

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, January 13, 2011**

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 Yvonne Chaillet, Zoning Administrator; Kelly Palmer, Environmental Planner; and Jada Stuckert, Recording Secretary. Attorney George Sparling 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 6:30 p.m.

PUBLIC HEARINGS

VAAP#10-1770 – Tri-County Builders

The applicant is requesting variance to clear more than 30 percent of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains 15,000 square feet; is zoned Residential Neighborhood Conservation District (RNC), Limited Development Area (LDA) Overlay; and is located at 29860 Washington Road, Mechanicsville, Maryland; Tax Map 5A, Grid 6, Parcel 338.

Owner: Hardy Credit Company
Present: Barry Vukmer, Chesapeake Trails Surveying

The property and variance were advertised in The Enterprise on December 29, 2010 and January 5, 2011. Ms. Palmer submitted the certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Palmer gave an overview of the staff report December 30, 2010 and the specific standards for granting variances in the Critical Area as well as the site development standards for forest and woodland protection. Ms. Palmer submitted the staff report for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Mr. Vukmer stated the applicant can not develop the property without clearing more than 30% and the house proposed is of modest size and is in harmony with the surrounding neighborhood.

Mr. Thompson asked if most of the planting would be done off-site. Ms. Palmer stated yes, and whatever can not be planted on or off-site, can be mitigated by paying the fee-in-lieu.

Chairman Thompson opened the hearing to public comment, hearing none, closed the hearing to public comment. Mr. Sparling submitted a memo dated January 13, 2011 outlining proposed findings of fact for this case.

Mr. Miedzinski made a motion to accept the January 13, 2011 memorandum from George Sparling as findings of fact in this case and Mr. Guy seconded. The motion passed by a 5-0 vote.

Mr. Guy made a motion in the matter of VAAP#10-1770, Tri-County Builders, having made a finding that the standards for granting a variance in the Critical Area and the objectives of Section 72.3.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to clear more than 30 percent of the existing vegetation to construct a single family dwelling and appurtenances in the Critical Area, subject to the following conditions:

- 1. The Applicant shall provide a Planting Plan prior to the issuance of the building permit, which shows the required 3:1 mitigation per square foot of the variance***

- granted pursuant to Section 24.4.2.b of the Ordinance. The Planting Plan shall show which native species have been selected for planting, and where on the Property the Applicant proposes to plant the vegetation. Areas without forest vegetation must be planted first prior to paying fees-in-lieu; and**
- 2. The Applicant shall comply with the Critical Area Planting Agreement and approved Buffer Management Plan; and**
 - 3. The proposed clearing shall not exceed 79.3 percent of the existing vegetation.**

Mr. Edmonds seconded and the motion passed by a 5-0 vote.

VAAP#10-1732 – Newtowne Creek LLC Pier

The applicant is requesting variance to encroach into the required lateral line setbacks to construct a pier. The property contains 20,473 square feet; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 39994 Ben Morgan Road, Leonardtown, Maryland; Tax Map 39, Grid 18, Parcel 122.

Owner: Wayne D. Taylor, Newtowne Creek LLC
Present: Robin Guyther

The property and variance were advertised in The Enterprise on December 29, 2010 and January 5, 2011. Ms. Chaillet submitted the certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave an overview of the staff report December 30, 2010 and the general standards for granting variances as well as the standards for shoreline resources. **Mr. Miedzinski made a motion to enter the staff report into the record and Mr. Edmonds seconded. The motion passed by a 5-0.** Ms. Chaillet submitted the staff report for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Mr. Edmonds asked if the property owner purchased the property with the understanding that he would be allowed to build a pier.

Mr. Guyther stated the County has always allowed property owners with development rights the option to build a pier. Mr. Guyther asked that the record reflect that Mr. Taylor is the sole owner of the property. Mr. Guyther submitted a small version of the site plan for the record, *hereby labeled as Exhibit 3 by the Recording Secretary*.

Mr. Guyther stated the applicant has had a surveyor map the exact locations of the property and surrounding piers. Mr. Guyther stated due to the existing piers the proposed pier is only 50 feet long and is located 11.6 feet from the southern pier with 16 feet to the end of the pier and 19.8 feet from the northern pier with 32 feet to the end of the pier.

Mr. Guyther stated Mr. Taylor wanted to minimize the impact of the pier and offered to pay for the removal and reconstruction of Mr. Hammett's pier so that all three piers could exist however this offer was declined. Mr. Guyther stated Mr. Taylor would simply like to exercise his right to build a pier on this property.

Mr. Edmonds asked if Mr. Hammett wanted to build anything on the left side of his pier would he be prohibited. Mr. Guyther stated he would be able to build something small. Mr. Miedzinski stated the Hammett pier could not be built in its current location today without a variance. Mr. Guy asked if the pier could be shortened. Mr. Guyther stated probably not because the water is only 2-3 feet deep.

Mr. Thompson asked how long he's owned the property. Mr. Wayne Taylor stated he has owned the property for approximately 3 years. Mr. Taylor stated he walked the property and knew there was only 23 feet of shoreline however he was under the impression that he would be able to build a pier as long as he mitigated. Mr. Taylor stated he has tried several different ways to get his neighbors to agree to the building of his own pier and each one has been unsuccessful. Mr.

Thompson asked if this is an investment property. Mr. Thompson stated yes, the house is currently a rental.

Chairman Thompson opened the hearing to public comment.

Mr. John Weiner, attorney for Hammett and Graves

Mr. Weiner referenced staff report attachment 4 stating both the Hammett's and Graves families strongly oppose the proposed pier. Mr. Weiner stated the Hammett family has owned their property for 40 years and the Graves family has owned their property for over 50 years. Mr. Weiner stated when Mr. Taylor purchased the property he should have recognized there was not enough room for a pier. Mr. Weiner submitted two photos of the existing shoreline and piers for the record, *hereby labeled as Exhibits 4 and 5 by the Recording Secretary*. Mr. Weiner stated with just 9 feet separating the boats there is not enough room for another pier. Mr. Weiner stated this is a safety issue no to mention this is a rather large variance request. Mr. Weiner stated both neighboring property owners will be injured by the approval of the proposed pier.

Mr. Joseph Graves

Mr. Graves stated he has had boats at the pier for 30 years now, wooden and fiberglass. Mr. Graves stated he already has to be careful not run into the other boats because there is limited space. Mr. Graves stated there is already a safety issue and no matter the shape or size of the proposed pier, there is not enough room or water to add another pier. Mr. Graves stated Mr. Taylor has tried to convince us to sign the agreement to allow the pier but we won't because there isn't enough room. Mr. Graves asked the Board to not approve this pier. Ms. Neale asked if he could put his boat on the other side of the pier. Graves stated we have several boats therefore we use both sides of the pier.

Ms. Anita Graves

Ms. Graves stated if you see the property in person it is much different than looking at a site plan. Ms. Graves stated there is no room for a pier between the two existing piers and there is no water with only 1.5 feet. Ms. Graves stated adding another pier would create impossible safety issues and crowding. Ms. Graves stated adding another pier would cause conflict arising between property owners as well as affect our property values because we wouldn't be able to use our pier.

Mr. Spencer Hammett

Mr. Hammett stated he has lived here for 40 years and there is no room for another pier. Mr. Miedzinski asked if Mr. Taylor offered to move the pier. Mr. Hammett stated he likes his pier the way it is.

Chairman Thompson closed the hearing to public testimony.

Mr. Guyther stated Mr. Taylor knew it wouldn't be easy but does have the right to a pier. Mr. Guyther stated he appreciates the neighbors concerns however you would be denying the applicant the right to a pier. Mr. Guyther commented on Exhibits 4 and 5 stating, if the neighboring pier owners would utilize the other side of their piers it wouldn't be as hard. Mr. Taylor stated he always knew he would have to get a variance if the neighbors didn't agree.

Mr. Taylor at this time would like to formally reduce the length of the pier from 50 feet to 40 feet. Mr. Miedzinski asked if this makes any difference to the neighboring owners. Mr. Weiner stated this would not make a difference for the neighbors.

Mr. Sparling submitted a memo dated January 13, 2011 outlining proposed findings of fact for this case. ***Mr. Miedzinski made a motion to accept the memorandum dated January 13, 2011 as findings of fact in this case and noting that requirement e. and requirement g. do not comply and Mr. Guy seconded. The motion passed by a 5-0 vote.***

Mr. Guy made a motion in the matter of VAAP#10-1732, Newtowne Creek LLC Pier, having made a finding that the standards for granting a variance and the objectives of Section 71.9.6 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, I move to deny the variance request to encroach into the required lateral line setback to construct a pier and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of December 9, 2010 were approved as recorded.

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

None

ELECTION OF OFFICERS

Mr. Miedzinski made a motion to appoint Howard Thompson Chairman and Mr. Edmonds seconded. The motion passed by a 4-0-1 vote with Mr. Thompson abstaining.

Mr. Thompson made a motion to appoint Wayne Miedzinski Vice-Chairman and Ms. Neale seconded. The motion passed by a 4-0-1 vote with Mr. Miedzinski abstaining.

ADJOURNMENT

The meeting was adjourned at 8:40 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: January 27, 2011

Howard Thompson
Chairman