

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, October 14, 2010**

Members present were Howard Thompson, Chairman; Wayne Miedzinski, Randy Guy, Veronica Neale, and George T. Edmonds. Alternate Ronald Payne was excused. Department of Land Use & Growth Management (LUGM) staff present were Phil Shire, Deputy Director; Yvonne Chaillet, Zoning Administrator; Kelly Palmer, Environmental Planner; 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 #09-1485 - Lynch

Mr. Sparling stated the standard for granting or denying a variance request is the same for after-the-fact variances as it is for regular variances. Mr. Sparling quoted the Maryland Annotated Code, Natural Resources Section 8.1808 Subsection 7 states, "If the local jurisdiction finds the activity or structure for which a variance is requested commenced without permits or approvals and 1) does not meet each of the criteria under the subsection the local jurisdiction shall deny the requested variance and order the removal or relocation of any structure and restoration of any affected resources or 2) does meet each of the criteria under this subsection, the local jurisdiction may grant approval for the requested variance". Mr. Sparling stated the parties are all agreed that all enforcement actions or penalties that have been imposed have all been paid and satisfied, therefore the applicants are able to proceed with the variance request tonight.

Ms. Chaillet stated this case is continued from September 23, 2010 at which time the legal description was read into the record and the certification of property posting and mailing receipts were submitted for the record. Ms. Chaillet gave a description of the revised staff report September 30, 2010. Ms. Chaillet submitted the staff report dated September 30, 2010 with attachments for the record, *hereby labeled as Staff Exhibit 1 by the Recording Secretary*. Ms. Palmer gave a PowerPoint presentation showing aerial photos of the property in question. The PowerPoint presentation also provided photos of the grading, the replacement shed, masonry walkways and stairs, retaining wall, and outdoor shower. Ms. Palmer submitted the PowerPoint presentation for the record, *hereby labeled as Staff Exhibit 2 by the Recording Secretary*. Mr. Longmore and Mr. Cucazello did not oppose the PowerPoint presentation being submitted as an exhibit. All members except Randy Guy toured the site.

Mr. Thompson asked if all fines have been paid. Ms. Chaillet stated the fines have been paid in full and we are prepared to move forward tonight.

Mr. Longmore gave his opening statement referring to the after-the-fact variances and the proposed variances. Mr. Longmore submitted pre-labeled Applicants Exhibits 1-9 for the record, *hereby accepted by the Recording Secretary*, and listed as follows.

- Applicant Exhibit #1 – Numerous photos and documentation regarding the property.
- Applicant Exhibit #2 – Numerous photos and documentation regarding the property.
- Applicant Exhibit #3 – LUGM Application #07-00002757 dated 9-7-07
- Applicant Exhibit #4 – LUGM Application #08-00001140 dated 5-9-08
- Applicant Exhibit #5 – MDE Field Inspection Report dated 12-23-09
- Applicant Exhibit #6 – Completion Certificate dated 6-18-08
- Applicant Exhibit #7 – Buffer Management Plan dated 10-4-10
- Applicant Exhibit #8 – Stormwater Management Plan
- Applicant Exhibit #9 – Board of Appeals Variance Application dated 11-13-09

Chairman Thompson opened the hearing to public comment.

Mr. Chester George

Mr. George testified he is the owner property next door to the property in question and has owned the property since 1980. Mr. George testified he has visited the property in question and there was a shed on the property which was pictured in the photos. Mr. George testified that the new shed is in approximately the same location of the old shed. Mr. Miedzinski asked what the shed was used for. Mr. George testified he was unsure however on his own property a similar shed is used as a pump house. Mr. Cucuzella, Assistant Attorney General for the Maryland Department of Natural Resources, asked if the old shed had a sitting area with stools. Mr. George stated he is unsure as he did not walk the property back in 1980. Mr. Sparling stated Mr. George is referring to the shed being in the same approximate location and asked if it in fact sat in the same footprint. Mr. George stated he is unsure.

Mr. Lynch stated when he purchased the property he had the intention of renovating the property. Mr. Lynch stated the idea was to stabilize the seawall and revetment, replace the pool, and replace the house. Mr. Lynch stated he did receive permits for the seawall and revetment referring to Applicant's Exhibit 1, 2 and 4. Mr. Lynch stated he hired a contractor to obtain the property permits. Mr. Longmore referred to Applicant Exhibit 3 and 5. Mr. Lynch stated MDE came out and inspected the work on the seawall and revetment. Mr. Lynch stated the shed and outdoor shower were replaced at the same time as the seawall and revetment.

Mr. Longmore stated Mr. Lynch would be giving a PowerPoint presentation and submitted a copy of the presentation for the record, *hereby labeled as Applicant's Exhibit 10 by the Recording Secretary*. Mr. Lynch gave a PowerPoint presentation showing aerial photos. Mr. Longmore noted even if the shed were considered lot coverage it is still less lot coverage than what was previously on the property.

Mr. Edmonds asked if the new shed went within the same footprint as the old shed. Mr. Lynch stated yes, however he did not obtain a permit for the replacement shed or the new shower. Mr. Guy asked what the square footage is for the new shed. Mr. Lynch stated it is 111 square feet and the old shed was 83.6 square feet but the pump house was 58.5 square feet, concrete slab was 48 square feet and the wooden deck was 60 square feet.

Mr. Guy asked if the backfill and sand trap were permitted. Mr. Lynch stated he believes this was covered with the seawall and revetment permit. Mr. Thompson asked if the sediment trap has to be attended to over time. Mr. Lynch stated no, however he will have to check this with DPW&T as part of the required mitigation. Mr. Thompson asked how the concrete slab was removed. Mr. Lynch stated the contractors removed it and incorporated it into the revetment wall. Mr. Miedzinski asked if there was a man access for the bottom of the shed. Mr. Lynch stated this is something he would look in to. Mr. Guy asked if we have an exact measurement on the stone stairs and if they are embedded and concrete sealed. Mr. Lynch stated the stones are not solidly concreted together. Mr. Longmore stated there is a measurement on the site plan as it refers to the stone walkway and stairs being 514 square feet. Mr. Longmore stated the stairs and walkway are 4 feet wide but the last step at the bottom is 5 feet wide.

Mr. Sparling referred to slide 19 of Applicants Exhibit #10 and asked if the new shed is in the same location as the old shed and stated it appears in this photo that the shed is sitting on the pier in this photo however in slide 20 of Applicants Exhibit #10 the new shed does not appear this way. Mr. Lynch agreed and stated plus or minus two feet it is in the same location. Mr. Sparling asked that Mr. Longmore look at page 7 paragraph 15 of the staff report and Mr. Sparling reviewed the paragraph. Mr. Sparling asked if Mr. Longmore was going to provide evidence that the shed was being used during the two year vacancy period. Mr. Longmore stated the house was on the market to be sold therefore it was not being lived in however neighbors can testify that electricity was never disconnected. Mr. Edmonds asked if the new shed is an actual shed. Mr. Lynch stated it is being used to store crab pots, life jackets, etc.

Ms. Chaillet stated staff is not disputing the old shed existed however the non-conforming structure regulations state any structure not being used for 1 year is considered non-existent. Ms. Chaillet stated any non-conforming structure can not be replaced not to mention being placed in the buffer. Mr. Thompson asked how long ago the separate well was dug for the shed. Mr. Lynch stated early 2008. Mr. Thompson stated at the time the well was part of the electric facility in the shed therefore it was not abandoned.

Ms. Chaillet stated staff is having a hard time accepting the testimony that there was a well on the property when the as-built site plan for permit #08-1140 does not show a well on the property.

Ms. Palmer stated permit #08-0879 has no well shown therefore the well may have been put in without a permit. Ms. Palmer stated if this is the case, the well would also need a variance. Ms. Palmer stated the applicant references existing steps however there were none shown on the site plan. Ms. Palmer stated the walkway and stairs measure 4 and 5 feet wide depending on the location. Ms. Palmer stated the site plan says the walkway is 200 square feet however the applicant is referencing 500 square feet therefore this is another flaw. Ms. Palmer stated the applicant has testified to backfill and creating new land. Ms. Palmer stated the permit was for only 18 inches and the site plan does not show this. Ms. Palmer submitted the #08-0879 site plan for the record, *hereby labeled as Staff Exhibit 3 by the Recording Secretary.*

Mr. Cucuzella stated weather any structure in the buffer is abandoned a non-conforming structure can not be upgraded or replaced. Mr. Cucuzella stated the structure would have to be looked at as an entirely new structure according to Section 24.4.1.

BREAK

Mr. Thompson asked if the board agrees with the abandonment issue. It was the consensus of the Board that the shed was never abandoned therefore it is not an issue.

Ms. Chaillet stated the applicant is also requesting an after-the-fact variance for the septic. Ms. Chaillet stated staff does in fact support the request for the septic tank as amended in the staff report. The Critical Area Commission also agreed with the septic tank and drain field variance request.

Ms. Owens testified to her qualifications in working with the Critical Area Commission. Mr. Edmonds asked if the steps were reduced from 5 feet to three feet would the Critical Area Commission support this. Ms. Owens stated the Commission would consider it.

Mr. Ron Glackner

Mr. Glackner stated he is in favor of the shed. Mr. Glackner stated the shed is a right commonly enjoyed by neighboring property owners. Mr. Glackner stated as a tax paying citizen of Maryland and St. Mary's County he expects the state and county to lead by example. Mr. Glackner stated the State of Maryland increased the size of the St. Mary's College building by 5 times and it is located on the waters edge. Mr. Glackner stated there is no difference in the case being presented tonight.

Mr. Albert Hammett

Mr. Hammett asked if you buy a piece of land on the water if you get a package in the mail asking what you can and can't do on your property?

Mr. Miedzinski made a motion to continue the hearing to January 27, 2011 and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of September 23, 2010 were approved as recorded.

The Board authorized the Chair to review and sign the following orders:
CUAP #10-131-033 – Dynard Elementary School

ADJOURNMENT

The meeting was adjourned at 9:59 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: November 18, 2010

Howard Thompson
Chairman