

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, August 20, 2015**

Members present were George Allan Hayden, Chairman; William Greene, John Brown, Wayne Miedzinski, Ronald Payne and Stuart Egeli (Alternate); Department of Land Use & Growth Management (LUGM) Phil Shire, Director and LUGM staff present were Yvonne Chaillet, Zoning Administrator; Shelia Smith, 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 # 05-1515 Tancreto Property

Ms. Yvonne Chaillet, LUGM, was sworn in for the record. The applicant is requesting a variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct a single-family dwelling. The property consists of 1.00 acre, is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay and is located at 16394 Thomas Road, Piney Point, Maryland 20674 Tax Map 69, Grid 08, Parcel 218, Election District 9.

Owner: Rick Tancreto, RMT Properties, LLC.

The property and variance request were advertised in The Enterprise on August 5, 2015 and August 12, 2015. Ms. Chaillet submitted the certification of publication, 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 August 3, 2015 and the applicable regulations pertaining to the application. Ms. Chaillet submitted the staff report with (4) attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Chairman Hayden swore in the following applicant and representative:

Applicant: Rick Tancreto, RMT Properties, LLC 16271 Thomas Road, Piney Point, MD 20674

Mr. Greene inquired Why the construction had not been started.

Mr Tancreto responded that he purchased the property as an investment property and has not yet sold it.

Chairman Hayden inquired "Is the house going to be your residence?"

Mr. Tancreto's response was "The property was purchased as an investment to be sold".

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

Mr. Miedzinski questioned the elevation of the house construction.

Mr. Tancreto responded "the base of the home would be nine (9) feet below the first floor and constructed out of cinderblock."

Chairman Hayden: "Is the construction in the floodplain?"

Ms. Chaillet responded "The living space construction must be three feet above the flood elevation and six hundred (600) square feet can be used for storage space and vehicles."

Chairman Hayden advised that the applicant is asking for a variance for his property to build which is a grandfathered lot with a 12% lot coverage which is less than what is allowed and a

modest request and granting the variance will allow the applicant to build or apply for a permit. The Critical Area Commission does not oppose the variance.

Mr. Miedzinski made a motion “In the matter of the, VAAP # 05-1515, Tancreto Property, 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, have not) been met, I move to approve the variance request to disturb the Critical Area Buffer to construct a single-family dwelling. ”

Mr. Brown seconded and the motion passed by a 5-0 vote.

ZAAP # 15-1015 Carbone Property

Ms. Yvonne Chaillet and Phil Shire of LUGM, was sworn in for the record. Pursuant to Chapter 23 of the Comprehensive Zoning Ordinance, zoning appeal by Tanner Creek Community Association, Mark Adelman, President, of the July 1, 2015 decision of the Director of Land Use & Growth Management to allow permit # 15-1015 to repair an existing revetment. The property consists of 3.75 acres, is zoned Rural Preservation (RPD), Limited Development Area (LDA) and is located at 50525 Scotland Beach Road, Scotland, Maryland 20687 Tax Map 73, Grid 17, Parcel 60, Election District 1.

Owner: Carbone Properties, LLC (John A. Carbone)

Mr Sparling advised the board Mr. Shire’s basis for the required permit was for tracking purposes and inspections and to alert the department when the work is being done in a critical area to monitor for compliance or violation regulations. Under the Comprehensive Zoning Ordinance they would not be any grounds for refusing the permit. Certified mailings are not done for an appeal. Land owner and adjoining parties within two hundred (200) feet were notified and public notice advertisement is required. No posting are required for the appeal.

Mr Shire gave a brief summary of the maintenance revetment permit which was applied for on July 1, 2015. Mr. Carbone made a request to place some additional rip rap stone on exiting rip rap stone in a maintenance effort for erosion. The standards for this type of permit are found in Chapter 71 of the Comprehensive Zoning Ordinance and a permit is required for structural repair and expansion of all shoreline structures. The standards are typically to minimize the disturbance in the buffer and if so the disturbance would be mitigated by planting and regarding. In this case there is not disturbance due to the existing rip rap in place and fortunate circumstance of having an asphalt road leading to the existing stone repair area, there is not any disturbance to the buffer. There is no reason to mitigate the review of the permit. Ms. Palmer, Land Use and Growth Management Environmental Reviewer reviewed and signed off on the site plan as summited.. As a structural repair, inspections would be required to review the site plan making sure the applicant did not exceed the bounds and limits of disturbance. The stones are all placed above knee high water and the Maryland Department of the Environment does not need to issue a permit for this repair, only in matters concerning tidal waters which is in the States domain. The lines shown on the site plan are outlining the boundaries of the existing rip rap.

Chairman Hayden inquired as to when the structural repair is inspected and how would the inspector determine the location of the boundaries are in the event that some of the rock doesn’t stay in place.

Mr. Shire confirmed “The inspector would review the lines drawn on the scaled plan at the site visit and determines if the construction or disturbance took place within or outside of the boundaries.”

Mr. Sparling advised the board members to stay on point and the issue of the appeal is the granting of the permit, if there were a violation that would be a separate issue.

Mr. Greene inquired as to whether a permit was issued for the original rip rap installation that currently exists. "How much stone is required or what are the standards; and why is the applicant asking for the maintenance revetment repair?"

Ms. Chaillet responded the Maryland Department of Environment was issued a permit for the original revetment because all the files pertaining to the Carbone property had been pulled when the appeal was filed. Ms. Chaillet explained the role of a marine contractor in obtaining approval and that revetment repair would be needed in cases of storms-rocks sliding into the water.

Mr. Sparling wanted clarification whether the appeal is by Mr. Adelman or by the Tanner Creek Community Association and asked whether Mr. Adelman was authorized to represent the association. He requested a copy of the Tanner Creek Community Association Bi-laws and asked whether the association waiving was waiving any defects in regards to receiving notice of the proceedings, since the notice was mailed to him personally.

Mr. Adelman's response: "The executive committee and elected officials from the three segments of the community authorized Mr. Adelman to process the appeal." "No formal vote has been taken and no meeting minutes are available due to time constraints for this emergency session" ". Mr. Adelman did e-mail all member of the association with the date of the appeal and where it would be held along with the notification letter and the association had acceptable notice.

Chairman Hayden swore in the following applicant and representative:

Applicant: Dr. Mark Adelman, P.O. Box 162 14655 Bay Front Drive, Scotland, Maryland 20687
Linda Gibbons, 14711 Patton Way Scotland, Maryland 20687
President and Vice President of the Tanner Creek Community Association

The appeal is for the Land Use and Growth Management Director, Mr. Shire's decision to issue a permit for maintenance revetment on the following grounds and should not have been granted:

1. The work being permitted would in fact further blocks access to the public beach.
2. There is no evidence that the revetment maintenance or repair is needed or required.
3. Maryland Department of the Environment was not consulted for requirements and regulations and to that the work needs to be completion in a three year window which expired in 2012.

Mr. Sparling advised the board that the first ground of appeal whether or not there is public access, is a question of real estate title which has to be resolved in Circuit Court and not the Board of Appeals. The record title to the location of the revetment is in Carbone Property LLC. and any question of public access could only be determined with prescriptive writing and in Circuit Court. In regards to the second grounds of appeal of the issue of whether or not repairs are necessary, Mr. Shire is not requiring the repairs; the repairs and desired by property owner. The third grounds of appeal on the issue with the Maryland Department of the Environment requirements the board needs to hear and address.

The Board was presented with the following documents:

Exhibit # 1 Notice of Public Hearing Advertisement
Exhibit # 2 Letter from George Erichsen, Director of Public Works and Transportation

Mr. Adelman spoke on the letter received from George Erichsen, Director of Public Works and Transportation, in reference to blocking safe public access to the beach, indicating the 40' right of way provides access to the Chesapeake Bay; and although posted for "No Parking", does receive intermittent use by individuals for fishing and/or walking on the beachfront area and public access to the beach is maintained at all times. These findings were reiterated by Commissioner Jarboe and Hewitt and former Commissioner Raley. The issue is not a question of ownership or restrictive easement that would have to be presented to Circuit Court. The association is

asserting that the law states “the public has the right to safe public access so long as it’s below the high tide.”

Mr Sparling’s response: “Land owned below the high water mark belongs to the State of Maryland and changes daily and there is no way to determine where the high water mark is found.”

Chairman Hayden inquired “What access to the beach is being blocked and where are the property lines?”

Mr. Adelman responded “The first set of rip rap put in in 2009 made access to the beach unsafe. The new rip rap work, if allows to proceed would make passage impossible in getting to the water.”

The Board was presented with the following documents:

Exhibit # 3 Photo Permit Placard 7/7/15

Exhibit # 4 Photo Revetment (A) 7/16/15

Exhibit # 5 Photo Revetment (B) 7/16/15

Mr Adelman explained the photos, the revetment site before the stone delivery and the revetment site following the stone delivery; the location of the fence; the permit placard; and the end of Mr. Carbone’s property. Mr. Adelman also said that Mr. Carbone was violation of the stay,in place once the appeal was filed, because he continued the revetment maintenance repair. The State Highway Right of Way and the guardrail is where the public access to the beach is located.

Mr. Greene questioned “Why do you claim you have a right to access the beach and is there any information in your lease stating you have access to the beach?”

Chairman Hayden stated a State of Maryland Public Beach would have a posted sign.

Mr. Adelman replied “Per county officials the public has the right to safe access to a beach and the beach is not sign posted as a public beach. The lease does not state any access to the beach.”

Chairman Hayden reiterated the appeal is of Mr. Shire’s decision to grant a permit for the maintenance of the revetment. Mr. Adelman’s presentation mostly concerns Mr. Carbone going pass his property lines with the maintenance revetment and preventing the community a safe point of access to the beach.

Mr. Adelman stated the purpose of the revetment was for maintenance repair and the rocks were not placed as a revetment to the water but to reduce access to the beach.

Mr. Adelman called and spoke with Justin Berezna, Environmental Planner, Water Management Administration, Maryland Department of the Environment, and was advised that the original revetment was placed in 2009 and the paperwork was no longer valid and expired in 2012.

His office has no record of consultation for the 2015 revetment repair and maintenance work.

Mr. Shire made two points: 1) the application was signed and released by Mr. Carbone on July 1, 2015 but the date the application was applied for was June 2, 2015. The Department of Land Use and Growth Management made an inspection and found one or two dump truck loads of rock delivered but not placed. Mr. Carbone is respecting his stay by not arranging and placing the rock in the proper location which is typically done by other machinery.

Chairman Hayden asked Mr. Shire whether Justin Berezna, with the Maryland Department of the Environment, or the County had jurisdiction over revetment maintenance.

Ms. Chaillet's response: "The department has no knowledge of the questions asked and the answers received in the conversation between Justin Bereznak and Mr. Adelman. A revetment maintenance repair of this nature does not require an authorization from the Maryland Department of the Environment. The Department of Land Use and Growth Management staff, Ms. Kelly Palmer, signed off on the approval, has been with the county since 2006 and is a Certified Floodplain Manager. If there were any doubt the revetment work was not repair maintenance, but an extension of an existing revetment then the county would contact the Maryland Department of the Environment. The permit was issued for only repair maintenance of the revetment and Kelly Palmer has the authority to grant the approval of the permit. Maryland Department of the Environment is contacted only if the linear footage of the revetment is being extended. Just adding rock on existing rock for repair maintenance revetment does not require the Maryland Department of Environment approval."

Chairman Hayden reiterated per the Comprehensive Zoning Ordinance that the Department of Land Use and Growth Management has the authority to grant a permit for repair maintenance on an existing revetment without approval of the Maryland Department of the Environment.

Mr. Adelman is not suggesting anyone in the county deliberately did anything wrong, but a series of misconstrued information has occurred and the rules were not followed and minor mistakes were made.

Chairman Hayden informed Mr. Adelman that his concerns would indicate more of a violation than a permit exercise, and the Department of Land Use and Growth Management has staff to perform inspections to clear up any violations.

Mr. Adelman summarized the events of July 16, 2015. The owner of the company who planned to have the rocks delivered, left with the bobcat and was unable to unload the rocks due to the ruckus made as well as the County Sheriff's Office Deputy being called requiring peace orders be issued. Around 10:00 a.m. Mr. Adelman drove to Leonardtown to complete the peace order paperwork and no rocks had been delivered to the site. After returning from Leonardtown completing the provisional peace order around 2:00 p.m. a pile of rocks had been delivered.

Mr. Shire and Chairman Hayden agreed that a delivery of rock had been delivered and dumped.

Mr. Adelman specified the state goal of the appeal is to prevent the Land Use and Growth Management Director, Mr. Shire's decision to issue a permit for maintenance revetment on the following grounds and should not have been granted:

1. The work being permitted would not in fact further blocks access to the public beach.
2. There is no evidence that the revetment maintenance or repair is needed or required.
3. Maryland Department of the Environment was not consulted for requirements and regulations.

Mr. Adelman requested that "If the board approves the issuance of the permit to specify when the rocks are placed, the rocks would not block the safe access to the beach."

Chairman Hayden swore in the following rebuttal applicant and representative:

Applicant: John Carbone 50525 Scotland Beach Road, Scotland, Maryland 20687

Exhibit # 6 Property Line Survey by VARC, LLC. d/b/a Nokleby Surveying dated 8/19/2015

Mr. Carbone summarized the locations of the fence area, the revetment area, the forty foot right of way, shoring up the county area that contained curb and gutter, and the beach area. Mr. Carbone stated that he placed the caution tape and no trespassing signs around the construction area for safety purposes until the repairs to the revetment could be completed. The access to the public beach, which is located at the end of the 40-foot right of way and which the neighbors

claim to have used for over one hundred years has been gone for over ten years to storms- Ernesto, Isabelle, Sandy, Diana. Mr. Carbone purchased his property in 2003 and the land was eroding because he did not have a revetment. The current rock area is not on the state or county property, but on Mr. Carbone's property. The ruckus the neighbors made involved blocking Mr. Carbone's contractor with four cars, not allowing the delivery on the rocks on the morning of July 16, 2015. The police advised Mr. Carbone against completing the repair of the revetment, and he agreed, and the contractor dumped one truck load of stone, and no work has been done.

Chairman Hayden questioned where the stone would be placed.

Mr. Carbone will place the rocks on two sections of the beachside because the existing rocks have moved and additional rocks are needed. Mr. Carbone repeated that this area is all his property and both fence lines are outside of the forty foot right of way as shown on the current survey. Mr. Carbone's property has always been private and was never part of the South Beach Community, the Scotland Beach Development or the Roda Beach Development. Mr. Carbone is repairing the revetment to maintain his property, Due to storms and nor'easters he has lost over one hundred and fifty (150) feet of land.

Mr. Sparling advises the board to consider the appeal of Mr. Shire's decision to issue a permit for revetment maintenance revetment and determine whether the permit should have been granted:

Chairman Hayden clarified with Mr. Carbone that the application filled out with Land Use and Growth Management was to grant permission for maintenance revetment.

Mr. Carbone's response: "Yes, to put additional rock on the original rock revetment as maintenance." Mr. Carbone is not trying to prevent the community access to the beach, if so, he could have place a fence down the entire property line. Mr. Carbone just wants to repair and maintain his revetment and protect my property.

Chairman Hayden swore in the following public testimony:

Applicant: Abigail Brassel Adelman 14655 Bay Front Drive Scotland Beach, Maryland 20687

Ms. Adelman expressed a statement of purpose. On July 7, 2015 Mr. Carbone stated twice the sole purpose for placing the rock was to prevent access to the beach. Ms. Adelman does not agree that Mr. Carbone has lost one hundred and fifty (150) feet of land.

Chairman Hayden closed the hearing to public comment.

Chairman Hayden The appeal is of the Land Use and Growth Management Director, Mr. Shire's decision to issue a permit for maintenance revetment.

Mr. Adelman is not questioning Mr. Shire's authority to grant the permit for maintenance of revetment but questioning how Mr. Shire's authority was exercised and if exercised appropriately

Mr. Sparling summarized that all the evidence in this case pertaining to the beach and the revetment is property Mr. Carbone or his business entity holds legal title. The board must assume that Mr. Shire granted a permit to the legal owner of the property. The Board can't decide property lines, or rights to a beach, whether eighty years ago, twenty years ago or today; that is within the sole jurisdiction of the Circuit Court of St. Mary's County. The defect in the issuance of the permit is whether Mr. Shire in his discretion as Director of Land Use and Growth Management appropriately issued a permit for the work. The reason for the issuance of the permit is totally irrelevant. Whether Mr. Carbone felt his revetment needed more rock, or he wished to block access to the beach to which he holds record title or whether he simply wanted to pile up rock is totally irrelevant. The only issue about repair is the nature of the permit. The permit was only needed for the repairs to the revetment. Why is a permit required? The permit is only required to

determine if the work is in compliance with the critical area buffer law. In the record, the board can see that the site plan signed by Ms. Kelly Palmer, who evaluated and determined the application, was in compliance with the critical area law. There has been no evidence before the board tonight that the permit and work are not in compliance with the critical area law. So, the question before the board would be," What basis could the board conclude that Mr. Shire improperly exercised his discretion in evaluating this application? A violation by Mr. Carbone since the application was issued would be handled by the Department of Land Use and Growth Management Inspections Division. In regards to the testimony of Mr. Shire and Ms. Chaillet, the Maryland Department of the Environment does not review applications for repairs to revetments. The original permit in 2009 was approved by the Maryland Department of the Environment and not future advised. If Maryland Department of the Environment was required and approval was not obtained, then the Maryland Department of the Environment could stop the work. 1) The board is not to define who has rights to the beach. The record states Mr. Carbone or his company holds title. 2) The purpose of piling the rock up is totally immaterial.3) Unless the board can find Mr. Shire violated his own department's policies with regards to consulting with the Maryland Department of the Environment, then the matter lies with the Maryland Department of the Environment.

Chairman Hayden summarized the facts, there was no evidence presented that Mr. Shire was not authorized to decide to issue the permit, and according to staff the Maryland Department of the Environment was not required to review the application for maintenance of a revetment and all rock repairs will be done on Mr. Carbone's property. The board should stand with Mr. Shire's decision on granting the permit.

Mr. Miedzinski questioned "If the board votes to approve Mr. Shire's decision will Mr. Carbone have approval to place the stones?"

Mr. Sparling's response: "The stay will still be in effect until the board signs the order and even if Mr. Carbone has violated the stay is a matter of enforcement and anything in between is at the property owners own risk."

Mr. Brown made a motion "In the matter of the, ZAAP 15-1015, Carbone Properties, LLC (John A. Carbone) Pursuant to Chapter 23 of the Comprehensive Zoning Ordinance, appeal by Tanner Creek Community Association, Mark Adelman, President, of the July 1, 2015 to stand with Mr. Shire's decision to issue permit # 15-1015 to repair an existing revetment. "

Mr. Greene seconded and the motion passed by a 5-0 vote.

Mr. Sparling advised Mr. Adelman that the decision by the board does not determine who has access to the beach or who owns the beach. The Tanner Creek Community Association is perfectly free to peruse the matter in Circuit Court.

MINUTES AND ORDERS APPROVED

The minutes of July 9, 2015 were approved.as amended.

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

ZAAP # 14-131-042 David Quade and Carol C. Stockman-Quade

CUAP # 15-131-006 Isaac and Lydia Fisher Property

CUAP # 15-131-011 Israel and Rachel Fisher Property

DISCUSSION

Mr. Sparling explained the reasons for the joint meeting with the Planning Commission on September 28, 2015 regarding telecommunication towers and regulations. The regulations

regarding local authority over telecommunication towers have changed recently and the County Attorney's Office has retained the law firm of Best, Best and Krieger in Washington, which specializes in representation of local governments and has considerable expertise in the area of tele-communication facilities. The attorneys will advise the county as to what the county can and can't do regarding approval of tele-communication towers and options for adopting policies on how the regulations should be drafted and implemented. The consultants will give a presentation during a joint work session for the Planning Commission, the Board of Appeals and an open public meeting on September 28, 2015 on various regulations and be available to answer questions. This should enable the Planning Commission to review policies as to appropriate locations of facilities and The Board of Appeals up to date information on factors to consider as to whether or not to approve conditional use applications.

ADJOURNMENT

The meeting was adjourned at 8:45 p.m.

Shelia Smith, Recording Secretary

Approved in open session: September 10, 2015

George Allan Hayden
Chairman