

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, January 25, 2007**

Members present were George Allan Hayden, Chair; Greg Callaway, Vice Chair; Ronald Delahay; Wayne Miedzinski; and Gertrude Scriber. Department of Land Use and Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; Susan Mahoney, Planning Specialist; Leslie Goldsborough, Senior Office Specialist; and Cindy Koestner, Recording Secretary. George Edmonds, Board of Appeals First Alternate; and Christy Holt Chesser, County Attorney, 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 6:35 p.m.

PUBLIC HEARINGS

CUAP #06-131-022 – MOTHER CATHERINE SPALDING CATHOLIC SCHOOL

The Applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance for a school and to construct a bus turn-around area and an expanded parking area. The property contains 19.54 acres; is zoned Rural Preservation District (RPD); and is located at 38833 Chaptico Road, Helen, Maryland; Tax Map 18, Block 8, Parcel 52.

Owner: Mother Catherine Spalding School (the "Applicant")
Present: Ken Crouse, Crouse Engineering Inc., Agent; Father Keith Woods, Administrator, and Donnie Burch, President of the Advisory Board, for Mother Catherine Spalding Catholic School

All cases heard at this meeting were advertised in the *St. Mary's Today* on 1/7/07 and 1/14/07 and in the *Enterprise* on 1/10/07 and 1/17/07. The properties were posted and certified mail receipts were submitted to staff for the files.

Applicant's Exhibit 1: Packet of information containing reasons for the needed parking lot addition and pictures of the current parking problems at the school site.

Mr. Crouse explained the Applicant is requesting approval to elongate the bus turn-around area to allow more storage capacity for the buses, because they are stacking up outside of the current bus turn-around area during peak hours and blocking the school's only access from Chaptico Road. In addition, the school will be getting new buses with longer wheel bases, which will only add to the problem. Mr. Crouse explained the Applicant is also requesting approval to expand the parking area to the west between the school and Dr. Johnson Road. Though the site currently meets the County regulations for required parking space, which is adequate for faculty and staff, there is not enough space to accommodate vehicles during evening and weekend school activities. Parking at these events currently overflows onto the grass and playground areas. Mr. Crouse noted there will be no new access points added.

Mr. Crouse stated one of the adjacent property owners expressed concern that the new impervious parking surfaces will compound existing problems with stormwater runoff in the area. He explained there is a drainage culvert and outflow channel on Dr. Johnson Road that carries water runoff. The channel is only about six feet to eight feet wide, shallow, and clogged with tree roots and silt. Mr. Crouse stated the new parking areas will not add to the stormwater runoff issues, because an infiltration device will be installed along the back of the parking lot to direct stormwater runoff into the ground. The Applicant has submitted a drainage analysis to the Department of Public Works and Transportation (DPW&T) to demonstrate that stormwater runoff will not increase.

Ms. Chaillet explained the site plan is currently undergoing Technical Evaluation Committee (TEC) review and will go before the Planning Commission if conditional use approval is granted tonight. The school was constructed in 1963 and complies with the development standards of the RPD. Ms. Chaillet stated the conditional use of the Property for a school needs to be confirmed. She added the proposed parking and bus turn-around areas will help prevent erosion on the site, because it will keep people from having to park on the grass.

Mr. Callaway moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

Mr. Miedzinski asked how many additional parking spaces will be added. Mr. Crouse responded either 98 or 101 more spaces than what the school already has. Mr. Hayden asked if the parking expansion will provide adequate parking space. Mr. Crouse replied the school has monitored the situation for a long time and there will probably be some extra space over what is needed. Mr. Hayden inquired about handicap parking. Mr. Crouse responded the expansion will not include any handicap parking, because it will be too far away from the school; however, handicap parking is available close to the school. Mr. Hayden expressed concern he did not observe any handicap parking areas during his site visit. Ms. Chaillet noted the Applicant will be required to comply with regulations for handicap parking during the site plan review process. Mr. Hayden inquired about the infiltration device that will be used to capture stormwater runoff. Mr. Crouse responded the device will be 15 feet deep, eight feet wide, and filled with gravel to capture stormwater runoff and direct it into the ground.

The Chair opened the hearing to public comment.

Salvatore A. DiSclafani, local resident, explained he lives across Dr. Johnson Road from the school site. He expressed concern that stormwater runoff from the site will increase during heavy rains if the parking area is expanded. He stated he understands the school needs to expand the parking areas; however, he wants the current water runoff problems in the area to be fixed, because his yard already floods when it rains.

The Chair closed the hearing to public comment.

Mr. Crouse replied the stormwater runoff problems are downstream from the school where the drainage channel needs to be cleaned out. He stressed the planned infiltration device will capture the runoff from the new parking area. Mr. Hayden inquired about the sediment pond located on the property. Mr. Crouse replied the sediment pond is a temporary structure for construction. Ms. Chaillet noted stormwater management will be addressed by the Planning Commission during site plan approval. Mr. Hayden asked if DPW&T has been informed of the runoff concerns in this area. Mr. DiSclafani noted he tried contacting DPW&T in the past but has not seen anything done about the problem. Ms. Chaillet responded staff will talk to DPW&T to try and remedy the stormwater runoff problems Mr. DiSclafani is experiencing.

Mr. Callaway moved that having accepted the staff report, dated January 16, 2007, and having made a finding that the standards for a conditional use pursuant to Section 25.6 of the St. Mary's Comprehensive Zoning Ordinance have been met, the Board grant approval of the conditional use for a school and to construct a bus turn-around area and an expanded parking area. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair called a recess at 7:15 p.m. The Chair called the meeting back to order at 7:20 p.m.

ZAAP #05-3465 – JENKINS

The Appellants are appealing the Planning Director's decision pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance denying the existence of a nonconforming use and structure and requiring after-the-fact variance approval for new impervious surface in the Critical Area Buffer. The property contains 22 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area Overlay (RCA); and is located at 23098 Grampton Road, Clements, Maryland; Tax Map 31, Block 15, Parcel 283.

Owner: B. Larry and Catherine Jenkins (the "Appellants")
Present: Al Lacer, attorney for the Appellants

Appellants' Exhibit 1: Packet of information including: photographs of storm damage on the Property, photographs of the structure in question, photographs of duck blinds and of the duck blind formerly located on the Property, letters supporting the Appellants, copies of information and photographs previously submitted to staff; 39 total pages.

Appellants' Exhibit 2: Landscaping plan for the Property prepared by Wentworth Nursery, Inc.

Appellants' Exhibit 3: Inventory of plants placed on the Property by Wentworth Nursery, Inc.

Mr. Lacer explained the Appellants maintain the structure in question is a duck blind and they are appealing the Planning Director's decision that the duck blind requires after-the-fact variance approval. He noted the Appellants had requested that a status determination be made regarding nonconforming use of the structure, but the status determination was never made.

Mr. Lacer questioned Mr. Jenkins, Appellant, regarding the Property and his use of the structure in question. Mr. Jenkins explained he purchased the Property in 1999, later built a house on the Property, and he has lived there since August 30, 2002. He testified he has hunted waterfowl on the Property since the 1960s and the structure in question is his duck blind that he uses to hunt waterfowl. Mr. Lacer asked Mr. Jenkins about the history of the duck blind on the Property. Mr. Jenkins responded the Property was purchased by his father-in-law in 1965. He explained he has hunted waterfowl on the Property since that time, except for a period during the 1990s. Mr. Jenkins added there was a duck blind already on the Property when he purchased it in 1999 that had been built by Marion Vallandingham. He explained he built his current duck blind, the structure in question, on the same footprint the former Vallandingham blind occupied, except the new duck blind is smaller and farther back from the water. Mr. Jenkins noted the current blind is 41 feet off the water and the sand bar in front of the blind has increased in width in recent years. Mr. Lacer presented several photographs into evidence, including pictures of the current structure being used for duck hunting and pictures of the Vallandingham blind. Mr. Jenkins explained he puts camouflage on his blind during duck season but removes it when the season is over. He stated his duck blind must be a shore blind, easily accessible, and very sturdy due to physical difficulties he suffers as a result of two strokes. Mr. Jenkins maintained he cannot hunt the shoreline safely without the current blind. Mr. Lacer asked Mr. Jenkins if there are other duck blinds on St. Clements Bay that are similar to the subject structure. Mr. Jenkins responded no two duck blinds are the same and the style depends on an individual's preference.

Mr. Jenkins testified he applied for a permit to construct a pier and additional revetment in August 2005, but was not allowed to proceed, because staff claimed the structure in question is nonconforming. He expressed concern the shoreline north of his duck blind is eroding, because he cannot get approval for a revetment; however, the shoreline south of his duck blind is stabilized where he installed a revetment in 2001. Mr. Lacer asked Mr. Jenkins if he temporarily

disassembled the duck blind on the Property during the 2001 revetment project. Mr. Jenkins replied he had. He added staff claims he cleared several trees without a permit; however, the trees were actually taken out by hurricane Isabel, after the new blind was constructed. Mr. Lacer inquired about plantings put in by the Appellants after Isabel. Mr. Jenkins responded he proceeded to have the trees that were uprooted by the storm replaced right away.

Mr. Lacer inquired about the January 22, 2007 letter from the Critical Area Commission (CAC). Mr. Jenkins responded the letter is inaccurate, because it states the structure in question is not a duck blind. Mr. Lacer asked Mr. Jenkins if he made attempt to reconstruct the former duck blind. Mr. Jenkins responded the current duck blind was constructed in 2003, but in 2002, he put up smaller structures in the footprint of the former Vallandingham blind to hunt from. He explained that he could not complete a permanent duck blind on his own due to health reasons, so he finally hired a contractor to rebuild the duck blind for him. Mr. Lacer asked Mr. Jenkins if he uses the structure for purposes other than as a duck blind. Mr. Jenkins replied he does not and he only intends to use the structure for waterfowl hunting in the future.

Mr. Canavan asked Mr. Jenkins to describe the former blind built by Mr. Vallandingham. Mr. Jenkins replied it was a large blind with sides and a partial roof. It included a locking back room used for storage. Mr. Canavan asked when Mr. Jenkins removed the Vallandingham blind. Mr. Jenkins responded it was removed in 2001. Mr. Canavan noted there was no structure shown between the house and the water on the site plan that accompanied the building permit for the house; however, a builder is required to document all structures on a site plan. He pointed out the former structure was torn down in 2001 but the current structure was built in 2003. Mr. Jenkins restated he placed smaller blinds in the same location to hunt from in the interim, which he pushed aside when he was not hunting, so they would not float away. Mr. Canavan asked Mr. Jenkins if he received any permission from the Department of Natural Resources (DNR) to build the new duck blind. Mr. Jenkins explained he had the entire shoreline licensed for waterfowl hunting and did not ask for DNR permission to build the current blind since he was replacing a former blind. He added the Vallandingham blind covered the same area where the current blind is. Mr. Canavan asked Mr. Jenkins if he pursued any permission for the new structure. Mr. Jenkins responded he was led by a County official to believe he was exempt from permit requirements if a duck blind existed since 1965. Mr. Lacer asked Mr. Jenkins if he removed the entire Vallandingham blind in 2001. Mr. Jenkins replied he removed most of the structure and burned the rest in place to allow the revetment project to proceed there. He noted he left some shattered boards and poles in place under the vegetation, so he could drive them in the ground and hang camouflage from them during good hunting days. Mr. Lacer asked Mr. Jenkins if he had a permit for his 2001 revetment project. Mr. Jenkins replied yes. Mr. Lacer asked Mr. Jenkins if he felt he needed a permit in order to maintain a blind at that site. Mr. Jenkins replied he did not.

Mr. Jenkins expressed concern he could not get any information from DNR or CAC. He stressed the duck blind is important to him and his hunting and he is a good conservationist. He thanked the Board for hearing his case. Ms. Chaillet clarified DNR and CAC staff probably could not discuss the structure in question with Mr. Jenkins, because the case was already pending before the Board and both DNR and CAC might be considered interested parties in this case.

Mr. Lacer questioned Clarence Marion Vallandingham about the subject structure. Mr. Vallandingham explained he has fished and hunted along St. Clements Bay his whole life. He stated he built his duck blind in 1990 with the help of his brother and the blind was approximately 20 feet across the front and 16 feet deep. He explained the blind was built during low tide, so during very high tide the blind could not be accessed without getting into the water. To remedy this, they placed boards leading to the back of the blind from the top of the bank in order to be able to get into the blind during very high tide. Mr. Vallandingham testified there have been blinds in that same location for many years. He explained his blind was built to replace a former blind at the same location that was old and rotting. Mr. Lacer asked if the current structure built by Mr. Jenkins was located in the same area as Mr. Vallandingham's blind. Mr. Vallandingham replied

the current blind is located in approximately the same location. Mr. Lacer asked if shore blinds are common on St. Clements Bay. Mr. Vallandingham replied shore blinds are common and the configuration of each blind depends on the individual's preference. Mr. Hayden asked Mr. Vallandingham if the front of his blind was in the water. Mr. Vallandingham replied only the front posts of his blind were in the water except during high tide, when the water reached all the way up to the back of the blind.

Mr. Lacer questioned Ray Trgina regarding the subject structure. Mr. Trgina explained he lives one-quarter of a mile past Mr. Jenkins and he learned about tonight's hearing when he drove by and saw a sign advertising the hearing on Mr. Jenkins's property. He testified he has lived at his current residence for the last two years but he has owned his property since 1964. He added he is a waterfowl hunter and he has hunted from Mr. Jenkins's blind. Mr. Lacer asked Mr. Trgina if duck blinds have been located in the past in the same location that the current blind occupies. Mr. Trgina replied he has periodically traveled the waterfront along the Property in the 1960s and 1970s and has observed blinds in the same location as Mr. Jenkins's current blind. Mr. Lacer asked Mr. Trgina if it is common to see blinds along St. Clements Bay and to see them restored and refreshed. Mr. Trgina replied yes. Mr. Lacer inquired about the size of the blind located on the Property in the 1960s. Mr. Trgina responded it was 18 feet to 20 feet across by 8 feet to 10 feet deep. Mr. Lacer asked Mr. Trgina how the existing blind compares to the blind he observed at the same location in the 1960s. Mr. Trgina replied the current blind is smaller.

Mr. Lacer questioned Richard Wentworth, owner of Wentworth Nursery. Mr. Wentworth explained he has been in the nursery business for 30 years, he performs a large amount of waterfront landscaping, and he is familiar with the mitigation requirements of the Ordinance. He prepared a landscaping plan for Mr. Jenkins's property that included several different types of plants. Mr. Wentworth testified the trees and plantings placed on the Property far exceed any mitigation that would be required for adding impervious surface in the Critical Area Buffer. Mr. Lacer asked if the current blind is impervious. Mr. Wentworth explained the current structure is not as impervious as the prior blind was, because the prior blind had a roof. Mr. Lacer asked if there were any plantings placed after the current blind was constructed. Mr. Wentworth replied the landscaping on the slope was completed after the blind was constructed to stabilize that portion of the Property. Mr. Canavan inquired about the imperviousness of the structure built by Mr. Jenkins. Mr. Wentworth replied the structure is considered impervious, but water runs through the slits in the surface to the ground below. He added there is a blue-chip gravel pathway that goes around to the front edge of the structure, where there are some stone steps. He explained the County also considers the pathway to be impervious surface, even though water drains through the surface. Mr. Canavan inquired about the size of the surface of the structure, not counting the pathway and stone steps. Mr. Wentworth replied the surface of the structure is 12 feet by 18 feet.

Ms. Chaillet explained the Appellants applied for a building permit in October 2001 for a single-family dwelling and detached garage. The approved site plan for the dwelling did not show a duck blind on the Property. Mr. Jenkins testified the Vallandingham blind was taken down in May 2001. In September 2005, the Appellants applied for a building permit to construct a pier and revetment and during the environmental review process, it was discovered the subject structure, stone steps and walkway had been constructed in the Critical Area Buffer without a permit. Ms. Chaillet added aerial photos of the Property taken in March 2003 do not show any structure in the Buffer but aerial photos taken in October 2003 show the structure and walkway in the Buffer. She explained a structure can be recognized as nonconforming if it continuously existed; otherwise, it must be considered a new structure and must conform to the Ordinance. In this case, the new structure would be required to have variance approval to add new impervious surface in the Critical Area, because there was not a structure there. Mr. Jenkins stressed the duck blind would not show up on aerial photographs, because it is under a canopy of trees. Ms. Chaillet read the letter from the CAC, which asserts the structure in question is clearly not a duck blind. She pointed out conflicting testimony has been given as to whether or not the current structure is completely or partially within the footprint of the Vallandingham blind. Mr. Hayden

inquired about the time frame a person is allowed to replace a structure. Ms. Chaillet responded the nonconforming status of a structure in the Critical Area Buffer does not continue after it has been removed if it is not replaced for one year or more. Mr. Canavan noted Mr. Jenkins testified he tore down the previous structure in 2001 and did not build the new structure until 2003.

Mr. Callaway moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

The Chair called a recess at 9:15 p.m. The Chair called the meeting back to order at 9:20 p.m.

Mr. Lacer asked if staff has received any variance requests or permit applications for construction or maintenance of a shore blind prior to 2006. Ms. Chaillet replied she is not aware of any.

The Chair opened the hearing to public comment. The hearing closed with no comments.

Mr. Lacer asked Mr. Jenkins if duck blinds are used seasonally. Mr. Jenkins replied yes and explained he camouflages his blind from October to late January. Mr. Lacer asked Mr. Jenkins if he had a structure in place from 2001 to 2003, between the Vallandingham blind and the current structure. Mr. Jenkins confirmed he had boards from the Vallandingham blind that he hung camouflage over for parts of each year. He added he made an attempt to restore the blind within one year of removing the Vallandingham blind for the revetment project but, due to physical issues and the fact that he was out of the country a lot, he did not get the blind restored and finally hired carpenter to do it for him.

Mr. Lacer summarized staff and the CAC concluded the structure in question is a deck but testimony shows that it is used as a duck blind and that the site has historically been used for a duck blind. He noted people do not apply for variances to construct duck blinds and they are not regulated in the County. He stressed testimony proves there has been historic, continued use of a duck blind in the same location. Mr. Lacer stated the Appellants requested status determination of a nonconforming structure but a status determination was never made, because staff concluded the structure was a deck. He explained the Vallandingham blind had to be disassembled to allow completion of the 2001 revetment project on the Property; however, Mr. Jenkins still used the site for duck hunting until the new duck blind could be completed. Mr. Lacer pointed out the landscaping on the Property far exceeds any mitigation that would be required if applied to the surface area of the structure. He noted the only erosion on the Property is along a portion of the shoreline where Mr. Jenkins is trying to obtain a permit for a revetment. Mr. Lacer stressed the structure in question is not a deck but the continuation of a historic use on the Property. He asked the Board to allow preservation of the use of this structure as a duck blind.

Ms. Chaillet responded the existing structure is considered nonconforming, because it is new. She noted any structure on land in the Critical Area Buffer must come before the Board for a variance and permits are required for any structure built above mean high tide. She added any structure built in State waters is not regulated. Ms. Chaillet noted the gravel pathway and steps are also prohibited in the Buffer without a variance. She stressed staff is not denying Mr. Jenkins the right to hunt from his Property. Mr. Canavan responded the structure in question is further inland than the prior structure, thus it is considered a new structure. He noted he would still make the same decision that the structure is not a nonconforming structure based on tonight's testimony.

Mr. Delahay commented he feels the Planning Director's decision is correct. Mr. Hayden noted Mr. Jenkins has a right to hunt from his property, but the photographic evidence shows Mr. Vallandingham's blind was further out than the current structure. He commented he does not

doubt Mr. Jenkins hunts from this structure, but it does not appear to be in the same footprint the former structure occupied. Mr. Callaway agreed Mr. Jenkins has a right to hunt from his property, but the structure in question appears to be a new structure. Mr. Miedzinski commented he believes Mr. Jenkins uses the structure for hunting waterfowl, but it appears to be a new structure. Ms. Scriber inquired about what the Appellants can do. Mr. Hayden replied the Appellants will have to apply for an after-the-fact variance or remove the structure. He noted the Board cannot remove Mr. Jenkins's right to hunt from his property and he can construct a blind in State waters and hunt from there.

Mr. Miedzinski moved that having accepted the staff report, dated December 18, 2007, the Board vote to uphold the Planning Director's determination that no nonconforming use or structure exists on the Property and that the Applicant must seek variance approval from the Board of Appeals for the new impervious surface in the Critical Area Buffer. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #06-132-007 – WINSTEAD PROPERTY SURFACE MINE

The Applicant is requesting a variance from Section 51.3.80 of the St. Mary's Comprehensive Zoning Ordinance to reduce the required setback from an external property line. The property contains 60.58 acres; is zoned Rural Preservation District (RPD); and is located at 27535 Thompson Corner Road, Mechanicsville, Maryland; Tax Map 11, Block 5, Parcel 63.

Owner: William E. Winstead

Ms. Chaillet explained the Applicant is requesting the hearings on the variance and conditional use applications for the Winstead Property Surface Mine be continued to the March 29, 2007 meeting in order have more time to gather additional information.

Ms. Scriber moved that the Board vote to continue this case to the March 29, 2007 meeting in order to give the Applicant time to gather additional information. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

CUAP #06-132-007 – WINSTEAD PROPERTY SURFACE MINE

The Applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance for an extractive industry. The property contains 60.58 acres; is zoned Rural Preservation District (RPD); and is located at 27535 Thompson Corner Road, Mechanicsville, Maryland; Tax Map 11, Block 5, Parcel 63.

Owner: William E. Winstead

Ms. Scriber moved that the Board vote to continue this case to the March 29, 2007 meeting in order to give the Applicant time to gather additional information. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of January 11, 2007 were approved as recorded.

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

VAAP #06-2592 – Garrigan

VAAP #04-2537 – Craig

VAAP #06-2501 – Paradis

CUAP #06-0224 – Leonardtown Elementary School Annex at Banneker Elementary

CUAP #05-132-049 – SMCPs 0606 Elementary School

ADJOURNMENT

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

Cindy R. Koestner, Recording Secretary

Approved in open session: February 8, 2007

George Allan Hayden
Chairman