



Notice of Public Hearing

NOTICE IS HEREBY GIVEN that the St. Mary's County Planning Commission will conduct a public hearing in the main meeting room of the Chesapeake Building, located at 41770 Baldrige Street, Leonardtown, MD, on August 12, beginning at 6:30 p.m., for the purpose of receiving public testimony and to consider an amendment to the text of Chapters 264 and 285, of the Code of St. Mary's County. The Amendments proposed for consideration are as follows:

Proposed amendments to the **Subdivision Ordinance:**

§30.3 of Chapter 264 of the *Code of St. Mary's County, Maryland*, is amended by adding:

7. Subdivision Around Lawfully Existing Dwellings.
 - a. A parcel containing more than one lawfully existing dwelling may be divided into not more than seven (7) residential lots of record each of which contains one such lawfully existing single-family dwelling.
 - b. Subdivision standards and adequate public facility requirements are not applicable to a minor subdivision around lawfully existing dwellings approved pursuant to Section 30.3.7; provided however, that any existing nonconformity of such lots shall not be increased.

Article 5 of Chapter 264 of the *Code of St. Mary's County, Maryland*, is amended by adding:
Dwelling, Single Family: A building containing one (1) dwelling unit as a principal use.

Proposed amendments to the **Zoning Ordinance:**

§52.7 of Chapter 285 of the *Code of St. Mary's County, Maryland*, is amended by adding:

4. Development standards and adequate public facility requirement provisions of Chapter 70 are not applicable to lots in a minor subdivision around lawfully existing dwellings approved pursuant to Section 30.3.7 of the St. Mary's County Subdivision Ordinance; provided however, that any existing nonconformity of such lots shall not be increased.

Note that as a result of the evidence and comments made at the public hearing, amendments may be made to the proposed ordinance.

Copies of the proposed amendment are available to the public at each public library within the County, at the Public Information Office located in the Chesapeake Building at 41770 Baldrige Street in Leonardtown, and for viewing or downloading through links on the St. Mary's County Government web page: www.stmarysmd.com.

Robert E. Bowles, Sr., Planner IV, FCQP
Manager, Development Services Division
St. Mary's County Department of Land Use and Growth Management
(301) 475-4200 ext 1522

**ST. MARY'S COUNTY GOVERNMENT
DEPARTMENT OF LAND USE
AND GROWTH MANAGEMENT**

Phillip Shire, Director

William B. Hunt, AICP, Deputy Director



BOARD OF COUNTY COMMISSIONERS

Francis Jack Russell, President

Lawrence D. Jarboe, Commissioner

Cynthia L. Jones, Commissioner

Todd B. Morgan, Commissioner

Daniel L. Morris, Commissioner

MEMORANDUM

To: Planning Commission

From: Phil Shire, Director

Date: July 26, 2013

Subject: Proposed zoning text amendment to Chapters 264 and 285 of the Code of St. Mary's County, to provide approval of subdivision around lawfully existing single family dwellings.

Purpose: Text amendments to provide an administrative method for subdividing around lawfully existing single-family dwellings on a single parcel or lot. And provision of definition for single-family dwelling.

Background: Subdivision around multiple existing dwellings on a single parcel is nothing new. There are a number of older parcels in St. Mary's County that contain multiple dwellings, typically built for family members. Current density standards often cannot be met for such subdivisions because many of these homes predate current zoning density requirements, but they have been determined to be lawfully existing by either pre-existing development regulations, or they met the density requirements at the time permits were issued.

In 1992, Planning staff was delegated authority to approve subdivisions around lawfully existing dwellings by the Planning Commission (see attached Policy #92-1), as long as noncompliance (i.e. density) was not increased by the subdivision.

Since the 1992 policy, a former County Attorney declared that density standards must be met or variance obtained from the Board of Appeals (BOA). Until recently LUGM was usually able to facilitate valid subdivision requests with density variances granted by the BOA. (*I have attached a BOA case staff report which is representative of such situations*).

Because interpretations change with time, it has recently been determined that there are legal obstacles relating to the BOA's ability to make the necessary findings for a density variance when existing structures are involved. The required findings must be related to the unique characteristics of the land itself – not the existence of the structures on it. The text amendment to allow administrative approval of this type of subdivision has been suggested by the County Attorney as an alternative to the BOA variance process.

A definition for single family dwelling is also being proposed for the Subdivision Ordinance (identical to the definition contained in the Zoning Ordinance).

This text amendment was introduced to the Board of County Commissioners on July 16, 2013 and they directed the Planning Commission to proceed with the Public Hearing. It was suggested that the requirement for TDRs for such subdivisions be discussed during the hearing process.

Proposed amendments to the Subdivision Ordinance:

§30.3 of Chapter 264 of the *Code of St. Mary's County, Maryland*, is amended by adding:

7. **Subdivision Around Lawfully Existing Dwellings.**
 - a. A parcel containing more than one lawfully existing dwelling may be divided into not more than seven (7) residential lots of record each of which contains one such lawfully existing single-family dwelling.
 - b. Subdivision standards and adequate public facility requirements are not applicable to a minor subdivision around lawfully existing dwellings approved pursuant to Section 30.3.7; provided however, that any existing nonconformity of such lots shall not be increased.

Article 5 of Chapter 264 of the *Code of St. Mary's County, Maryland*, is amended by adding:

Dwelling, Single Family: A building containing one (1) dwelling unit as a principal use.

Proposed amendments to the Zoning Ordinance:

§52.7 of Chapter 285 of the *Code of St. Mary's County, Maryland*, is amended by adding:

4. Development standards and adequate public facility requirement provisions of Chapter 70 are not applicable to lots in a minor subdivision around lawfully existing dwellings approved pursuant to Section 30.3.7 of the St. Mary's County Subdivision Ordinance; provided however, that any existing nonconformity of such lots shall not be increased.

Recommendation: "I move that the Planning Commission, having accepted the finding of the staff report, regarding the proposed text amendment, to make the changes to the Zoning Ordinance, Chapters 52.7 and the Subdivision Ordinance chapters 30 and 50 as described in the Staff Report, approve a resolution recommending that the Board of County Commissioners approve this amendment and that the Chair be authorized to sign a resolution on behalf of the Planning Commission transmitting this recommendation to the Board of County Commissioners."

Attachments: Planning Commission Policy 92-1
BOA Staff Report for VAAP 10-110-030
Resolution

RESOLUTION

TO AMEND CHAPTERS 264 AND 285 OF THE *CODE OF ST. MARY'S*
***COUNTY, MARYLAND* TO PROVIDE FOR APPROVAL OF SUBDIVISIONS**
AROUND LAWFULLY EXISTING DWELLINGS

WHEREAS, pursuant to §§4.01-4.05 of the Land Use Article of the *Annotated Code of Maryland*, the Commissioners of St. Mary's County are authorized to establish zoning districts and prescribe regulations applicable in such districts; and

WHEREAS, pursuant to §5.03 of the Land Use Article of the *Annotated Code of Maryland*, the Commissioners of St. Mary's County are authorized to adopt regulations governing the subdivision of land; and

WHEREAS, the Planning Director wishes the Planning Commission to consider amending Chapters 264 and 285 of the Code of St. Mary's County, Maryland to provide for approval of subdivisions around lawfully existing dwellings; and

WHEREAS, the Planning Commission, following due notice published in the July 26, 2013 and August 2, 2013 editions of the *Enterprise*, a newspaper of general circulation in St. Mary's County, held a public hearing on August 12, 2013, to accept public comment regarding the proposed amendment to Chapters 264 and 285 of the Code of St. Mary's County, Maryland to provide for approval of subdivisions around lawfully existing dwellings; and

WHEREAS, upon due consideration of the comments of the public and staff and in furtherance of the public health, safety and welfare, the Planning Commission finds, with a _ to _ vote, that it is in the best interest of the public health, safety and welfare of the citizens of the St. Mary's County, Maryland, to recommend favorably the proposed amendment, and

WHEREAS, the Planning Commission authorized the chair to sign a resolution on its behalf to transmit its findings and recommendation to the Board of County Commissioners;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission that the following amendments to the Zoning Ordinance are recommended to the Board for adoption:

SECTION I. §30.3 of Chapter 264 of the *Code of St. Mary's County, Maryland*, is amended by adding:

7. **Subdivision Around Lawfully Existing Single- Family Dwellings.**
 - a. A parcel containing more than one lawfully existing dwelling may be divided into not more than seven (7) residential lots of record each of which contains one such lawfully existing single-family dwelling.

RESOLUTION No. 13-
Subject: To Amend Chapters 285 and 264 of the
Code of St. Mary's County, Maryland to provide
for approval of Subdivisions Around Lawfully
Existing Dwellings

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- b. Subdivision standards and adequate public facility requirements are not applicable to a minor subdivision around lawfully existing dwellings approved pursuant to Section 30.3.7; provided however, that any existing nonconformity of such lots shall not be increased.

SECTION II. Article 5 of Chapter 264 of the *Code of St. Mary's County, Maryland*, is amended by adding:

Dwelling, Single Family: A building containing one (1) dwelling unit, as a principal use.

SECTION III. §52.7 of Chapter 285 of the *Code of St. Mary's County, Maryland*, is amended by adding:

4. Development standards and adequate public facility requirements provisions of Chapter 70 are not applicable to lots in a minor subdivision around lawfully existing dwellings approved pursuant to Section 30.3.7 of the St. Mary's County Subdivision Ordinance; provided however, that any existing nonconformity of such lots shall not be increased.

BE IT FURTHER RESOLVED by the Planning Commission that the foregoing recitals are hereby incorporated as if fully set forth herein.

Date of Adoption: _____

Ayes: _____ Nays: _____ Abstain: _____

ST. MARY'S COUNTY PLANNING COMMISSION

James Howard Thompson, Chair

Attest:

Phillip J. Shire, Director
Department of Land Use and Growth Management

SUBDIVISION POLICY 92-1
PLANNING COMMISSION POLICY

RE: In-House Processing of Subdivision Plats

1. **Subdivision of Properties Containing Existing Structures, (including resubdivision of recorded lots where structures were lawfully erected)**
2. **Subdivision Subsequent to Site Plan Approval**

Purpose: To Delegate Authority to Staff for Approval of Certain Types of Subdivisions:

1. Creating building lots around lawfully erected, existing principal structures; and
2. Around principal structures built or shown on approved site plans

Background/Justification

- * Current subdivision processing procedures, adopted by the Planning Commission on October 16, 1991, do not allow for expedited review of subdivision plats where building lots are created around existing structures or around proposed structures shown on approved site plans. These types of subdivisions should not require the full, formal review as prescribed in the processing procedures because: (i) sites containing existing, lawfully erected structures have already been reviewed and received approvals from applicable agencies via the permit process; and (ii) structures contained on an approved site plan receive full TEC and Planning Commission review via the site plan approval process.
- * Creation of building sites around existing structures (regardless of the number of lots proposed or prior lots taken off of the parent parcel) should be subject to TEC review, with the applicant providing the evidence that all existing structures were lawfully erected. Formal TEC review will ensure that all applicable agencies have the opportunity to provide written comments on the proposed subdivision. Noncomplying situations shall not be created by such subdivisions, nor should any increase in noncompliance be permitted (e.g. creation of a noncomplying building setback or additional building site which exceeds density allowances).
- * If a site plan approval is required and subdivision is also intended, the site plan and subdivision plat should be processed concurrently to allow for a comprehensive overview of site development and to optimize the review timetable. The Subdivision Regulations and Zoning Ordinance encourage the concurrent processing approach: Section 4.09 (A) "Nonresidential Subdivision" and Section 4.12 "Cluster Development" (Subdivision Regulations); Sections 38.05 (9) and 67.02 "Planned Unit Development" (Zoning Ordinance). The site plan and subdivision submissions should be made simultaneously, but as separate submissions.

Draft Planning Commission Policy
Subject: In-House Subdivision Approval

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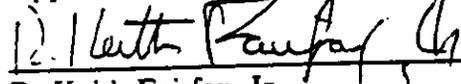
- * If a record plat is not processed in conjunction with the site plan, but is filed for review prior to expiration of the approved site plan, the subdivision plat may be approved administratively (regardless of the number of lots proposed or prior lots taken off of the parent parcel), without formal TEC or Planning Commission review. The rationale for an expedited review is that site development was reviewed through the site plan approval process.
- * If a record plat is not filed for review prior to expiration of the approved site plan, the subdivision proposal must be viewed as a separate application and should be processed via formal TEC and Planning Commission review.

Action Required

Staff is hereby delegated authority from the Planning Commission for administrative approval of subdivision plats:

- (1) containing existing, lawfully erected principal structures, provided that a full, formal TEC review of the proposed subdivision (according to the "Basic" subdivision procedure) shall precede the in-house approval; and,
- (2) in accordance with Planning Commission site plan approval, provided that the original TEC review of the site plan and Planning Commission approval of the site plan include findings that future subdivision around proposed structures would be approvable. The subdivision plat shall be submitted for review prior to expiration of the approved site plan, and does not change the approved site development or number of units; and
- (3) provided the subdivision does not create new noncomplying situations.

Approved:



R. Keith Fairfax, Jr.
Chairman

Date of Decision: April 13, 1992

PCINHS

ATTACHMENT 1 B



MEMORANDUM

Date: March 14, 2011
To: Board of Appeals
From: Yvonne Chaillet, Zoning Administrator
Subject: VAAP #10-110-030, Remenira Subdivision
Board of Appeals Hearing of March 24, 2011

SECTION I. Development Data:

Request: Variance from Section 32.1 of the Comprehensive Zoning Ordinance to increase the residential density in the Rural Preservation District (RPD) to subdivide around two existing single-family dwellings.

Owner: Leonard E. and Margaret L. Wathen, L/E, and Deigh Anna Young (the "Applicant")

Agent: William P. Higgs, LSR, Inc.

Location: 42165 and 42155 Medley's Neck Road, Leonardtown, MD

Tax Map: 49 **Grid:** 7 **Parcel:** 10 **Election District:** 3

Acreage: 2.10 acres

Zoning: Rural Preservation District (RPD)

SECTION II. Notification: The property and variance request were advertised in *The Enterprise* on March 9, 2011 and March 16, 2011.

SECTION III. Applicable Regulations:

St. Mary's County Comprehensive Zoning Ordinance (Ordinance)

1. Section 24.3. General Standards for Granting Variances.
2. Section 32.1. Development Standards

SECTION IV. Recommended Motion: Staff recommends the following motion (with modifications and additions following discussion):

"In the matter of VAAP #10-110-030, Remenira 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/have not) been met, I move to (approve / deny) the variance request to increase the base residential density in the Rural Preservation District by

ATTACHMENT *2A*

subdividing around the existing houses on the Property to create two lots of less than five acres each.”

SECTION V. Property and Case Information:

1. The Applicant is the owner of a 2.1-acre property in Leonardtown, which contains two single-family dwellings. The Applicant occupies the original dwelling located at 42165 Medley's Neck Road, which was constructed in 1877. Her parents Leonard E. Wathen and Margaret L. Wathen have a Life Estate and live in the second dwelling, which was constructed in approximately 1990 and is located at 42155 Medley's Neck Road.
2. The subject property (the "Property") is located in the Rural Preservation District (RPD) and the base residential density in the RPD is one dwelling unit per five acres in accordance with Schedule 32.1 of the Ordinance. At the time the second dwelling was constructed, the density in the RPD was one dwelling unit per acre. The Property contained enough acreage at that time to allow for two dwellings on the Property.
3. The Applicant recently obtained a building permit from the Department of Land Use and Growth Management to replace the original house built in 1877. While pursuing financing, the Applicant learned that the lender required her parents Mr. and Mrs. Wathen to participate in the mortgage because the Property contained two principal dwellings. To relieve her parents of this responsibility, the Applicant plans to subdivide around the two existing dwellings and create two distinct lots. The subdivision would increase the base residential density in the RPD from one dwelling unit per five acres to a more intense density. However, the overall impact to the Property and surrounding area would remain the same with two dwelling units. Proposed lot 1 consists of 32,069 square feet (.74 acres) and proposed lot 2 consists of 1.37 acres.
4. In addition to two single-family dwellings, the Property also contains three sheds and three gravel driveways with access off Medley's Neck Road. The gravel driveway farthest west on the Property, as shown on the site plan, will be removed. The shed immediately west of the proposed shared boundary will be relocated. The existing dirt farm road will also be removed.

An existing drilled well serves both dwellings and will continue to serve both dwellings following subdivision approval. Each dwelling, however, is served by its own septic system.

5. If the variance is granted, the Applicant must comply with Section 24.8 of the Ordinance pertaining to lapse of variance. Variances shall lapse one year from the date of the grant of the variance by the Board of Appeals.

SECTION VI. Standards for Granting a Variance: In accordance with Section 24.3 of the Ordinance, the Board of Appeals (the "Board") shall not vary the regulations of the Ordinance unless it makes findings based upon evidence presented to it that the Applicant has met each standard for granting a variance. The general standards for granting a variance follow below:

- a. *Because of particular physical surroundings such as exceptional narrowness, shallowness size, shape or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty.*

The Property is 2.1 acres in size and contains two single-family dwellings. The base residential density in the RPD is one dwelling unit per five acres. The Applicant plans to subdivide around the existing dwellings so that she can obtain financing to replace the house that was built in 1877.

In order to decide that the Applicant has met this standard the Board must find that the conditions of the Property create a practical difficulty, precluding enforcement of the five-acre density in the RPD.

- b. *The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification.*

One of the houses on the Property dates to 1877. The second house was built at a time when the base residential density in the RPD was one dwelling unit per acre. The Property is 2.1 acres in size and could meet the base density with two single-family dwellings.

The Applicant desires to create lots around the existing houses, so that she can proceed with replacing the older house and so that her parents can keep their Life Estate and continue to live in the second house.

In order to find that the Applicant has met this standard, the Board must determine that two dwellings on a 2.1-acre lot in the RPD is a condition that is not, generally, applicable to other properties in the RPD.

- c. *The purpose of the variance is not based exclusively upon reasons of convenience, profit or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding.*

The purpose of the variance is to allow the Applicant to subdivide around two existing houses, thus increasing the base residential density in the RPD. The Applicant recently obtained a building permit to replace the older house, which was constructed in 1877. In order to obtain financing for construction of a replacement house, the Applicant must demonstrate that the original house is on a separate lot from the second dwelling.

In order to find that the Applicant has met this standard, the Board must conclude that the purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice.

- d. The alleged difficulty has not been created by the property owner or the owner's predecessors in title.*

The alleged difficulty results from the presence of two single-family dwellings on a 2.1-acre parcel of land in the RPD. The original house was built in 1877 prior to any subdivision or zoning regulations in the County. The second house was built at a time when the zoning regulations allowed two single-family dwellings on a 2.1-acre parcel because the base residential density in the RPD was one dwelling unit per acre. The zoning regulations have changed since the Property was improved, and the base residential density in the RPD is now one dwelling unit per five acres. In order to subdivide around the existing houses and increase the base density in the RPD, the Applicant needs variance relief from Schedule 32.1 of the Ordinance.

If the Board concludes that the alleged difficulty was not created by the property owner or the owner's predecessors in title, then the Board may conclude that the Applicant has met this standard.

- e. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance.*

The granting of the variance will allow a legal subdivision around the existing conditions on the Property, which have been in place for more than two decades. The original house was built in 1877. No other changes to the Property are proposed, so there will be no change to the character of the district.

In order to find that the Applicant has met this standard, the Board must find that the granting of the variance will not harm or impair other properties or improvements in the neighborhood and that the character of the district will not be changed.

- f. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

The granting of the variance will allow a legal subdivision around the existing houses and septic systems serving these houses. Following approval of the subdivision, the Applicant will obtain financing in order to begin construction on a house to replace the one built in 1877. No other improvements to the Property are proposed. Essentially, the same conditions will exist as they do today. The only difference will be that each house will occupy its own lot of record.

In order to find that the Applicant has met this standard, the Board must find that the variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

g. The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

One of the goals of the Comprehensive Plan is to maintain the rural character of the County. The Property is located in the Rural Preservation District, which historically was known as the Agricultural Residential District. The original house was built on the Property in 1877 and the second house was built around 1990 when the residential density in the RPD was still one dwelling unit per acre. The density changed with the adoption of Zoning Ordinance #90-11, which created a three-acre density in the RPD.

Although the Applicant plans to replace the older house, the conditions of the Property will essentially remain the same. The Property contains two houses now and anyone passing by the Property will continue to see two houses. The difference will be that each house will sit on its own lot of record, if the Board finds that the Applicant has met this standard and all other standards for granting the variance.

SECTION VII. Staff Recommendation: Staff believes that the Applicant has demonstrated a practical difficulty and recommends approval of the request to increase the density in the RPD by subdividing around the existing conditions on the Property; thus creating two lots of less than five acres each.

SECTION VIII. Attachments:

Attachment #1- Letter of Intent

Attachment #2- Location Map

Attachment #3- Site Plan

Attachment #4- Letter from Patricia Van Ryswick dated March 15, 2011

Variance Application Date: February 21, 2011