

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
CHESAPEAKE BUILDING \* LEONARDTOWN, MARYLAND  
Thursday, December 9, 2010**

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 Derick Berlage, Director; Yvonne Chaillet, Zoning Administrator; and Jada Stuckert, Recording Secretary. Attorney Shane Mattingly, representing the Board of Appeals and David Weiskopf, representing staff were 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**

**ZAAP #08-131-030 – Buzz's Marina**

The applicant is requesting an appeal of an administrative decision by the Planning Director in March 2010 regarding the status of a nonconforming campground; and an appeal of an administrative decision by the Planning Director in July 2010 reversing the March 2010 decision and establishing a final decision regarding the status of a nonconforming campground. The property contains 73.32 acres; is zoned Rural Preservation District (RPD), Commercial Marine (CM) District, Resource Conservation Area (RCA) Overlay and Limited Development Area (LDA) Overlay; and is located at 49675 Buzz's Marina Way, Ridge, Maryland; Tax Map 71, Grid 20, Parcel 246.

Owner: Joseph and Christy Henderson  
Present: John Norris III (Henderson Attorney) and Jacquelyn Meiser (Dean Attorney)

The property and variance request were advertised in The Enterprise on November 24, 2010 and December 1, 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 submitted the staff report November 29, 2010 with attachments 1-18 for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Mr. Mattingly stated he has reviewed all the proper documentation and noted the procedural issues. Mr. Mattingly provided the Board with a brief timeline of events and quoted Chapter 2 Section 23.1.1 of the Comprehensive Zoning Ordinance as follows, "An appeal may be filed with the Board of Appeals by: a. Any person aggrieved by an order, requirement, decision, or determination made in regard to the administration or the enforcement of this Ordinance, as may be amended from time to time;". Mr. Mattingly further quoted 23.1.2 as follows, "Such appeal shall be taken within 30 days of the date of the action being appealed by filing an application for Board of Appeals review with the Department of Land Use and Growth Management. An application for appeal shall identify with specificity all grounds for the appeal." Mr. Mattingly stated the application form was filed within the 30 day period however no specific grounds were listed for the appeal by the Hendersons.

Mr. Mattingly stated the Board needs to determine if the initial appeal has been perfected and met all the terms and guidelines set forth in the ordinance. Mr. Guy asked which portion the applicant did not satisfy. Mr. Mattingly stated Mr. Henderson did not specify the grounds for the appeal. Mr. Thompson stated the supporting evidence is supplied in the staff report attachment six (6). Mr. Mattingly stated using the information provided in the packet the Board must decide if the applicant in fact provided sufficient information to apply for the appeal. Mr. Miedzinski asked if Ms. Chaillet ever received the information requested. Ms. Chaillet stated no. Mr. Guy asked if the applicant was aware of the required information. Ms. Chaillet stated yes, it is listed on the bottom of the application as well as in a letter sent from herself to the applicant.

Mr. Norris stated quite often people come in and are upset about the decision, when the appeal was filed they felt staff would be helping with the writing of the appeal as they were not represented by legal council. Mr. Norris stated the applicant was working with staff therefore the department was not unaware of the appeal. Mr. Norris stated the applicant was gaining additional information to help staff make a better decision.

Ms. Meiser stated the rules that govern the appeals process are there for a reason and none of the requirements for an appeal are discretionary; they are mandatory and until the information is provided (within the timeframe set forth in the regulations) an appeal is not complete. Ms. Meiser stated this appeal was not noted properly and agrees that the form itself says you have to state the grounds for your appeal. Ms. Meiser stated the applicant had time after receiving the letter from staff and an additional email from staff advising them of the requirement to state the grounds for the appeal within the 30 days and the applicant still did not comply.

Mr. Mattingly explained whenever you see the word "shall" in documents, it means mandatory. Mr. Mattingly stated the Board should base their opinion on the facts provided. Mr. Thompson stated he would have liked to have heard in testimony that the applicant made some effort to contact staff and submit their grounds for the appeal. Mr. Norris asked that the record reflect that Mr. Henderson is willing to testify that he was told by staff that they would help him fill out the application.

Mr. Mattingly asked that Ms. Chaillet be sworn in. Mr. Thompson swore Ms. Chaillet in for the record.

***Mr. Thompson made a motion in the matter of ZAAP #08-131-030, Buzz's Marina, to deny the appeal based on Chapter 23.1 of the Zoning Ordinance. The statute requires that the application for appeal shall identify with specificity all grounds for the appeal and should be filed in writing with 30 days. The Board finds based on staff report attachments six (6) and eight (8) that the application fails to comply with the requirements of Section 23.1 and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.***

Mr. Thompson asked how to deal with the second portion of this case. Mr. Mattingly stated there are two different opinions to this question. Mr. Thompson asked if the Board can, based on the first decision, overturn the July decision to allow two (2) illegal nonconforming campsites. Mr. Mattingly suggested the Board hear from the applicant's council and opposing council.

Ms. Meiser stated the reconsideration didn't have anything to do with the appeal you just denied. Ms. Meiser stated instead of brining this new information to the Board of Appeals, Mr. Norris asked for reconsideration on the March decision. Ms. Meiser stated Mr. Berlage reconsidered the original decision and changed the final determination. Ms. Meiser stated she is now appealing the fact that Mr. Berlage did not have the authority to reconsider the original decision. Ms. Meiser stated there is nothing in the Zoning Ordinance defining reconsideration and/or allowing reconsideration. Ms. Meiser stated if an applicant is unhappy with the administrative decision, they should appeal to the Board of Appeals, as the Ordinance stipulates. Ms. Meiser stated if reconsiderations were allowed people would be coming back for reconsiderations all the time. Ms. Meiser stated the July decision needs to be discussed to see if Mr. Berlage even had the authority to make the July decision.

Mr. Weiskopf stated he believes the Board needs to consider weather or not Mr. Berlage in fact had the authority to reconsider the appeal. Mr. Weiskopf stated for the record on behalf of the County that Mr. Berlage did in fact have the authority to reconsider.

Mr. Norris stated the March 29 letter was a conclusion that there was not a nonconforming use due to the lack of information provided in the appeal. Mr. Norris stated he believes the only instance where an appeal can not be applied for and re-applied for is a Conditional Use. Mr. Norris stated there is nothing saying an applicant can not re-apply over and over again.

Mr. Mattingly stated he believes the Board needs to make a decision on whether or not the Planning Director had the authority to reconsider the case. Mr. Thompson stated he believes the Ordinance says after the Director makes a decision the re-appeal would have to come to the Board of Appeals. Mr. Weiskopf clarified his attorney status. Mr. Weiskopf quoted 20.4.1.f as follows "To establish application requirements and schedules for review of applications and appeals, to formulate and promulgate rules and procedures, and to take any other actions necessary to implement and enforce the provisions of this Ordinance." Mr. Weiskopf stated Mr. Berlage has the inherent authority to hear and re-hear cases. Mr. Mattingly stated he could not find anything specific either granting the Director authority to reconsider or denying the Director the authority to reconsider. Mr. Mattingly stated he did some research on reconsiderations and found that case law allows the Board to reconsider a case however there were not many cases involving Zoning Officials.

Ms. Meiser stated the Ordinance is in place for a reason, and the Ordinance is clear on the fact that if you are aggrieved by an order, requirement, decision, or determinations made in regard to the administration or the enforcement of the Ordinance you have the right to an appeal to the Board of Appeals. Ms. Meiser stated the March decision states if you are unhappy with this you may want to try the conditional use process. Ms. Meiser stated the March decision was in fact a final decision. Ms. Meiser stated if the applicants were unhappy with the March decision they should have come before the Board of Appeals. Ms. Meiser stated the new information and new testimony should have never gone through the Planning Director and reiterated the problem with the concept of reconsideration is that there is no rule or regulation for it. Ms. Meiser stated there is no clock or timeframe as to when reconsideration can be done and in this case 120 days passed between the filing of the original appeal and the reconsideration. Ms. Meiser asked if reconsideration is allowed when an administrative decision becomes final. Ms. Meiser stated you can't allow reconsideration until the Ordinance is amended to allow it because in certain cases you could actually be causing homeowners to lose out on monies by allowing reconsiderations. Ms. Meiser stated after the July decision she sent a letter to Mr. Berlage asking how this reconsideration tool is allowed to be used, and never received a response as noted in the staff report as attachment 14.

Mr. Norris stated we are treating the term "reconsideration" as if it's defined in the ordinance and it isn't. Mr. Norris referenced the United States Supreme Court, Chevron vs. NRVDC, which gives the Director in charge of enforcing these regulations the authority to ensure the Ordinance is met. Mr. Norris stated the Board can in fact make a decision classify the July decision as a new decision rather than reconsideration. Ms. Meiser stated the Planning Director has the authority to make sure the Ordinance is met however he does not have the right to make up the rules as he goes along.

Mr. Thompson stated he feels if a decision of the Planning Director is disagreed with, the case should then come before the Board of Appeals. Mr. Miedzinski asked how long Ms. Chaillet has been the Zoning Administrator and if this has ever happened before. Ms. Chaillet stated she is unaware of any. Mr. Thompson stated he feels the original decision should stand and if reconsideration was requested it should have come before the Board of Appeals. Mr. Miedzinski asked if we find that there shouldn't have been reconsideration, are we setting precedence, should we put a time limit on our decision. Mr. Mattingly stated no, however you could send a letter to the Planning Director to make him aware of your wishes. Mr. Mattingly stated the Planning Director could also appeal the Board of Appeals decision to the Circuit Court. Mr. Guy stated he feels Mr. Berlage had a right to reconsider this case. Mr. Thompson stated he disagrees because the applicant hadn't even finished their appeal from the original decision. Mr. Edmonds stated he agrees with Mr. Thompson. Mr. Miedzinski agrees with Mr. Guy. Ms. Neale stated she agrees with Mr. Edmonds and Mr. Thompson.

***Mr. Thompson made a motion in the matter of ZAAP #08-131-030, Buzz's Marina, to uphold the original decision of the Planning Director made in March and to abandon the July 2010***

***Planning Director's decision to allow a nonconforming campground and that the directors decision to reconsider did not follow the rules set forth in the Comprehensive Zoning Ordinance and Ms. Neale seconded. The motion passed by a vote 3-2 with Mr. Miedzinski and Mr. Guy opposed.***

**MINUTES AND ORDERS APPROVED**

The minutes of November 18, 2010 were approved as recorded.

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

VAAP #09-1727 – Flat Iron, LLC

VAAP #10-1553 – Kirk

CUAP #10-1641 – Charles Memorial Gardens, Inc.

**ADJOURNMENT**

The meeting was adjourned at 8:38 p.m.

---

Jada Stuckert, Recording Secretary

Approved in open session: January 13, 2011

---

Howard Thompson  
Chairman