

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, November 30, 2006**

Members present were George Allan Hayden, Chair; Greg Callaway, Vice Chair; Ronald Delahay; Wayne Miedzinski; and Gertrude Scriber. Department of Land Use and Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; Sue Veith, Environmental Planner; and Cindy Koestner, Recording Secretary. Christy Holt Chesser, County Attorney, and Colin Keohan, Deputy County Attorney, were 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.

**ANNOUNCEMENT**

The Chair announced staff asked for continued cases to be limited to one hour on the night of their second hearing. This will allow the Board time to hear other cases on the agenda and assist staff in managing the number of pending cases. Any continued case that is not completed within the one hour time frame during the second hearing will be scheduled for an additional continuation after the other pending cases.

**PUBLIC HEARINGS**

**ZAAP #05-2934 – TILLEY'S MARINA (Continued from November 9, 2006)**

The Appellants are requesting an appeal of the Planning Director's determination regarding the scope of the non-conforming use pursuant to Chapter 23 of the St. Mary's County Comprehensive Zoning Ordinance. The property contains 22,252 square feet; is zoned Commercial Marine District (CM), Limited Development Area Overlay District (LDA); and is located at 45970 Wild Rose Lane, California, Maryland; Tax Map 35, Block 2, Parcel 9.

Owner: Walter Tilley and Frank Miller, Appellants  
Present: Kara Doyle of Dugan, McKissick, Wood & Longmore LLC, attorney for the Appellants

This property was advertised in *St. Mary's Today* on 10/22/06 and 10/29/06. The property was posted and certified mail receipts were submitted to staff for the files.

Appellants' Exhibit 1: Location drawing of subject property signed by witness Harry B. Huseman, Jr.

Ms. Doyle summarized the testimony from November 9, 2006. She explained Harold Huseman, Sr. and Joe Stone testified that the subject pier has consistently been used to rent slips to eight to ten boats over the past several decades. Ms. Doyle maintained the definition of a slip is "a docking place for a boat." She explained the Ordinance allows the continuance of a nonconforming use if it has not been abandoned and the testimony of the witnesses demonstrates the Appellants' nonconforming use has not been abandoned.

Ms. Doyle called Harold Huseman, Jr. and questioned him regarding his background and his observations on the use of the subject property. Mr. Huseman, Jr. explained he has worked on the water for many years and he currently guides ships along the Chesapeake Bay as a Captain for the Association of Maryland Pilots. He defined "slip" as a mooring place for a boat to tie up and explained there are several piers in the area where boats are not tied in multiple places. Mr. Huseman, Jr. stated he lives next door to the subject property with his father and for the past several years he either lived there or visited his parents there. He testified he has regularly observed eight to nine boats at the subject pier at any given time. Mr. Huseman, Jr. explained he used to own the subject property and rented pier space to a total of six to nine boats, both pleasure and commercial, on a daily basis.

Ms. Doyle called Walter Tilley, Appellant and co-owner of the subject property. Mr. Tilley testified he purchased

the property in February 2003 in partnership with his step-father, Frank Miller. He explained the property was purchased so he could rent slips and work on boats; however, the pier needed repairs. He explained he met with Ms. Veith at LUGM and was provided with a plan for a renovated pier. According to Mr. Tilley, Ms. Veith told him he would have to apply to the State and the Army Corps of Engineers and that the County would approve whatever the State approved. Mr. Tilley explained he sent his materials to the Maryland Department of the Environment (MDE) and the Corps and received approval to rebuild and renovate the pier in July 2005. He began the renovations in August 2005, but was notified by staff he had to stop work until he paid the County fee. Mr. Tilley explained he paid the fee, but was notified two weeks later that the fee was incorrect. He then paid the corrected amount and continued work on the pier when the stop-work order was lifted. Mr. Tilley explained the renovations were completed in the fall of 2005, at a cost of \$125,000, using more environmentally friendly materials. He stressed he was never notified by staff that he could not continue with the planned renovations after paying the correct fees.

Ms. Doyle questioned Mr. Tilley regarding the revision of the State permits. Mr. Tilley explained he originally applied for a permit to renovate the pier with ten slips, but was later informed ten slips classify the pier as a commercial marina. He revised the permit to include only nine slips. He later inquired about expanding the septic tank or drain fields on the property; however, he was informed by the Health Department that he would not be allowed to expand the sewer system because the property only qualifies for whatever the County determines the use of the property to be. Mr. Tilley explained this prompted him to approach staff to determine the scope of the nonconforming use on the subject property.

Mr. Miedzinski noted there are currently ten slips at the subject pier. Mr. Tilley clarified he received permission from MDE to remove the tenth slip; however, he is waiting until the nonconforming use issue is clarified before he removes it. Mr. Callaway asked Mr. Tilley if he was advised ten slips qualifies a pier as a commercial marina prior to submitting his application to the State. Mr. Tilley replied no. Ms. Veith responded she does not recall telling Mr. Tilley ten slips constitutes a commercial marina but she typically does advise people of this. Mr. Tilley stressed he did not know what questions he needed to ask regarding the renovation of the pier and he would not have renovated it as he did if he had thought that he would have to tear part of it down. Mr. Miedzinski asked Mr. Tilley for his opinion on the definition of "slip." Mr. Tilley replied he prefers to tie his boats to pilings, but he feels a slip equates to any place a boat is tied to a dock. Mr. Hayden asked how many parking spots are located on the subject property. Mr. Tilley replied eight to ten parking spots were approved by staff.

Ms. Chaillet explained this is an after-the-fact variance and the Appellants should have obtained the correct County permits prior to proceeding with the pier renovations. She explained two site visits were performed by a former staff member in 1999 and 2002 to count slips as part of the comprehensive rezoning preparations. Staff used the documentation from these two visits to assist with the determination of what existed at the pier at the time the Appellants applied to the State. She noted there were never more than five slips when the staff member visited the site. She added the County generously agreed to allow six slips based on the Appellants' documentation. Ms. Chaillet stressed the number of boats present at the dock does not equate to the number of slips because the County counts slips as places to tie boats with four mooring piles. This is the only way they can count slips in order to determine when a pier enters the commercial marina status. She noted the Appellant has had as many as 13 boats tied to the subject pier. Ms. Chaillet explained the County only looks at what existed during the prior year when figuring the scope of a nonconforming use and the nonconforming status is lost if removed and not replaced in that one year.

Mr. Miedzinski asked Ms. Veith why she drew ten slips on the Appellants' plans if she knew ten slips would classify the pier as a commercial marina. Ms. Veith responded she does not recall drawing ten slips or why she would have drawn ten slips. Mr. Miedzinski inquired about what other information Ms. Veith gave to Mr. Tilley when they met. Ms. Veith replied she informed Mr. Tilley he first had to apply to the State and the Corps and then had to apply to the County after receiving the State permit. Ms. Veith added an applicant can apply for an expansion of a non-conforming use up to 50% of what the current use is. Ms. Chaillet pointed out the Appellant will not receive approval from the Health Department for any expansion over what the County determines the use is and Mr. Canavan concluded the use to be six slips.

Mr. Miedzinski inquired about prior testimony that demonstrates more than six slips have been rented at the pier in the past. Mr. Canavan replied there may have been testimony regarding more than six boats, but those boats do not equate to slips. Mr. Delahay asked if Mr. Tilley can keep nine slips if the Board approves nine slips. Mr. Canavan replied no because the Health Department has expressed concerns over septic limitations of the site and cannot

approve a septic expansion.

Ms. Doyle questioned why staff lifted the stop-work orders when Mr. Tilley paid the County fees if he was not supposed to continue renovating the pier. She pointed out Mr. Tilley began the process of renovating his pier by meeting with a staff member. She explained to the Board if they find the use is in keeping with eight slips, then the Health Department will have to support that number. Ms. Chaillet restated the County determines slips and not boats. Mr. Doyle asked if the County will allow the Appellants to tie eight boats if six slips are approved. Mr. Canavan responded the approval of six slips does not mean the Appellants can only tie six boats to the pier.

Ms. Doyle called Frank Miller, co-owner and Appellant. Mr. Miller explained he lives in Lusby and has spent most of his life on the water. He explained he wanted to see the pier fixed because it was run down when the property was purchased. He added that he and Mr. Tilley did everything they knew they were supposed to do in order to proceed with the renovations. He questioned why the term "slip" is not defined in any State or County regulations if they are both required to count "slips" to determine marina status. He asked the Board that they be allowed to keep what they have already paid to build because they thought they were in compliance when they built it.

The Chair opened the hearing to public comment. The hearing closed with no public comments.

Ms. Doyle concluded the Board can find the scope of the non conforming use is for eight slips based on the testimony of the witnesses and the Health Department has stated they will approve whatever the County determines the use is. She noted the Appellants renovated the pier thinking they had the blessing of the government. They are not asking for an expanded use; they are only asking to keep the expanded structure. She explained the use at the pier has always been the rental of at least eight slips. Ms. Doyle added the Appellants will lose a lot of money as well as have to pay additional funds if they have to tear down the renovated pier.

Mr. Delahay explained he is okay with allowing the Appellants to keep eight slips. Ms. Scriber noted it does not matter how many slips the Appellants have because they can still tie additional boats to the pier. Mr. Callaway agreed the use of the pier appears to have always been the rental of at least eight slips. Ms. Canavan noted the Board can affirm his decision regarding the nonconforming use and, if they want the Appellants to keep eight slips, then the Appellants will have to come back before the Board to apply for an expansion at a separate hearing. Ms. Doyle disagreed and explained the Board can reverse the Director's determination and also find tonight that the nonconforming use of the pier is for eight slips.

Mr. Hayden explained the Board should affirm Mr. Canavan's decision regarding the scope of the nonconforming use and then allow the Appellants to come back before the Board and apply for an expansion. He expressed concern allowing additional slips will increase the activity at the pier and cause problems for the existing septic system. Mr. Miedzinski disagreed and explained if the Board feels the use of the pier includes eight slips, then they should make those findings tonight so the Appellants do not have to come back. He stated he does not feel the additional slips will increase traffic at the pier.

**Ms. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter and also adopt the testimony given by the witnesses. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**Mr. Miedzinski moved that having adopted the staff report, dated October 31, 2006, and the public testimony given at the hearings on November 9, 2006 and November 30, 2006, and having found that the scope of the nonconforming use of the subject pier allows the use of eight (8) slips, the Board reverse the decision of Denis Canavan, Director of Land Use and Growth Management, contained in his letter, dated June 26, 2006. The motion was seconded by Ms. Scriber and passed by a 4-1 vote. Mr. Hayden was opposed.**

**VAAP #06-0966 – WOOD**

The Applicant is requesting a variance from Section 71.9.6 of the Comprehensive Zoning Ordinance to encroach into the required lateral line setback to construct a pier. The property contains 1.40 acres; is zoned Rural Preservation District (RPD), Limited Development Area Overlay District (LDA); and is located at 49866 Gray Goose Lane, Ridge, Maryland; Tax Map 71, Block 21 Parcel 555.

Withdrawn from the agenda.

**VAAP #06-1618 – WALKER**

The Applicant is requesting a variance from Section 72.3 of the Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation to construct a single-family dwelling and appurtenances. The property contains 14,900 square feet; is zoned Residential Neighborhood Conservation District (RNC), Limited Development Area Overlay District (LDA); and is located at 40225 Waterview Drive, Mechanicsville, Maryland; Tax Map 5A, Block 10 Parcel 1.

Owner: Douglas Walker  
Present: Bill Higgs, Little Silences Rest, and Joe Boling, builder

All of the remaining cases heard at this meeting were advertised in *St. Mary's Today* on 11/12/06 and 11/19/06. The properties were posted and certified mail receipts were submitted to staff for the files.

Mr. Hayden stated a Board member visited the site and found the driveway and mound system have been installed and property has been cleared. He added the mound system appears to be too close to the property line. Staff issued a stop-work order because no work should have proceeded on the site without the approval of the Board. Mr. Higgs explained Mr. Boling feels none of the work performed at the site will require an additional variance and he would like to proceed with the case. Ms. Chaillet noted the request is now for an after-the-fact variance and staff has not determined if any additional variances are needed because the inspector has not had time to meet with staff. Mr. Higgs explained his field crew staked the mound system and feels it is in the correct location.

Mr. Hayden asked Mr. Boling why he went forward with construction on the site without first receiving approval for the variance. He expressed concern a precedent will be set for everyone to proceed with development prior to their hearing if the Board continues to hear cases after the fact. Mr. Boling stated he did not know it was not okay to proceed with the mound system prior to obtaining the building permit for the dwelling and he realizes he will have to pay any associated fines. Mr. Delahay pointed out Mr. Boling should have been aware of this because he is a local builder. Mr. Miedzinski and Mr. Hayden both stated they do not wish to proceed with this hearing. Mr. Callaway expressed concern people are not supposed to start work prior to receiving approval from the Board and he feels it is an insult to the Board when they do. Ms. Chesser noted the Board is allowed to ask staff to prepare additional information if they feel they do not have enough information in the staff report to proceed. The Board agreed they want to continue this case at a later date in order to allow staff time to re-inspect the site and gather additional information. Mr. Hayden asked if the case will need to be advertised again. Ms. Chaillet responded no, unless there is a need for an additional variance.

**Mr. Miedzinski moved to continue this case at the March 8, 2007 meeting in order to give staff time to perform an additional full site inspection and document any violations or additional variances needed. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #06-0924 – GRIFFIN**

The Applicant is requesting a variance from Section 32.1 of the Comprehensive Zoning Ordinance to increase the base density (units per acre) to construct three single-family dwellings and appurtenances and a variance from Section 41.2 of the Comprehensive Zoning Ordinance to re-establish grandfathered impervious surface. The property contains 1.13 acres; is zoned Rural Preservation District (RPD), Limited Development Area Overlay District (LDA); and is located on the south side of MD 249, 300 feet south of the St. Georges Island Bridge, Piney Point, Maryland; Tax Map 66, Block 19 Parcel 43.

Owner: Maryland Diamond Point LLC (c/o Stephen Griffin)  
Present: Jerry Nokleby, Nokleby Surveying, Inc.

Applicant's Exhibit 1: 27 pictures of the subject property, including pictures of all structures prior to demolition

Mr. Nokleby explained the site was surveyed when the applicant purchased the property and there were three

existing dwelling units at that time. He stated the applicant is asking to rebuild the three existing dwelling units that were on the property and retain the impervious surface that was present when the property was purchased. Mr. Nokleby noted this property is the first impression of St. Georges Island and the dwellings the applicant is proposing will greatly enhance the property and the character of the island. He explained the buildings on the subject property were damaged by storms and were in poor condition and the property was trashed and unsafe. Mr. Griffin explained he found people renting the dwellings without leases when he purchased the property. He gave them 60 days to vacate the property and then demolished one building because he deemed it unsafe and was worried about someone getting injured. He stressed the building posed a great liability in the condition it was in. Mr. Griffin explained he believed he only needed to show a survey demonstrating the impervious surface that existed at the time he purchased the property in order to recover that impervious surface. He added he is not trying to get more impervious surface than what was already there.

Mr. Griffin explained he plans to build three upscale, single-family dwelling units and install a seawall to protect the property from further erosion. He noted the property has eroded from 4.1 acres to the current 1.13 since he purchased the property in August 2004. Mr. Hayden asked when the structure was demolished. Mr. Griffin responded in December 2004. He explained the second structure was in the process of being demolished when he was notified by staff the demolition was not allowed. Mr. Griffin noted he spoke to staff prior to settling on the property and discovered he could build three structures based on the dwelling units located on the property at that time. Mr. Hayden asked Mr. Griffin if he was made aware the Ordinance stipulates that a structure torn down in the Critical Area must be replaced within one year or the right to the impervious surface ceases. Mr. Griffin replied he was unaware of this stipulation in the Ordinance, especially since this is the first property he has developed in the County. Mr. Griffin explained he would be allowed three structures today if he had known he only had a year to apply to staff after tearing anything down. Mr. Hayden asked Mr. Griffin if he deals with special regulations in the other counties in which he builds. Mr. Griffin responded yes. Mr. Hayden asked if permits are required for demolition. Mr. Canavan replied yes. Mr. Hayden asked if permits are required for demolition in other counties. Mr. Griffin replied yes. Mr. Delahay asked Mr. Griffin if the demolition contractor had advised him that the building should not be demolished. Mr. Griffin responded he was told by the contractor that he could demolish anything damaged by Hurricane Isabel and later replace it. Mr. Hayden asked for clarification the structure was already in bad shape prior to the hurricane. Mr. Griffin replied yes but he was trying to do the right thing by tearing down what he perceived to be a very unsafe building.

Mr. Canavan asked Mr. Griffin if he was informed of the regulations. Mr. Griffin replied he was informed by Butch Bailey, the general contractor, that the building should not be demolished; however, by then it was too late. He called the demolition contractor the same day he was informed to stop further demolition. Mr. Hayden explained the applicant's demolition contractor may have been at fault for not informing him of County regulations. Mr. Griffin stressed he did not intentionally commit any violations. He expressed concern he would not be allowed any dwellings if he had proceeded to demolish the remaining structures. Mr. Hayden clarified all grandfathered lots in the Critical Area are allowed one single-family dwelling; therefore, Mr. Griffin would at least be allowed one structure.

Ms. Chaillet noted the structures on the subject property were inspected by staff after Hurricane Isabel and none of them were condemned or required to be removed. She explained there is currently one structure on the property with two dwelling units and the applicant can replace this structure with two single-family dwelling units. The applicant will still need a variance to increase the density in the RPD zone in order to construct two dwelling units. The applicant is also requesting restoration of the grandfathered impervious surface to build a third dwelling unit, but the Ordinance does not allow this because the other dwelling unit was demolished over one year prior to the application. Ms. Chaillet explained all of the structures were present when the applicant first approached staff, but the applicant failed to notify staff prior to removing the third dwelling unit and he did not apply for a permit to replace the dwelling within one year of removing it.

**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 Ms. Scriber and passed by a 5-0 vote.**

The Chair opened the hearing to public comment.

John Hormell, adjacent property owner, explained he is opposed to the reduction of the density on this property, whether it is to allow two or three single-family dwellings. He stated the property is the first impression of St. Georges

Island and building two or three homes on it is not consistent with the character of the Island. Mr. Hormell explained he offered to put up "No Trespassing" signs on the subject property, but the person he talked to, a representative for Mr. Griffin, was not interested in having them posted. Mr. Hormell explained he posted the signs anyway. He asked the board not to grant the requested variances because the applicant clearly violated the regulations.

Ralph Watson, owner of the property across the street from the subject property, explained he believes the variances should be granted and he feels the three houses planned by the applicant will improve all of the neighboring properties.

The Chair closed the hearing to public comment.

Mr. Griffin expressed concern one year is not enough time to submit a site plan and build a dwelling. Mr. Hayden responded the Ordinance does not stipulate the structure must be completed in one year. Mr. Miedzinski stated he feels the approval of two dwellings is generous. He pointed out cases in similar situations have been denied. Mr. Delehay and Mr. Callaway agreed.

**Mr. Miedzinski moved that having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's Comprehensive Zoning Ordinance have not been met, the Board deny the variance to allow three (3) dwelling units on 1.13 acres in the RPD. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.**

**Mr. Miedzinski moved that 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 Comprehensive Zoning Ordinance have not been met, the Board deny the variance to restore the grandfathered impervious surface. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.**

**Mr. Miedzinski moved that having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's Comprehensive Zoning Ordinance have been met, the Board approve the variance to allow two (2) dwelling units on 1.13 acres in the RPD. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.**

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

**VAAP #05-1887 – Logue** – 0.85 acres – The applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to place impervious surface in the Critical Area Buffer.  
**Variance approved with conditions.**

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

The minutes of November 9, 2006 were approved as corrected.

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

**ZAAP #06-133 – Grading Permit for Woods at Myrtle Point Subdivision**  
**CUAP #05-132-050 – STS Bus Shelter**  
**CUAP #06-132-008 – Modification E, Zimmerman Mine No. 2**

#### **ADJOURNMENT**

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

---

Cindy R. Koestner, Recording Secretary

Approved in open session: December 14, 2006

---

George Allan Hayden  
Chairman