

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, October 9, 2003**

Present: Marie Underwood, Chairperson
George Allan Hayden, Sr., Vice Chair
Ronald C. Delahay, Sr., Member
Sandy Mriscin, Member
Bryan Barthelme, Second Alternate
John B. Norris, III, County Attorney
Yvonne Chaillet, Planner III, LUGM
Theresa Dent, Environmental Planner, LUGM
Peggy Childs, LUGM Recording Secretary

A list of attendees is on file in LUGM. The Chair called the meeting to order at 7:00 p.m. For the record, all participants in all applications were sworn in by the Chair.

CONTINUATION OF PUBLIC HEARING

VAAP #02-2892 – JOE AND NANCY POTANKA

Requesting a Variance from Section 38.2.13 of St. Mary's County Zoning Ordinance

#90-11 for "after-the-fact" impervious surface and clearing within the Critical Area Buffer.

The property contains 10,942 square feet, or 1.16 acre, is zoned RNC (LDA Overlay),

and is located at 45233 Daniels Court in Hollywood, Maryland; Tax Map 27, Block 17,

Parcel 366; Lot 500-6 of Scotch Point Subdivision.

Present: Joe and Nancy Potanka, Owners/Applicants
Jackie Raley Meiser, Attorney for the Potankas

This hearing was continued from the meeting of September 11, 2003 pending submission of the Applicants' revised site plan to the Chesapeake Bay Critical Area Commission (CAC) and receipt of the CAC's comments. The Applicants have constructed a single-family dwelling on the Property at other than the approved location, in violation of their approved permit and the Critical Area law. The CAC initially opposed the variance; however, a revised site plan submitted on September 9th more accurately depicts the erosion, the existing driveway easement, and the revised location of the required sewage reserve area, which have forced the dwelling to its existing location, the only available site remaining for construction. For the record, Bryan Barthelme, the Board's Second Alternate, who was not present at the September 9th hearing, has reviewed the video tape of the hearing and is eligible to vote on this application.

Staff is now in receipt of the CAC's revised comments dated September 29, 2003, which recognizes the existing constraints and states they that no longer oppose the granting of a variance to allow a small portion of the house to encroach into the Buffer, subject to the required mitigation. The CAC also recommends a condition that there be no more variances to the impervious surface limit; however, the Applicants have proffered the removal of a portion of their existing driveway, a pool and deck within the Buffer so that a variance from the impervious surface limitation is no longer required. The CAC's September 29th letter was entered into the record as Applicant's Exhibit #A-3.

Ms. Raley Meiser indicated that she had no additional comments other than to request, if the variance is approved, the Board's Order be expedited so the Applicants can meet their funding deadline.

It was moved by Ms. Mriscin that, having adopted the 8/29/03 Staff Report and making a finding that the Standards for Variance of Section 38.2(7) of ZO #90-11 have been met in that, based on the revised site plan: 1) the location of the shared driveway easement and the required septic reserve area have made this the only available location on the lot to construct the house; and 2) the Chesapeake Bay Critical Area Commission has withdrawn its previous opposition and is now in support of the variance; the Board approve a Variance from Section 32.3.13 of ZO #90-11 for "after-the-fact" impervious surface and clearing in the Critical Area Buffer, subject to the following conditions:

(1) The Applicant shall adhere to the Planting Agreement requiring mitigation of the amount of the approved impervious surface and clearing within the buffer at a ratio of 3:1, in accordance with the Critical Area regulations.

(2) The Applicant shall conform to the revised site plan that complies with Health Department requirements for the septic reserve area and reduces the total impervious surface on the Property, to meet the maximum allowance of 7,579 square feet.

The motion was seconded by Mr. Hayden and passed by 5-0.

PUBLIC HEARING

VAAP #02-1826 ATF – SCOTT & RICHARD J. MALEY

Requesting "after-the-fact" variance approval from Section 71.7.3 of ZO #Z-02-01

for unauthorized disturbance and clearing on slopes greater than 15% in the expanded

Critical Area Buffer. The property contains 3.13 acres, is zoned RPD (RCA Overlay), and is located on Flat Iron Road; Tax Map 58, Block 15, Parcel 254; Lot 6 of Greens Rest Subdivision.

Owners: Scott and Richard Maley

Present: Scott Maley

Jerry Soderberg, of D. H. Steffens Company

Legal Ad published in The Enterprise on 9/24/03 & 10/01/03

Property posted by staff

#A-1 Certified Receipts of notification to contiguous property owners

This is an "after-the-fact" variance request for unauthorized disturbance and clearing in the expanded Critical Area Buffer. The lot is completely constrained by the expanded Critical Area Buffer due to the presence of steep slopes and erodible soils. In March 2003, the applicants received variance approval for a minimum amount of clearing in order to construct a house. However, the applicants have performed unauthorized clearing in the amount of 1,500 square feet over what was approved by the Board.

Staff has reviewed the application and finds that the standards for variance have not been met. In addition, the Critical Area Commission (CAC) opposes the variance. Staff recommends *DENIAL* of the variance and that the applicant adhere to the Critical Area Planting Agreement to fully restore the area of unauthorized clearing and disturbance with native species trees and shrubs at a ratio of 3:1, in accordance with the Critical Area regulations. Staff is asking that the area that was disturbed be fully restored with vegetation.

Ms. Mriscin moved to accept the 9/30/03 Staff Report. Seconded by Mr. Delahay and passed by 5-0.

Mr. Maley, who co-owns the lot with his father, said the tree line shown on the original site plan was not shown correctly and is, in fact, 25 to 30 or 40 feet from the street. He said, when he discovered this, he asked Mr. Soderberg to correct the site plan and also asked him to clear the peninsula from the back yard between the septic system and the back of the house. At this point, the framing was almost completed and they were getting ready to put in the septic system. He said he thought, because he was clearing less in the front than the originally approved amount because of the tree line, he could clear more in the back, and that would be an administrative change by Land Use & Growth Management (LUGM). However, he did not ask anyone at LUGM.

Mr. Maley said the cleared area in the front is down almost 3,000 feet because of the incorrect tree line and the disturbance now is about the same. The clearing he did in the steep slopes has increased the disturbance by 1000–1500 square feet. He said it was never his intention to leave that

completely deforested; as part of the Planting Agreement he knew he had to plant a large number of trees and shrubs, and his original contract with Wentworth Nurseries was for 119 trees and 159 shrubs. Mr. Maley said he has terraced that area – there are two flat areas and three sloped areas, and all of the slopes are planted. In that area there are 140 of the 159 shrubs he was required to plant, so he had hoped to mitigate any erosion issues.

Ms. Dent said a revised site plan reflecting the difference in the tree line was submitted by Mr. Maley and the required clearing in the Planting Agreement was reduced, so Mr. Maley has already benefited from the incorrect tree line and LUGM was led to believe that the additional clearing had not been done at that point.

The Chair asked Mr. Maley why he did it? He replied he thought he could balance the clearing difference and he wanted to round out the back yard. He said he hasn't gone any closer to the water or to the ravine which runs through the property, so he thought there wouldn't be any problem with erosion or runoff into the St. Mary's River.

Addressing the Staff Report, Mr. Maley said he couldn't contest standard a. but said his clearing figure is more like 1,000 square feet and he did try to maintain the stability of the slope by planting 140 shrubs. He said part of his thinking at the time was that he was reducing the total amount of clearing, so it wouldn't be a big issue. He said he didn't intend to increase the issues in the steep slopes and when he realized he had he did the best he could to mitigate the situation. The following are Mr. Maley's remarks on staff's findings under the standards:

b. – He has planted a lot more shrubs than the owner of Lot 5 for a similar-sized house.

c. – His intent was simply to have a continuous back yard, not to increase the total

amount of clearing, and he didn't believe that was a special privilege.

d. – True, but he did his best to mitigate.

e. – He believed his actions were in the best interests of the County because he thought was reducing the total amount of clearing.

f. – Because he cleared less area and mitigated he thought he had less impact to the environment at that location.

Jerry Soderberg, of D. H. Steffens Company, commented only that the tree line on the original site plan was taken from the County's planimetrics, which are not "real exact." He said when Mr. Maley noticed the difference in the tree line he had the Steffens field crew go out and locate the actual tree line on the revised site plan.

At this point the Chair closed public testimony and the Board deliberated.

Mr. Delahay said Mr. Maley did a good job in terracing his lot, but Ms. Dent replied that both LUGM's position and the Critical Area Commission's position is that nothing takes the place of trees. She said the soils on this lot are Evesboro and Westphalia, the most erodible soils there are, and they are not going to hold. She asked that Mr. Maley be made to mitigate and add 7 trees and 8 shrubs to bring the area back up to its original vegetative state, spaced properly so they will survive.

It was moved by Ms. Mriscin that, having adopted the 10/09/03 Staff Report and making a finding that the standards for variance have not been met and noting the project has not satisfied the State of Maryland Critical Area Commission, Chesapeake and Atlantic Coastal Bays, the Variance be *DENIED* and the additional planting be required. The motion was seconded by Mr. Delahay and passed by 5-0.

ORDERS AND MINUTES APPROVED

Minutes of September 11, 2003
VAAP #03-0686 – Thomas Ruthenberg
CUAP #03-135-003 – Omnipoint at Hollywood VFD

ADJOURNMENT – 7:48 p.m.

Approved in open
session: December 4, 2003

Peggy Childs
Recording Secretary

Marie E. Underwood
Chairperson