

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, October 13, 2005**

Present:                   George Allan Hayden, Chairman  
                              Greg Callaway, Vice Chair  
                              Ronald C. Delahay, Member  
                              Michael Hewitt, Member  
                              Wayne Miedzinski, Member  
                              John B. Norris, III, County Attorney  
                              Denis Canavan, Director, Department of Land Use &  
                              Growth Management  
                              Yvonne Chaillet, Zoning Administrator, LUGM  
                              Sue Veith, Planner IV, Environmental, LUGM  
                              Sharon Sharrer, LUGM Recording Secretary

The Board of Appeal's 1<sup>st</sup> Alternate, Gertrude V. Scriber, was present in the audience. A sign-in sheet is on file in the Department of Land Use & Growth Management (LUGM). All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

**PUBLIC HEARING**

**CUAP #04-132-009 – NEW MARKET PARK AND RIDE LOT**

The applicant is requesting an extension in time of an approved Conditional Use pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to construct a park and ride lot. The property contains 7.0 acres; is zoned Rural Preservation District (RPD); and is located on the north side of MD Route 6, northeast of its intersection with northbound MD Route 5; Tax Map 4, Block 16, Parcel 56.

Owner:                   St. Mary's County Commissioners  
Applicant:           Maryland Transit Administration (MTA)  
Present:               Mary Anne Polkiewicz, MTA

All cases being heard at this meeting were advertised in the Enterprise on September 28, 2005 and October 5, 2005. Staff posted the property and sent out letters for the New Market Park and Ride. Certified mail receipts are in the file.

Ms. Polkiewicz explained that a substantial amount of time has been spent working on this project since the October 2004 Board of Appeals hearing. Most of this preliminary work is required by the FTA, since federal funds are being used for this project, as well as state funds. An open house was held in November 2004. Additional mapping has been completed, including the areas

where road improvements will be made. Ms. Polkiewicz explained that the project will go to the Planning Commission for their approval on October 24, 2005. Due to an endangered plant along the power lines near the site the stormwater management pond has been relocated, since MTA could not be certain that the stormwater management pond would not change the hydrology of that area.

Ms. Polkiewicz explained that the schedule for the project anticipates that the project will be turned over to their office of engineering to complete detailed final designs this fall if Planning Commission approval is received. It is anticipated that final design of the site should be completed this winter, and the bid process would be completed in the spring of 2007. She explained that they hope to ultimately open the facility during the spring or summer of 2008. Ms. Polkiewicz explained that an extension of two years would be needed to allow them to get the point of starting construction.

Mr. Hewitt explained that he had received the impression that the facility was needed much sooner than 2008 when the Board heard the original conditional use request. Ms. Polkiewicz explained that the lease on the lot currently being used has been extended for the time being, so the park and ride can stay there until the New Market facility is open. Adjusting the design for changes in the stormwater management pond and changes to the access roads has taken more time than was originally anticipated. She explained that there is also a particular bird which nests in that area, and this means that there may be some necessary adjustments to their schedule since they will not be able to disturb any of the forested area for a couple of months of the year.

Mr. Miedzinski asked about the distance from the park and ride lot to Lettie Dent Elementary School, and about the possibility of using the lot for overflow parking. Ms. Polkiewicz explained that she did not recall the exact distance, but felt it was between 1,200 feet and one quarter of a mile. She said that the possibility of a walkway to connect the two exists, but it is not a part of the MTA plans. She explained that the design will not preclude the County from providing this access, if desired.

**Mr. Miedzinski made a motion that the staff report be accepted. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

The Chair opened the hearing to public comment.

Paul Colonna, a resident of New Market Turner Road, expressed continued concern with traffic issues at this site. He explained that he feels that the traffic will be as bad or worse with a park and ride lot on New Market Turner Road than it would have been with a lot on Golden Beach Road.

The Chair closed the public hearing.

Ms. Polkiewicz explained that they are working closely with State Highway Administration (SHA) and the Department of Public Works & Transportation (DPW&T). She said that MTA believes that the proposed improvements will address the traffic problems mentioned by Mr. Colonna.

**Mr. Miedzinski moved that having accepted the staff report, dated October 6, 2005; and having made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met; the Board approve the request for an extension of two years to the approved Conditional Use for a park and ride lot, pursuant to Chapter 25 of the Ordinance. The motion was seconded by Mr. Delahay and passed by a 5-0 vote.**

**VAAP #03-1071 - RUTHENBERG**

The applicant is requesting after-the-fact variance from Section 71.9.6 of the St. Mary's County Comprehensive Zoning Ordinance to encroach into the extended property line setbacks to construct a pier. The property contains 14,100 square feet; is zoned Residential, Low Density (RL) District, Intensely Developed area (IDA) Overlay; and is located at 45401 St. Georges Avenue in Piney Point, Maryland; Tax Map 65, Block 12, Lots 29-33.

Owner: Thomas & Carolyn Ruthenberg

Applicants' Exhibit A (1-4): Pictures (4) of the pier

Mr. Gardner's Exhibit 1: uPlan of Property, showing property lines and setback lines

Mr. Gardner's Exhibit 2: Commercial Tidal Fish License, Oyster Ground Leasing bills (2), letter from Joseph Meinert dated 5/7/93

Mr. Gardner's Exhibit 3: Copy of pages from St. Mary's County Comprehensive Zoning Ordinance (Z02-01), including Section 71.9

Mr. Gardner's Exhibit 4: Copy of approved Critical Area Review, surveys (2), letters from Sue Veith dated 2/19/05 & 4/7/05, letter from Yvonne Chaillet dated 8/16/05

Ms. Veith's Exhibit 1: ArcMap – Map for Environmental review

Ms. Veith's Exhibit 2: Original approved Critical Area Review from LUGM file

The property was posted and certified mailings were sent. The applicant certified that the mailings were completed, though certified mail receipts were not submitted for the file at the hearing.

Ms. Ruthenberg explained that they received a permit to put a pier on their property in 2003, and the pier was installed in 2004. She said that it was never their intention to have the pier constructed in violation of the approved permit.

Ms. Chaillet explained that staff is supporting the variance request because the applicants complied with both the MDE permit and the LUGM permit when it came to constructing the pier. Ms. Veith explained that all of the information available to the staff at LUGM had been used at the time of the permit application, including the information provided by the applicant, plats of the subdivision, and information from aerial photos on the shoreline. At the time the pier was reviewed, she explained that LUGM did not have the level of detail that is now available as aerial photos. Based on that original review, it was found that the pier met the lateral line setbacks as it was located in the application. Ms. Veith explained that LUGM was contacted by Mr. Gardner, who explained that he thought the pier was across the line. Information received since that time has shown that the pier is over the line, even though it appears that the applicants made every effort to put the pier in the correct location. Ms. Veith provided a brief description of how lateral line setbacks are done.

Mr. Hewitt asked if someone in the business of putting in piers would know the formula for how lateral line setbacks should be done. Ms. Veith explained that it has been in the Ordinance, and in existence, since 1991. She explained that landowners and the contractors who submit applications really only have the survey information for the property they are working on, and must rely on plat information for the properties on either side since they typically don't have the right to go onto that property and survey.

**Mr. Miedzinski made a motion that the staff report be accepted. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

The Chair opened the hearing to public comment.

George Edmunds, an area resident, said that he felt the Ruthenberg's request was reasonable. He explained that Mr. and Mrs. Ruthenberg had enhanced the area, increasing the value of the land for everyone in the area.

James Nagy, another resident of the Piney Point area, expressed concern with all of improper things happening in Piney Point Shores. He asked the Board to act forcefully because of all of the improprieties occurring in the yacht basin.

Joseph Gardner, who owns adjoining property, explained that he feels that the Ruthenberg's pier improves the value of their property while taking away from the value of his property. He said that he does not want to look at their pier or their boat. Mr. Gardner explained that he bought waterfront property and wants to look at the water.

Ms. Ruthenberg explained that they had followed the basic procedures, submitting plans as required. When the pier was installed, there was an approved permit. She explained that she does now understand that the permit was not correct, but that they had no idea that there was any problem at the time the pier was installed.

The Chair closed the public hearing.

**Mr. Hewitt moved that having accepted the staff report, dated October 5, 2005; and having made a finding that the standards for variance in the Critical Area and the objectives of Section 71.9.6 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, the Board deny the after-the-fact variance to encroach into the extended property line setbacks. The motion was seconded by Mr. Delahay and passed by a 4-1 vote, with Mr. Miedzinski voting against the denial.**

**VAAP #05-0961 – SOUTHERN MARYLAND HOMES**

The applicant is requesting variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the side yard setback by more than 50%. The property contains 0.539 acres; is zoned Residential, Low Density (RL) District, Intensely Developed Area (IDA) Overlay; and is located at 44988 Lighthouse Road in Piney Point, Maryland; Tax Map 65, Block 16, Parcel 225.

Owner: Shields Family – Piney Point LLC  
Applicant: Southern Maryland Homes  
Present: Floyd Graham

Certified mail receipts were submitted for the file.

Mr. Graham explained that he was the builder and was representing the Shields family on this project. He said that the property owner would like to build a carport and the lot is too narrow to allow this addition without reducing the required side yard setback.

Board members expressed concern about the ability to provide access to the back of the house in an emergency situation. Mr. Graham explained that one reason for requesting a carport, rather than a garage, is to provide the ability to drive through the structure and into the back yard if necessary. He said that there is also space to drive around the other side of the house, even though that would be on the adjoining property, not on this property.

The Chair asked if the same roof pitch used on the house would be used on the carport. Mr. Graham responded that the pitch will be much flatter on the

carport. He explained that the water will be directed to a gutter system and downspouts.

**Mr. Hewitt made a motion that the staff report be accepted. 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 public comment.

**Mr. Miedzinski moved that having accepted the staff report, dated October 3, 2005; and 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 been met; the Board approve the variance to reduce the required side yard setback from 15 feet to five (5) feet to construct a carport upon the condition that stormwater runoff be collected from the structure that is the subject of the variance. The motion was seconded by Mr. Delahay and passed by a 5-0 vote.**

**VAAP #05-0781 – LANEDON SUBDIVISION, Lot 8**

The applicant is requesting after-the-fact variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains 20,154 square feet; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is lot 8 of the Lanedon Subdivision in Leonardtown, Maryland; Tax Map 57, Block 19, Parcel 123.

Owner: David & Joyce Wood  
Applicant: Tri-Star Construction  
Present: Bill Higgs, of Little Silences Rest, Inc.  
Robert Coffren, President of Tri-Star Construction

Certified mailing receipts were submitted for the file.

Mr. Higgs explained that, when the building permit for this lot was obtained, the applicants felt that they could make the development work without clearing in excess of 30% of the existing vegetation. Mr. Coffren explained that an excavator got a little bit crazy with the excavating machine and cleared too much land. He offered to work with the County to do whatever was necessary to rectify the situation.

Ms. Chaillet explained that 37.4% of the existing vegetation was cleared. This is an after-the-fact variance, and the Ordinance requires clearing in excess of 30% obtain a variance before clearing is done. The Ordinance requires mitigation at a ratio of three-to-one (3:1) for the unauthorized clearing in excess

of 30%. She explained that staff recommends denial of the variance, with the stipulation that the applicant will mitigate at a ratio of three-to-one (3:1) per square foot of clearing.

**Mr. Hewitt made a motion that the staff report be accepted. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**Mr. Hewitt moved that having accepted the staff report, dated October 6, 2005; and having made a finding that the standards for variance in the Critical Area and the objectives of Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance have not been met; the Board deny the variance to clear in excess of 30% of the existing woodland. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.**

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

**VAAP #05-1515 – RMT Properties – 0.73 acres – The applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to construct a single-family dwelling and appurtenances in the Critical Area Buffer. Variance approved with signed planting agreement.**

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

The minutes of September 8, 2005 were approved as recorded.

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

**CUAP #05-132-029 – Stoltzfus Property  
VAAP #05-132-029 – Stoltzfus Property  
VAAP #05-1798 – Peter Ide  
VAAP #05-1799 – Peter Ide  
VAAP #05-0111 – Nancy Wathen  
VAAP #05-1042 – William J. Barker  
ZAAP #04-3249 – Steve Leopold**

#### **ADJOURNMENT**

The meeting was adjourned at 9:18 p.m.

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Sharon J. Sharrer  
Recording Secretary

Approved in open session:  
November 10, 2005

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George Allen Hayden  
Chairman