

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, January 24, 2008**

Members present were George Hayden, Chairman; Wayne Miedzinski, Veronica Neale, George T. Edmonds and 2nd Alternate Ronald Payne. Department of Land Use & Growth Management (LUGM) staff present were Denis Canavan, Director and Jada Stuckert, Recording Secretary. Christy Holt Chesser, County Attorney 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 #07-1251 - Windsor

The applicant is requesting an after-the-fact variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer and after-the-fact variance from Section 41.5.3.i of the Comprehensive Zoning Ordinance to exceed the impervious surface limit. The property contains 2.03 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 21045 Oakland Hall Road, Avenue, Maryland; Tax Map 46, Block 17, Parcel 427.

Owner: Stephen and Lori Windsor

The property and variance was advertised in The Enterprise on December 26, 2007 and January 2, 2008.

Ms. Lori Windsor thanked the board for hearing their case. Ms. Windsor stated they would like to revise their request and submitted Exhibit A – Site Map of Parcel 427. Ms. Windsor stated the map indicates by yellow highlighting the portions of impervious surface to be removed. Ms. Windsor stated portions to be removed include 1,113 sq. ft. of driveway by the detached garage, 1,811 sq. ft. of driveway that extends between the detached garage and the house, 556 sq. ft. of driveway by the house, 280 sq. ft. of brick pavers within the 100-foot buffer, and 123 sq. ft. by removing the gazebo in the 100-foot buffer. Ms. Windsor stated they would also be willing to plant an additional four trees to mitigate for the 313 sq. ft. overage of impervious surface.

Mr. Payne asked about the difference in acreage numbers one being 2.03 acres and the other being 1.98 acres. Mr. Stephen Windsor stated the .05 acre difference was lost on the shoreline in one of the storms. Mr. Windsor stated the surveyor recalculated the lot at 1.98 acres. Mr. Canavan stated while staff appreciates the revised plan the additional 313 sq. ft. still needs to be removed. Mr. Canavan asked if the applicants felt they could further reduce the impervious surface and still maintain reasonable use of the property. Ms. Windsor stated they have already reduced the impervious surface by 3,883 sq. ft. Mr. Canavan stated he believes there is plenty of placed additional impervious surface can be removed such as the walkway between the house and the detached garage, a portion of the driveway to split the connection, or the planters. Ms. Windsor stated they would rather leave these items alone for beautification purposes.

Mr. Canavan gave an updated version of the staff report which still recommended denial to add and exceed the impervious surface limit by 313 sq. ft. Mr. Hayden stated he does agree with staff however the board has allowed a reduction and proper mitigation in the past. Mr. Hayden asked if staff would support plantings in lieu of. Mr. Canavan stated, yes, however the applicants cleared 313 sq. feet without a permit in the beginning therefore they are required to mitigate at a ratio of (3:1).

Mr. Miedzinski made a motion to accept the staff report and Ms. Neale seconded. The motion passed by a 5-0 vote. Mr. Hayden opened the hearing for public comment. Ms. Ann

Halwick stated she is an adjoining property owner and knows the Windsor's applied for a pool permit. Ms. Halwick asked the status of the pool. Mr. Hayden stated the applicant's area already over their impervious surface limit therefore a pool would not be allowed unless they tore down one of the existing buildings and placed the pool in its place. Mr. Hayden closed the hearing to public comment.

Mr. Canavan asked that the board give their findings of fact regarding the standards required to meet the variance. The board made the following findings based on the supplemental information provided by the applicant during tonight's meeting:

- a. That special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship.

The board finds the applicant has demonstrated that special conditions exist.

- b. That strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County.

The variance relief of 313 sq. ft. is a similar set of circumstances considered by the Board of Appeals in previous cases therefore the Board finds that this is not a privilege granted solely to these applicants.

- c. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area of St. Mary's County.

The applicant, if allowed excess impervious surface would be granted a privilege that others are sometimes permitted.

- d. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.

Based on the applicants oral testimony the applicant was unaware permits were needed to exceed the impervious surface limit and upon recognition of the violation the applicants have worked to bring the property into compliance leaving only 313 sq. ft. of excess impervious surface.

- e. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.

The applicant's willingness to reduce the impervious surface for a difference of 313 sq. ft will not adversely affect the water quality, fish, wildlife, or plant habitat. The Board finds the applicants have met this standard based on the minimal amount of excess impervious surface and the planting agreement.

- f. The variance is the minimum necessary to achieve a reasonable use of the land or structures.

The applicants willingly reduced the impervious surface to the minimum necessary to achieve a reasonable use of the land.

Mr. Miedzinski made a motion in the matter of VAAP #07-1521 Windsor, having made a finding that the standards for granting a variance in the Critical Area and the objectives of

Section 41.5.3.i of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move that the variance request to exceed the impervious surface limit on the Property be approved as shown by Exhibit A with the condition to mitigate with staff for a planting agreement and Ms. Neale seconded. The motion passed by a 5-0 vote.

CUAP #07-131-032 – Byler Mining & VAAP #07-131-032 – Byler Mining

The applicant is requesting conditional use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance for an extractive industry involving mining more than five acres and requesting variance from Section 51.3.80 of the Comprehensive Zoning Ordinance to reduce the required 200-foot setback for an extractive industry. The property contains 19.51 acres; is zoned Rural Preservation District (RPD); and is located at 36414 Ryceville Road, Mechanicsville, Maryland; Tax Map 7, Block 18, Parcel 32.

Owner: Ben and Lydia Byler
Present: Raymond Gorbolton & Joe Penn

The property and conditional use and variance requests were advertised in The Enterprise on January 9, 2008 and January 16, 2008.

Mr. Gorbolton gave an overview of both cases and submitted Exhibit A – Aerial map of property, to be used for both cases. Mr. Gorbolton stated he agrees with staff's findings. Mr. Gorbolton asked Mr. Penn if Howlin Concrete would be willing to comply with St. Mary's County, Charles County and any applicable State requirements regarding this mining operation.

Mr. Canavan read the staff report for both applications which recommended approval for both with 15 conditions for the conditional use approval. Mr. Canavan requested that four additional conditions be added to the conditional use approval as follows:

- #16 The applicant shall obtain approval of all applicable regulations from Charles County for the portion of acreage in Charles County.
- #17 The applicant shall obtain permission to traverse the 250 foot right-of-way held by Morant Power line.
- #18 The applicant shall meet all applicable regulations of VAAP #07-131-032 within a period not to exceed two years.

Mr. Hayden stated condition #3 should be amended to include no hauling on Saturdays or Holidays and list the holidays, also list the hours of operation.

Mr. Edmonds made a motion to accept the staff reports with a point of clarification on VAAP #07-131-032, page 6.VI "to reduce the setback to 100 feet along the southwest boundary with parcel 2 (Brookbank Property)" instead of 32 feet and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

Mr. Hayden opened the hearing for public comment. Mr. Donald Utz stated he was not notified of the meeting, rather he saw the sign posted on the property. Mr. Utz stated he owns a horse farm on Ryceville Road and having a mining operation next door for the next 15 years will be detrimental to his property value as well as ruin his tranquil way of life. Mr. Utz asked that the board continue the case to give him time to seek legal advice on this application. Mr. Canavan stated he has the certified mailing receipt for Mr. Utz, and stated his mailing is probably sitting at the post office.

Ms. Heather Lombardi of Charles County stated she is concerned with the haul road and the dust from the haul road. Ms. Lombardi stated she would like to preserve the way of life she has right now.

Mr. Paul Willenbird stated there are going to be 200 trucks per day on this haul road. Mr. Hayden stated there will only be 100 per day. Mr. Willenbird stated due to the trucks there will be mud slicks on the road and he is already fed up with the jakebreak noise the trucks make.

Ms. Kelly Morgan stated she is concerned with the noise and that Ryceville Road is a small road. Ms. Morgan stated it is already hard to get onto the road with the Amish buggies and now we are considering adding large trucks.

Ms. Chesser advised the board and public that while the ordinance requires the notification letters be sent by certified mail the ordinance does not require that all persons notified have to sign and return the mail receipts. The board discussed the notification requirements. Mr. Miedzinski stated continuing the case to another date would set precedence and the notifications. Mr. Miedzinski stated he would rather hear the case and make a decision tonight. It was the consensus of the board to hear the case.

Ms. Cynthia Morgan stated she is concerned with maintaining the peaceful neighborhood and stated Ryceville Road is not wide enough and has a dangerous sharp turn. Mr. Hayden closed the hearing for public comment.

Ms. Neale made a motion in the matter of CUAP #07-131-032 having made a finding that the standards for granting a conditional use and the objectives of Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to mine 10.3 acres, more or less, subject to the conditions stated in the staff report and additional conditions to include maximum speed limit of 15 mph on the haul road, no jake breaks, no hauling on Saturdays, #16 obtain approval of all applicable regulations from Charles County for the portion of acreage in Charles County, #17 obtain permission to traverse the 250 foot right-of-way held by Morant Power line, #18 meet all applicable regulations of VAAP #07-131-032 with in a period not to exceed two years and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

Ms. Neale made a motion in the matter of VAAP #07-131-032 having made a finding that the standards for granting a variance and the objectives of Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to reduce the 200-foot setback to 100 feet along the south boundary of the Utz property, to reduce the setback to 100 feet along the southwest boundary with the Brookbank property, and to reduce the 200-foot setback to zero along the eastern boundary of the Swarey property, subject to the conditions of the approved conditional use and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

VAAP #07-3074 - Shreeve

The applicant is requesting an after-the-fact variance from Section 71.8.3 of the comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer to construct a shed. The property contains 1.61 acres; is zoned Rural Preservation District 9RPD), Limited Development Area (LDA); and is located at 44528 Oliver Drive, Valley Lee, Maryland; Tax Map 61, Block 15, Parcel 302.

Owner: Harry and Carolyn Shreeve

The property and variance were advertised in The Enterprise on January 9, 2008 and January 16, 2008.

Mr. Shreeve stated this is a unique lot in St. Mary's County because it has a 36° angle and has water on three sides. Mr. Shreeve stated he was in Ocean City when his wife ordered and had the shed delivered. Mr. Shreeve submitted Exhibit A1 – Compass 1962 Itinery and A2 – Gehmans Utility Barn receipt and delivery slip. Mr. Shreeve stated staff recommended moving the shed to the northeast edge of the property. Mr. Shreeve stated this is unacceptable because he would have to carry an outboard engine over 600 feet to the water and this is our hardship. Mr. Shreeve submitted the following exhibits for the record:

- Exhibit A – Four Photo Panoramic of the property from the water
- Exhibit B – Eight Photo Panoramic of the property from the pier
- Exhibit C – Three Photo Panoramic of the property from the southern edge
- Exhibit D – Five Photo Panoramic of the property from the front yard
- Exhibit E – Photo of rain catcher at 22 ½ inches
- Exhibit F – Photo of rain catcher at 24 inches
- Exhibit G – Photo of house
- Exhibit H – Photo of house in rear
- Exhibit I – Photo of water from mailbox
- Exhibit J – Photo of water with blue shed
- Exhibit K – Photo of white shed and swingset
- Exhibit L – Photo of open shed and red metal container
- Exhibit M – Sketch Map of property explaining setbacks

Mr. Canavan read the staff report which recommended denial. ***Mr. Miedzinski made a motion to accept the staff report and Ms. Neale seconded. The motion passed by a 5-0 vote.***

Mr. Miedzinski Made a motion in the matter of VAAP #07-3074, having made a finding that the standards for granting a variance in the Critical Area and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, I move to deny the variance request to place new impervious surface in the Critical Area Buffer and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of January 10, 2008 were approved as recorded.

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

None

ADJOURNMENT

The meeting was adjourned at 10:45 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: February 14, 2008

George Allan Hayden
Chairman