

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, September 27, 2007**

Members present were George Hayden, Chairman; Wayne Miedzinski, Ronald Delahay, George Edmonds, 1st alternate; Veronica Scriber, and Ronald Payne, 2nd alternate. Members excused were Greg Callaway. 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 and George Sparling, 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 #07-17-1756 – Thomas

Ms. Chaillet stated the Thomas variance request has been removed from the agenda. Ms. Chaillet explained the applicant decided to revise their site plan so no variances would be necessary.

VAAP #07-1840 - Helldorfer

The applicant is requesting a variance to reduce the base density (units per acre) to place a mobile home on the property, resulting in three dwelling units on the property; and a variance to re-establish grandfathered impervious surface. The property contains 1.5 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 16212 Thomas Road, Piney Point, Maryland; Tax Map 69, Block 16, Parcel 81.

Owner: John E. Helldorfer

The property was advertised in The Enterprise on September 12, 2007 and September 19, 2007.

Mr. Helldorfer stated the property he purchased in 1997 experienced significant damage during hurricane Isabel in 2003 totaling \$50,000. Mr. Helldorfer explained the insurance company only paid out \$20,000 so due to lack of funds some of the 2003 damages still have not been repaired. Mr. Helldorfer stated Commissioner President Thomas McKay promised the community in a public meeting that we would be able to put our lives and communities back together and replace what had been lost with minimal red tape from county agencies. Mr. Helldorfer stated he could not afford to replace the one trailer and decided to advertise the pad instead; unfortunately he could not get a contractor to move a trailer on to the lot due to the ground being too soft and/or wet. Mr. Helldorfer stated in August of 2006 he was finally financially stable enough to replace the trailer therefore he went to Land Use & Growth Management to obtain a permit and was told that his time limit had expired. Mr. Helldorfer stated at no time was it a consideration that the unit would not be replaced and he believes this has been demonstrated by his continuing to pay for the METCOM sewerage grinder. Mr. Helldorfer requested a favorable motion to allow replacement of the living unit.

Ms. Chaillet read the staff report which recommended denial for both variance requests. Mr. Hayden asked what exactly was promised by the Commissioners in 2003. Mr. Canavan stated the Commissioners worked with Land Use & Growth Management and the State to allow two years to rebuild. Mr. Canavan stated the two years ran out in the fall of 2005. Mr. Hayden asked about the excessive 15% impervious surface and what it would amount to in square footage. Ms. Chaillet stated the Helldorfers currently have 14,934 square feet of impervious surface. Ms. Chaillet stated 8,421 square feet of impervious surface is allowed meaning they are 6,513 square feet over the allowable amount. 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. Hayden opened the hearing to public comment, hearing none; he closed the hearing to public comment. Mr. Hayden asked why the Helldorfers did not seek the proper permits during the two years allowed. Mr. Helldorfer stated he was unaware of the two year time limit. Mr. Hayden stated in the least the applicant could have requested an extension of the two year time limit.

After further discussion, **Ms. Scriber made a motion in the matter of VAAP #07-1840, having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, I move that the variance to allow three (3) dwelling units on one and one-half (1.5) acres in the Rural Preservation District (RPD) be denied and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.**

Ms. Scriber made a motion in the matter of VAAP #07-1840 having made a finding that the standards for variance in the Critical Area and the objectives of Section 41.2 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, I move that the variance to restore the grandfathered impervious surface be denied and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

ZAAP #06-132-017 – FDR Colonial Square Office Building

Please note for the record Mr. George Sparling will be sitting in as county attorney for Ms. Christy Holt Chesser. The applicant is requesting an appeal of an administrative decision by the St. Mary's County Planning Commission in FDR Holdings, LLC to deny the Concept Site Plan for a proposed office building. The property contains 1.14 acres; is zoned Downtown Core Mixed Use (DMX) District; and is located at 21975 FDR Boulevard, Lexington Park, Maryland; Tax Map 51, Block 02, Parcel 04.

Owner: FDR Holdings, LLC
Present: John Norris, Norris & Dudderar; Rick Benefield and Tom Benefield, FDR Holdings, LLC

The property was advertised in The Enterprise on September 12, 2007 and September 19, 2007.

Mr. Norris stated the certified mail receipts have been given to Land Use & Growth Management along with photographs of the posting on the property and introduced Mr. Rick Benefield. Mr. Benefield gave an overview of the subject property stating FDR Holdings, LLC purchased the property in the early months of 2006. Mr. Norris submitted Exhibit #1 – Plat showing the existing development and proposed FDR Boulevard recorded by Mehaffey & Associates and Exhibit #2 – Preliminary Alignment Plan for FDR Boulevard from PBS&J.

Mr. Benefield made references to the draft Lexington Park Development District Master Plan and the adopted Transportation Plan which both make reference to the proposed location of FDR Boulevard. Mr. Benefield further stated there have been no monies budgeted for the acquisition of land or construction of FDR Boulevard through fiscal year 2011.

Mr. Benefield stated FDR Holdings, LLC concept for development progressed to a plan for renovation of the existing dwelling on the property. Mr. Benefield stated the permit approval was given on January 2006. Mr. Benefield stated during the reconstruction of the existing dwelling the concept plan for the commercial office portion of the land came into mind. Mr. Benefield stated preliminary application meetings were held for the concept plan with Land Use and Growth Management. Mr. Benefield introduced his site plan engineer Mr. Blasco from Mehaffey and Associates.

Mr. Blasco submitted Exhibit #3 – Concept Plan for Colonial Square Office Building giving an overview of the proposed 6,700 square feet office building site plan. Mr. Hayden asked where FDR Boulevard is located or proposed to be located on this site plan. Mr. Blasco used a black marker to highlight FDR Boulevard. Mr. Blasco stated after building the road and adding in setbacks there will not be any property left to develop.

Mr. Benefield stated the concept site plan request was heard by the Planning Commission on May 14, 2007 and deferred to June 25, 2007 for further information to be submitted and reviewed. Mr. Benefield stated on June 25, 2007 the Commission voted to continue the case so the County Attorney could advise the Commission on the standards for taking a property. Mr. Benefield stated on July 9, 2007 the Planning Commission made a motion to deny the concept site plan based on 60.5.3 of the Ordinance.

Mr. Norris stated the issue being presented to the Board is whether a provision of the Ordinance that references the Comprehensive Plan that incorporates by reference a Transportation Plan is actually a standard of the Ordinance. Mr. Norris stated the Planning Commission approved Hampton Square in February 2004 even though the Transportation Plan depicted the FDR Boulevard alignment. Mr. Norris stated this concept site plan is very similar to Hampton Square which was approved. Mr. Norris stated the Lexington Park Development District Plan states DPW&T still have to determine the future status of FDR Boulevard and a decision on the ultimate extent and configuration needs to be made to allow this area to be planned appropriately. Mr. Norris stated if the county intended to protect any of the multitudes of alignments they have considered for FDR Boulevard, the proper method is to map the alignment with certainty.

Ms. Chaillet read the staff report which recommended upholding the decision of the Planning Commission. George Erichsen, Director of the Department of Public Works and Transportation read a paragraph from the Hampton Square Staff Report from the January 26, 2004 Planning Commission meeting to demonstrate that at that time, the County had not yet have an adopted alignment. The staff report reads as follows: "The alignment of FDR Boulevard has not been formally adopted, but it is an element in the proposed County and Lexington Park Transportation Plans. Because the alignment has not yet been approved, nor funds allocated for right-of-way acquisition, and also because the site plan meets the criteria for concept approval, staff supports approval. The Hampton Square project was unable to obtain the necessary Railroad Right of Way Easement and the County subsequently was able to negotiate for FDR Boulevard. We have been authorized by the County Commissioners to negotiate for the right-of-way and the most recent correspondence from the Benefields was that they would be willing for the County to purchase the property. The applicant was made aware of the impact of FDR Boulevard from the prior owner as well as the County, and still desires to proceed with the development. Exhibit #19 was entered into the record by Mr. Erichsen to show the extent of the renovations that were knowingly performed on the existing structure that is in direct conflict with the FDR Boulevard centerline alignment.

Mr. Erichsen submitted this staff report statement as Exhibit #4. Mr. Erichsen also submitted Exhibit #5 - a memo dated November 3, 2003 with attachment 1"=150' scale drawing. He reminded the Commission that they have the surveyed alignment of FDR that are at several scales that were the basis for the approved transportation plans. Mr. Erichsen named several other developments that have gone thru a similar process that have resulted in the construction or reservation of FDR Boulevard that include; Mazel Subdivision, Nicolette Park Master Plan, Laurel Glen PUD, First Colony PUD, Bay District VFD, Hickort Hills, Lexington Park Library access, White Oak and Victory Housing Subdivisions, San Soucci Retail Expansion, Hickopry Hills Hotel, Lexington Park Corporate Center, Wildwood / Sturbridge Apartments, Fairfield Inn and Valley Drive Townhouses.

Mr. Erichsen stated the property was originally purchased by a Mr. Canetti in January 1986. At that time the County knew the property would be affected by the alignment of FDR Boulevard and the County performed an appraisal, however the property was not purchased at that time. Mr.

Erichsen provided the Commission with a copy of the Maryland Department of Assessment and Taxation records (Exhibit #13) showing all transactions on the property since 1986. Mr. Erichsen stated in 1996 the County entered into a Memorandum of Understanding with the State Highway Administration to perform a feasibility study for FDR Boulevard as it was hoped the State would assist in the funding due to the benefit to MD 235. Mr. Erichsen stated a draft feasibility report was completed in January 1997 and in April 1998 the final feasibility report was produced along with an alignment of fairly sufficient detail. The selected alignment is shown on the Preliminary Alignment (Alignment Plat) dated October 1, 1999 and marked as Exhibit L. He explained that the environmental assessment had been completed, the final design was underway for the first phase of the FDR project and that \$1.5M was in the current fiscal year capital budget to purchase right-of-way. A copy of the Capital Budget sheet (Exhibit BB) was submitted into the record. Mr. Erichsen stated that it would appear that both parties are in agreement to discussing the acquisition of all or a portion of the property for the FDR corridor. Mr. Erichsen entered the following exhibits explaining how each exhibit proves FDR Boulevard has been in the planning, surveying and design stages and is currently in the land acquisition phase.

- Exhibit #6 Memorandum of Understanding between SHA and St. Mary's County dated November 1996
- Exhibit #7 Draft FDR Boulevard Feasibility Study Report Dated January 1997
- Exhibit #8 Final FDR Boulevard Feasibility Study Report Dated April 1998 – 3 pages, 1 map
- Exhibit #9 Letter to Raymond Canetti regarding FDR Boulevard from John Groeger dated November 24, 1998
- Exhibit #10 Authorization to Enter upon the subject Property to perform surveying dated December 6, 1998
- Exhibit #11 List of all Notified Property Owners that abut the proposed right-of-way – 4 pages
- Exhibit #12 December 11, 1995 Planning Commission Minutes – 2 pages
- Exhibit #13 Maryland Department of Assessments and Taxation Real Property Search Dated September 25, 2007
- Exhibit #14 Scope of Services Engineering Consultant Services for FDR Boulevard to demonstrate the level of survey detail required for the deed mosaic – 3 pages
- (Exhibit K) Concept Plan for FDR Colonial Square showing centerline of Future FDR Boulevard
- (Exhibit L) Preliminary Alignment Plan (aka Alignment Plat) for FDR Boulevard
- Exhibit #15 Memorandum Dated May 17, 2006 from DPW&T TEC Items
- Exhibit #16 Public Notice Dated January 27, 2000
- Exhibit #17 Plat of Survey and Description of the subject property – 2 pages

It was requested that the Comprehensive Plan, Lexington Park Development District Plan, and the Transportation Plan be entered into the record. These three items were entered as Addenda #1, 2, 3. The following documents were also submitted into the record.

- Exhibit #18 Letter from Army Corps of Engineers Letter Dated March 2, 2000 – 2 pages
- (Exhibit W) Preliminary Engineering Report Dated October 5, 1999 and page 2 Environmental Assessment Dated July 30, 1999
- Exhibit #19 Photographs of the Subject Property before and after the renovation work – 2 pages
- (Exhibit Z) Ordinance # 06-08 Dated August 29, 2006 adopting the Transportation Plan – 2 pages
- (Exhibit AA) Letter from Army Corps of Engineers Dated December 7, 2004 indicating that there were wetlands on the property at the time of survey that dictated the alignment thru the subject property- 6 pages
- Exhibit #20 Comments of John B. Norris, III Representing FDR Holdings, LLC – 3 pages
- (Exhibit BB) Capital Improvements Budget and Program Fiscal Year 2008 FDR Boulevard

Mr. Erichsen stated that the County does not have the storm drainage or stormwater management designs completed and does not have specific details, such as where the median

crossovers will be, as of today. Mr. Erichsen did state that the right-of-way has been surveyed to a level of detail that is very accurate and includes bearings and distances. In fact, the County has prepared a Plat of Survey by a licensed surveyor for the right of way and an appraisal that has for purposes of negotiation. Mr. Erichsen stated that the concept plan prepared by Mr. Blascoe (Exhibit K) shows the proposed structure as a square, with no details regarding finishes, architectural drawings or the exact location. It may not have the detailed information until the time of final site plan and building permit application. Mr. Erichsen stated he would counter that FDR Boulevard is similar to the concept site plan, only the County has done a significant amount of survey and environmental work to establish and adopt the alignment. .

Mr. Norris stated the aerial photographs do not show the alignment of FDR Boulevard going through the property in question, instead rather they show it touching a corner of the property. Mr. Norris stated the applicants went before the Planning Commission in 2006 to request relief from FDR Boulevard and requested that it be aligned differently; their request was denied. Mr. Norris stated the Transportation plan that was adopted does not delineate ultimately where FDR Boulevard is going to be aligned.

The Board discussed testimony received. Mr. Miedzinski stated he would like to see the aerial photographs of the alignment for FDR Boulevard. Ms. Scriber agreed stating she would like additional time to review all the exhibits submitted. Mr. Erichsen agreed to provide the requested information for their review.

Ms. Scriber made a motion in the matter of ZAAP #06-132-017, FDR Holdings, LLC, I move that the Board of Appeals hereby continue the case to November 29, 2007 at 6:30 p.m. and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of September 13, 2007 were approved as recorded.

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

CUAP #06-135-001 – Long Valley Lee Tower Site
CUAP #07-131-015 – McIntosh Surface Mine
VAAP #07-131-015 – McIntosh Surface Mine

ADJOURNMENT

The meeting was adjourned at 10:30 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: November 8, 2007

George Allan Hayden
Chairman