

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, February 8, 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; and Cindy Koestner, Recording Secretary. George Edmonds, Board of Appeals First Alternate; Christy Holt Chesser, County Attorney; and Colin Keohan, Deputy 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 6:30 p.m.

**PUBLIC HEARINGS**

**CUAP #06-132-030 – ST. ANDREW'S LANDFILL TRANSFER STATION  
(Continued from December 14, 2006)**

The Applicant is requesting modification to an approved conditional use pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance to construct and operate a processing facility and transfer station. The property contains 210.70 acres; is zoned Rural Preservation District (RPD); and is located at 44825 St. Andrew's Church Road, California, Maryland; Tax Map 42, Block 4, Parcel 104.

Owner: St. Mary's County Commissioners

This case was advertised in the *St. Mary's Today* on 10/22/06 and 10/29/06. The property was posted and certified mail receipts were submitted to staff for the files.

Ms. Chaillet announced the Applicant is requesting that the conditional use and variance cases for the St. Andrew's Landfill Transfer Station be continued until the April 12, 2007 meeting in order to give the Applicant more time to gather additional information.

**Ms. Scriber moved that the Board continue this case to the April 12, 2007 meeting in order to give the Applicant more time to gather additional information. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #06-132-030 – ST. ANDREW'S LANDFILL TRANSFER STATION  
(Continued from December 14, 2006)**

The Applicant is requesting a variance from Section 51.3.93 of the St. Mary's Comprehensive Zoning Ordinance to reduce the required setback from the nearest home or institutional building and to reduce the required setback from a potable water supply or wellhead. The property contains 210.70 acres; is zoned Rural Preservation District (RPD); and is located at 44825 St. Andrew's Church Road, California, Maryland; Tax Map 42, Block 4, Parcel 104.

This case was advertised in the *St. Mary's Today* on 11/26/06 and 12/3/06 and in the *Enterprise* on 12/3/06 and 12/6/06. The property was posted and certified mail receipts were submitted to staff for the files.

**Ms. Scriber moved that the Board continue this case to the April 12, 2007 meeting in order to give the Applicant more time to gather additional information. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #06-2250 – KELSEY**

The Applicant is requesting a variance from Section 71.8.3 of the St. Mary's Comprehensive Zoning Ordinance to add new impervious surface in the expanded Critical Area Buffer to construct a detached garage. The property contains 1.08 acres; is zoned Rural Preservation District (RPD), Limited Development Area Overlay (LDA); and is located at 25920 Whiskey Creek Road, Hollywood, Maryland; Tax Map 21, Block 7, Parcel 144, Lot 6.

Owner: David and Marta Kelsey

All remaining cases heard tonight were advertised in the *St. Mary's Today* on 1/21/07 and 1/28/07 and in the *Enterprise* on 1/24/07 and 1/31/07. The properties were posted and certified mail receipts were submitted to staff for the files.

Mr. Kelsey explained they live in a small house on a waterfront lot in the Eagle Crest subdivision. He stated the Property is completely wooded and they have worked hard to maintain it in a natural state. The house has a footprint of 960 square feet and the proposed garage is 24 feet by 24 feet. Mr. Delahay asked how long the Applicants have lived on the Property. Mr. Kelsey replied they have lived there for 19 years. Mr. Miedzinski inquired about the garage. Mr. Kelsey replied the garage will be 1.5 stories with an attic. Mr. Hayden expressed concern the slope behind the proposed location of the garage is very steep. He asked if there will be any sediment control measures installed. Ms. Chaillet noted the plan received approval by the Soil Conservation District (SCD). Mr. Kelsey added there will be a silt fence in place during construction of the garage and the structure itself will not extend over the embankment. Mr. Hayden expressed concern the soils on the property are highly-erodible. He inquired about the exact location of the garage. Mr. Kelsey replied the back of the garage will end six feet in front of the area where the slope drops off. He noted most of the area residents already have garages.

Ms. Chaillet explained the entire lot is constrained by highly-erodible soils, which is the reason the Critical Area Buffer was expanded. Because of this, the Applicants face an unwarranted hardship and must seek relief through a variance in order to build their garage. She noted the Applicants will be required to mitigate at a ratio of three-to-one per square foot of impervious surface added. Mr. Miedzinski asked where the Applicants will place the plants required in the planting agreement. Ms. Chaillet replied the Applicants can plant in other areas along the same watershed, donate plants to someone else in the Critical Area, or pay fees-in-lieu. Mr. Kelsey replied he is a volunteer ranger at Greenwell State Park and he will pay fees-in-lieu that will go towards plantings in the park.

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

**Ms. Scriber moved that having accepted the staff report, dated January 30, 2007, and having made a finding that the standards for variance in the Critical Area and the objectives of section 71.8.3 of the St. Mary's Comprehensive Zoning Ordinance have been met, the Board grant approval of the variance to add new impervious surface in the expanded Critical Area Buffer, with the condition that the Applicant shall adhere to the Critical Area Planting Agreement. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #06-0926 – JUBECK**

The Applicant is requesting a variance from Section 71.9.6 of the St. Mary's Comprehensive Zoning Ordinance to encroach into the lateral line setback to construct a

pier. The property contains 0.61 acres; is zoned Residential Neighborhood Conservation District (RNC), Limited Development Area Overlay (LDA); and is located on Lot 4, Esperanza Farms Subdivision at 23291 Esperanza Drive, Lexington Park, Maryland; Tax Map 35, Block 20, Parcel 116, Lot 4.

Owner: Cornelius and Norma Jubeck

Donald Cooksey's Exhibit 1: Site plan showing the Property, adjoining properties and wetlands

County's Exhibit 1: Site drawing of the Property and adjoining properties showing the lateral lines, setbacks, existing piers and proposed pier and an aerial photograph

Mr. Jubeck thanked the Board for hearing this case. He explained he purchased two lots 34 years ago; one lot is the Property with waterfront on Lewis Creek where the pier is proposed and the other lot adjoins the Property and contains the Applicants' home. Mr. Jubeck stated his neighbors were given the opportunity to comment on the proposed pier when the application was submitted to the State. He explained they responded to the neighbors' concerns and obtained a State permit contingent on a variance from the lateral line setbacks.

Ms. Chaillet stated the Applicants own Lots 3 and 4 in the Esperanza Farms Subdivision and both lots front non-tidal wetlands owned by Donald L. Cooksey. In addition, Lot 4 has 48 feet of frontage on tidal waters, which is where the pier will be constructed. Ms. Chaillet explained a 25-foot setback is required from the lateral lines of the neighboring piers; however, the Property is constrained by the shoreline configuration, the narrowness of the cove and the crossing of the lateral lines, which creates a practical difficulty for the Applicants and allows them to apply for a variance. Ms. Chaillet noted both Mr. Cooksey and the other adjoining property owner, Jerry Carter, each have a pier on Lewis Creek.

**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 opened the hearing to public comment.

Mr. Cooksey thanked the Board for hearing his comments and asked that the requested variance be denied. He explained he owns six acres of land and six-tenths of an acre of non-tidal wetlands fronting Lewis Creek that is 180 feet wide. He pointed out the proposed pier will be only four feet away from his property line where it begins and will run 120 to 140 feet directly in front of his property line. He explained the proposed pier will be almost 100 percent over his lateral line and only 24 feet from his pier. Mr. Cooksey expressed several concerns, including: the proposed pier will be too close to his pier, it will allow more boat congestion on the creek that will present safety hazards and cause damage to the environment, and it will reduce his property value. He inquired about the exact location on the Property where the pier will begin. Ms. Chaillet clarified the pier will begin at the tidal marsh line. Mr. Cooksey noted there is a misprint on the site plan accompanying the Maryland Department of the Environment (MDE) permit that shows his name on a piece of property that is actually owned by the Applicants.

Mr. Carter thanked the Board for hearing his comments and asked how the tidal wetlands area was established. Ms. Chaillet replied the tidal wetlands were field delineated by a State representative several years ago. Mr. Carter expressed concern the proposed pier will be too close to his pier, which will cause hardship to him when he is trying to maneuver his boat to his pier. Mr. Canavan replied the width between the piers should afford a safe maneuvering distance. Mr. Carter asked the Board to consider moving the proposed pier back. He explained the Applicants will still have enough water depth for a boat and allow both himself and Mr.

Cooksey to maneuver larger boats to their piers. Mr. Callaway asked Mr. Carter what the depth of the water is at the end of his pier at high and low tide. Mr. Carter replied approximately seven or eight feet at high tide and five feet at low tide. Mr. Hayden asked how long Mr. Carter's pier is. Mr. Carter replied his pier is 80 feet long. Mr. Callaway asked how long the proposed pier is. Mr. Jubeck replied it will be 90 feet long. Mr. Callaway asked Mr. Jubeck why his pier is so far out into the creek. Mr. Jubeck replied he needs to reach adequate water depth. He noted his objective was to build his pier equally between the two existing piers. Mr. Carter expressed concern the proposed pier will reduce his property value and limit the size of boat that can be kept at his pier. He also expressed concern addition of another pier will negatively impact area wildlife. He asked the Board to consider reorienting the proposed pier if the variance is granted.

Mr. Callaway commented every property owner has the right to develop and use their property according to the rules and regulations. Mr. Cooksey stated a new survey needs to be completed because the lateral lines are out of date. Ms. Chaillet replied a new survey would have to be performed on all three properties. Mr. Jubeck noted he offered to reorient Mr. Carter's pier at his own expense in order to relieve some of the crowding but Mr. Carter refused. Mr. Hayden asked why a 90-foot pier was chosen. Mr. Canavan noted the site plan accompanying the MDE permit shows a mean high water depth of six feet and a mean low water depth of three-and-a-half feet; therefore the water depth might not be adequate if the pier is shortened. He added the proposed pier configuration will allow equal spacing between the two existing piers.

The Chair closed the hearing to public comment.

Mr. Miedzinski commented the orientation proposed on the site plan appears to be the best possible way to position the Applicants' pier between the two existing piers. Mr. Callaway agreed and added Mr. Jubeck has a right to construct a pier on this waterfront property. Mr. Delahay commented he believes the lot lines are correct. Ms. Scriber noted the Applicants deserve to have a pier. Mr. Hayden agreed the Applicants have a right to enjoy their waterfront and the Property has constrained them with regards to where they can put a pier.

**Mr. Callaway moved that having accepted the staff report, dated February 1, 2007, and having made a finding that the standards for variance and the objectives of Section 71.9.6.h of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant approval of the variance to encroach into the lateral line setback. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.**

#### **ACTIONS TAKEN BY PLANNING DIRECTOR ON VARIANCE APPLICATIONS RECEIVED FOR ADMINISTRATIVE REVIEW**

**VAAP #05-1887 – Logue – 0.84 acres –** The applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to place impervious surface in the Critical Area Buffer, and a variance from Section 41.5.3.i(3)(b) of the Ordinance to exceed the amount of impervious surface traded in the Critical Area Buffer to construct a single-family dwelling. **Variance approved.**

#### **MINUTES AND ORDERS APPROVED**

The minutes of January 25, 2007 were approved as recorded.

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

**CUAP #06-131-022 – Mother Catherine Spalding Catholic School**

#### **ADJOURNMENT**

The meeting was adjourned at 7:55 p.m.

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Cindy R. Koestner, Recording Secretary

Approved in open session: February 22, 2007

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George Allan Hayden  
Chairman