

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, February 10, 2005**

Present: George Allan Hayden, Chairman  
Greg Callaway, Vice Chair  
Ronald C. Delahay, Member  
Wayne Miedzinski, Member  
Walter Gillette, 2<sup>nd</sup> Alternate  
John B. Norris, III, County Attorney  
Denis Canavan, Director, Department of Land Use & Growth Management  
Yvonne Chaillet, Planner III, LUGM  
April Bahner, Critical Area Plans Reviewer, LUGM  
Sharon Sharrer, LUGM Recording Secretary

A sign-in sheet is on file in the Department of Land Use & Growth Management (LUGM). All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

**DISCUSSION/DECISION**

**ZAAP #99-0093 – MCINTOSH SUBDIVISION APPEAL**

The Board opened a discussion on the Order for the McIntosh Subdivision Appeal. Accepting Mr. Densford's recommendation for revisions to the Order, based on Department of Defense guidelines for clearing a site that has unexploded ordnance and suggestions for notification of property history, the Board voted to amend the motion and the Order reflecting their decision and authorized the Chair to sign an Order reflecting the amended motion:

In applying the "unreasonable risk" standard, the Board concluded that the residential development of the Property, given the current level of subsurface investigation conducted on the portion proposed for residential development, poses an unreasonable risk to the health, safety and welfare of the public due to an unacceptably high risk that these areas remain contaminated with unexploded ordnance. Having reached this conclusion, however, the Board made a finding that the Property may be rendered reasonably safe for residential development upon compliance with the following conditions:

1. Copies of all reports, including those issued by federal, state and county agencies, as well as public and private investigatory and remedial contractors, will be made available to all St. Mary's County public libraries and the Southern Maryland Regional Library in Charlotte Hall.
2. Each initial deed for a residential lot or other parcel of land within the Property will contain a reference to the former use of the Property as a munitions manufacturing plant, and advise the purchaser of the availability of the reports described above. All subdivision plats or phasing plans submitted to the Department of Land Use and Growth Management shall contain the same information.
3. The original munitions plant site, consisting of approximately twenty-four (24) acres, will continue to be deed restricted and access restricted by the owner with fencing extending fifty feet (50') beyond the furthest point at which ordnance has been recovered, and signage consistent with the signage found on page 177 of Gollahon Ex. A-24 shall be placed around the perimeter.
4. The phasing plan may be approved upon completion and acceptance of a new geophysical survey performed on the entire Property with modern equipment

designed to detect small items of buried ordnance. The geophysical survey shall provide overlapping coverage of all areas to a minimum depth of ten feet (10') or four feet (4') beyond the depth of any excavations to be performed on portions of the Property, whichever is greater. The company performing the geophysical survey shall submit a work plan to the Department of Land Use and Growth Management complying with the requirements of this section, and shall certify full compliance to the Department in writing following completion of the survey and removal of all discovered ordnance. Any unexploded ordnance located by the survey shall be reported to the State Fire Marshal and the Maryland Department of the Environment and disposed of under their supervision.

## **PUBLIC HEARING**

### **CUAP #04-135-003 – BUZZ'S MARINA TOWER**

The applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to construct a 195-foot monopole cellular communications tower. The property contains 80.9 acres, is zoned Rural Preservation District (RPD), and is located at 49675 Buzz's Marina Way in Ridge, Maryland; Tax Map 71, Block 20, Parcel 246.

Owner: Michael & Christa Henderson  
Present: Alan Swendiman, attorney for Summit Tower  
Frank Marco, of Summit Tower, LLC  
Barb Pivec, of Atlantic Site Acquisition  
Mark Marzulo, of Entrex Communication Service, Inc.  
Don Shenoski, of Verizon  
Praveen Errabelli, of Cingular Wireless

The property was posted and copies of receipts from certified mailings were submitted to staff.

Mr. Swendiman explained that balloon tests were conducted on February 14, 2004 and October 29, 2004. Ms. Pivec said that she has been actively searching for an appropriate location for a telecommunications tower in the Ridge/Scotland area for about six years. She explained that the intent is to impact the scenic byway, local history, and potential historical structures of St. Mary's County as little as possible when finding sites for towers. Ms. Pivec said that, in her opinion, this is the only site in the Ridge/Scotland area which will work because of the amount of potentially historical properties and the scenic byway.

Mr. Shenoski and Mr. Errabelli explained the current coverage for their respective carriers, as well as the expected coverage with a tower in the proposed location. Board members expressed concerns that there will still be areas nearby with no coverage. It was explained that some of the more rural areas might be able to be covered at some time in the future, with additional towers.

Board members expressed concerns regarding removal of the buffering trees and the possible collapse of the tower. Mr. Marco said that the buffer zone is designed into the lease agreement, and would not be able to be disturbed. He explained that the towers are designed to collapse in on themselves, rather than falling extended at full length.

**Mr. Callaway made a motion that the staff report be accepted. The motion was seconded by Mr. Gillette and passed by a 5-0 vote.**

The Chair opened the hearing to public comment.

Minnie Russell, a resident of Ridge, explained that she is not opposed to any tower. She expressed concern that pictures of the Ridge Chapel would show the tower. Ms. Pivec provided photo simulations, explaining that the impact would be as minimal as possible.

The Chair closed the public hearing.

**Mr. Callaway moved that having accepted the staff report, dated January 30, 2005, and having made findings that the Conditional Use Standards of Chapter 25.6 and the Standards of Chapter 51 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) have been met, the Board grant Conditional Use approval to construct a 195-foot monopole cellular communication tower with the condition that an 85-foot perpetual easement be maintained as a part of the Conditional Use. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.**

**VAAP #03-0830 – MARSHALL LUDLOW**

The applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to replace a mound system in the 100 foot Critical Area Buffer. The property contains 2.2 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at the end of St. Jerome's Neck Road in Dameron, Maryland; Tax Map 46, Block 8, Parcel 14.

Owner: Marshall Ludlow  
Present: Jerry Soderberg, of DH Steffens Company

The Chair explained that this case has been continued from November 18, 2004 and January 13, 2005. Certified mail receipts were presented in November 2004. Ms. Chaillet explained that, due to revisions to the **original** site plan, only one variance is now being requested by the applicant.

**Mr. Miedzinski made a motion that the staff report be accepted. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

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

**Mr. Callaway moved that having accepted the staff report, dated February 3, 2005, 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 County Comprehensive Zoning Ordinance have been met, the Board approve the variance to place the replacement mound system in the 100 foot Critical Area Buffer, as requested. The motion was seconded by Mr. Gillette and passed by a 5-0 vote.**

**VAAP #04-0213 – ADAMS**

The applicant is requesting a variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30% of the existing vegetation and a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to construct a single-family dwelling and appurtenances in the Critical Area Buffer. The property contains 21,763 square feet; is zoned Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay; and is Lot 498 in Section 2 of the Golden Beach Subdivision on Duke Road in Mechanicsville, Maryland; Tax Map 6, Block 2, Parcel 56.

Owner: R. J. Adams Construction  
Present: Robert Heier, of Ben Dyer Associates

Certified mail receipts were submitted.

Ms. Chaillet explained that this is a reconsideration of a case that was denied by the Board of Appeals in November of 2004. Mr. Heier said that the applicant has responded to recommendations made by the Critical Area Commission (CAC) prior to the November hearing. He explained that the impacts to the Critical Area Buffer have been minimized by the new site plan.

Ms. Chaillet explained that the Health Department has approved the site plan and Soil Conservation District (SCD) has approved the sediment control plan since the staff report was written. Critical Area Commission does not oppose the variance requests, but does recommend mitigation for both variances.

**Mr. Miedzinski made a motion that the staff report be accepted. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

The Chair opened the hearing to public comment.

Ray and Ken Hastings, residents of Mechanicsville, expressed doubts about the feasibility of fitting the plantings which are required by the Planting Agreement onto the property. Ms. Bahner explained that the planting square footage on the Planting Agreement reflects a mathematical equation, and doesn't truly reflect the amount of plantings which can be put on a piece of property. She explained that there is a contingency for fees in lieu of planting after all plantings possible have been made on the lot.

The Chair closed the public hearing.

The Chair asked how off-site mitigation would work, when all plantings could not be accommodated on the property. Ms. Chaillet explained that typically fees in lieu of planting are accepted in that situation. Sue Veith, LUGM Environmental Planner, then works with the State Forester to determine where in the County those plantings should be done. Ms. Bahner explained that off-site plantings remain within the same watershed to offset the disturbance in that area.

**Mr. Miedzinski moved that having accepted the staff report, dated February 3, 2005; and having made a finding that the standards for variance in the Critical Area have been met; the Board approve the variance to clear in excess of 30% of the existing woodland and the variance to develop in the Critical Area Buffer with the recommended conditions to adhere to the Planting Agreement for planting of 26,160 square feet, which represents a three-to-one (3:1) mitigation for 8,720 square feet of clearing within the Critical Area Buffer and that fees may be paid in lieu of plantings in accordance with the St. Mary's County Comprehensive Zoning Ordinance after all plantings possible have been made on the lot. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.**

**VAAP #04-0739 – GOLDEN BEACH SUBDIVISION, LOT 210**

The applicant is requesting a variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to clear in excess of 30% of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains 15,006 square feet; is zoned Residential Neighborhood Conservation (RNC), Limited Development Area (LDA) Overlay District; and is Lot 210 of the Golden Beach Subdivision on Beach Drive, just

before its intersection with Dockser Drive in Mechanicsville, Maryland; Tax Map 5, Block 6, Parcel 340.

Owner: William & Virginia Suite  
Present: Billy Higgs, of Little Silences Rest, Inc.

Legal ads were published in the Enterprise on 1/26/05 and 2/2/05. The property was posted and receipts of certified mailings were submitted.

**Mr. Callaway made a motion that the staff report be accepted. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.**

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

**Mr. Callaway moved that having accepted the staff report, dated February 3, 2005, and having made a finding that the standards for variance in the Critical Area and the objectives of Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board grant the variance to clear in excess of 30% of the existing woodland with the recommended condition to adhere to the Critical Area Planting Agreement. The motion was seconded by Mr. Gillette and passed by a 5-0 vote.**

**CUAP #87-1824 – BIG FOOT HUNT CLUB, INC.**

The applicant is requesting an amendment to an approved conditional use pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01). The property contains 21.1 acres, is zoned Rural Preservation District (RPD), and is located at 24450 Pincushion Road in Loveville, Maryland; Tax Map 24, Block 18, Parcel 173.

Owner: Big Foot Hunt Club, Inc.  
Present: Joseph Mitchell  
Billy Mehaffey, of Mehaffey & Associates  
Spencer Whalen, President of Big Foot Hunt Club, Inc.

The property was posted and receipts of certified mailings were submitted.

The Chair explained that this hearing was originally scheduled for January 13, 2005. At that time, the hearing was continued until the Board's February meeting to allow time for Maryland Department of Environment (MDE) to look into an excessive noise complaint which had been received. Mr. Mitchell explained that comments have still not been received from MDE.

Mr. Mitchell explained that Big Foot Hunt Club has lawfully operated its trap shooting facility for at least 17 years. Big Foot Hunt Club is now requesting approval of several improvements to the property, which have been made over the years; amendment to the approved operating hours; and the addition of a third type of target, which is to be used for sporting clays.

Mr. Whalen explained that he is one of the original members who started the Club around 1986. He said that members gather to practice shooting in the evenings, after work. Members travel to different clubs for events outside of the area, including events throughout Maryland, Virginia, Delaware, and Ohio. Mr. Whalen explained that Big Foot Hunt Club needs to host shooting events in order to raise money to maintain the Club.

Mr. Gillette asked what distance a shot would travel. Mr. Whalen explained that a shot would generally go about 600-650 feet, though 900 feet is given as the safety zone.

Mr. Delahay asked if members practiced shooting seven days a week. Mr. Whalen explained that members practice on Wednesday evenings and on Saturdays, during good weather. Mr. Mitchell said that the current use would allow members to shoot every day except Sundays during all daylight hours, and on Sundays from 1:00 p.m. until ½ hour before sunset. Board members asked how often competitive shoots might be organized, and how many participants would be involved. Mr. Whalen explained that shooting events might be scheduled once a month about nine months of the year, with a maximum of 45-60 shooters. Since many of the participants of the shooting events must travel some distance, events end before 3:00 p.m. on Sunday. Mr. Whalen explained that they have not been able to schedule Sunday events because Big Foot's allowed hours of operation on Sundays begin at 1:00 p.m.

John Wiles, a resident of Lusby, explained that he is a certified Maryland hunter safety instructor and a NRA gun safety instructor, as well as a member of Big Foot Hunt Club. He said that the NRA established safety zones of 900 feet for the type of shot used at Big Foot to cover any safety issues, but that 99% of all shot falls within 600 feet. Mr. Wiles explained that skeet trapping and sporting clays have an incredibly controlled environment, from a safety standpoint.

Ms. Chaillet explained that St. Mary's County has no specific regulations that apply to a shooting range. She said that the applicant has explained that Big Foot Hunt Club has set up their targets and range in accordance with NRA guidelines. She explained to the Board that approval can be conditioned upon compliance with any regulations imposed by MDE.

**Mr. Callaway made a motion that the staff report be accepted. The motion was seconded by Mr. Gillette and passed by a 5-0 vote.**

The Chair opened the hearing to public comment.

Wally Abell, a resident of Hollywood, said that he is a sporting clay shooter. He explained that he thought that Big Foot was a good place for sporting clays, and didn't realize they were violating any rules when they set up their portable traps at Big Foot.

Joe Thomas, a resident of Bushwood, explained that the movement of shooters is restricted when they are shooting sporting clays since they are in a box. He said that it is a controlled environment, with a limited shooting direction. A variety of targets are provided in a safe direction.

William and Howie Guy, residents of Oakley and Abell, explained that involvement in sporting clays is a family outing for their family. They said that the emphasis is always on safety, and Big Foot is the only convenient facility available for them to shoot.

John Mattingly, representing five of the adjacent property owners who live on Pin Cushion Road, provided the Board members with a copy of a letter from MDE and a study done on another gun club. He explained that the people he represents feel that shooting at Big Foot Hunt Club is too loud, and does not allow them to enjoy their property. Mr. Mattingly asked that the Board not allow the use of the property at Big Foot to increase, by allowing Sunday morning shooting. He said that the NRA does not certify or approve shooting ranges, and that the shot fall zones for both skeet and trap shooting reach well into one of the neighboring properties. He explained to the Board that the NRA guidelines recommend a distance of ½ mile to the nearest house for noise purposes, and 900 feet and a 180 degree arch for shot fall purposes.

Mr. Norris reminded the Board that they do not need to apply or interpret MDE regulations. The Board of Appeals must determine whether the requested use has a different impact in the specific neighborhood than it would at a different location in the same zoning district, not whether the applicant has violated noise restrictions. He explained that the Board can

add a condition that the applicant must comply with all laws and regulations, but the Board can not enforce MDE regulations.

**Due to time constraints, the Board will continue with the Public Hearing on CUAP #87-1824 at their next meeting at 6:30 p.m. on Thursday, March 10, 2005 in Room 14 of the Governmental Center in Leonardtown, Maryland.**

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

**VAAP #04-2668 – Patricia Balas** – The applicant requested a variance from Schedule 32.1 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to reduce the front yard setback. **Variance approved with signed planting agreement.**

**VAAP #01-130-117 – Patuxent River Naval Air Museum** – The applicant requested a variance from Schedule 32.1 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to reduce the front yard setback. **Variance approved.**

#### **RETREAT DATE**

The Board of Appeals will hold a retreat from 9:00 – 3:00 on March 11, 2005.

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

The minutes of December 28, 2004 and January 13, 2005 were approved.

The Board authorized the Chairman to review and sign the orders. The Chair reviewed and approved as submitted the following Orders:

**CUAP #04-131-044 – Dynard Elementary School**  
**VAAP #04-1551 – Hosterler**  
**CUAP #02-130-029 – McIntosh Pit, Extractive Industry**  
**ZAAP #99-0093 – McIntosh Subdivision Appeal**

#### **ADJOURNMENT**

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

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Sharon J. Sharrer  
Recording Secretary

Approved in open session: March 10,  
2005

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George Allan Hayden  
Chairperson