creek taken by Appellant Kellie Gofus  |
| Appellants' Exhibit 3: | Resume of Daniel J. O'Leary, P.E., expert witness for the Appellants  |
| Appellants' Exhibit 4: | Map of the Woods at Myrtle Point lots shaded to illustrate property grades of 15 percent or greater                         |
| Appellants' Exhibit 5: | Table comparing pre-development and post-development slopes for all the lots of Woods at Myrtle Point                       |
| Appellants' Exhibit 6: | Enlarged copies lot drawings for each of the six contested lots shaded to illustrate areas with steep slopes                |
| Appellants' Exhibit 7: | Resume of Robert William Paul, expert witness for the Appellants  |

Appellants' Exhibit 8:	Summary of Robert William Paul's testimony
Appellants' Exhibit 9:	Letter from Erik Jansson, President of the Potomac River Association; the letter states Robert Lewis, a board member of the association, is authorized to testify on behalf of the association
County's Exhibit 1:	Staff report from Mr. Erichsen and Mr. Groeger
County's Exhibit 2:	Illustrations of planned sediment runoff controls for the Woods at Myrtle Point development

Mr. Hollmann questioned Ms. Kellie Gofus, one of the named Appellants in this case. Ms. Gofus explained she lives on Mill Creek, which is adjacent to the western border of the Woods at Myrtle Point subdivision. She identified Appellants' Exhibit 1 as an aerial photograph of the Woods at Myrtle Point subdivision and surrounding area, including the Mill Creek headwaters and marsh area. She stated the exhibit appears to be correctly marked with the location of her residence and the residences of some of the other named Appellants. Ms. Gofus explained sediment runoff has caused Mill Creek to become shallower and narrower, which negatively impacts her quality of life because she can no longer dock her boat on the creek or kayak in the area. She stated while she has no technical knowledge of whether the grading permit for the subdivision adheres to the Ordinance, she has directly observed sedimentation from the property in question. Mr. Hollmann presented the Board with photographs taken by Ms. Gofus to show the discoloration of Mill Creek.

Mr. Miedzinski asked Ms. Gofus to confirm she can no longer maneuver her boat out of Mill Creek. Ms. Gofus explained her boat can not be launched because the creek is too shallow, causing the boat to blow out plumes of mud. Mr. Miedzinski questioned how long this has been happening. Ms. Gofus replied runoff occurs naturally in Mill Creek, but the changes to the creek have been greatly accelerated in the last two years due to development in the area.

Mr. Hollmann noted the Appellants oppose the grading of the six lots in question because they contain more than the maximum area of steep slopes than what is allowed in the Ordinance. He explained the developer should not be allowed to grade the lots until they meet the steep slope requirements for development. A steep slope is defined as a slope with a grade of 15 percent or greater.

Mr. Hollmann questioned Mr. Daniel O'Leary, expert witness for the Appellants. Mr. O'Leary stated he has been a civil engineer for 22 years and he currently specializes in the area of water resources. Mr. Hollmann admitted Mr. O'Leary's resume into evidence. Mr. O'Leary stated he has testified five to ten times before as an expert witness on sediment control and stormwater management. He displayed a copy of a section of the Woods at Myrtle Point subdivision plan shaded to depict the areas with steep slopes (Appellants' Exhibit 4). He read Article 4.4.3(h)(1) of the Stormwater Management, Grading, Erosion and Sediment Control Ordinance as follows:

Development may occur within steep slope areas provided that a minimum of 30 percent of the lot or parcel upon which the principal structure is to be situated is less than 15 percent grade and contiguous to a road meeting design standards. The extent of cutting and filling that will be permitted on any lot will be based on the soil condition of the site, and as determined by the Department of Public Works and Transportation and the St. Mary's Soil Conservation District. Construction on piling and/or supports shall be permitted...

Mr. O'Leary testified steep slopes are discussed in the developer's plans under the erosion and sediment control plan section. He stated conceptual grading plan number two contains a table that lists all lots in Phase One with the total area of each lot and the area of steep slopes of each lot for both pre-development and post-development conditions of the property. Mr. Hollmann admitted a copy of the table into evidence as Appellants' Exhibit 5. Mr. O'Leary explained the table shows each of the six contested lots consists of more than 70 percent steep slopes. He believes grading these lots violates the Ordinance because it requires property to consist of 70 percent steep slopes or less in order to be developed. Mr. O'Leary read the percentages of steep slopes from the table for each of the six lots as follows: Lot 3 contains 77 percent, Lot 10 contains 77 percent, Lot 11 contains 77 percent, Lot 19 contains 72 percent, Lot 20 contains 94 percent, and Lot 54 contains 77 percent. Mr. O'Leary explained the table also shows the percentages of steep slopes after development. He noted the area of steep slopes for all six lots after development will be 70 percent or less.

Mr. O'Leary explained he copied lot drawings from the developer's plans for each of the six lots and enlarged them. The drawings were then shaded to illustrate the existing area of steep slopes on each lot. All six enlarged lot drawings were admitted into evidence as Appellants' Exhibit 6.

The Chair called a recess at 7:50 p.m. to allow the Board to view the six enlarged lot drawings. The meeting was called back to order at 8:05 p.m.

Mr. Longmore questioned Mr. O'Leary about the procedure used to create the six lot drawings in Appellants' Exhibit 6. Mr. O'Leary explained the original plans prepared by the developer were scanned in and enlarged using the same scale as the original plans. Mr. Longmore inquired about the accuracy of the six enlarged lot drawings compared to the developer's original drawings. Mr. O'Leary explained the enlarged drawings are no less accurate than the originals. Mr. Longmore asked Mr. O'Leary if he performed any field work for his analysis of the property. Mr. O'Leary replied his analysis was based solely on a copy of the developer's plans. Mr. Longmore asked Mr. O'Leary if he analyzed the steep slope percentage of the entire parcel of Phase One of the Woods at Myrtle Point subdivision. Mr. O'Leary replied he did not. Mr. Longmore asked Mr. O'Leary if he has ever designed homes or structures on lots that have similar physical steep slope characteristics as the six lots in question. Mr. O'Leary replied he does not typically design structures or homes.

Mr. Hollmann questioned Dr. Robert Paul, expert witness for the Appellants. Dr. Paul stated he holds a Ph.D. in Zoology, he specializes in aquatic ecology and he teaches at St. Mary's College. Mr. Hollmann asked Dr. Paul if he is familiar with the Woods at Myrtle Point subdivision. Dr. Paul replied yes. Mr. Hollmann admitted Dr. Paul's resume and summary of Dr. Paul's testimony into evidence. Mr. Longmore objected to allowing Dr. Paul to testify and stated his testimony is not relevant to the issue. Mr. Hollmann explained Dr. Paul can testify on the environmental impacts of sedimentation in Mill Creek. Ms. Chesser stated the testimony is acceptable as long as it ties into the grading permit and possible affects of grading the six lots in question. Mr. Hollmann asked Dr. Paul if he was present during the testimony of Mr. O'Leary. Dr. Paul responded he was. Mr. Hollmann asked Dr. Paul if he understands Mr. O'Leary testified the six lots in question do not meet the steep slope requirements. Dr. Paul replied yes. Mr. Hollmann asked Dr. Paul if he has done any independent investigation to confirm or support Mr. O'Leary's findings. Dr. Paul replied he has not. Mr. Hollmann asked Dr. Paul to comment on the likely impact to the environment if the six lots are steep sloped and grading of the six lots proceeds. Dr. Paul explained the soil types of the area are erodible and will cause negative aquatic impacts to the environment of Mill Creek, which contains endangered species.

Mr. Hollmann called Robert Lewis to testify for the Appellants. Mr. Lewis stated he serves on the Board of Directors of the Potomac River Association, a named Appellant in this

case. Mr. Longmore objected to Mr. Lewis testifying and stated the Potomac River Association is not an aggrieved party and should be dismissed as an Appellant in this case. Mr. Hollmann replied the association has a number of members who reside near the Woods at Myrtle Point property. Ms. Chesser stated Mr. Lewis can speak on behalf of the Potomac River Association if proof is offered that he can speak for those members. Mr. Hollmann presented the Board with a letter from the association's President, Erik Jansson, which states Mr. Lewis is authorized to speak on behalf of the Potomac River Association. Mr. Longmore stated the association does not have standing in this appeal just because some of its members live near the property in question. Mr. Hollmann asked the Board to allow Mr. Lewis to testify and then decide if his testimony should be considered public comment instead. The Board agreed to allow Mr. Lewis to testify. Mr. Lewis explained the Potomac River Association incorporated in 1967 as the Patuxent River Association and 90 percent of the 400 plus association members currently live in St. Mary's County. He explained the mission of the association is the preservation and protection of the environment. Mr. Hollmann asked Mr. Lewis to summarize the concerns of the association in regards to the property in question. Mr. Lewis replied association members have two concerns: the laws are not being followed and the welfare of the environment is in jeopardy.

Mr. Hollmann stated the Appellants rest their case.

Mr. Longmore asked the Board to allow the County to give testimony before the Applicant and the Board agreed.

Mr. Erichsen explained he has 22 years of experience as an engineer and has performed a multitude of site plans and grading plans for both the public and private sector. He testified the Woods at Myrtle Point subdivision is grandfathered under the prior Zoning Ordinance (#90-11) and the six lots in question meet the steep lands requirements in #90-11. He explained DPW&T believes there are no requirements to preserve steep slopes within the Lexington Park Development District (LPDD), which is where this property is located. DPW&T uses the Stormwater Management, Grading, Erosion and Sediment Control Ordinance to determine the best method for developing approved property; it is not used to regulate development rights. The plat was recorded, giving the Applicant development rights up to 55 lots, before the grading permit was issued. Mr. Erichsen explained these six lots may not be developable under today's Ordinance but he stressed they are grandfathered and developable under #90-11. He explained DPW&T does not refute the testimony of Mr. O'Leary; however, DPW&T issued the grading permit for the parcel as a whole, rather than issuing permits on a lot-by-lot basis. Mr. Erichsen calculated 42 percent of the lots of the entire parcel are on slopes graded at less than 15 percent; thus, when viewed on a parcel basis, the property meets the requirements set forth in the current Ordinance. He added grading on the lots has been minimized by shortening driveways, and locating structures on the flattest portions of the lots. Sedimentation on the lots will be reduced through the use of retaining walls, sub-basements and basement walls.

Mr. Young stated he has been the district manager of SCD for 18 years. He explained the Westphalia soils found on this property are highly erodible, sandy and hard to stabilize. Because of this, the Woods at Myrtle Point is required to go beyond minimum standards, set forth by the Maryland Department of the Environment (MDE) and Department of Natural Resources, to reduce the adverse affects of concentrated flow of water in the subdivision. One of the requirements for this subdivision is the installation of permanent diversion dykes to divert water draining off the lots. SCD identified several areas on the property where the soil is already eroding in a natural state; accordingly, the developer will be required to take measures to divert water draining from impervious surfaces away from these erodible areas. Mr. Young explained there are several advantages to approving a grading permit on an overlot basis. In this case, the lots are small and will be graded in sequence rather than all at once, which means only four to six lots can be graded at one time and the soils on those lots must be stabilized before grading of the next section can begin. Subdivisions where lots are graded on a single-lot basis instead of an overlot basis experience greater erosion.

Mr. Hayden asked for clarification on the difference between overlot grading and single-lot grading. Mr. Young explained overlot grading is required because when contiguous lots are graded, certain structures can be utilized around the back of the lots to control sedimentation runoff by collecting the runoff and discharging it into a sediment trap. Single-lot grading utilizes silt fences around each individual lot, which are not as effective at collecting and holding sediment runoff. Mr. Erichsen explained overlot grading moves drainage away from the base of the houses a minimum of ten feet towards the property lines so there is continuity between the lots. Single-lot grading can allow drainage to be pushed onto neighboring lots. Mr. Hayden asked if the overlot drainage methods are currently in place around the lots in question. Mr. Erichsen replied yes they are.

Mr. Edmonds asked for clarification the grading permit was not just issued on each of the six individual lots but for the entire property. Mr. Erichsen explained the grading permit in this case was issued for the entire parcel based on an overall grading plan. Mr. Miedzinski asked what authority gives DPW&T permission to issue a grading permit for the overall subdivision rather than on a lot-by-lot basis. He noted the Appellants separated out six lots for this case while DPW&T issued a permit for the subdivision as a whole. Mr. Young replied the overlot grading permit is a requirement of SCD for approval under their guidelines. Mr. Hayden asked if the Applicant would have received grading permits if he applied for each lot on an individual basis. Mr. Young replied he would not.

Mr. Hayden inquired if the SCD and DPW&T require the grading plan be put in place throughout the subdivision in order to divert runoff to one location and if so, where the sediment collects. Mr. Young responded each sub-section of the subdivision contains a series of sediment traps that collect the drainage from the lots. The sediment first runs through earth dykes, in this case B-dykes, which are a minimum of 36 inches in height, compacted and stabilized. The water then flows to a stone outlet structure, which is a 2 x 12 perforated board wrapped in filter fabric, banked with rock and embedded into each section of the dyke. Here the water filters through the board, fabric and stone to control the sedimentation leaving the lots. Mr. Erichsen asked Mr. Young what year storm event this sedimentation control plan is based on. Mr. Young replied the minimum standard is a one to two year storm frequency event. Because these structures will fail after this point, the Applicant was required to install sedimentation controls above the minimum standards, which will hold up longer unless there are severe weather conditions. Mr. Hayden asked Mr. Young to confirm any one of the sedimentation control systems allows runoff for four to six lots. Mr. Young replied because the grading is sequenced, the four to six lots open to grading at any one time are contiguous and require a sedimentation control system be in place to manage the runoff. He further explained these controls are only to manage the runoff during grading and the building permits for the houses require additional sediment control measures be installed. Mr. Hayden asked if the sediment controls required for the building permits of the houses will be as strict as the controls required for the grading. Mr. Young replied they will be as strict and in addition, the perimeter controls will remain in place until the houses are built.

Mr. Hayden asked Mr. Young if he meant the perimeter controls might be removed, and if so, why they might be removed. Mr. Young explained after a site is stabilized and approved by MDE, the perimeter controls are removed because long-term use can cause more harm to the environment if the system is not maintained or is over-burdened. He explained there are permanent diversions that will remain in place to protect gully heads. Mr. Hayden asked where the temporary sediment control dykes divert the water. Mr. Young explained the water is filtered out of the sediment trap into the forest conservation easement and finally to normal drainage areas, such as Mill Creek. Mr. Miedzinski raised the concern when he visited the site during a hard rain, he observed muddy water running out from under the dirt at the top of a hill and washing down the side of the hill. Mr. Young replied the system may need maintenance in that particular area and he also noted the structures near the road were designed for the road construction and not the lot construction. Mr. Hayden expressed concern the MDE will allow the perimeter diversion dykes to be removed. Mr. Erichsen responded the diversion dykes are

temporary and only used during grading until a site is stabilized because, once a site is stabilized, the water flows in sheets and is not concentrated.

Mr. Hayden inquired about the sediment control devices required for construction of the homes. Mr. Young replied sediment basins and sediment traps can be used, but no system will trap 100 percent of all sediments without causing more disturbance than good to the environment. Mr. Ericshen explained two bio-retention devices are used to capture runoff once a home is built: rain gardens and dry wells. Mr. Hayden inquired about how these two devices work. Mr. Groeger explained some of the runoff from the subdivision will collect in the roadway drainage systems and flow to the area treatment facility. Bio-retention systems will be utilized on individual lots that do not drain into the roadway drainage systems. In these cases, each driveway will be treated with a rain garden, a 2.5-foot layer of organic soil that filters runoff for up to one inch of rain and allows most of the water to stay in the ground. The gutters will be routed to drywells, holes filled with stone that have a filtering capacity up to one inch of rain. Mr. Groeger noted the capacity of a drywell increases over time. Mr. Hayden asked what will happen if the area receives five inches of rain. Mr. Groeger replied five inches will cause water to overflow those devices and flow behind the houses into a wooded area or out into the street into the storm drain system. He further explained any runoff behind the houses will be minimal and not detrimental to the environment because there is not a lot of impervious surface associated with a house.

Mr. Erichsen submitted illustrations of cross sections of the lots in question into evidence. Mr. Pat Mudd, an engineer for P.F. Summers, testified he took the plans and prepared the cross sections for the six lots. He explained, as an example, lots 10 and 11 have an existing grade of 16 percent to 17 percent. The developer will propose a series of retaining walls to minimize disturbance and drainage swales to move water away from the houses where the property returns to the existing grade. Mr. Miedzinski asked if these two lots were cleared for the retaining walls. Mr. Summers replied no, but the soil was bored to obtain soil information for the structural engineer to design the retaining walls. Mr. Hayden inquired about the design of the retaining walls. Mr. Mudd replied the retaining walls will be cast-in-place concrete 8 inches to 12 inches wide, which will connect to a footing with reinforcement bars. Mr. Hayden asked who will inspect the development to ensure the plan is adhered to. Mr. Canavan responded the County contracts with the Middle Department Inspection Agency (MDIA) and they will test the concrete for density when the concrete is poured. Mr. Hayden asked if the MDIA inspectors will have the individual lot requirements with them at the time of their inspection. Mr. Canavan replied they will.

Mr. Hollmann asked Mr. Erichsen to explain why Woods at Myrtle Point is grandfathered if the plat was approved and recorded in 2005. Mr. Erichsen explained he did not testify as to why the subdivision is grandfathered and this decision is not made by DPW&T. Mr. Hollmann asked why DPW&T approved the permit for the entire parcel, rather than for individual lots, when Article 4.4.3(h)(1) applies to the six lots in question. Mr. Erichsen explained that article does not apply to these six lots on an individual basis because DPW&T reviewed the subdivision as a whole. Mr. Hollmann asked what section of the Ordinance explains the basis for overlot grading. Mr. Erichsen replied section 3.11 of the Stormwater, Management, Grading, Erosion and Sediment Control Ordinance. Mr. Hollmann asked Mr. Erichsen to explain how Article 4.4.3(h)(1) can be ignored in this case when it states no development can take place where steep slopes exist. Mr. Erichsen explained the article does not prevent all development in areas where steep slopes exist; rather, it allows development to occur in areas where steep slopes exist provided the additional requirements are met. Mr. Hollmann inquired how DPW&T applied the language in the article that states, "Construction on piling and/or supports shall be permitted..." Mr. Erichsen explained "and/or supports" includes retaining walls, basement walls and sub-basement walls. Mr. Longmore asked Mr. Erichsen if modifying the grading permit to exclude the six lots in question will be better or worse for the environment. Mr. Erichsen explained the grading plan can be modified to tie in adjacent grades on the remaining lots without any difficulty if these six lots are removed.

The Board agreed to continue the public hearing at the next Board of Appeals meeting on October 12, 2006 at 6:30 p.m.

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

**VAAP #06-0978** – Emery – 2.20 acres – The Applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the Critical Area Buffer to construct a single family dwelling and appurtenances. **Variance approved with conditions.**

**VAAP #06-1460** – Schroeder – 1.51 acres – The Applicant is requesting a variance from Section 71.7 of the St. Mary's County Comprehensive Zoning Ordinance to construct a pool on highly erodible soils in the Critical Area. **Variance approved with conditions.**

#### **MINUTES AND ORDERS APPROVED**

The minutes of August 10, 2006 were approved as recorded.

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

**VAAP #06-1782 – Decorator's Trading Company**  
**VAAP #05-0363 – Evans – as revised**  
**CUAP #04-135-003 – Buzz's Marina Communication Tower**  
**CUAP #06-131-009 – Verizon Wildewood Water Tower Site**

#### **GENERAL DISCUSSION**

The Chair reminded the Board that the fall retreat will be on September 29, 2006 from 9:00 a.m. to 3:00 p.m. at the Harry Lundberg School in Piney Point. Ms. Chaillet asked the Board to advise staff of ideas for the retreat agenda. She stated Mary Owens and Jennifer Lester from the Critical Area Commission will give a presentation.

Mr. Miedzinski asked if the Board has the authority to decide not to hold a meeting if there are less than five members present. Ms. Chaillet reminded the Board they only need three votes to pass a motion and five members do not need to be present to have three votes.

#### **ADJOURNMENT**

The meeting was adjourned at 9:55 p.m.

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Cindy R. Koestner, Recording Secretary

Approved in open session: November 9, 2006

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George Allan Hayden  
Chairman