

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, October 8, 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; Mary Russell, Inspector; and Jada Stuckert, Recording Secretary. County Attorney Christy Chesser 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 6:32 p.m.

PUBLIC HEARING - CONTINUED

Vergheze Zoning Appeal

Mr. Norris agreed to allow public testimony prior to him finishing his presentation. Chairman Thompson opened the hearing for public testimony.

Loretta Abell Vallandingham (ck spelling) – Representing the Abell Family

Ms. Vallandingham stated the family owns property in the area. Ms. Vallandingham stated she has been the caretaker for her parents for many years and has lived in the neighborhood her entire life. Ms. Vallandingham stated she remembers the auto repair shop being on the property for many years. Ms. Vallandingham stated there have always been cars on the property, weather they were for parts for being worked on however the amount has recently increased. Ms. Vallandingham stated the abandoned vehicles on the property are a nuisance and the hours of operation are inconsistent. Ms. Vallandingham stated stock cars and race cars do not have mufflers and are located within 50 yards of other homes and they are loud at all times of the day or night. Ms. Vallandingham recalled a vehicle being stuck in reverse and rolling onto her mother's property and another time where Mr. Mattingly pulled into the property at excessive speed while she was mowing the lawn with her son. Ms. Vallandingham asked the Board to consider the neighborhood itself and asked that strict regulations be placed on this project if it is allowed to continue.

Mr. Thompson asked how often the vehicles are run during the evening hours. Ms. Vallandingham stated it is mostly in the summer months two or three times per week. Mr. Thompson asked which building was being used for repair when she was a child. Ms. Vallandingham stated there was no garage when she was a child.

Mr. Thompson asked approximately how many cars were on the lot in the past. Ms. Vallandingham stated there were a few back in the woods but the number increased over time and now there are many. Mr. Guy asked when the cars began to accumulate. Ms. Vallandingham stated it was approximately the late 80's.

Mr. Stephen L. Raley

Mr. Raley stated he was born and raised in the neighborhood. Mr. Raley stated the building was built in 1980 according to the Department of Taxation. Mr. Raley submitted an official copy of the St. Mary's County Farm Service Agency Aerial Photo dated 10/08/09 for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Mr. Raley stated when the estate was settled in 1994 the property turned into a junkyard. Mr. Raley stated it is inappropriate to have an auto repair business in a residential neighborhood. Mr. Raley stated this is bad for the environment and persons living on the property. Mr. Thompson asked how far away he lives. Mr. Raley stated he lives 2 tenths of a mile from the property. Mr. Norris submitted a photo of a Mattingly Auto Service Truck dated 09/1961 for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Mr. Bill Fitzgerald

Mr. Fitzgerald stated he has lived in the neighborhood for many years and has owned property in the area for over 20 years. Mr. Fitzgerald stated he has built and sold over 40 houses in the area but has always had a hard time selling them with the Mattingly junkyard being so close. Mr. Fitzgerald stated he has spoke with Mr. Mattingly about the vehicles on the property and what a nuisance they are but he does not seem to care. Mr. Fitzgerald stated Dr. Verghese is the owner of the property and should also be held liable. Mr. Fitzgerald stated he has had Ms. Abell call him many times over the past 20 years crying asking how we can fix this situation with Mr. Mattingly.

Ms. Barbara Morgan

Ms. Morgan stated in mid 50's there was always someone there working on vehicles. Ms. Morgan stated there were always cars on the property.

Mr. John McKenney

Mr. McKenney stated he has lived in the area since 1966. Mr. McKenney stated in the late 60's he had one of his cars worked on by Mattingly. Mr. Edmonds asked if any invoices were ever given for the work Mr. McKenney had done on his vehicles. Mr. McKenney stated no.

Mr. Thompson closed the hearing to public comment.

Mr. Norris continued his initial presentation and called Cody Mattingly. Mr. Mattingly testified that there have always been vehicles for repair and racing on the property. Mr. Mattingly stated parts from the older junk cars are being used.

Mr. Norris called Zack Mattingly to testify and submitted a photo of the back of his parent's house with seven (7) persons in the photograph dated 1961 for the record, *hereby labeled as Exhibit 3 by the Recording Secretary*.

Mr. Norris submitted a color photo of car #54 for the record, *hereby labeled as Exhibit 4 by the Recording Secretary*. Mr. Norris submitted a blank repair slip no. 1929 for the record, *hereby labeled as Exhibit 5 by the Recording Secretary*.

Mr. Norris asked if Mr. Mattingly had any applicable licenses for the auto racing and repair business. Mr. Mattingly provided Mr. Norris with applicable licenses. Mr. Norris submitted a General Scrap Tire Collection Facility License dated 06/30/06 for the record, *hereby labeled as Exhibit 6 by the Recording Secretary*. Mr. Norris submitted a Scrap Tire Hauler License dated 06/30/06 for the record, hereby labeled as Exhibit 7 by the Recording Secretary. Mr. Norris submitted Articles of Incorporation of Mattingly's Auto and Racing Inc. dated 12/31/91 for the record, *hereby labeled as Exhibit 8 by the Recording Secretary*. Mr. Norris submitted a State of Maryland Workers' Compensation Commission Certificate of Compliance dated 02/12/2003 for the record, *hereby labeled as Exhibit 9 by the Recording Secretary*.

Mr. Mattingly testified there were approximately 42 cars on the property when his father passed away in 1993. Mr. Norris submitted a two (2) page subdivision plat dated May 1931 for the record, *hereby labeled as Exhibit 10 by the Recording Secretary*.

Mr. Thompson stated the Mr. Grimm Exhibit 7 of 9-10-09 is being disputed. Mr. Grimm has stated this is not his signature on the approval notice. Mr. Norris stated this case does not hedge on Mr. Grimm's signature. Mr. Norris stated this case will be decided on proof that the business has been in operation since the 1960's.

Ms. Neale asked if business taxes were ever filed for the business. Mr. Mattingly stated he filed every year. Ms. Neale stated she would like to see these taxes.

Mr. Thompson asked when the racing business began. Mr. Mattingly stated approximately 13 years ago. Mr. Thompson stated Exhibit 5 references auto repair and realignment, not racing. Mr. Thompson asked if there are invoices that state Mattingly Auto Racing and Repair. Mr. Mattingly stated he does have them at his house. Mr. Thompson asked if there are invoices. Mr. Mattingly stated he uses a receipt book. Mr. Thompson asked if there is a site plan for this property. Mr. Norris stated due to expenses we reverted back to the subdivision plan.

Mr. Norris referenced 11-20 S tax records from 2006 however refused to submit them for the record due to the personal information on the document. Mr. Thompson stated this is Dr. Verghese is the owner of the property and should and can be held responsible for the business operations on the property. Mr. Mattingly guaranteed the citizens of St. Mary's County that the property would be cleaned up if LUGM would allow him to build pole barns on the property.

Mr. Thompson asked for staff's presentation at this time. Ms. Chaillet stated Mr. Vuckmer was never hired to complete a site plan for the property. Ms. Chaillet stated there was no retainer paid and/or signed agreement with Mr. Vukmer to do the site plan. Ms. Chaillet stated she checked on the use and sales use tax registration and it is valid. Ms. Chaillet stated the purpose of this is for taxes, he should be collecting receipts. Ms. Chaillet stated Mr. Mattingly has no valid business license. Ms. Chaillet referenced affidavits submitted with tonight's record and Ms. Chaillet read the information for the record. Ms. Chaillet stated the original denial of the request is on file at the department of land use and growth management.

FIVE (5) MINUTE BREAK

Mr. Norris referenced Exhibit 7 of 9-10-09 (approval by Grimm) and asked if these affidavits could have been used as a basis to approve lots 6-10 and 610- 164. YC stated the affidavits do not reference lots therefore could not be used to make a conclusive determination.

Mr. Guy made a motion to accept the staff products received and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

Mr. Guy made a motion to accept the 9-10-09 staff report and attachments as findings of fact in this case and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

Mr. Miedzinski stated he has not seen evidence that disagrees with staff's recommendation. Ms. Neale agreed. Mr. Edmonds agreed.

Ms. Neale made a motion in the matter of the Verghese Zoning Appeal, I move that the Board of Appeals hereby uphold the Planning Director's decision regarding the bounds of a legal nonconforming use known as Mattingly's Auto Racing and Repair, which found that the storage, dismantling, and sale of automobiles and automobile parts on lots 11-15, lots 155-159, lots 6-10, and lots 160-164 of the St. Clements Woods Subdivision did not predate the adoption of the St. Mary's County Zoning Ordinance in 1974. Furthermore, the Director found that the auto racing and repair business was never documented or authorized as a legally existing nonconforming use on lots 6-10 and lots 160-164 of the St. Clements Woods Subdivision and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of September 10, 2009 were approved as recorded.

The Board authorized the Chair to review and sign the following orders:
CUAP and VAAP #06-132-030 – St. Andrews Landfill Transfer Station

ADJOURNMENT

The meeting was adjourned at 9:10 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: November 19, 2009

Howard Thompson
Chairman