

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, July 8, 2010**

Members present were Howard Thompson, Chairman; Wayne Miedzinski, and Ronald Payne. Randy Guy, George Edmonds and Veronica Neale were excused. Department of Land Use & Growth Management (LUGM) staff present were Phil Shire, Deputy Director; 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 6:30 p.m.

PUBLIC HEARINGS

VAAP #07-132-003 – Lexington Village (Kohl's) continued from 6/24/10

Mr. Thompson stated although he was not present at the last meeting he was able to obtain a DVD of the meeting to review at home. Ms. Chaillet submitted the proposed findings of fact relating to the variance standards provided by Mr. Chris Longmore and dated July 7, 2010 for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave a brief overview of the request stating the Planning Commission saw and approved the revised buffer yard at its scheduled meeting on June 28, 2010, subject to the Applicant obtaining a Board of Appeals variance. Ms. Chaillet submitted the revised staff report and attachments dated June 30, 2010 for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*. Mr. Sparling pointed out the third attachment showing the types of vegetation to be planted and asked that it be properly labeled as Attachment three (3) to the staff report.

Mr. Longmore gave a brief overview of the request asking that the Board keep in mind that there is a downward slope towards the rear of the property. Mr. Longmore reviewed and submitted the original buffer proposal for the record, *hereby labeled as Exhibit 3 by the Recording Secretary*, as well as reviewing staff report attachment two (2) and attachment three (3) with the Board. Mr. Thompson thanked the applicant for working with staff to come up with a workable buffer management plan. Mr. Miedzinski asked if all the current planting will be replaced. Mr. Longmore stated the applicant should be able to reuse all available materials and plantings. Mr. Payne asked what the offset is between the plantings and the signs. Mr. Story stated the space between the sign and the plantings are between three and twenty feet.

Chairman Thompson closed the hearing to public comment and reviewed Exhibit 1 for completeness.

Mr. Miedzinski made a motion in the matter of VAAP #07-132-003, Lexington Village, having made a finding that the standards for granting a variance and the objectives of Section 63.4 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to modify the required "B" buffer yard by substituting a "C" buffer yard with a variable width of 50 to 60 feet and installing a wrought iron style decorative fence and Mr. Payne seconded. The motion passed by a 3-0 vote.

VAAP #05-132-019 – St. Mary's Marketplace continued from 6/24/10

Mr. Sparling stated there were some uncertainties at the last meeting as to whether or not the Stormwater Management has been grandfathered. Mr. Shire stated he spoke with Mr. John Groeger from the Department of Public Works and Transportation (DPW&T) who confirmed that the applicant has in-fact been grandfathered for the Stormwater Management requirements. Ms. Chaillet gave a brief overview of the request stating the Board requested evidence be submitted regarding progress made since the original approval.

Mr. Norris III stated his father has submitted a package to the Department of Land Use and Growth Management (LUGM) containing correspondence regarding this project to include correspondence with the State Highway Administration (SHA). Mr. Norris III submitted and reviewed a list of work done since March of 2009 on the property for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Mr. Norris stated there was also a concern that the tenants may not be the same and that the site plan may change. Mr. Norris III stated the request is to continue the approval and stated if the site plans change the applicant is fully aware that they may have to return to the Planning Commission and/or Board of Appeals for approvals.

Mr. Thompson stated a lot of the buffers, tenants, and parking spaces etc. are changing therefore he is hesitant to grant an extension on a project that will need to come back before the Board for new approvals. Mr. Norris III stated the applicant is simply exploring additional options for the property to gain maximum profits. Mr. Norris III stated the applicant is not requesting the variance approval remain if the project changes. Mr. Norris III stated the applicant is fully aware if the project changes new approvals will be necessary to obtain.

Chairman Thompson closed the hearing to public comment.

Mr. Miedzinski made a motion in the matter of VAAP #05-132-019, St. Mary's Marketplace, pursuant to Section 24.8 of the St. Mary's County Comprehensive Zoning Ordinance, I move to approve the request to extend to December 31, 2010 the approved variance from Section 64.3 of the Ordinance to reduce the required number of parking spaces by no more than 12 spaces and Mr. Payne seconded. The motion passed by a 2-1 vote with Mr. Payne opposed.

Mr. Miedzinski made a motion in the matter of VAAP #05-132-019, St. Mary's Marketplace, pursuant to Section 24.8 of the St. Mary's County Comprehensive Zoning Ordinance, I move to approve the request to extend to December 31, 2010 the following approved variances:

- 1. Variance from Section 63.4 of the Ordinance to allow parking in the required buffer on the east side of the Property along its frontage with the utility corridor; and***
- 2. Variance from Section 63.4 of the Ordinance to reduce the required 75-foot "B" buffer to a 30-foot "C" Buffer along the Property's frontage with MD Route 4 and along the west side of the Property where it will front FDR Boulevard; and to further reduce the required 30-foot "C" Buffer to 20 feet along FDR Boulevard to the west, subject to the following conditions:***
 - a. The Applicant shall erect a six-foot tall, decorative wrought iron style fence along the reduced buffers; and***
 - b. The Applicant shall work with the staff to determine a suitable substitution for the proposed vegetation on the southeast corner of the Property, which will enhance the appearance of this corner; and***
 - c. The Applicant shall move the required "A" buffer along the east side of the Property to parcels 51 and 422 between MD Route 235 and the proposed hiker-biker trail. The Applicant shall retain ownership of a 15-foot wide strip of land along the east side of the hiker-biker trail for planting the required "A" buffer; and***
 - d. The Applicant shall maintain all required bufferyards and, if necessary, replace any dying trees or shrubs.***

Mr. Payne seconded and the motion passed by a 3-0 vote.

VAAP #05-3786 – Hluchanek-Monan

The applicant is requesting a variance from Section 71.8.3 of the Ordinance to add new lot coverage in the expanded Critical Area Buffer to construct a single family dwelling and appurtenances and a variance from Section 71.5 to disturb non-tidal wetlands and their buffers. The property contains 1.33 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 16395 Ball Point Road in Piney Point, Maryland; Tax Map 69, Grid 9, Parcel 222.

Owner: Vickey Hluchanek-Monan and Patrick Monan
Present: William Higgs of LSR

The property and the variance request were advertised in The Enterprise on June 23, 2010 and June 30, 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 gave an overview of the staff report dated June 29, 2010 including the Specific Standards for Granting Variances in the Critical Area, The 100-Foot Critical Area Buffer, and Wetlands and Hydric Soils Resource Protection Standards. Ms. Chaillet submitted the staff report dated June 29, 2010 for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Mr. Miedzinski asked if the original five requests have been addressed. Mr. Higgs reviewed the original requests and stated yes these items have been addressed in this plan. Mr. Higgs gave an overview of the request utilizing the staff report attachment six (6) as a visual aid. Mr. Higgs stated the off-site mitigation has already been taken care of and approved. Mr. Higgs submitted drawings of the proposed house for the record, *hereby labeled as Exhibit 3 by the Recording Secretary*.

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

Mr. Miedzinski made a motion in the matter of VAAP #05-3786, 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 request to clear and add lot coverage in the Critical Area Buffer to construct a single-family dwelling and appurtenances, subject to the following conditions:

- 1. The Applicants shall provide a Major Buffer Management Plan prior to the issuance of the building permit, which shows the required 3:1 mitigation per square foot of the variance granted. The Buffer Management Plan shall show which native species have been selected for planting, and where on the Property the Applicants propose to plant the vegetation. Areas without forest vegetation in the Buffer must be planted first prior to planting understory trees or shrubs and prior to paying fees-in-lieu; and***
- 2. The Applicants shall comply with the Critical Area Planting Agreement and approved Buffer Management Plan.***

Mr. Payne seconded and the motion passed by a 3-0 vote.

Mr. Payne made a motion in the matter of VAAP #05-3786, having made a finding that the standards for granting a variance in the Critical Area and the objectives of Section 71.5 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to disturb non-tidal wetlands and their buffers to construct a single family dwelling and appurtenances and Mr. Miedzinski seconded. The motion passed by a 3-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of June 24, 2010 were approved as recorded.

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

None

ADJOURNMENT

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

Jada Stuckert, Recording Secretary

Approved in open session: July 22, 2010

Howard Thompson
Chairman