

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
CHESAPEAKE BUILDING \* LEONARDTOWN, MARYLAND  
Thursday, February 25, 2010**

Members present were Wayne Miedzinski, Vice-Chairman; Randy Guy, Ronald Payne, and George T. Edmonds. 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 Vice-Chair called the meeting to order at 6:30 p.m.

**PUBLIC HEARINGS**

**VAAP #09-135-002 – Bethune Public Safety Tower**

The applicant is requesting variance to reduce the required setback from a building or other structure not associated with the tower site. The property contains 19.84 acres; is zoned Rural Preservation District (RPD); and is located at 22975 Colton Point Road, Bushwood, Maryland; Tax Map 38, Grid 5, Parcel 56.

Owner: St. Mary's Public Schools  
Present: Dave Zylak, Public Safety Director

The property and variance were advertised in The Enterprise on February 10, 2010 and February 17, 2010. 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 read the staff report which recommended approval of the request to reduce the required setback from a building or other structure not associated with the tower site from 330 feet to 235 feet. Ms. Chaillet submitted the staff report and attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.* Ms. Chaillet read Section 51.3.89.b (10) of the Ordinance into the record as follows:

"In addition to any setbacks otherwise required by the Zoning Ordinance, towers shall require a setback distance of 100 percent of the height of the tower from any residence, historic site, building or other structure not associated with the tower site. If the setback is to be on an adjoining property, a notarized statement of agreement or an easement must be obtained from the adjoining property owner."

Mr. Edmonds asked if the issue of the fall zone has been dealt with. Ms. Chaillet stated there are signed letters from the surrounding property owners as well as SMECO.

Mr. Zylak stated this is a request from the State Highway Administration (SHA) which will serve emergency services. Mr. Zylak stated this tower will be beneficial to St. Mary's County's police and fire rescue radio frequency tower. Mr. Zylak submitted a letter regarding tower design criteria engineering design dated 2/4/09 for the record, *hereby labeled as Exhibit 3 by the Recording Secretary.*

Vice-Chairman Miedzinski opened the hearing to public comment, hearing none, closed the hearing to public comment.

Mr. Sparling recommended a conditional of approval be that any and all agreements in this case be reviewed by the County Attorney's office. Ms. Howe stated the agreements were reviewed by the Public School's Attorney. Ms. Christy Chesser stated Deputy County Attorney Weiskopf has reviewed the agreements.

**Mr. Edmonds made a motion to accept the staff report as findings of fact in this case and Mr. Guy seconded. The motion passed by a 4-0 vote.**

**Mr. Edmonds made a motion in the matter of VAAP #09-132-002 having made a finding that the standards for granting a variance and the objectives of Section 51.3.89(10) of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to reduce the required setback from a building or other structure not associated with the tower site from 330 feet to 235 feet and Mr. Guy seconded. The motion passed by a 4-0 vote.**

**VAAP #08-132-011 – McDonald's**

The applicant is requesting variance to reduce the required buffer yard from a 75-foot "B" buffer to a 20-foot "B" buffer along the public right-of-way and to eliminate the buffer requirement along a portion of this right-of-way. The property contains .67 acres; is zoned Community Commercial (CC) District, Airport Environs (AE) Overlay; and is located at Old Rolling Road, California, Maryland; Tax Map 34, Grid 24, Parcel 435.

Owner: Ahanri Holdings Corp.  
Present: Bernice Crissiman, NGO Engineering

The property and variance request were advertised in The Enterprise on February 10, 2010 and February 17, 2010. 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 read the revised staff report which recommended approval of the request to reduce the required buffer yard from a 75-foot "B" buffer to a 20-foot "B" buffer along the Property's frontage with Old Rolling Road and to eliminate the buffer from the SMECO easement. Ms. Chaillet submitted the revised staff report dated 2/24/10 with attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.*

Ms. Crissiman gave an overview of the project submitting a map of what was provided to the Planning Commission, *hereby labeled as Exhibit 3 by the Recording Secretary.* Ms. Crissiman submitted the current plan, *hereby labeled as Exhibit 4 by the Recording Secretary.* Ms. Crissiman explained there is a SMECO easement that runs through the Kaplan property which we would like to extend to keep our canopy trees away from the SMECO lines.

Vice-Chairman Miedzinski opened the hearing to public comment, hearing none, closed the hearing to public comment.

**Mr. Guy made a motion to accept the staff report as findings of fact in this case and Mr. Edmonds seconded with the exception of the variable width buffer ranging from 23 feet to 28 feet. The motion passed by a 4-0 vote.**

**Mr. Guy made a motion in the matter of VAAP #08-132-011, McDonald's, having made a finding that the standards for variance and the objectives of Section 63.4.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move that the variance to reduce the required buffer yard from a 75-foot "B" buffer to a 20-foot "B" buffer along the Property's frontage with Old Rolling Road and to eliminate the buffer from the SMECO easement be approved and Mr. Payne seconded. The motion passed by a 4-0 vote.**

**VAAP #09-1516 – Teti**

The applicant is requesting an after-the-fact variance to exceed the lot coverage limit in the Critical Area; to reduce the rear yard setback for a deck and to reduce the front yard setback from for a deck; to reduce the required setback from a detached accessory structure and the principal structure. The property contains 13,000 square feet; is zoned Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay; and is located at 22373 Colton Street, Leonardtown, MD; Tax Map 39A, Grid 8, Parcel 8.

Owner: Anthony and Dale Teti  
Present: Anthony Teti

The property and variance requests were advertised in The Enterprise on February 10, 2010 and February 17, 2010. 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 read the staff report which recommended denial of the requests to exceed the lot coverage limit in the Critical Area; to reduce the rear yard setback for a deck and to reduce the front yard setback from for a deck; to reduce the required setback from a detached accessory structure and the principal structure. Ms. Chaillet submitted the staff report with attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.*

Mr. Sparling asked why we are here tonight. Ms. Chaillet stated we have not received the estimate from the Applicant. Mr. Sparling stated the Board needs to determine if a certified estimate has been received, if not the Board has no reason to hear the case tonight. Ms. Chaillet stated Marianne Dice of the Critical Area Commission stated the hearing could be heard however the Board can deny the case but not approve it. Mr. Sparling stated this would not be a fair hearing for the applicant. Mr. Sparling stated if the applicant can assert that the estimate is true and accurate the hearing can be held. Mr. Sparling stated the applicant has to meet the pre-conditions of the Board.

Mr. Sparling asked Mr. Teti if he understands the law in this case where he needs to submit an estimate and that the Department has found this estimate inadequate. Mr. Teti stated he understands. Mr. Sparling asked Mr. Teti if he would like to continue the case and if he will obtain an acceptable estimate. Mr. Teti stated yes he would like a continuance and noted that he would provide an acceptable estimate and that he has removed one of the driveways to date. Mr. Sparling stated there is no sense in hearing the case until the adequate estimate has been provided.

Ms. Chaillet the Applicant is also required to provide a letter of credit and has not done so to date then a mitigation plan is needed prior to the hearing of the case.

***Mr. Guy made a motion to continue the hearing to April 22, 2010 to give the Applicant adequate time to meet the pre-conditions of the Board of Appeals and Mr. Edmonds seconded. The motion passed by a 4-0 vote.***

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

The minutes of February 1, 2010 were approved as recorded.

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

None

Mr. Sparling announced Errington would be remanded back to the Board for further discussion.

#### **ADJOURNMENT**

The meeting was adjourned at 8:15 p.m.

Approved in open session: April 8, 2010

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Jada Stuckert, Recording Secretary

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Howard Thompson  
Chairman