

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, March 24, 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; 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 6:31 p.m.

PUBLIC HEARINGS

VAAP #09-1485 – Lynch (Continued from March 10, 2011)

Mr. Thompson stated this case is continued from January 27, 2011 where the Board had consensus of findings of fact in this matter. Mr. Sparling presented the draft findings of fact as indicated by consensus of the Board at the January 27, 2011 meeting. Mr. Sparling stated Mr. Payne will need to sit with the Board for this case as he was present for a portion of the meetings and Mr. Guy was present for the other portion of the meetings. Mr. Thompson asked if Mr. Payne and Mr. Guy would be voting on these motions. Mr. Sparling stated, yes.

Mr. Miedzinski made a motion to accept the findings of fact and Mr. Edmonds seconded. The motion passed by a 6-0 vote.

Mr. Thompson read the following motions for the record.

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for granting a Variance in the Critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the request for the variances to construct (a) the existing shed and adjacent deck, (b) the existing walkway, and (c) the existing septic distribution box and drainfield, in the scope and degree to which they are already constructed and located on the Property are hereby GRANTED, subject to the following conditions:

1. The Applicants shall create a trap door in the shed so that Applicant can monitor and clean out the sediment basin as necessary; and
2. The Applicants shall comply with the Critical Area Planting Agreement and approved Buffer Management Plan; and
3. The Applicants shall provide additional drainage upon the walkway to the underlying sand bed by drilling three half-inch holes in the pavers following each set of stairs.

AND FURTHER ORDERED, that having made a finding that the standards for granting a Variance in the Critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have not been met as to the variance request for the existing shower structure on the Property, said request is hereby DENIED and requires the applicant to remove the privacy fence surrounding the shower, remove the shower head and remove the plumbing from the water valve to the shower head.

And Further ORDERED, that, having made a finding that the standards for granting a Variance in the Critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the request for the variances (a) to reconstruct the existing single family dwelling, (b) to construct an attached deck in the Buffer, (c) to replace the existing septic tank with a nitrogen reduction tank, and (d) to install a second septic tank and a third drainfield in the Buffer are hereby GRANTED, subject to the following conditions:

1. The Applicants shall comply with the Critical Area Planting Agreement and approved Buffer Management Plan.

And Further ORDERED, that, having made a finding that the standards for granting a Variance in the Critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the request for the variances (a) to construct an attached portico in the Buffer, and (b) to install a stormwater management system (pond and associated structures) in the Buffer, are hereby GRANTED, subject to the following conditions:

1. The Applicants shall comply with the Critical Area Planting Agreement and approved Buffer Management Plan;
2. The Applicants shall submit a revised site plan including details of the stormwater management system; and
3. The Applicants shall obtain approval the installation of the stormwater management system by the St. Mary's County Department of Public Works and by the St. Mary's Soil Conservation District.

And Further ORDERED, that having made a finding that the standards for granting a Variance in the Critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have not been met as to the variance request for (a) construction of a detached garage in the Buffer, (b) construction of a detached deck in the Buffer, and (c) construction of an outdoor bath facility (shower and toilet) in the Buffer, said requests are hereby DENIED.

Mr. Miedzinski made a motion to accept the order with the individual votes as recorded Mr. Edmonds seconded.

Ms. Chaillet stated the proposed development obtained variances states that the applicant must comply with the approved planting agreement and buffer management plan. Ms. Chaillet asked that the record show that we are not talking about the buffer management plan that was approved for the after-the-fact variances and the violations. Ms. Chaillet stated the applicant will have to mitigate 3:1 per square foot for the variances granted for the new development.

The motion passed by a 6-0 vote.

ZAAP #07-0118 - Rice

The case is being remanded by Circuit Court to the Board of Appeals for further proceedings consistent with the Court of Special Appeals Unreported Opinion, No. 795, issued on September 27, 2010 in the Appeal of the Planning Director's decision to issue building permit #07-0118 to expand an existing garage. Mr. Sparling clarified that only Mr. Edmonds, Mr. Miedzinski, and Ms. Neale may vote on this matter due to the original hearing. Mr. Sparling stated the opinion of the Circuit Court does not allow for a new hearing and/or new evidence.

Mr. Miedzinski made a motion in the matter of ZAAP #07-0118 to accept the written order as findings of fact and Ms. Neale seconded. The motion passed by a 3-0 vote.

VAAP #10-110-030 – Remenira Subdivision

The applicant is requesting a variance to subdivide around two existing single-family dwellings. The property contains 2.10 acres; is zoned Rural Preservation District (RPD); and is located at 42165 and 42155 Medley's Neck Road, Leonardtown, Maryland; Tax Map 27, Block 10, Parcel 130.

Owner: Leonard E. and Margaret L. Wathen, L/E, and Deigh A. Young
Present: William Higgs

The property and variance request were advertised in The Enterprise on March 9, 2011 and March 16, 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. Yvonne Chaillet (Sworn)

Ms. Chaillet gave an overview of the staff report dated March 14, 2011 and the General Standards for Granting Variances and the Development Standards. Ms. Chaillet submitted the staff report dated March 14, 2011 for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.*

Ms. Neale asked whose home would the well belong to if these homes were to be sold. Ms. Chaillet stated the Health Department is currently requiring that the well serve both houses.

Mr. William Higgs, LSR Inc. (Sworn)

Mr. Higgs summarized Exhibit 2 (Staff Report) specifically attachment one (1) as it pertains to the general standards for granting variances.

Mr. Miedzinski stated he is concerned about the road. Mr. Sparling stated as far as the Board is concerned, that road does not exist. If the neighbor has a legal right-of-way across the applicant's property they would have to be determined before a court of law rather than before the Board tonight. Mr. Higgs stated it is his understanding that this issue has been resolved between the neighbors.

Chairman Thompson opened the hearing to public comment, hearing none, closed the hearing to public comment.

Mr. Edmonds made a motion to accept the staff report as findings of fact with the deletion of the last sentence in Section 5 Paragraph 4 and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

Ms. Neale made a motion in the matter of VAAP #10-110-030, Remenira subdivision, having made a finding that the standards for granting a variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to increase the base residential density in the Rural Preservation district by subdividing around the existing houses on the Property to create two lots of less than five acres each and Mr. Guy seconded. The motion passed by a 5-0 vote.

ZAAP #08-2359 – Drift Inn Sign Appeal

The applicant is requesting an appeal of an administrative decision of the Planning Director regarding the legal status of an off-site advertising sign. The property contains 1.55 acres; is zoned Rural Commercial Limited District (RCL); and is located at 27215 Three Notch Road, Mechanicsville, Maryland; Tax Map 13, Grid 12, Parcel 42.

Owner: Josephine A. and Leonard E. Copsey Sr.
Present: Jerry Bowles

The property and variance request were advertised in The Enterprise on March 9, 2011 and March 16, 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. Yvonne Chaillet (Sworn In)

Ms. Chaillet gave an overview of the staff report dated March 14, 2011 and the General Standards for Granting Variances and the Development Standards. Ms. Chaillet submitted the staff report dated March 14, 2011 for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.*

Mr. Sparling asked if the Director's decision was based on the 2007 aerial photos. Ms. Chaillet stated yes. Mr. Sparling stated if the applicant is going to contest this photograph it should be entered into the record. Ms. Chaillet submitted the 2007 aerial photo of the property for the record, *hereby labeled as Exhibit 3 by the Recording Secretary*. Mr. Sparling asked for clarification of the difference between off-street advertising signs and directional signs. Mr. Sparling asked if the sign shown on Staff Report attachment 8 is an advertising sign or a directional sign. Ms. Chaillet stated this is an off-site advertising sign.

Jerry Bowles asked how often you have to reapply for a sign. Ms. Chaillet stated the permit is good as long as the sign is standing.

Mr. Jerry Bowles (Sworn In)

Mr. Bowles stated the front of attachment 8 is a photo of the sign; the bottom piece is just a piece of the sign with artwork. Mr. Bowles stated the sign on the front is the same as on the back as this is a double sided sign. Mr. Bowles submitted a photo of the original sign for the record, *hereby labeled as Exhibit 4 by the Recording Secretary*. Mr. Bowles stated this sign is a necessity for our business as we are not located on the main road. We applied for the sign permit; the permit was approved; now we are finding out that because Land Use and Growth Management (LUGM) made a mistake we are in violation. Mr. Bowles stated we paid \$110.00 for the sign permit, we paid to have the sign reposted and two years later we find out LUGM made a mistake.

Mr. Edmonds asked if this is a new sign. Mr. Bowles stated yes, we replaced the old sign with this new sign which is 8X8. Mr. Edmonds asked if we have this information. Mr. Thompson stated yes, it is Staff Report attachment #2. Mr. Miedzinski asked why the sign was moved from its original location. Mr. Bowles stated the sign was moved due to the neighbors however since that time we have since purchased the property therefore the sign is now closer to the road.

Mr. Thompson stated because LUGM clearly made a mistake can the sign be approved. Mr. Sparling stated he does not believe LUGM's mistake has any legal bearing however could research estoppels. Mr. Bowles stated he wants to utilize the 1976 sign permit and asked what he did wrong since the 1976 sign permit was approved. Mr. Sparling stated Mr. Bowles testified earlier that when the original sign was removed the 1976 sign permit was no longer valid. Ms. Chaillet stated beer distributors often pay business owners to advertise their products. Ms. Chaillet stated considering Bud Light is being advertised she wonders if they helped pay for the replacement sign. Mr. Bowles stated no.

Chairman Thompson opened the hearing to public comment.

Mr. Walter Burch (Sworn In)

Mr. Burch stated he has reviewed the aerial photos from 2007 and 2002 and can affirm that this sign was not located in this spot. Mr. Burch stated the blue portion of the sign is now covered up with advertisement signs from two other businesses. Mr. Burch stated this particular business has more advertisement signs than any other business in the county.

Chairman Thompson closed the hearing to public comment.

Mr. Thompson asked if the Board would like to continue this case to a date specific to allow Mr. Sparling time to research to what extent the mistake made by LUGM is relevant to the Board's decision in this case. Mr. Miedzinski stated he has no problem with the sign as they have had a sign in the posted for numerous years.

Mr. Miedzinski made a motion in the matter of ZAAP #08-2359, to continue the hearing to April 14, 2011 to receive advice from Legal Council regarding the relevancy of LUGM's mistake as it pertains to the Board's decision and Ms. Neale seconded. The motion passed by a 5-0 vote.

CUAP #05-132-050 – STS Bus Shelter – Application Withdrawn
None

MINUTES AND ORDERS APPROVED

The minutes of March 10, 2011 were approved as recorded.

The Board authorized the Chair to review and sign the following orders:
VAAP #09-1485 - Lynch

ADJOURNMENT

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

Jada Stuckert, Recording Secretary

Approved in open session: April 14, 2011

Howard Thompson
Chairman