

*St. Mary's County
Board of Appeals
Annual Report*



Calendar Year
2010

Prepared By:
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ST. MARY'S COUNTY BOARD OF APPEALS 2010 MEMBERSHIP

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David Wayne Miedzinski, Vice-Chairperson
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I. Introduction

A. Formation of the Board of Appeals in St. Mary's County

The Board of Appeals (the "Board") was created pursuant to Section 4.07 of Article 66B of the Annotated Code of Maryland. The Board consists of five (5) members and one (1) alternate appointed by the County Commissioners. Board members serve no more than two consecutive three-year staggered terms. To ensure the Board can meet its quorum requirements and hold public hearings, the County Commissioners have designated one alternate member who has been empowered to sit on the Board in the absence of any member.

The Board is required to hold public hearings and keep minutes of its proceedings. The minutes must show the vote of each member upon each question and indicate whether or not a member is absent or abstains from voting. All final decisions on Critical Area requests must be rendered by written order within 30 days of the close of the public hearing. All other final decisions must be rendered in the same manner within 60 days of the close of the public hearing.

To ensure official records are kept for all public hearings, the Board of County Commissioners has designated a secretary to maintain records of all proceedings. Video, audio, and written records of all public hearings are maintained. The official copy of all records is retained in the Department of Land Use and Growth Management.

B. Functions of the Board of Appeals in St. Mary's County

The Board of Appeals is a quasi-judicial body responsible for presiding over public hearings for appeals, variances, and conditional uses. By doing so, the Board, as a whole, is responsible for defending the public interests as defined by the St. Mary's County Comprehensive Zoning Ordinance. The purpose of the Board is to ensure that zoning is fair, correctly interpreted, and does not cause excessive hardship upon landowners in St. Mary's County.

As outlined in the St. Mary's County Comprehensive Zoning Ordinance, No. Z-10-02 (the "Ordinance"), the Board has four (4) main functions to ensure that the goals and objectives of the Comprehensive Plan are met and that the regulations of the Ordinance are implemented. These powers and duties include:

- 1) To hear and decide appeals when it is alleged there is an error in any order, requirement, decision, or determination made in regard to the enforcement of the Ordinance or of any amendments adopted thereto;
- 2) To authorize, upon application in specific cases, a variance from the terms of the Ordinance as will not be contrary to the public interest, and when, owing to special conditions, the enforcement of the provisions of the Ordinance will result in practical difficulties or unwarranted hardships. Only those variances that accomplish the

- purpose and intent of the Ordinance and are consistent with the Comprehensive Plan can be approved;
- 3) To adopt and promulgate such rules and regulations as it shall deem necessary in the conduct of its hearings; and
 - 4) To hear and act upon conditional use applications as provided in Chapter 25 of the Ordinance.

II. Judicial Review

All decisions of the Board of Appeals are subject to judicial review as prescribed in Section 4.08 of Article 66B. Therefore, as a citizen of St. Mary's County, any applicant or opponent aggrieved by a Board decision can appeal that decision to Circuit Court. As a result of this remedy, the Board has instituted practices and procedures which allow the Board to thoroughly and accurately render decisions, based on the facts of each case. In addition, staff provides technical support to the Board through a written staff report and by participating in all hearings.

A. Board of Appeals Variance Cases for 2010

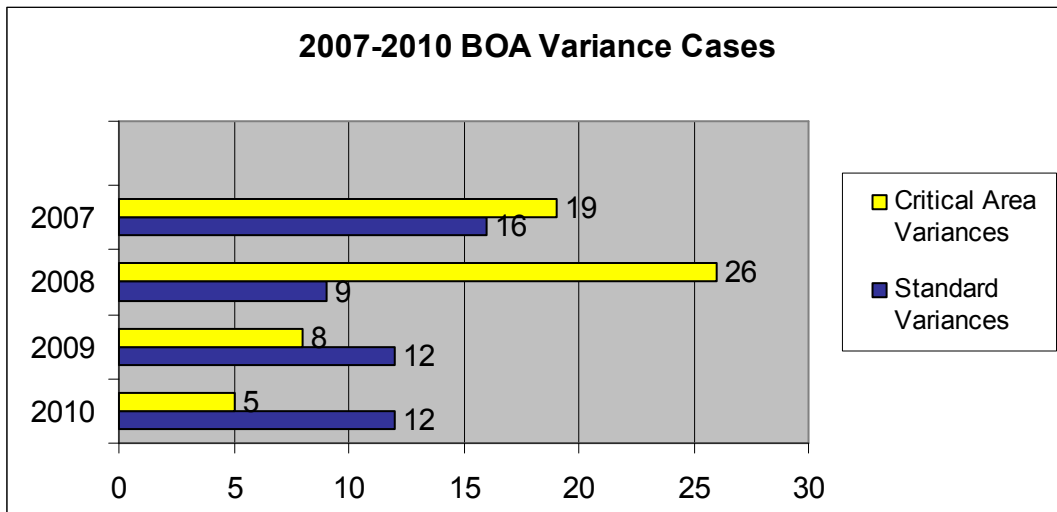
The Board of Appeals has the authority to vary the height, bulk, area, density, setback, lighting, parking, or landscaping regulations of the Ordinance. The Board may grant a variance in accordance with the standards for the specific variance when strict enforcement of the Ordinance would result in a practical difficulty or unnecessary hardship.

Standard variance requests are often made to the Board to enable a property owner to make modest improvements to existing single-family dwellings or to construct a detached accessory structure such as a garage or shed where the property is constrained by various setback requirements. The Board heard twelve standard variance requests in 2010. Eleven of these cases were approved and one was denied. The denial pertained to an after-the-fact request to reduce a lateral line setback.

Variations may be granted from the provisions of the Critical Area Program as implemented in Chapter 41 of the Ordinance (Chesapeake Bay Critical Area Overlay Districts) and Chapter 71 (Resource Protection Standards) when it has been found that the literal enforcement of those provisions would result in unwarranted hardship on the landowner. The most common Critical Area variance requests are to disturb the Critical Area Buffer, which is a protected area, measured a minimum of 100 feet from the edge of tidal waters, tidal wetlands, and tributary streams. The Board heard and approved all five Critical Area variance requests in 2010.

The following chart provides an itemization of Board of Appeals variance cases heard in calendar years 2007 through 2010. As shown in the chart, the number of Critical Area variances significantly increased from 2007 to 2008, but just as significantly declined in

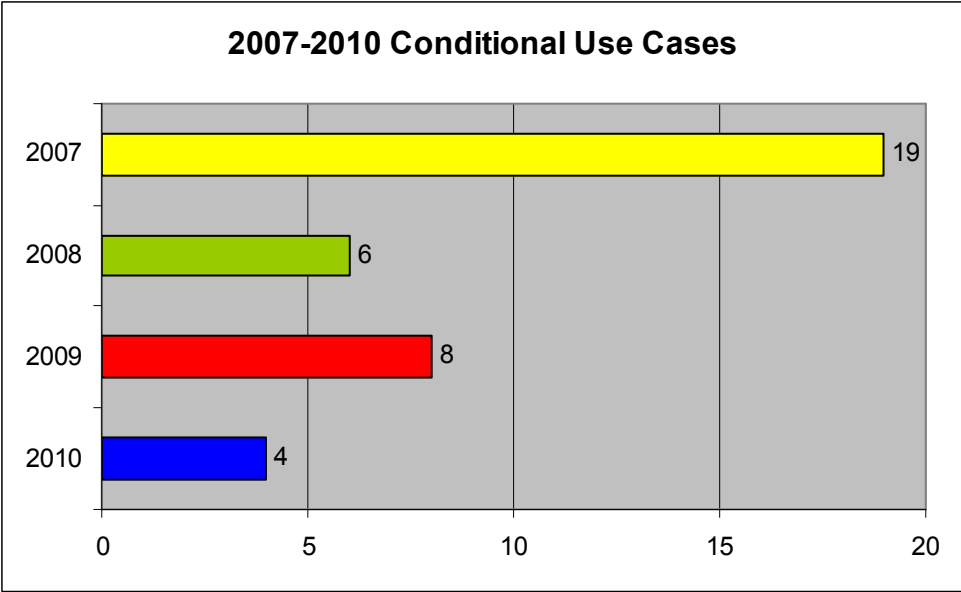
2009 and again in 2010. Standard variances declined from 2007 to 2008, but increased by one-third in 2009 and remained at this level in 2010.



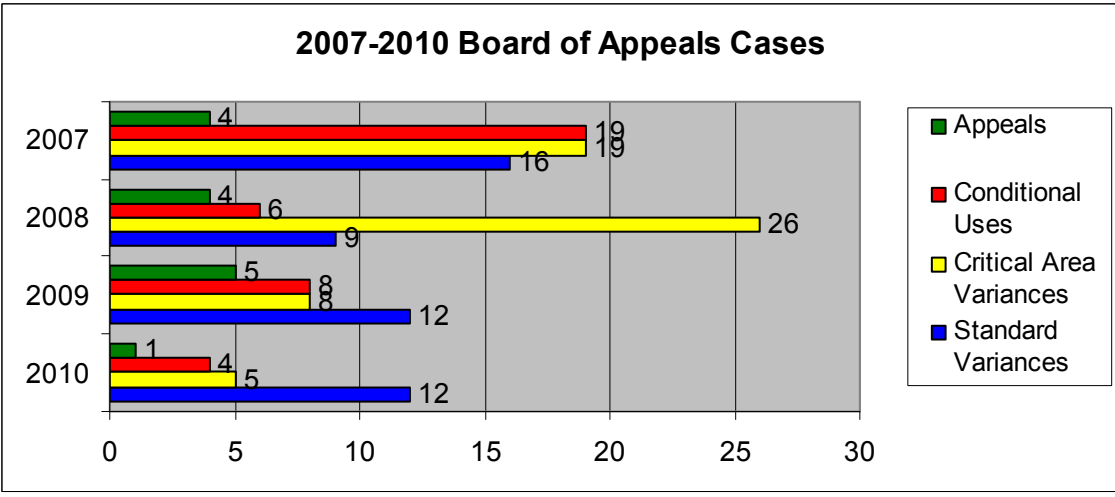
B. Conditional Use Cases for 2010

The Board's case load for conditional use requests has been relatively sporadic over the previous four years. The Board heard four cases in 2010, eight cases in 2009, six cases in 2008, and 19 cases in 2007. All four cases heard in 2010 were approved by the Board. Although mining operations typically comprise the bulk of conditional use cases, the Board had only one such case in 2010, which was a modification of an already approved surface mine. The other three conditional use cases were requests to 1) add commercial telecommunication antennae to an existing water tower; 2) install a pet crematory in an existing building on an existing cemetery site; and 3) add a modular classroom to an existing elementary school.

The following chart provides an itemization of Board of Appeals conditional use cases heard in calendar years 2007 through 2010. The high number of cases heard in 2007 was due in large part to the number of requests to open new surface mines and the number of requests to add structures to some of the schools that already had conditional use approvals. Subsequently, the number of conditional use cases heard was significantly lower.



The following chart is a summary of all Board of Appeals cases beginning with calendar year 2007 through calendar year 2010.



III. Board of Appeals Retreat

The Board holds an Annual Retreat at the Harry Lundeberg School of Seamanship in Piney Point. The Retreat is designed to afford Board members and staff an opportunity to discuss topics affecting development that result in actions by the Board and to discuss matters of law affecting decision making. Additionally, the Retreat is an opportunity to convene staff from other county and state agencies to discuss their respective regulations and procedures for reviewing proposals that originate with Land Use and Growth Management.

IV. Administrative Variance Cases for 2010

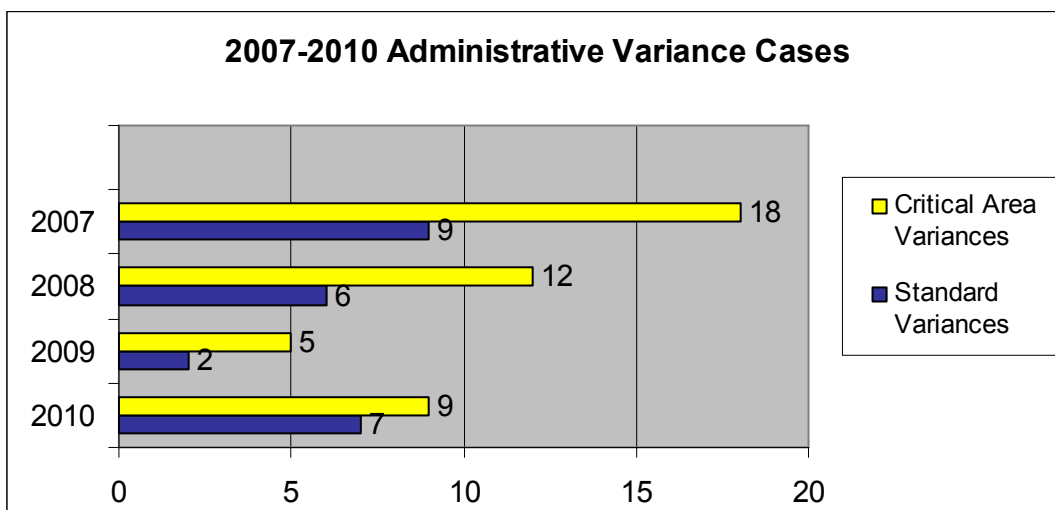
Section 4.05(d) of Article 66B of the Code states that a local legislative body may authorize the Planning Director or another designee to grant administrative adjustments (variances) from the Ordinance. The Planning Director may apply the standards for variance for proposed construction activities requesting relaxation of:

- a. The minimum lot dimensions or minimum setback standards of Schedule 32.1 of the Ordinance or the elevation requirement for substantially renovated historic structures located in the 100-year floodplain;
- b. Standards for lot coverage, buffer encroachment, or disturbance of steep slopes; and
- c. The provisions of Chapter 75, Forest Conservation.

Administrative variance relief as described in paragraph b above is governed by the standards for granting a variance in the Critical Area. The granting of an administrative variance in the Critical Area is limited to applications to construct, alter, or enlarge attached decks (open or covered), porches, sheds, garages (detached or attached), patios, breezeways, septic fields, wells, utility installations, principal structures for residential use, or structures for incidental storage uses.

The 2010 Administrative hearing case load consisted of nine Critical Area variances, four setback variances, and three Forest Conservation (tree removal) variances. All 16 variances were approved.

A breakdown of Administrative Standard and Critical Area Variances are provided in the chart below for the years 2007 through 2010.



V. 2010 Summary of Cases - SEE ADDENDUM

ADDENDUM
BOARD OF APPEALS
2010 Summary of Cases
1st Quarter
January 1, 2010 – March 31, 2010

Hearing Date	Case No.	Address Zoning	Request	Decision
2/25/10	VAAP #09-135-002 Bethune Public Safety Tower	Colton Point Road, Bushwood, MD/ RPD	Variance from Section 51.3.89.b(10) of the Comprehensive Zoning Ordinance to reduce the required setback from a building or other structure not associated with the tower site.	Approved on 4/8/10. 4-0 vote.
2/25/10	VAAP #08-132-011 McDonald's	Three Notch Road, California, MD/ CC/AE	Variance from Section 63.4 of the Comprehensive Zoning Ordinance to modify the required buffer yard.	Approved on 4/8/10. 4-0 vote.

There were no hearings in January or March.

2nd Quarter
April 1, 2010 – June 30, 2010

Hearing Date	Case No.	Address Zoning	Request	Written Decision
4/8/10	VAAP #09-1349 Hill-Wilson	35784 Bay Drive, Chaptico, MD RNC	Variance from Section 71.9.6 of the Comprehensive Zoning Ordinance to encroach into the required lateral line setback to construct a pier.	Denied on 4/22/10. 4-1 vote.
4/22/10	VAAP #08-1529 Hicks	46690 Orchid Lane, Lexington Park, MD PUDR	Variance from Section 32.1 of the Comprehensive Zoning Ordinance to reduce the required front yard setback to construct a porch.	Approved on 5/27/10. 5-0 vote.
4/22/10	VAAP #08-1530 Dorsey	46680 Orchid Lane, Lexington Park, MD PUDR	Variance from Section 32.1 of the Comprehensive Zoning Ordinance to reduce the required front yard setback to construct a porch.	Approved on 5/27/10. 5-0 vote.
4/22/10	VAAP #08-1531 Vause	46670 Orchid Lane, Lexington Park, MD PUDR	Variance from Section 32.1 of the Comprehensive Zoning Ordinance to reduce the required front yard setback to construct a porch.	Approved on 5/27/10. 5-0 vote.
4/22/10	VAAP #08-1532 Morgan	46660 Orchid Lane, Lexington Park, MD PUDR	Variance from Section 32.1 of the Comprehensive Zoning Ordinance to reduce the required front yard setback to construct a porch.	Approved on 5/27/10. 5-0 vote.
4/22/10	VAAP #09-0097 So.MD Tri-County Community Action	46650 Orchid Lane, Lexington Park, MD PUDR	Variance from Section 32.1 of the Comprehensive Zoning Ordinance to reduce the required front yard setback to construct a porch.	Approved on 5/27/10. 5-0 vote.
5/27/10	CUAP #10-135-001, Verizon Wireless at Hermanville	48061 Long Lane, Lexington Park, MD RL	Conditional Use Approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance to add cellular antennae to an existing water tower.	Approved on 6/24/10. 5-0 vote.

All cases heard on 6.24.10 were continued to July 2010

BOARD OF APPEALS
2010 Summary of Cases
3rd Quarter
July 1, 2010 – September 30, 2010

Hearing Date	Case No.	Address Zoning	Request	Written Decision
7/8/10	VAAP #07-132-003 Lexington Village (Kohl's)	Corner of Buck Hewitt And Three Notch Road Lexington Park, MD CMX	Variance from Section 63.4 of the Comprehensive Zoning Ordinance to modify the required "B" buffer yard by substituting a "C" buffer yard with a variable width of 50 to 60 feet and installing a wrought iron style decorative fence.	Approved on 7/22/10. 3-0 vote.
7/8/10	VAAP #05-132-019 St. Mary's Marketplace	West corner of MD Route 235 and Route 4 California, MD CMX/AE	Extend to December 2010 variance approvals from Section 63.4 of the Ordinance to reduce the required buffer yards and from Section 64.3 of the Ordinance to reduce the number of required off-street parking spaces.	Approved on 7/22/10. 3-0 vote.
7/8/10	VAAP #05-3786 Hluchanek - Monan	16395 Ball Point Road Piney Point, MD RPD/RCA	Variance from Section 71.8.3 of the Ordinance to add new lot coverage in the Critical Area Buffer and variance from Section 71.5 of the Ordinance to disturb non-tidal wetlands and their buffers to construct a single family dwelling and appurtenances.	Approved on 7/22/10. 3-0 vote.
7/22/10	VAAP #09-1744 Corinthian Yacht Club	48583 Bean Road Ridge, MD RPD/LDA	Variance from Section 71.8.3 of the Ordinance to clear and add lot coverage in the Critical Area Buffer and variance from Section 41.5.3.i(3)(b) of the Ordinance to trade lot coverage in the CA Buffer to replace a mobile home with a single family dwelling and appurtenances.	Approved on 8/26/10. 5-0 vote.
8/26/10	CUAP and VAAP #09-110-012 Phillip Moore Mining Operation	20533 Point Lookout Rd. Great Mills, MD RPD	Modification of a Conditional Use approval, pursuant to Chapter 25 of the Ordinance, to reduce the size of parcel 199 by five acres and Variance from Section 51.3.80 of the Ordinance to reduce the required 200-foot setback from the property's boundary with Lot 5 to zero.	Approved on 9/9/10. 5-0 vote.
9/9/10	VAAP #09-2282 Caldwell	25040 Old Brick Way, Hollywood, MD RPD/LDA	Variance from Sections 41.5.3 and 71.8.3 of the Ordinance to trade more than 1,000 square feet of lot coverage in the Critical Area Buffer and to disturb the Buffer and clear in the Buffer to replace existing dwellings with new dwellings and appurtenances.	Approved on 9/23/10. 5-0 vote.
9/23/10	CUAP #10-131-033 Dynard Elementary School	23510 Bushwood Road Chaptico, MD RPD	Conditional Use approval pursuant to Chapter 25 of the Ordinance to add modular classrooms.	Approved on 10/14/10. 5-0 vote.

BOARD OF APPEALS
2010 Summary of Cases
4th Quarter
October 1, 2010 – December 31, 2010

Hearing Date	Case No.	Address Zoning	Request	Written Decision
10/14/10	VAAP #09-1485 Lynch	44826 Three Coves Road Hollywood, MD RPD/LDA	Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the Critical Area Buffer including steep slopes and highly erodible soils with after-the-fact lot coverage and clearing and to disturb the Buffer with proposed lot coverage to replace an existing single-family dwelling.	Continued from 9/23/10. No vote – continued to 1/27/11.
11/18/10	VAAP #09-1727 Flat Iron, LLC	13995 Cornfield Harbor Drive Scotland, MD RPD/LDA	Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to add lot coverage in the Critical Area Buffer to construct a detached garage.	Approved on 12/9/10. 5-0 vote.
11/18/10	VAAP #10-1553 Kirk	18817 McKay's Beach Road Leonardtown, MD RPD/LDA/BMO	Variance from Schedule 32.1 of the Comprehensive Zoning Ordinance to reduce the required front yard setback to construct a shed.	Approved on 12/9/10. 5-0 vote.
11/18/10	CUAP #10-1641 Charles Memorial Gardens	26325 Point Lookout Road Leonardtown, MD RPD	Conditional Use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance to install a pet crematory in the existing building.	Approved on 12/9/10. 5-0 vote.
12/9/10	ZAAP #08-131-030 Buzz's Marina	49675 Buzz's Marina Way Ridge, MD RPD/CM/RCA	Pursuant to Chapter 23 of the Comprehensive Zoning Ordinance: 1) Appeal of an administrative decision by the Planning Director in March 2010 regarding the status of a nonconforming campground; and 2) 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.	Dismissed appeal of March 2010 administrative decision on 1/27/11. 5-0 vote. Reversed July 2010 administrative decision on 1/27/11. 3-2 vote.