

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the Appeal of Tanner Creek
Community Association from the Decision of
the Director to Issue a Permit for 50525
Scotland Beach Road, Scotland, Maryland

Case No. 15-02
ZAAP #15-1015

DECISION AND ORDER**I. Introduction**

Tanner Creek Community Association (hereinafter "Appellant"), appealed the decision of the Director to issue a permit for property located at 50525 Scotland Beach Road, Scotland, Maryland (hereinafter the "Property").

After due notice, a public hearing was conducted on August 20, 2015, at the Governmental Center in Leonardtown, Maryland, and all persons desiring to be heard were heard, documentary evidence received, and the proceedings recorded electronically.

Appellant specified three grounds for the appeal: (1) members of the Tanner Creek Citizens Association had used a beach located on the Appellee's Property for a number of years, that the Appellee's installation of additional rip-rap on an existing revetment impeded access to the beach; (2) the revetment did not require repair; and (3) the Maryland Department of the Environment did not review the application.

The Appellant waived any defect in notice of the proceeding.

II. Legal Standard: The legal standard is whether the decision of the Director is supported by the evidence. An appeal is a de novo proceeding.

III. Summary of Testimony: The Appellant presented testimony that (1) members of the Tanner Creek Citizens Association had used a beach located on the Appellee's Property for a number of years, that the Appellee's installation of additional rip-rap on an existing revetment impeded access to the beach; (2) the revetment did not require repair; (3) Appellee admitted that the purpose of the additional rip-rap was to prevent access to the beach; and (4) the Maryland Department of the Environment did not review the application. The Appellee presented testimony that the portion of the revetment on which the rip-rap was installed was on property owned by the Appellee. The Director of the St. Mary's County Department of Land Use and Growth Management testified that (1) the revetment was installed in 2009 pursuant to a permit issued by the Maryland Department of the Environment; (2) the revetment was located entirely above the mean high water mark, but in the Critical Area Buffer; (3) the sole purpose of the permit was to determine that the installation of the rip-rap did not violate the statutes and regulations governing disturbance of the Critical Area Buffer; (4) the Maryland Department of the Environment did not customarily review applications for repair and maintenance of a previously-approved revetment; and (5) an environmental planner in the Department had conducted a Critical Area review of the proposed work and had "Approved as drawn" the site plan. There was testimony presented by both parties and the Director regarding the actual location where stone was placed after issuance of the permit.

IV. Summary of Documentary Evidence:

- Exhibit # 1 Notice of Public Hearing
- Exhibit # 2 Letter from George Erichsen, Director, Department of Public Works & Transportation
- Exhibit # 3 Photo of Permit Placard
- Exhibit # 4 7/16/15 (A) Photo of Revetment area before delivery of rocks
- Exhibit # 5 7/16/15 (B) Photo of Revetment area after delivery of rocks
- Exhibit # 6 Carbone property line survey date 8/19/15 by VARC, LLC. d/b/a/ Nokleby Surveying

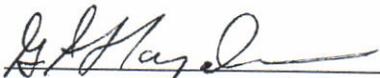
V. Findings of Fact: On June 2, 2015, Appellee applied for a permit for "rip-rap repair." On June 30, 2015, the St. Mary's County Department of Land Use and Growth Management made a finding that the proposal complied with the Critical Areas laws and regulations. On July 1, 2015, the Director issued a permit pursuant to Section 71.9.5 of the St. Mary's County Comprehensive Zoning Ordinance for "Revetment Maintenance."

VI. VI. Conclusions of Law: The Director must evaluate applications for permits on the basis of the record title of the applicant. The Board of Appeals does not have jurisdiction to adjudicate disputes regarding boundary line locations or title to real property, including prescriptive easements. Appellant's remedy to enforce rights, if any, to access and use the beach on Appellee's property lies in the Circuit Court for St. Mary's County. The determination of whether repair or maintenance of a revetment is necessary, and the reason for the proposed repair or maintenance, is not a condition of issuance of a permit, and is not reviewable by the Department or the Board of Appeals. There is no evidence or legal authority before the Board to support a finding that approval by the Maryland Department of the Environment was required in order for the Director to issue the permit in question.

DECISION AND ORDER

NOW, THEREFORE, BE IT ORDERED, that the decision of the Director to approve a permit for property located at 50525 Scotland Beach Road, Scotland, Maryland is **AFFIRMED**.

Date: September 10, 2015

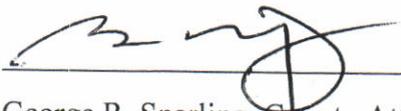

George A. Hayden, Chairman

Those voting to grant the variance

Mr. Hayden, Mr. Brown, Mr. Greene,
Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney

ST. MARY'S COUNTY GOVERNMENT
COMMISSIONERS OF
ST. MARY'S COUNTY



James R. Guy, President
Michael L. Hewitt, Commissioner
Tom Jarboe, Commissioner
Todd B. Morgan, Commissioner
John E. O'Connor, Commissioner

June 16, 2015

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JUL 13 2015

COUNTY ATTORNEY

Peter Egeli
46815 W. Saint Mary's Manor Road
Drayden, MD 20650

Dear Mr. Egeli:

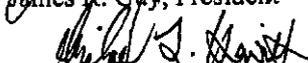
The Commissioners of St. Mary's County respectfully request that you accept partial appointment as an alternate to the Zoning Board of Appeals for a term to be effective July 1, 2015, and to expire December 31, 2017.

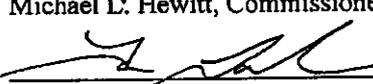
Please indicate your acceptance of this appointment by signing this letter in the space provided below and returning the original to this office in the enclosed stamped self-addressed envelope. Please be advised that this appointment is not effective until your signed letter is received in this office.

We are confident your service on this board will continue to benefit to the County and we appreciate your willingness to serve.

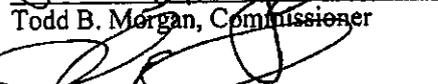
Sincerely,
COMMISSIONERS OF ST. MARY'S COUNTY


James R. Guy, President


Michael L. Hewitt, Commissioner

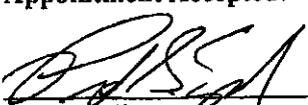

Tom Jarboe, Commissioner


Todd B. Morgan, Commissioner


John E. O'Connor, Commissioner

CSMC/dlg
T:ALL/Consent/

Appointment Accepted:


Peter Egeli

1 July 2015
Date