

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
LUGM BACK CONFERENCE ROOM \* LEONARDTOWN, MARYLAND  
December 4, 2003**

Present: Marie Underwood, Chairperson  
George Allan Hayden, Vice Chair  
Ronald C. Delahay, Sr., Member  
Michael Hewitt, Member  
Greg Callaway, First Alternate  
John B. Norris, III, County Attorney  
Heidi E. Dudderer, Assistant County Attorney  
Denis Canavan, Director, LUGM  
Yvonne Chaillet, Planner III, LUGM  
Peggy Childs, LUGM Recording Secretary

This meeting was moved to the first Thursday in December to meet the 60-day deadline for signing the Order from the October 9, 2003 meeting. The Chair called the meeting to order at 7:03 p.m. All participants were sworn in by the Chair.

Prior to beginning the meeting, the Chair asked for a moment to remember Board member Sandy Mriscin, who passed away on November 8, 2003, following a sudden illness. Ms. Underwood spoke for the Board members and LUGM staff, stating that Ms. Mriscin kept us on our toes and exuded energy and humor, and would really be missed.

**PUBLIC HEARINGS**

**CUAP #01-130-071 – JOHN & LEONE GATTON**

Requesting an extension of time for Conditional Use Permit #01-130-071, per Sections 25.9 and 27.3 of Zoning Ordinance #Z-02-01. The Conditional Use, which was approved by the previous Board of Appeals on July 12, 2001, was to renovate and expand an existing garage to serve as the new location for Gatton's Barber & Beauty Shop, in Hollywood. The Conditional Use will expire on January 12, 2004.

Legal Ad published in The Enterprise on 11/19/03 & 11/26/03  
Property posted by staff on 11/17/03

Ms. Underwood she has been advised by County staff that the Board has no jurisdiction to her this request. County Attorney John Norris said LUGM staff relied on a provision in Chapter 25 of ZO #Z-02-01 which allows extensions for conditional uses approved under this Ordinance #Z-02-01; however, this conditional use was granted under ZO #90-11, and the Ordinance language is very explicit that no extension can be granted.

The Gattons, who were present at the meeting, were very upset, as were Board members Ronnie Delahay and Mike Hewitt. However, LUGM Director Denis Canavan and Mr. Norris pledged to work with the Gattons to resolve the issues by the January 12, 2004 conditional use deadline, and Mr.

Canavan and Mr. Norris retired from this meeting to meet with the Gattons in that regard.

**VAAP #03-2545 – THOMAS & LYNNE SMOOT**

Requesting: 1) A variance from Section 71.8.3 of ZO #Z-02-01 to increase the amount of impervious surface within the Critical Area Buffer with additions to a single-family dwelling, and 2) A variance from Section 41.6.3 of ZO #Z-02-01 to exceed the overall impervious surface limitation on the site. The property contains 1.01 acres, is zoned RPD (RCA Overlay), and is located at 29585 Hearts Desire Drive in Mechanicsville, TM 5, Block 12, P 106, Lot 1 of Hearts Desire Subdivision.

Present: Thomas and Lynne Smoot, Owners

Legal Ad published in The Enterprise on 11/19/03 & 11/26/03

Property posted by staff on 11/16/03

The applicants' home was constructed in 1987, after the State had adopted its Critical Area law but prior to the County's adoption of the Critical area regulations, and part of the house is located within the Critical Area Buffer. Applicants propose the construction of two additions to the house, partly over existing impervious surface – a 480 square foot expansion of their great room, which will yield a net increase of 288 square feet, and a 192 square foot covered porch, for a total net increase of 480 square feet on the lot. Of the 480 square feet, 222 square feet will be within the 100-foot Critical Area Buffer

Lots over one-half acre in the RCA are restricted to 15% of impervious surface which, for this lot, is 6575 square feet. However, this site currently has 6,684 square feet of impervious coverage, exceeding the 15% limitation by 109 square feet. The requested additions would increase the total amount of impervious surface to 7,164 square feet, which equals or 16.34% of the lot or 589 square feet over the limit.

Staff and the Critical Area Commission support the variance to allow the additions, but cannot support the second variance to exceed the 15% impervious limit. Both staff and the Critical Area Commission recommend that the applicants reduce the existing impervious surface by removing a portion of their driveway in exchange for the new construction. This would bring the lot into compliance with the 15% limitation and eliminate the need for the variance from Section 41.6.3.

**Mr. Hewitt moved to accept the 11/24/03 Staff Report. Seconded by Mr. Hayden and passed by 5-0.**

Mr. Smoot stated that their house is in the shape of an "H" and they would like to build one wall and put a roof over it to expand their great room and add a porch, and the only bone of contention is the chopping up of their driveway. He said they have two cars which they keep in their garage and park a pickup truck on their driveway, and they want to keep the driveway area for their visitors to park; otherwise, they would have to back all the way out to Hearts Desire Drive. The Chair stated that she turned around in the Smoots' other lot –

the Smoots also own a vacant lot adjoining this one. Ms. Smoot said, as long as they own that lot they could do that, but they may not own it at some future time. She said their driveway is on a slope of land that will erode if they remove the portion recommended by staff, and they have just added fill and gotten it to the point where it does not erode. She said she doesn't understand why they are being asked to do that.

There were no questions by Board members, and the Chair opened the hearing to public comment. There were no comments.

Mr. Hewitt began the Board's discussion by saying he thinks the Smoots have a good point. He said they only want to increase the impervious surface by 1.34%, which is very minor. He said he thinks the chance of drainage into the creek from the proposed additions is very slim and the Board could require planted mitigation to prevent it. He said he does not believe the drainage from the small area of the additions will adversely impact the fish, plant, and wildlife habitat. Mr. Hewitt said the Board tends to gravitate to what the Critical Area Commission says but, at the last meeting where he was present the Board approved construction on a lot at Piney Point at 46 feet from the water line and, if the Critical Area Commission allows someone to build a house on stilts and park a car under it and say there will be better water quality returning to the river than what was there, he thinks it is inconsistent not to allow this increase. He said he thinks we can allow the 1.34% increase in impervious surface, with the provision that the mitigation will allow water quality that is at least as good as what is there now.

Mr. Hayden said he agrees with Mr. Hewitt, because he thinks the improvements will allow better control of the runoff than they have now, whereas right now they have to control it from three sides. With the new wall, Mr. Hayden said they will only have to control it from one side and, as long as they plant mitigation around it, he doesn't think it will be a problem. Mr. Callaway agreed. Mr. Hewitt said, if the house were flipped around the other way and that side was facing the water, he would be less inclined to support the request, but the way the house is situated now, he will support the variance. The Chair stated she thinks the Board is on a slippery slope when we second-guess the Critical Area Commission and that the next person who comes in will say you bent the rules in this case, why not bend them for me? She said it might be an inconvenience and the Smoots might have to stabilize the driveway, but she thinks they can remove a portion of their driveway and comply with the Critical Area regulations.

**Mr. Hewitt moved that, having accepted the Staff Report and making a finding that the Standards for Variance have been met, a Variance from Section 71.8.3 of ZO #z-02-01 to increase the amount of impervious surface within the Critical Area Butter and a Variance from Section 41.6.3 of ZO #Z-02-01 to exceed the overall impervious surface on the site be approved, subject to the condition that the applicants shall adhere to the Planting Agreement developed by staff. The motion was seconded by Mr. Hayden and passed by a vote of 3-2. The Chair and Mr. Delahay voted against the motion.**

## **DISCUSSION**

### **FY 2004 BUDGET**

Staff had provided in the Board's packages of information a copy of the Board's current operating budget. She requested that the members submit any additional requests to staff within the next week so they can be included in the Departmental Budget Request.

## **RULES OF PROCEDURE**

The Board concurred with the proposed changes to the Rules of Procedure but the Chair noted that she does not see on Page 8, under Order of Presentation, where the applicants presents his case, and asked that that be added under that section.

## **2004 MEETING SCHEDULE**

The Board agreed with the proposed Meeting Schedule for 2004, as presented by staff. One meeting per month is scheduled on the second Thursday of the month, beginning at 6:30 p.m. This is a change from the current meeting time of 7:00 p.m.

## **ORDERS AND MINUTES APPROVED**

Minutes of October 9, 2003.  
VAAP #02-1826 ATF – Scott and Richard Maley

## **ADJOURNMENT**

The meeting was adjourned at 8:10 p.m.

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Peggy Childs  
Recording Secretary

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Approved in open  
session: January 8, 2004

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Marie E. Underwood  
Chairperson