

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, July 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 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 #08-2359 – Drift Inn Sign (continued from 6/23/11)

Mr. Thompson stated this hearing has been continued from 6/23/11. Mr. Sparling indicated both staff and Mr. Bowles are still under oath from the 6/23/11 meeting. Mr. Bowles thanked the Board and staff for their time and stated he would like to move forward without offering to remove one of the signs.

Chairman Thompson asked for additional testimony, hearing none, closed the hearing to public testimony and gave a brief overview of the case. Mr. Miedzinski asked how far the sign was moved from its original position. Mr. Bowles stated a little over fifty feet towards the road. The Board discussed the case and formulated the consensus that the sign should be allowed with the condition that the commercial advertisements be removed. Mr. Sparling stated he would prepare an order for the Board's signature at the next meeting.

CUAP #06-132-026 – Hertzler Pit

Ms. Yvonne Chaillet, LUGM was sworn for the record. Mr. Jerry Soderberg, DH Steffens Company was sworn for the record. Ms. Chaillet submitted the certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. The applicant is requesting a modification of a conditional use approval to revise condition five to allow a maximum of 75 truckloads per day to travel north on Thompson Corner Road towards New Market and Charlotte Hall. The property contains 156.7 acres; is zoned Rural Preservation District (RPD); and is located at 36652 Bethel Church Road, Mechanicsville, Maryland; Tax Map 12, Grid 13, Parcel 2.

Owner: Sam and Hannah Hertzler
Present: Jimmy Richards, Jimmy Richards Excavating; Jerry Soderberg, DH Steffens Co.

The property and conditional use request were advertised in The Enterprise on July 13, 2011 and July 20, 2011. Ms. Chaillet gave an overview of the staff report dated July 18, 2011. Ms. Chaillet submitted the staff report for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*. Mr. Thompson asked if there have been any complaints about the trucks traveling Bethel Church Road. Ms. Chaillet stated no, however we get complaints all the time about trucks traveling Route 234.

Mr. Soderberg testified that with the price of fuel on the rise it is simply not economically feasible to take a longer route. Mr. Edmonds asked how much shorter the proposed route would be. Mr. Soderberg stated it is approximately ten miles shorter. Mr. Thompson agreed, stating it's between eight and ten miles shorter. Mr. Sparling asked for clarification regarding the amount of truckloads, stating it would be 150 truckloads per day roundtrip. Mr. Sparling stated this would be a truckload every four and one-half minutes. Mr. Soderberg stated he would be willing to modify this number.

Mr. Jimmy Richards, of Jimmy Richards Excavating, was sworn for the record. Mr. Richards stated since the opening of this pit we've only hauled about 1,000 loads out of it, simply due to the price of the haul. Mr. Richards stated we have a very good track record with Maryland Department of the Environment (MDE) and the County as to the safety of our trucks and drivers. Mr. Richards stated the only trucks hauling out of this pit belong to the Richards Excavating Company. Mr. Richards stated we are simply having a hard time making the dollars and cents work with the current route we're required to take. Mr. Thompson asked if Mr. Richards foresees any trouble spots for the trucks on Thompson Corner Road. Mr. Richards stated if the trucks slow down there shouldn't be any issues.

Mr. Miedzinski asked which routes the trucks are currently taking. Mr. Richards stated you can go to Mechanicsville/Chapico Road, Route 231 or Route 301 to the north. Mr. Edmonds asked if Mr. Richards

agrees with the statement that the proposed route would cut ten miles off the travel route. Mr. Richards stated yes. Ms. Neale asked about the truck safety records. Mr. Richards stated we have a great safety record; the accidents we've had have not been our fault. Mr. Sparling asked if less than 1,000 truckloads have been pulled from this pit since it's opened. Mr. Richards stated yes. Mr. Sparling asked what the cost per truckload is. Mr. Richards indicated he does not have that information with him tonight. Mr. Sparling asked if Richards Excavating has lost jobs because of the condition placed on this pit. Mr. Richards stated it is possible. Mr. Sparling stated the applicant has asked for permission to haul 75 loads per day but, since pit has been opened, less than 5 loads per week have been hauled. Mr. Sparling asked what the minimum amount of loads acceptable would be. Mr. Richards stated he would recommend 50 loads per day. Mr. Sparling indicated this number is not consistent with the amount of loads currently being hauled.

Mr. Soderberg stated the Hertzlers have decided not to testify tonight but have stated that they've never had a problem with the trucks.

Chairman Thompson opened the hearing to public testimony.

Mr. John Groeger, Deputy Director for St. Mary's County Department of Public Works and Transportation, was sworn for the record. Mr. Groeger testified that MD Route 236 has a traffic volume of 246 vehicles per day and the road is narrow, with vertical and horizontal curves. In his opinion Route 234 is still a better choice for the trucks. Mr. Thompson asked if there have been any complaints regarding trucks in this area. Mr. Groeger stated no however it is more appropriate for those types of calls to be directed to State Highway Administration (SHA). Mr. Groeger stated he spoke with Ms. Kimberly Tran of SHA who also does not agree with the proposed route. Mr. Thompson asked if there would be a change in the Maintenance Bond. Mr. Groeger stated there would not be a change, as the maintenance bond is for Bethel Church Road only, not the state road.

Mr. Miedzinski indicated any alternate route, if you're headed to Charles or Calvert counties, would be just as bad as Thompson Corner Road. Mr. Groeger agreed and stated it seems a stretch that 75 loads per day would travel the proposed route. Mr. Sparling asked if Route 236 is a state or county road. Mr. Groeger stated it is a state road. Mr. Sparling asked if the state requires any bond. Mr. Groeger stated he has never seen the state ask for a bond. Mr. Sparling stated this would mean additional wear and tear on the road and no bond money to fix the road. Mr. Thompson asked if this is a case where we need to have SHA present to answer questions. Mr. Sparling asked if Mr. Thompson is asking Mr. Groeger to have SHA attend a meeting to testify. Mr. Thompson stated yes.

Hearing no additional testimony, Mr. Thompson agreed to leave the public hearing open. Mr. Miedzinski asked how many mines are operating in this area. Ms. Chaillet stated there are approximately seven. Mr. Miedzinski asked if staff could provide accurate numbers at the next hearing. Mr. Miedzinski asked Mr. Richards if he has any current bids that could be affected by the continuance of this case. Mr. Richards stated yes, and asked for the earliest possible continuance date.

Mr. Guy made a motion in the matter of CUAP #06-132-026, Hertzler Pit, to continue the case to August 11, 2011 and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

VAAP #07-110-048 – Gloria Breaux Subdivision

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, LUGM was sworn for the record. The applicant is requesting a variance to increase the residential density in the Rural Preservation District. The property contains 4.71 acres; is zoned Rural Preservation District (RPD); and is located at 24041 McIntosh Road, Hollywood, Maryland; Tax Map 25, Grid 24, Parcel 247.

Owner: Gloria F. Breaux
Present: Jerry Soderberg, DH Steffens Company

The property and variance request were advertised in The Enterprise on July 13, 2011 and July 20, 2011. Ms. Chaillet gave an overview of the staff report dated July 18, 2011 and the general standards for granting variances. Ms. Chaillet submitted the staff report for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*. Mr. Sparling stated this is an appropriate case if the Board so chooses to approve the request.

Mr. Jerry Soderberg, of DH Steffens Company, was sworn for the record. Mr. Soderberg testified the land was deeded to Ms. Breaux without being properly recorded as a lot of record.

Chairman Thompson opened the hearing to public testimony, hearing none, closed the hearing to public testimony. Mr. Sparling provided the members with proposed findings of fact.

BREAK

Mr. Miedzinski made a motion to accept the proposed findings of fact for this case and Ms. Neale seconded. The motion passed by a 5-0 vote.

Mr. Guy made a motion in the matter of VAAP #07-110-048, Gloria Breaux 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 residential density in the RPD to create a 4.71 acre lot and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

VAAP #09-0633 – Guy Commercial Center Sign

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, LUGM was sworn for the record. The applicant is requesting a variance to increase the height of a freestanding sign in the RCL District from 16 feet to 20 feet and to increase the square footage of a freestanding sign in the RCL District. The property contains 8.02 acres; is zoned Rural Commercial Limited (RCL) District; and is located at 22725 Radio Station Way, Leonardtown, Maryland; Tax Map 32, Grid 14, Parcel 4.

Owner: RSG&F, LLC
Present: William Mehaffey of Mehaffey & Associates

The property and variance requests were advertised in The Enterprise on July 13, 2011 and July 20, 2011. Ms. Chaillet gave an overview of the staff report dated July 18, 2011 and the general standards for granting variances. Ms. Chaillet submitted the staff report for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*. Mr. Sparling clarified that the applicant is applying for a 170 square feet and 20 feet high.

Mr. Billy Mehaffey, of Mehaffey & Associates, was sworn for the record. Mr. Mehaffey stated the applicant is in fact asking for a 170 square foot sign that is 20 feet tall. Mr. Mehaffey testified he is unaware that the sign will be placed any closer to the road. Mr. Sparling asked the board to review staff report attachment six. Ms. Chaillet stated staff requested a site plan and did not receive one. Mr. Sparling stated the applicant is requesting double the previously approved amount and it is four feet closer to the roadway. Mr. Mehaffey testified he was told there was a site plan in the package, however, he did not see one in the package. Mr. Mehaffey stated he was unaware that the sign would be changing locations. Mr. Mehaffey submitted a sketch of the location of the sign for the record, *hereby labeled as Exhibit 3 by the Recording Secretary*.

Mr. Mehaffey quoted Section 65.3 paragraph 1 "the following regulations apply to all nonexempt, on-site signs that are visible from a public right-of-way." Mr. Mehaffey quoted "c". "Highway-Oriented Sign Bonus. The total maximum sign area for freestanding signs, excluding electronic changeable copy signs as defined in Section 65.3.4.i, that are visible from a state highway with a posted speed limit of 50 miles per hour or more may be increased up to 172 square feet, and the maximum height to 20 feet." Ms. Chaillet stated this standard does not apply in the RCL District or Residential Districts. Mr. Mehaffey stated this standard is the reason for submitting for the variance request. Mr. Thompson asked what the purpose of doubling the size of sign was. Mr. Mehaffey stated the business is located off the road and is not visible from MD Route 5. Ms. Chaillet stated although she understands the need for a sign, the size being asked for is excessive. Mr. Sparling stated after reviewing the ordinance his interpretation is that Mr. Mehaffey is correct. Mr. Mehaffey stated the applicant would like to have the 170 square foot sign, however would accept an 85 square foot sign.

Chairman Thompson opened the hearing to public testimony.

Ms. Joy Bowes, of Bowes Heating and Air Conditioning, was sworn for the record. Ms. Bowes stated we moved into the Guy center in February 2009 and have not had a sign. Ms. Bowes asked the board to approve the sign at 170 square feet. Ms. Bowes stated Radio Station Way can not currently be found on mapquest or garmin.

Chairman Thompson closed the hearing to public testimony. Mr. Sparling provided the Board with proposed findings of fact for this case.

BREAK

Mr. Miedzinski made a motion to accept the proposed findings of fact for this case and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

Mr. Miedzinski made a motion in the matter of VAAP #09-0633, Guy Commercial Center Sign, having made a finding that the standards for granting a variance and the objectives of Section 65.3 and Section 65.3.4 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to increase the size and the height of the freestanding sign in the RCL District from 32 square feet to 85 square feet and increase the height from 16 feet to 20 feet and that the sign be located at least 10 feet from the road right-of-way and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

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

DISCUSSION

Mr. Sparling provided the Board with an updated copy of the Rules and Procedures. Mr. Thompson asked that members review them for decision at the next meeting.

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

None

ADJOURNMENT

The meeting was adjourned at 9:22 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: August 11, 2011

Howard Thompson
Chairman