

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
CHESAPEAKE BUILDING \* LEONARDTOWN, MARYLAND  
Thursday, April 28, 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 and Bryan Dugan were also present.

A sign-in sheet is on file at LUGM. The Chair called the meeting to order at 6:38 p.m.

**PUBLIC HEARINGS**

**ZAAP #07-0118 – Rice**

Mr. Chris Longmore gave a brief overview of the case asking that the Board reconsider their March 24, 2011 decision and noted the rules for reconsideration. Mr. Longmore drew attention to a letter dated April 8, 2011 to Ms. Chaillet requesting the reconsideration. Mr. Longmore stated the Board based its decision on opinions and suppositions of the Appellant and not on the facts that are on record and these mistakes include, but are not limited to, the Board's finding that the relocation of the walls would leave in place that portion of the existing slab foundation that had underlain the encroachment of the wall (s) into the five-foot setback. Mr. Longmore asked for a new hearing to receive factual evidence.

The Board having not received the April 8, 2011 letter prior to tonight's hearing received advice from Mr. Sparling who recommended taking the April 8, 2011 letter as an Exhibit as well as rebuttal by John Norris, III and his letter and continuing the case to a future meeting. Mr. Longmore submitted the April 8, 2011 letter for the record, *hereby labeled as Exhibit 1 by the Recording Secretary.*

Mr. Norris, III rebutted the request for reconsideration of this matter stating the Board does not have the legal authority to address the issues raised in Mr. Longmore's letter of April 8, 2011. Mr. Norris, III stated Mr. and Mrs. Rice have not been denied due process and the request must be denied based on the doctrine of Res Judicata. Mr. Norris, III submitted the April 22, 2011 letter to the Department of Land Use and Growth Management for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.*

Mr. Sparling stated in his opinion Res Judicata is not a factor in this case. Mr. Sparling stated this is essentially the same case and if this case was decided on the premise that a flat slab on the ground invaded a setback line and for that reason, he feels there is a strong probability of a mistake of the law.

***After consideration it was the consensus of the Board to continue this case to May 12, 2011.***

**VAAP #10-1107 – Van Heerden**

Ms. Yvonne Chaillet (Witness Sworn)

Ms. Chaillet of LUGM was sworn for the record. The applicant is requesting a variance to disturb the Critical Area Buffer to construct two decks. The property contains 8.78 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 44480 Sotterly Wharf Road, Hollywood, Maryland; Tax Map 21, Grid 13, Parcel 160.

Owner: Gita S. Van Heerden

The property and variance request were advertised in The Enterprise on April 13, 2011 and April 20, 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 dated April 4, 2011 and the general standards for granting variances, regulations for on-premise signs, and freestanding signs. Ms. Chaillet submitted the staff report for the record, *hereby labeled as Exhibit 2 by the Recording Secretary.*

Ms. Gita Van Heerden (Witness Sworn)

Ms. Van Heerden was sworn for the record. Ms. Van Heerden asked if the prior removal of the dual driveways would count towards the mitigation. Ms. Chaillet stated no. Mr. Miedzinski asked what the size of the second deck would be. Ms. Van Heerden stated it would be approximately 20 ft by 17 ft.

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

***Mr. Guy made a motion in the matter of VAAP #10-1107, Van Heerden, 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, I move to approve the variance request to disturb the Critical Area Buffer to construct two decks, 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 in the Critical Area Buffer the Applicant proposes to plant the vegetation.***
- 2. The Applicant shall comply with the Critical Area Planting Agreement and approved Planting Plan.***

***Also that Section VI paragraphs 1 through 5 of the staff report be adopted as findings of fact in this case and Ms. Neale seconded and the motion passed by a 5-0 vote.***

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

The minutes of April 14, 2011 were approved as recorded.

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

ZAAP #08-2359 – Drift Inn sign Appeal

VAAP #10-2140 – Leonardtown Middle School Sign

VAAP #11-0028 – Village Hair Boutique

#### **Nonconforming Use Area Appeal - Verghese**

Mr. Sparling recused himself from this case and Mr. Dugan took his place as attorney for the Board.

#### Ms. Yvonne Chaillet (Witness Sworn)

Ms. Chaillet of LUGM was sworn for the record. The applicant is requesting an appeal of an administrative decision of the Planning Director regarding the bounds of a legal nonconforming use known as Mattingly's Auto Racing and Repair. The property contains 20,800 square feet; is zoned Residential Neighborhood Conservation District (RNC); and is located at 22237 Bayside Road, Compton, Maryland; Tax Map 39B, Grid 23, Parcel 10.

Owner: Kannarkat P. Verghese, M.D.

Present: John B. Norris, III

Ms. Chaillet stated there is a mistake in the staff report regarding the advertisement; the property and appeal were advertised in The Enterprise on April 13, 2011 and April 20, 2011. Ms. Chaillet submitted the certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary.*

Mr. Thompson stated Dr. Verghese is the owner of the property in question and Mr. Mattingly is the applicant; Thompson asked if Dr. Verghese should be present this evening to answer questions and give testimony considering he is ultimately responsible for the property. Mr. Dugan stated the burden of proof is on the applicant and that he would have to review this further.

Mr. Dugan stated during the appeal three issues were before Judge Railey however only one issue was addressed by Judge Railey and that was the issue of whether or not staff had to be sworn in for the record. Mr. Dugan stated Judge Railey's order was to send the case back to the Board of Appeals to have sworn testimony taken. Mr. Dugan stressed that because the case is going to be represented, the Board may not consider any evidence or testimony received in the past. Mr. Dugan referenced the letter written by staff dated December 18, 2008 which in summary says the Department of Land Use and Growth Management continues to recognize what was approved by Jon Grimm in 1991 under zoning permit #91-0185 which was an auto racing and repair business as a legally existing nonconforming use on lots 11-15 and lots 155-159 of the St. Clements Woods Subdivision. Mr. Dugan stated the Department denied this use on lots 6-10 and lots 160-164 of said subdivision.

Mr. Dugan stated regarding the status of the existing uses of lots 11-15, lots 155-159, lots 6-10 and lots 160-164 of the St. Clements Woods Subdivision for the storage, dismantling, and sale of automobiles and automobile parts, the Department finds that it cannot register these uses as legally existing nonconforming uses. Mr. Dugan stated the notice of appeal filed by the applicant dated September 29, 2008 essentially appeals the decision that there was no nonconforming use for the other lots. Mr. Dugan stated it is his opinion that he did not appeal the decision relating to the salvage yard. Mr. Dugan stated under Article 8 Section B of the Rules and Procedures for the Board of Appeals for Administrative Appeals, "the Board may reverse or affirm in whole or in part, or may modify, the order, requirement, decision, or determination appealed from and may make the order, requirement, decision, or determination, that in its opinion, ought to be made in the case before it. To this end, the Board shall have all the powers of the administrative official from whom the appeal was taken." Mr. Dugan stated this means the Board is now acting in place of Mr. Jon Grimm and Mr. Denis Canavan when they made their decisions.

#### **BREAK**

The Board took a ten (10) minute break to determine whether or not the owner of the property needed to be present for the meeting.

Chairman Thompson asked to continue the hearing to May 12, 2011 so the owner of the property could be present for the proceedings. After reviewing the schedule of Board of Appeals meetings it was decided to hold a special meeting on May 19, 2011 to accommodate this case. **Mr. Edmonds made a motion to continue the case to May, 19, 2011 and Ms. Neale seconded. The motion passed by a 5-0 vote.** Ms. Chaillet asked if the case would have to be posted and if abutting neighbors would need to be notified. Mr. Dugan stated yes.

#### **ADJOURNMENT**

The meeting was adjourned at 7:50 p.m.

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Jada Stuckert, Recording Secretary

Approved in open session: May 12, 2011

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Howard Thompson  
Chairman