

MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS

ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND

Thursday, March 9, 2006

Present: George Allan Hayden, Chairperson

Greg Callaway, Vice Chair

Ronald Delahay, Member

Gertrude V. Scriber, Member

Wayne Miedzinski, Member

John B. Norris, III, County
Attorney

Denis Canavan, Director,
Department of Land Use &
Growth Management

Yvonne Chaillet, Planner,
Zoning Administration

Staci Merriman, Critical Area
Plans Reviewer

Jean Wathen, Office Specialist

Keona Courtney, LUGM
Recording Secretary

The Board of Appeals' 1st Alternate, George Edmonds, and 2nd Alternate, Brian Werring, were present in the audience. 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.

PUBLIC HEARING

CUAP #05-131-027 – STAUFFER MENNONITE CHURCH SCHOOL

The applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to construct an educational facility. The property contains over 100 acres; is zoned Rural Preservation District (RPD); and is located on Pin Cushion Road in Leonardtown, Maryland; Tax Map 25, Block 1, part of parcel 54.

Owner: Norman M. & Mary B. Stauffer

Present: Elam Stauffer

All cases being heard at this meeting were advertised in *St. Mary's Today* on February 19, 2006 and February 26, 2006 and in *The Enterprise* on February 22, 2006 and March 1, 2006. The properties were posted and certified mail receipts were submitted to staff for the files.

Elam Stauffer, a member of the Stauffer Mennonite Church's school board, explained that the applicant is proposing to build a one room school on the farm. The Church plans to lease 1.13 acres from the parent tract, which is approximately 100 acres. Mr. Stauffer explained that the site will be served by an existing 20 foot wide right-of-way, which measures approximately 600 feet from Pin Cushion Road to the proposed site. He explained that there will be approximately 20 to 30 students, who will travel to school by foot, bicycle, or bus. There will be one bus to provide transportation for students who live farther from the school. This is the only vehicular access anticipated other than horse and buggy trips.

Ms. Chaillet explained that the Southern Maryland Electric Cooperative (SMECO) has an easement in this area, but do not have any issues with the proposed location of the school.

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 and closed the hearing to public comment. There were no comments.

Mr. Miedzinski moved that having accepted the staff report, dated March 1, 2006, and having made a finding that the Conditional Use Standards of Section 51.3.27 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board approve the request to construct a one room school. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #05-3265 – WINDSOR

The applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add impervious surface in the Expanded Critical Area Buffer to construct a replacement dwelling and appurtenances. The property contains 1.5 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 16431 Thomas Road in Piney Point, Maryland; Tax Map 69, Block 8, Parcel 62A.

Owner: Brenda Windsor

Present: Denise Cherington

Ms. Cherington explained that this is waterfront property which overlooks the Potomac River. A road divides the property into tidal and non-tidal wetlands. There is some impervious surface to be removed from the property because the Old St. George's Island Hotel was partially located on this land. She explained that the property is in a flood plain and that the house will be constructed on a nine foot tall basement which will serve as a garage with flood gates. Mr. Hayden asked about the living space. She explained that there will not be living space in the basement.

Ms. Chaillet explained that the Maryland Critical Area Commission does not oppose the granting of the variance, and that the applicant is required to obtain approval from Maryland Department of the Environment (MDE) for disturbance in the wetlands. The applicant has made an application for this.

Mr. Hayden expressed concern about the property being located in a flood plain, and asked if a condition is necessary. Ms. Chaillet explained that the applicant must sign a flood certification form at LUGM. She explained that the proposed dwelling does not have to be elevated on stilts, but the living space must be elevated. She stated that the ground level can be used as a garage or storage space.

Mr. Callaway moved that the staff report be accepted. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

The Chair opened and closed the hearing to public comment. There were no comments.

Ms. Scriber moved that having accepted the staff report, dated February 24, 2006, and having found 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 add new impervious surface in the expanded Critical Area Buffer, subject to obtaining approval from Maryland Department of the Environment (MDE) and with the recommended condition to adhere to the Critical Area Planting Agreement. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

VAAP #05-0738 - ALEY

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 percent of the existing vegetation to construct a single family dwelling and appurtenances. The property contains 15,000 square feet; is zoned Residential Neighborhood Conservation (RNC), Limited Development Area (LDA) Overlay; and is located at 29777 Prince Road in Mechanicsville, Maryland; Tax Map 5A, Block 2, Parcel 56.

Owner: Richard, Theresa, & Jessica Aley

Present: Mike Bailey, DH Steffens Co.

Mr. Bailey explained that the applicants are proposing to build a 2,091 square foot dwelling, and will need to clear approximately 57 percent of the woodland to allow for the mound system, well, and septic tank. Mr. Hayden asked about the sites for the mound system. Mr. Bailey explained that there are two sites for the mound system, one for the primary system and the other for the back-up system. He explained that the primary system will be located to the rear of the lot because the elevation is more suitable there. Mr. Hayden explained that it will be better to locate the system closer to the house so that there will be less disturbance to the woodlands. Mr. Bailey agreed to this.

Ms. Chaillet explained that the proposed clearing is also needed for drainage purposes to accommodate the limits of disturbance. Mr. Bailey explained that there is not a significant difference between the amount of clearing to be done in the back and front yards, and that drainage will still have to go the same distance. Mr. Hayden stated that he would like to sustain the habitat existing in the back yard. Mr. Bailey said that they can locate the primary system in the front yard.

Ms. Chaillet explained that the applicants have met the standards for granting a variance in the Critical Area. She explained that if the Board decides to add a condition regarding the location of the primary system and this change results in less clearing of the property, then staff will revise the Planting Agreement. Mr. Delahay asked if the front yard will pass a perc test for a mound system. Mr. Bailey explained that three perc tests were performed on the property and all passed; however, the tests were performed toward the rear of the property.

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

The Chair opened and closed the hearing to public comment. There were no comments.

Mr. Norris suggested that the Board may want to consider a condition that provides for the limits of disturbance to be 10 feet west of the mound system located closest to the house until such time the replacement system is needed.

Ms. Scriber moved that having accepted the staff report, dated February 27, 2006, 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 approve the variance to clear in excess of 30 percent of the existing woodland with the recommended conditions: 1) to adhere to the Critical Area Planting Agreement, 2) the limits of disturbance shall be limited to 10 feet to the west of the mound system located closest to the house until such time the replacement system is necessary, and 3) to switch the primary and secondary mound system so that the primary system is the one closest to the house. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

VAAP #04-3124 – BLAZER

The applicant is requesting an after-the-fact variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation. The property contains 5.76 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 17630 Shady Maple Lane in Drayden, Maryland; Tax Map 66, Block 9, Parcel 30.

Owner: John and Cheryl Blazer

Present: Chris Longmore, Attorney representing the Applicants

Applicant's Exhibit A (1 -3): Pictures (3) depicting dead trees on the site

Applicant's Exhibit A-4: Aerial photo of property from 1989

Applicant's Exhibit A-5: Aerial photo of property from 1998

Applicant's Exhibit A-6: Letter from Mr. Balaco regarding wetland work

Ms. Chaillet's Exhibit 1: March 2003 aerial photo of property

Ms. Chaillet's Exhibit 2: Fall 2003 aerial photo of property

Critical Area Commission's Exhibit CAC-1: Photo of house and waterway

Critical Area Commission's Exhibit CAC-2: Photo of waterway and land

Critical Area Commission's Exhibit CAC-3: Photo of dwelling/building with grass in front

Critical Area Commission's Exhibit CAC-4: Photo overlooking Buffer from edge of pool

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Mr. Callaway removed himself from the hearing due to his own possible conflict of interest. Mr. Werring sat on the Board in his place.

Mr. Longmore provided an explanation of why the Applicants were before the Board, explaining that they were issued citations at the end of January, with running fines of approximately \$1,000 per day issued for issues and violations found by staff. He explained that they immediately filed the appropriate paperwork to deal with the citations. He explained that staff told them that application for a variance was the only way to stop the daily fines. Mr. Longmore explained that he feels that this was not the appropriate method to deal with this, and that staff was forceful in recommending denial of the request.

Mr. Longmore explained that they did not know the Planting Agreement would be an issue before the Board, and that the calculations for this Agreement are dramatically wrong. He explained that the calculations do not take into consideration other factors staff was informed about. He stated

that he feels that approval of the variance with the appropriate amount of mitigation will resolve the problem.

Mr. Longmore noted that the staff report makes it seem as if the property was a very mature, wooded lot and that vegetation was cut out of it. He explained that he has photos from 1989 and 1998 that show that a lot of vegetation was cleared, and that there were many dead trees on the property. He stated that there is no mention of this in the staff report.

Ms. Scriber asked if the Applicants received information on the limits of disturbance and the Critical Area Buffer. Mr. Longmore explained the Applicants were active in the application process and made several applications relating to this property to address issues relating to the limits of disturbance and issues relating to the revetment of the shoreline. He stated that the Board should have copies of all of this paperwork, including the approved plan in their packages.

Bob Trautman introduced himself as the land surveyor for the Applicants, and explained that he prepared the site plan to include the house and located the boundary of the woodland. The site plan showed 2.04 acres of woodland at that time. The woods were medium and there were no really mature trees. Mr. Trautman explained that there were a lot of dead trees that were down, and that many of them were lying along the shoreline. He noted that, at this time, the shoreline had receded approximately 20 to 30 feet. He explained that the shoreline was then inside of the property line and they started at the mean high water and worked their way back from that point in order to place the house properly to keep it out of the Critical Area Buffer. They also observed sensitive setbacks of 20 feet, which are required.

Mr. Longmore asked Mr. Trautman if the wooded area on the property measures 2.04 acres as he previously stated. Mr. Trautman explained that this acreage is correct, and is what he put on the site plan as his estimate at that time. This acreage was approved, and the Applicants received their permit based on this amount. He explained that he located the tree line and made the calculation himself. Mr. Longmore asked Mr. Trautman if he has seen any other engineered or surveyed work on the amount of woodland on the property from LUGM relating to this application. Mr. Trautman said that he has not seen any to date.

Mr. Longmore showed Mr. Trautman Exhibits A-1 thru A-3, and asked him if these pictures were prior to construction being done on the site. Mr. Trautman said that they were prior to construction. He explained that the pictures depict some of the dead trees that he saw at that time. He explained that approximately 20 to 30 percent of the woodlands were dead or dying at the time he visited the site. Mr. Longmore asked Mr. Trautman if he knew the cause of such a high percentage of dead or dying trees on the site. Mr. Trautman explained that he assumed Hurricane Isabel was the major cause of this, and that he believes other storms may have caused damage. He explained that over a 10 year period the shoreline had receded, but that it is hard to tell how much in certain places.

Mr. Longmore asked Mr. Trautman if he had a chance to look at the estimate of existing woodland prior to any activity, as provided by staff. Mr. Trautman estimated the acreage to be approximately 149,000 square feet. Mr. Longmore noted that the Board received a copy of the Planting Agreement in their packages, and that the Agreement has three different categories for mitigation. The first category is for 27,000 square feet, the second is for 73,000 square feet, and the third is for 3,600 square feet. Mr. Longmore asked Mr. Trautman if these numbers sound like the correct numbers. Mr. Trautman said that they sound correct. Mr. Longmore explained that these numbers were based on aerial photos, and asked Mr. Trautman if it is more accurate to base an estimate of woodland coverage on the survey work that he performed or on aerial photos. Mr. Trautman explained that he feels it is better to make an estimate in the field and on the ground.

Mr. Longmore showed Mr. Trautman Exhibits A-4 and A-5, asking if he had seen them before. Mr. Trautman said that he had seen them before, explained that they were provided by the Soil Conservation District (SCD) and signed off by Bruce Young. He estimated that there was a quarter to a half an acre of woodland in the north east corner of the property in the 1989 photo. He explained that it looked like there were sparse and scattered trees throughout that portion of the property in the 1998 photo. He said that it would be hard to estimate because the trees were spotted all about that portion of the property.

Ms. Chaillet explained that the staff report provides standards for granting an after-the-fact variance in the Critical Area to clear in excess of 30 percent, and indicates that the standards have not been met. Therefore, staff recommends denial of the request. Regardless of the decision made from the hearing, the Applicant is required by law to mitigate at a ratio of three-to-one (3:1). Mr. Hayden asked if this is cumulative for the entire property. Ms. Chaillet said that it is.

Ms. Chaillet displayed Exhibits 1 and 2 which showed how the property looked in March 2003 and October 2003, after Hurricane Isabel. She noted the location of the buffer on each photo, and the down trees along the shoreline in Exhibit 2. Mr. Hayden asked if the cleared trees shown in Exhibit 2 could be a result of Hurricane Isabel, which occurred in September 2003. Ms. Chaillet explained that this exhibit indicates the cleared area. Mr. Hayden asked if it indicates the area that was cleared over a six month period. Ms. Chaillet said that it does. Mr. Miedzinski asked if this clearing affects the mitigation, as noted in the staff report. Ms. Chaillet said that it does.

Mr. Canavan explained that staff recognizes the fact that trees may have fallen down on the property as a result of Hurricane Isabel. He noted that the Board of County Commissioners (BOCC) had several community meetings where it was made clear that individuals could remove fallen trees if they affected revetment walls, piers or decks. He stated that he advised these individuals to take pictures of the affected areas and remove the fallen trees. Mr. Canavan explained that these individuals were then allowed to rebuild the affected areas without needing permits. He stressed that the aerial photos show the woodland on the property before the Hurricane and after the Hurricane. He stated that he does not believe that the Hurricane destroyed the trees within the Critical Area Buffer, but that woodland cover was removed from the property after the Hurricane. Mr. Canavan stressed that the vast majority of the woodland cover on the property is green and alive.

Mr. Canavan stated that he feels there has been a blatant disregard of the regulations. He explained that the Critical Area Law became effective in 1985, and was effective prior to the current Zoning Ordinance. According to the Law, an individual may not proceed in clearing without the proper permits. He said that the Applicant proceeded with getting the proper permit for the revetment wall and pier, and the permit and Critical Area Plan clearly state that there shall be no disturbance to the Critical Area Buffer or beyond the limits of disturbance. He stated that this woodland is now clear. Mr. Canavan explained that he will work with the Applicant regarding the vegetation that has been cleared; however he wants more insight as to what is being depicted by Exhibits 1 and 2.

Mr. Miedzinski asked if the approved amount of clearing at 14.3 percent of the woodland was deducted from the final amount that was approved for clearing. Ms. Chaillet explained that when an individual clears over 30 percent of woodland without authorization, the mitigation ratio of three-to-one (3:1) applies to cumulative clearing. She explained that staff analyzed what had been cleared on the property, whether approved or unapproved; the mitigation ratio was based on that amount. Mr. Hayden asked if all other mitigation requirements that had been submitted have been revoked because of the after-the-fact variance. Ms. Chaillet replied that they had.

Mr. Hayden asked about the difference between the existing woodland calculations, as cited by Mr. Trautman and as cited by Staff. Ms. Chaillet explained that when staff calculated the existing

vegetation they disagreed with Mr. Trautman's calculation. Mr. Hayden asked if the difference is only by a quarter of an acre. Ms. Chaillet replied that it was.

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

Mr. Longmore explained that there have been other issues that the Applicant has had to work out with staff regarding things that were incorrect, including the wetlands on the property. He submitted Exhibit A-6 to the Board for their review.

The Chair opened the hearing to public comment for those in support of the Blazers' request.

Larry Brabec, a neighbor who has lived there since 1986, explained that he feels that the Blazers have been helpful and considerate neighbors. He said that he hunted this property for 20 years and during this time he noticed a lot of undergrowth and underbrush, which he feared as a fire hazard. Mr. Brabec expressed concern about the mitigation requirement of a three-to-one (3:1) ratio because he doesn't think there are that many good trees on the property. He said that he believes the Blazers are simply trying to make the property rural and not develop it.

The Chair opened the hearing to public comment for those who oppose the Blazers' request.

Marianne Mason, an Assistant Attorney General and Counsel to the State of Maryland Chesapeake and Atlantic Coastal Bays Critical Area Commission, explained that she is in support of staff and opposes the request for a variance. She asked the Board to consider one expert witness and one fact witness. Mr. Longmore interjected, explaining that he does not object to those expressing public opinion but did not feel this was the appropriate forum for Ms. Mason to present a case. Ms. Mason argued that the State of Maryland Code, Natural Resources Article 81812 gives the Chairman of the Critical Area Commission the right and authority to participate, intervene, and initiate in any proceedings in any jurisdiction within the State concerning projects within the Critical Area. Mr. Longmore objected, stating that there was no notice given to the Applicants from the County or staff, and that they should have been notified that another party was going to participate. Mr. Hayden explained that since the Critical Area Commission made comments regarding this project and visited the property after-the-fact, he asked that staff contact the Commission and request their presence to answer questions from the Board. Mr. Longmore explained that he objects to them presenting a case, which is a violation of due process without giving prior notice to the Applicants. Mr. Norris stated that staff can call the Commission forward for witnesses. Mr. Hayden permitted the Commission to present their witnesses after public testimony.

The Chair closed the hearing to public comment.

Mr. Longmore provided his rebuttal, explaining that the Applicant never wanted to apply for a variance and that they were only trying to comply with staff's request. He stated that staff can require the Applicant to mitigate for any violations committed without coming before the Board. Mr. Longmore reiterated that they were told by staff that this is the appropriate process to stop the fines from being charged; however the Applicants feel that it would be more appropriate to go through the citation process and work with staff on a mitigation agreement if one is needed for the property. He stated that if the Board denies the variance then they do not have the authority to enforce mitigation and the Applicants would have to go back to staff to work this out. Mr. Longmore stated that he feels this process is not the appropriate method to deal with this case, and requested to withdraw the variance request.

Ms. Chaillet explained that the Planning Director does not have the authority to approve clearing in excess of 30 percent of existing woodland; this authority rests with the Board. The purpose of

this process is to keep the record clear. Mr. Longmore explained that he feels the variance application process takes a lot of time and money, and is a waste of the County's resources. He explained that an after-the-fact variance should not be used to address this case. He said that there is a citation process under Maryland Law that allows an individual to challenge a citation through District Court. If a violation is found, then mitigation can be provided for by the Zoning Ordinance. Mr. Longmore stated that he does not want to waste the Board's time if the case should be heard before the District Court of Maryland. He asked the Board to consider the violations and citations section of the Ordinance. He explained that, if a violation is found, staff can work with the Applicants to impose mitigation conditions. If the Applicants disagree with the conditions, they could make an appeal to the Board.

Mr. Norris explained that the only way to have the Applicants' request approved is through the variance process. He stated that the Critical Area Commission has the ability to intervene, according to State Code and the Board's rules of procedure. He said that he feels that comments from the Commission will be informative to the Board. Mr. Norris mentioned that the Applicants submitted a request to the Legal Office to forward the citations to the District Court, and have stayed the request pending work with staff. He explained that staff does not have the authority to approve the variance, but does have the authority to require proper mitigation and proper penalties.

Mr. Hayden asked if the Applicants could withdraw the request. Mr. Norris explained that the Applicants can withdraw the request at their own risk. He explained that they are being charged for violations enforceable by Article 23(a), and that the Commission can intervene and issue additional citations. He said that he is not familiar with any provisions of the Ordinance that require an Applicant to proceed to conclusion once a variance application has been filed. Mr. Canavan reiterated that the process is to keep the record clear, and suggested finishing the hearing.

Mr. Longmore explained that they have worked with staff to determine appropriate fines for the citations, and they are willing to work with Mr. Canavan on the mitigation process. He explained that they think the proposed mitigation provided by staff is incorrect, and disagreed with this information being provided to the Board as final in the staff report. He explained that the mitigation information was a draft that they agreed to review before providing comments to staff. Mr. Hayden asked if they received a copy of the staff report. Mr. Longmore explained that they did receive it. He reiterated that mitigation requirements are not an issue unless the variance is granted.

Mr. Canavan explained that the variance process is clear in the Ordinance, and that staff is following the Critical Area Law. He explained that there have been previous cases where clearing has taken place in the Critical Area Buffer, an after-the-fact variance was requested, and based on the testimony received by the Board the variance was granted. He explained that the purpose of the process is to establish and close the record, reach a decision, and move on to a mitigation agreement.

Mr. Longmore explained that if the clearing was in fact done without approval, then the violation section of the Ordinance should be used instead of the variance section. He explained that the Applicants were given citations, which they are addressing with the Legal Office and staff. He explained that they would prefer to work toward a good resolution. Mr. Hayden explained that in order for the Board to be able to approve the variance request, they need to receive the appropriate information to support the six standards for variance, and then work out mitigation for the property.

Mr. Hayden explained that, in the letter submitted by Mr. Longmore regarding the standards for the variance request, continual references were made to standard "a" and that this is not enough to support the other standards. He explained that if the request is withdrawn, then staff does not

receive a conclusion of the case and the Applicants would have to work out the fines with the District Court. Mr. Longmore explained that the Applicants do not want to go to Court, and will not have to do so if they agree to pay the fines that have been charged. Mr. Hayden explained that if the Board denies the case then it would have to be appealed to the District Court. Mr. Norris explained that the only reason the citations have not been sent to District Court is because the Applicants and LUGM were supposed to try to work out an agreement for mitigation and fines that would be acceptable to the Commission. He explained that the agreement would have to be filed, and in the event that an agreement was not reached the Court would establish a hearing date. Mr. Longmore stated that the Applicants want to reach an agreement. Mr. Canavan recommended that the case be heard so that the record is clear. Ms. Chaillet noted that the Commission is involved in the variance process for the Critical Area, and makes comments on all variance requests.

Mr. Hayden asked if the Applicants would have to return to the Board if their request is appealed to the Court. Mr. Norris explained that once the Applicants withdraw their request, the case is no longer considered by the Board. The Applicants can withdraw their case at any time before the decision is made. Mr. Hayden asked if they need the Board's approval to withdraw the request. Mr. Norris explained that a request for withdrawal is a courtesy. Mr. Longmore explained that the Applicants want to work out the request, and do not want to draw out the time. He stated that the Board can stay the case until a later date to allow the Applicants to work with staff, and they could provide additional testimony at a later date. Mr. Hayden explained that the Board wanted to obtain as much information as possible so that they could make the right decision for LUGM and the Applicants.

Mr. Hayden asked the Board if they support the Applicants' request to withdraw their case. Mr. Delahay explained that he supports their request because they have the right to withdraw. Mr. Werring asked if the Applicants will proceed to work out an agreement with staff if they withdraw. Mr. Canavan explained that they will have to work with staff regarding the Planting Agreement regardless of whether or not the variance request is granted. Mr. Werring agreed with their request. Mr. Miedzinski explained that he would prefer to continue with the hearing, and does not want to set a precedent of Applicants withdrawing their request because it may be denied. Mr. Norris reminded the Board that neither the Ordinance nor the rules of procedure prohibit an Applicant from withdrawing their request. This is done at the Applicant's own risk. Mr. Longmore stated that the Applicants do not mind hearing testimony from the Critical Area Commission given the fact that they are present; however the Commission made it clear that they are also recommending denial of the request, and they do not want to waste the Board's time. Mr. Hayden explained that he agrees with Mr. Miedzinski's comments, and said that a withdrawal would be a waste of the Board's time. He stated that the Board will continue with the hearing. Mr. Norris suggested that the Board may want to continue the hearing to their next meeting to see if an agreement was reached between staff and the Applicants during this interim period. Mr. Hayden agreed, and stated that he would still like to hear from the Commission.

Mr. Hayden asked Ms. Mason to come forward. Ms. Mason called Mary Owens before the Board for her testimony. Ms. Owens explained that she works for the Critical Area Commission and is the Chief of Program and Implementation. She said that she has been employed there for 10 years. Ms. Owens explained that she oversees program implementation in all Critical Area jurisdictions, to include 16 counties and 46 municipalities.

Ms. Mason asked Ms. Owens if she is familiar with the State law and the Natural Resources Article which created the Critical Area Program. Ms. Owens replied that she was. She explained that there are three goals of the Program: 1) minimizing adverse impacts to water quality that result from pollutants that come from structures, conveyances, or development activities, 2) conserving fish, wildlife, and plant habitat, and 3) establishing land use policies and regulations that will accommodate growth but address the need to control pollution and people's activities within the Critical Area.

Ms. Owens explained that all clearing of trees, shrubs, and natural vegetation is prohibited within the 100 foot Critical Area Buffer and there are clearing limits for overall forest cover which is generally no more than 30 percent in the RCA. She explained that the removal of natural vegetation is prohibited because a forest normally consists of canopy trees, under story trees, shrubs, and herbaceous plants and these types of vegetation perform important water quality and habitat functions. Ms. Owens explained that the 100 foot Buffer helps to provide for the removal of things that may be present in run-off such as sediments and potentially harmful substances, to minimize the adverse affects of human activities on tidal waters, to maintain transitional habitat between an upland area and a wetland, and to provide for and protect the wildlife habitat of certain species that are located in this area.

Ms. Owens explained that she visited the property on 2/24/06 along with Ms. Chaillet and Ms. Merriman. She explained that the County informed her that there was a very significant violation of Buffer clearing, and wanted the property to be looked at. Upon visiting the property, they observed that nearly the entire forested Buffer had been cleared. Ms. Owens explained that while there they discussed the other clearing that was in excess of 30 percent.

Ms. Mason showed Ms. Owens photos taken on the site visit on 2/24/06, asking her to describe what the photos showed. Ms. Owens explained that Exhibit CAC-1 shows a pier view of the formerly forested Buffer and indicates that the entire existing forest was removed and the property was graded and planted with grass. She explained that Exhibit CAC-2 was taken from the right side of the property, facing the water, and shows that all of the existing forest vegetation in this area was removed. Ms. Owens said that Exhibit CAC-3 is a close-up view of the dwelling, and shows the Buffer with no forest or natural vegetation.

Ms. Owens explained that the water quality function has been severely impacted to nearly the point of non-existence. She explained that more run-off is generated with nothing to slow down its velocity; there is no organic matter on the forest floor to provide for better absorption of run-off, and there is no vegetation to absorb nutrients and trap sediments. Ms. Owens explained that the Buffer currently has no wildlife habitat function. The previous forested Buffer provided connections to other forested areas on the property and surrounding landscapes, and these connections are now gone. She stated that there currently is no area in the Buffer for wildlife.

Ms. Mason asked Ms. Owens if she has an opinion about the state of the Buffer on the property, and if it is in compliance with the spirit and intent of the Critical Area Program. Ms. Owens stated that the Buffer is not in compliance, explaining that there is a clear prohibition on clearing and she believes the Applicants were made aware of this at the time that they received their permits for erosion control. She stated that they did not comply with the prohibitions. She explained that the County has spent a significant amount of time trying to develop a mitigation plan that would involve replanting the Buffer to replace what would have naturally been there. She stated that the Commission supports the County in their efforts to finalize the mitigation plan, and the recommendations for mitigation as written in the staff report. Ms. Owens explained that the Commission staff routinely works with applicants to develop Buffer management plans that involve establishing or re-establishing the Buffer.

Mr. Longmore asked Ms. Owens if the February visit was her first visit to the property. Ms. Owens replied that it was. Mr. Longmore asked Ms. Owens if she was able to make any observations, from the visit or from the aerial photos, as to whether there were any dead or dying trees within any of the area that she thinks was cleared. Ms. Owens explained that she was not able to observe any during the site visit, because all of the vegetation was gone.

Mr. Longmore asked Ms. Owens if the purpose of mitigation is to help re-establish the woodland or to punish. Ms. Owens explained that the purpose of mitigation is to try to offset an adverse impact made by an applicant. She explained that in cases where applicants remove mature trees and replace them with small stock, often times the mitigation needs to be at a higher ratio in order

to be appropriate. Ms. Owens explained that the Commission supports the County in their mitigation measures to try to get mitigation equivalent to what was lost.

Ms. Mason called Jennifer Lester forward for her testimony. Mr. Lester explained that she is a Natural Resources Planner, and has worked at the Commission in her present position for a few months. She said that, while in Law School, she interned with the Commission and worked on natural resource law. Ms. Lester explained that prior to Law School she worked as a community organizer and natural resource employee for a watershed association.

Ms. Lester explained that she works with three counties in the State, and reviews plans and variances to make sure that they are in compliance with the local law and State law. She explained that she received the request to review this variance request, reviewed the site plan, and the application that accompanied the site plan. She explained that she reviewed County law to see what their variance standards are, and called Ms. Chaillet to get more information on the request. She stated that she also made a site visit with Ms. Chaillet in February.

Ms. Mason showed Ms. Lester photos taken on the 2/24/06 site visit. Ms. Lester explained that Exhibit CAC-4 is of the property, and they were standing at the edge of the pool looking out over the Buffer, toward the water. She explained that the Buffer is totally graded, flat, and there is no vegetation. She mentioned that there was only grass seeds and dirt. Ms. Lester explained that Exhibit CAC-5 is a photo of the property looking west from the water, and that there are trees bordering the property. She explained that the Buffer was totally clear, and she assumes the trees that are shown are typical of what was there prior to the clearing and based on the aerial photos that she has seen.

Ms. Mason asked Ms. Lester if she did anything else as part of her review of the request. Ms. Lester explained that she reviewed the variance standards for the County that the Applicants would have to meet in order for it to be granted, and wrote a letter to Ms. Chaillet regarding this review. She explained that Exhibit CAC-6 is a copy of that letter, and that her comments were based on the variance standards. She explained that the variance request can not be based on a self created hardship, and that this request is based on a self created hardship because the Applicants cleared the Buffer without permission.

Ms. Lester explained that unwarranted hardship refers to the variance standard that requires an applicant to show that his property is unique in some way, and that application and enforcement of the Law by the County would result in hardship. She explained that the Applicants have reasonable use of the property without the variance, and are not suffering any hardship because of any peculiar features of the property. She explained that the property is flat, with no expanded Buffer. The majority of the property is outside of the Buffer.. Ms. Lester explained that if the variance is granted, the Applicants would be given a special privilege. She stated that no one is permitted to clear the Buffer to the extent that the Applicants have, and to permit them to do this would give them a special privilege in the Critical Area that no one else would be granted. She explained that the Applicants would not be denied a reasonable use commonly enjoyed by similar property owners in the same area within the Critical Area through strict interpretation of the Critical Area provisions. She explained that the Applicants do enjoy reasonable use of their property and that they have a home, pool, driveway, and farm. She stated that they should enjoy all of this without a clear Buffer.

Ms. Mason asked Ms. Lester if she considered during her review of their application, whether the granting of a variance would not adversely affect water quality or impact fish, wildlife, or plant habitat and if the variance would be in harmony with the spirit and intent of the Critical Area Program. Ms. Lester explained that she considered this and that granting a variance to the Applicants will not be in the spirit and intent of the Critical Area Law because it would adversely affect the water quality to have an entirely clear Buffer. She explained that the General Assembly

strengthened the Law in 2002 and 2004 and reiterated their commitment to ensure the Buffer is an important part of the Law and that it is protected.

Ms. Mason asked Ms. Lester if she had a recommendation for the Board as to whether or not the variance should be granted. Ms. Lester explained that the Commission opposes the variance and recommends denial of the request for variance. She explained that her recommendation to the Board is to follow staff's recommendation for mitigation at a three-to-one (3:1) ratio.

Mr. Longmore asked Ms. Lester if the February visit was her only visit to the site. Ms. Lester replied that it was. Mr. Longmore asked Ms. Lester if she did any calculations or had any knowledge of how much of the site was wooded before her visit or before any of the activity. Ms. Lester explained that during her review of the Applicant's request and staff report, she noted that the revetment permit which they were granted in 2004 included a Critical Area Planting Plan. She explained that she also noted that the plan outlined that the Applicants were permitted to establish a 20 feet wide working area along the top of the revetment and a 12 feet wide access route through the Buffer to the work area. She explained that after the Applicants completed their work they were required to restore the 12 feet wide area. She stated that this plan would not have been implemented if there was not a considerable Buffer present.

Mr. Longmore asked Ms. Lester if she did any calculations or had any idea of the square footage or acreage of the woodland prior to her visit and based on her own knowledge and not what was provided to her by Staff or the staff report. Ms. Lester explained that she measured the linear acreage of the Buffer, and included her calculation in her letter. Mr. Longmore asked Ms. Lester if she personally calculated the area of woodland prior to her visit to the site in February, or did any field work, or considered the area of woodland before any work was done on the site. Ms. Lester explained that she did consider the area of woodland prior to the work being done on the site and she based her consideration of this on what was reported in the staff report. She stated that she measured the Buffer and the linear feet of the Buffer that was affected by clearing was 367.41 linear feet of shoreline.

Mr. Longmore asked Ms. Lester if she knew of any other counties that require after-the-fact variances or require applicants to go through this type of process. Ms. Lester explained that she does know of other counties with this requirement, such as Wicomico County.

Mr. Hayden asked Mr. Longmore if he had any additional comments. Mr. Longmore explained that they have some concerns about the staff report, and that there are some discrepancies within it. He explained that Mr. Trautman testified that prior to any activity taking place on the property; there was 2.04 acres of woodland on the entire site. He pointed out that, in the staff report, staff states that there was 149,310 square feet of woodland and that they believe 100,710 square feet of this was cleared. He explained that Mr. Trautman testified that there was 2.04 acres of entire woodland on the site, and staff included in their staff report that there is over three acres of woodland, which is a difference of approximately one acre.

Mr. Longmore explained that there were dead or dying trees on the property, and also submitted pictures to depict this. He said that staff made reference to mature woodland being on the property in their staff report. He explained that Mr. Trautman testified that in his opinion a large amount of the woodland was not mature. Mr. Longmore stated that they dispute the mitigation requirement at a ratio of three-to-one for cumulative clearing, because they believe that the Zoning Ordinance and its standards convey that it is not a three-to-one ratio but instead conveys that 1) in the first 20 percent of woodland, mitigation is at a one-to-one ratio, 2) in the next 10 percent of woodland, mitigation is at a two-to-one ratio, and 3) mitigation is at a three-to-one ratio thereafter. He stated that they will address this with staff, and will try to work out a mitigation plan.

Mr. Longmore explained that the staff report makes reference to the Critical Area Planting Agreement and its requirements. He stated that there has not been an agreement between the Applicants and staff to accept this Plan. He explained that they were provided the Plan for the first time on 3/1/06, and have been reviewing it. Mr. Longmore stated that they plan to present staff with the errors they feel have been made in the calculation, and will try to work with them on this.

Mr. Longmore noted that their engineers have worked with SCD and the engineered erosion and sediment control plan is ready to be sent to them. He stated that they were initially told that there were no problems with it being taken care of. He explained that this should not be a future issue for the Board.

In regards to the continuation request, Mr. Longmore asked that the Board keep in mind that the Applicants reserve the right to present rebuttal testimony to the Commission in the event that they are unable to work out the request with staff. Mr. Hayden agreed.

Mr. Hayden asked staff if they had any additional comments. Mr. Canavan reiterated that staff is willing to work with the Applicants. He explained that if there is a difference in the calculation of woodland acreage on the property, then staff will take this into consideration. He stated that the Applicants are aware that clearing and grading not only pertains to woodland but to any vegetative cover. Ms. Chaillet explained that the Applicants were required to mitigate for the pier and revetment, and that mitigation was required in the Buffer. She explained that they were also required to re-establish the 12 feet access route. She stated the Applicants did not do any mitigation for the pier and revetment, and they do not get any credit for plantings that are not in the Buffer, since there is no Buffer. Mr. Longmore explained that it is stated in the staff report that the Critical Area Planting Agreement is still active, and the Applicants should receive credit for any plantings that they have done. He stated that they do not believe there should be two mitigation requirements, but that they will work this out with staff.

Mr. Hayden asked the Board if they had any questions. Mr. Miedzinski explained that he does not understand the need for a continuance. Mr. Norris explained that the advantage of granting a continuance is to give staff and the Applicants another month to work out an agreement. Mr. Hayden explained that if they can not work out an agreement, then the Applicants will come back to the Board and have rebuttal testimony to what the Critical Area Commission presented. If the Applicants and staff can work out an agreement, they will provide a report to the Board and the case will be closed. In the event that an agreement is reached, Mr. Miedzinski asked if there would have to be another hearing. Mr. Hayden replied that there will not have to be another hearing.

Mr. Miedzinski made a motion that the Board postpone their decision. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

Mr. Hayden explained that the decision will be postponed until April 13, 2006 at 6:30pm in Room 14 of the Governmental Center.

CUAP #05-131-026 – STEWART'S GRANT MINING PIT EXPANSION

The applicant is requesting expansion of an approved Conditional Use and a modification to the approved conditions pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance for an extractive industry involving the mining of more than five acres. The property contains 425.2 acres; is zoned Downtown Mixed Use (DMX) District with a Planned Unit Development – Commercial Park (PUD-CP) Overlay, Residential Low-Density (RL) District with a PUD-R (residential) Overlay; and is located at the south side of Quatman Road,

at the end of the road, in Great Mills, Maryland; Tax Map 51, Blocks 8,9,14 & 15, Parcels 40, 384, 634, & p/o 615.

Owner: Stewart's Grant, L.L.C.

Applicant: Chaney Enterprises

Present: Edward Gibbs, Attorney representing the Property Owner and Applicant

Applicant's Exhibit A-1: Noise Analysis Report from Scantek, Inc.

Applicant's
Exhibit A-2:
Letter from
ERM, dated
3/8/06,
regarding
hydrologic
evaluation for
surface mining

Applicant's
Exhibit A-3:
Letter from
Traffic
Concepts, Inc.,
dated 3/9/06,
regarding
conditional use
application
traffic impact

Applicant's Exhibit A-4: Mr. Gass' Resume

Applicant's Exhibit A-5: Aerial photo of Stewart's Grant property

Applicant's
Exhibit A-6:
Letter, dated
4/26/95,
regarding
conditional use
approval of a
temporary wash
plant operation

Applicant's
Exhibit A-7:
Conditional Use
order to allow a
wash plant to
remain and
operate an

additional 20
years

Applicant's
Exhibit A-8:
Conditional Use
order to
increase the
limit of truck
trips per day
from 100 to 250

Applicant's Exhibit A-9: Order reflecting PUD approval of the entire property

Applicant's
Exhibit A-10:
Order reflecting
conditional use
approval for
mining and
reclamation of
approximately
33 acres of land

Applicant's Exhibit A-11: Aerial photo – Stewart's Grant phasing of mining operations

Applicant's Exhibit A-12: Drawing to show types of soils and elevation of ponds

Applicant's
Exhibit A-13:
Letter from Mr.
Langley, dated
3/6/06,
regarding the
conditional use
application

Mr. Gibbs explained that Stewart's Grant, L.L.C is comprised of Great Mills Trading Post and Southstar, L.P. He explained that the Applicant, Chaney Enterprises, is the controlling ownership entity of Southstar.

Mr. Gibbs submitted Exhibit A-1 and explained that Scantek, Inc., an acoustical engineering firm, performed noise analysis on the project. Their report stated that none of the operations proposed will come close to the 60 decibel (dB) limit of the Zoning Ordinance. He submitted Exhibit A-2 and explained that their findings were that the mining operation that is being proposed will not have any impact on the water table, existing wells, or Hilton Run stream. He submitted Exhibit A-3 and explained that their findings were that this project will not result in any new trips. Mr. Gibbs explained that the traffic engineer analyzed MD 246 and the two intersections there and found that they will work at acceptable levels of service (LOS). He asked that the Board accept the justification statement and accompanying maps that were submitted with their application as affirmative proof.

Mr. Gibbs called Glenn Gass forward for testimony. Mr. Gass, an employee of Great Mills Trading Post, explained that he is a professional engineer and site designer for engineering firms and civil type work. He said that he has been employed by Great Mills Trading Post for one month as a direct employee, but has been a consultant for the company for 12 years. Mr. Gass explained that he works on site designs, construction plans, land development, cost estimating, permitting, and many other phases of work. Mr. Gibbs asked Mr. Gass if prior to his employment with Great Mills Trading Post, he was ever employed by the County. Mr. Gass explained that he worked as a lead project engineer for what used to be known as the Office of the County Engineer from 1975 to 1984, now called the Department of Public Works and Transportation (DPW&T).

Mr. Gibbs pointed out the outlines of the Stewart's Grant property and Chaney Enterprises plant on Exhibit A-5, and explained that the plant is adjacent to the Stewart's Grant property, but that it is off-site.

Mr. Gass explained that the area near Sanner's Lake has been used continuously since the establishment of the Naval Air Station, as a source of materials and area for batch plants. He explained that there were up to three plants on the site and that someone once ran a concrete business in the area. He stated that another plant in the area was previously reviewed and approved by the Board, and that it has a batch plant. Mr. Gass explained that there are other lakes in addition to Sanner's Lake, excavation areas, and gravel mines in the area that have been there for years.

Mr. Gass explained that there is a wash plant that currently exists on the property which is owned and operated by Chaney Enterprises, and that it was an approved conditional use on tax map 51, parcel 39. He explained that this area has been in use for mining operations since the 1940's and 1950's, but the residential development is relatively new.

Mr. Gibbs asked Mr. Gass if the wash plant was originally approved in 1995. Mr. Gass explained that the wash plant was a separate application made by Great Mills Trading Post and the request received a hearing before the Board and was originally approved for a five year period in 1995. The plant was later approved for an additional 20 years, and is active until 2020. He explained the original approval in 1995 provided for a trip generation of 20 loads per day, and this was increased in 2001 to 250 trips per day via Quatman Road.

Mr. Gibbs asked Mr. Gass if he was aware that there were two requests for mining approvals on the Stewart's Grant Property. Mr. Gass replied that he was. He explained that the first mining request was not reviewed by the Board because it was less than five acres and this was allowed as a permitted use as opposed to a conditional use. He explained that after the materials were mined, the second request was submitted for a 33 acre mine, and this request was reviewed due to its size and approved by the Board.

Mr. Gibbs asked Mr. Gass if there was ever a time when the owners of Stewart's Grant donated land from their property to the County for an elementary school site. Mr. Gass explained that the owners did dedicate and donate land which is now under construction for Carver Elementary School.

Mr. Gibbs asked Mr. Gass if this property will be developed with a residential community. Mr. Gass replied that this was correct. He explained that the property will be developed as a PUD with a commercial component. He explained that there will be approximately 1,600 units in the residential development; however this application is not an intention to move forward with the residential development.

Mr. Gibbs asked Mr. Gass if this application has any relation to the recreational amenities that will be provided to the residential community. Mr. Gass explained that the Applicant intends to create

two recreational lakes. He explained that the lakes will differ in size, and pointed out where they are proposed to be located. He explained that the pump routes and haul routes will be contained.

Mr. Gass explained that the proposed mining operation expansion will be done in phases, and that Exhibit A-11 shows phases one through five. He explained that phase one represents the completion of the steep bank grading, which will bring the bank back to a general slope. He explained that phase two will begin at the start of the smaller lake, and phase three will be the completion of this lake. Phase four will be to expand the area and start the larger lake, and phase five will be the completion of the larger lake. Mr. Gass explained that in developing the two lakes, they do not intend to build embankment type structures to contain water; however they do intend to build excavated structures. They intend to use conventional type overland equipment to excavate down to the water table, and a hydraulic dredge to pump back up to the lakes and finally to the plant.

Mr. Gass explained that there will be a slurry pipe having a mixture of water and materials and this will be pumped back to the plant area, dropped into a conveyor type system and conveyed into the separation process. All waste water will be recycled. Mr. Gibbs explained that in order to get to the product, the overburden has to be removed and this will be stock-piled on site. Mr. Gass stated that it will be stock-piled on site under a sediment control plan approved by the SCD. Mr. Gass explained that Exhibit A-12 is an engineered plan that shows the various types of soils on the site, excavation of the two ponds, and general slopes throughout the property being proposed for mining, and the lakes.

Mr. Gibbs asked Mr. Gass if all required State and County permits will be obtained prior to any activity occurring on the site if the application is approved. Mr. Gass replied yes.

Mr. Gibbs asked Mr. Gass for his opinion regarding any benefits that may result from the mining and establishment of the lakes. Mr. Gass explained that the lakes will be a recreational benefit. He explained that the area provides stormwater management and an area large enough for a reservoir if treated surface water was ever needed.

Mr. Gass stated that they are requesting that condition #19 be deleted because excavation and development of a pond is a normal type of excavation activity in many developments. He explained that they want to use the materials that are excavated, instead of trying to find places to stock-pile them and without going on the main roads. He explained that when the BOCC made the decision to accept Carver Elementary School, they realized that this was an active area, and that both uses could exist at the same time. Mr. Gibbs asked the Board to also consider deleting this condition based on 1) a report on file from Anthony Bauer who has been involved in similar compatible residential and mining developments, and 2) the fact that they will have to go through the approval process for the residential component and staff will have to determine the distance between the development and any mining operations.

Mr. Gibbs asked Mr. Gass where the closest residence is located to this mining site. Mr. Gass explained that the closest property is owned by Mr. Langley and the mine in back of their property and the processing plant is to the side of their property. Mr. Gibbs asked Mr. Gass if he had spoken with Mr. Langley and if he had given him any comments on this request. Mr. Gass submitted Exhibit A-13 and explained that he had no objection to the request.

Mr. Hayden asked Mr. Gass to point out the location of Carver Elementary School, and asked him how close the mining operations will be to the school site. He explained that phase one of the project will be the closest activity to the school site. Mr. Hayden asked if there will be any protection to the students from the mining operations. Mr. Gass explained that the site will be monitored during the day and that the same procedures will apply here as any other lake or recreational facility, so it will be a matter of enforcement. He explained that he does not have an

answer for how to contain wandering children. Ms. Scriber asked if there will be fencing on the site. Mr. Gass replied that there would not be, but this was not an issue before the BOCC. Mr. Hayden stressed that the safety of the students is very important to the Board.

Mr. Miedzinski asked if Quatman Road will be used as an egress for the residential development. Mr. Gass explained that Bay Ridge Boulevard will be the primary entrance, and that Quatman Road will only be used by vehicles hauling from the mining site. He mentioned that Carver School Boulevard and Mattapany Road may also be used for access. Mr. Hayden asked if a traffic study has been done to determine if these roadways will be able to withstand an additional 3,200 vehicles. Mr. Gibbs explained that the Applicant is aware that a full traffic study will need to be completed in order to proceed with the residential development.

Ms. Chaillet explained that staff agrees with the Applicant's comments about the approval of what was originally known as Sanner Wash Plant on the adjoining property. She explained that the 4.97 acres did not require the Board's approval previously because it was less than five acres, so only a grading permit was required. She explained that this request is to expand the mining operations by 47.5 acres, which includes the expansion of the haul road. She stated that staff supports the removal of condition #19 from the conditional use that was approved in 2001.

Ms. Chaillet explained that staff has amended condition #18, whereas approval of a detailed development report and site plan by the BOCC will be subject to approval of an amendment to the PUD pursuant to the PUD agreement. There will be a review and approval process by the Planning Commission for the proposed residential development, and the removal of condition #19 will allow the applicant to move forward with the development report and site plan. She explained that staff has found that there are no adverse impacts, and that all other standards have been met regarding the proposed expansion.

Ms. Chaillet explained it is her understanding that Carver Elementary School will have a fenced area around the playground area and fields. One of the previously approved conditions was that a 200 feet buffer be maintained around the mining operation. She stated that staff recommends that the Board require that the mining operation be fenced, due to their concerns about protecting students who may wander from the school. She explained that the existing mining operation is approximately 300 feet from the nearest point of the school site, and the proposed expansion will be further south and more than 300 feet from the school site. She explained that there is currently no restrictive measure in place to prevent students from wandering onto or close to the property, other than the Buffer.

Ms. Chaillet explained that staff recommends approval of the expansion of the mining operation subject to the 18 conditions outlined in the staff report, the recommendation that a fence be required around the site, and the amendment to condition #18. She explained that condition #19 will be removed subject to the Applicant obtaining approval pursuant to the PUD for the residential development.

Mr. Callaway moved that the staff report be accepted. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

The Chair opened the hearing to public comment for those who oppose the request.

Brandon Munday explained that he lives in the Bay Ridge Subdivision, and is probably the closest neighbor to this property. He stated that he is not objecting to the request, but that he would like to make the Board aware of some of his concerns. He expressed his concern about the residential development and the impact that it may have on schools and traffic, and about the fact that he did not receive many of the materials that were presented prior to this hearing. He explained that staff was not able to give him many of the specifics that were presented to the

Board, so the community was not given the opportunity to review these materials before the Board made a decision. Mr. Munday stated that one of his primary concerns is when the mining operation development is going to stop, because there have been several plans presented in the past, in addition to this one. He expressed concern about the residential property values changing in the coming years, and explained that it may become more valuable to mine this area as well. He explained that the phasing plan makes sense to him, but wanted to know if there is anything legal binding to this other than the Applicant's intention. Mr. Munday expressed concern about the buffer zone of the property, and explained that a 50 foot buffer was left on the property when they cleared the property in 2003, prior to Hurricane Isabel; however a lot of the buffer blew down and landed on his property and a neighbor's property. He explained that there is a requirement in the PUD, which requires that there be 15 percent of wooded area and wanted to know if this is going to be enforced and maintained, because he feels that it is very important. He also explained that the recreational lake will be beneficial to the Applicant due to the fact that it will increase the residential property values; however it will be difficult for him to access and use the lake because he lives farther from it and it will be surrounded by houses.

Mr. Gibbs explained that the Applicant is offering the phasing plan and volunteering to be bound to it, and that the Board can add the phasing plan as a condition to their approval of the request. He explained that the Applicant does not believe that there will be further mining opportunities for this property, and do not intend to seek further approvals of mining operations. Mr. Gibbs explained that the clearing was done in compliance with all State and County permits, and that he does not think that it is appropriate to declare that the lakes will be available to anyone other than the residents of the future development at this time. Mr. Hayden explained that any changes to this request would have to come back before the Board. Mr. Munday reiterated that he would like to have information made available to him in advance.

The Chair asked Mr. Gibbs if there will be anyone speaking in favor of the request. Mr. Gibbs replied that they were finished with their testimony. The Chair closed the hearing to public comment.

Mr. Gibbs provided his comments regarding the staff report, explained that the term major amendment occurs a couple times, and should be deleted based on an amended condition #18. He explained that the staff report also refers to this request as Modification B, and the Applicant would prefer if it were referred to as 2006-01 A and B, with A and B representing the two lakes as modifications. He explained that in the past a request for Modification B was submitted and never pursued, and they do not want this to create confusion.

Mr. Gibbs explained that condition #4 requires that a 200 foot buffer be maintained around the mining operation. Currently there is no buffer along the northeast boundary near the wash plant and Quatman Road, as a result of mining that previously occurred on the property. He explained that the Board may want to consider that this condition not apply to this portion of the property that does not have a buffer, or that the condition only apply to the new mining operation proposed with this request as opposed to the previously existing mining operation. Mr. Hayden asked about possible remediation of the buffer that was previously there. Mr. Gibbs explained that this would be difficult since this area will be part of the lake area.

Ms. Chaillet explained that the 200 foot buffer requirement is pursuant to Section 51.3.80 of the Zoning Ordinance. Mr. Norris explained that it appears that phase one goes to the west of the property, and therefore the proposed mining operation would not encroach on the 200 foot buffer, unless it is in the area near the school. Mr. Hayden stated that if this was a requirement in the past, the Applicant should have to remediate the buffer. Mr. Norris explained that if LUGM determined that there was a violation of this, they would take the appropriate action. Mr. Gibbs noted that the prior approval for 33 acres of land had condition #4, and quoted the following from Exhibit A-10, "An undisturbed buffer of 200 feet from property lines shall be provided around the

perimeter of the mining operation except for the proposed pond, where a buffer of 100 feet shall be maintained." He stated that the Applicant can meet the 100 foot buffer requirement.

Mr. Gibbs explained that they realize the Board's concerns about fencing; however they would prefer to fence the school site rather than the mining operation. Mr. Hayden agreed that it would be better to fence the school site, since this is where the protection is needed, and asked Mr. Canavan for his opinion. Mr. Canavan explained that a school and playground are typically fenced; however Carver Elementary School is not yet occupied and this excavation site is simply being proposed. He explained that the school's playground may be controlled. Mr. Hayden explained that he would prefer for the entire school site to be fenced. Mr. Canavan explained that the Board may want to address fencing on the proposed site rather than on the existing excavation site. Mr. Hayden asked how the Board can suggest this. Mr. Canavan suggested placing a fence within the buffer.

Mr. Hayden asked how many acres of the property Chaney Enterprises or the Applicant have been mining at any given time, and how many acres are sitting and how many acres of land are being reclaimed. Mr. Gibbs explained that this is not a typical mining operation, and the reclaimed area is the lake area. Mr. Canavan suggested that the Board consider the fact that the Applicant is willing to bind himself to conditions as stated in the submitted documents. He explained that the Board can choose to accept and condition this request based on the Applicant's statement of operation and phasing plan. He suggested reading these into the record as condition #1, and then the Applicant will be bound. Mr. Gibbs stated that the Applicant is willing to accept this.

Mr. Hayden explained that the fencing details will be worked out between the Applicant and staff, and that this will be added as a condition. Both parties agreed. Ms. Chaillet explained that she received a question for the Applicant from Dennis Nicholson, of the St. Mary's County Housing Authority. Since Mr. Nicholson was not present, Ms. Chaillet asked the Applicant, on behalf of Mr. Nicholson, the number of trucks per hour that enter and exit Great Mills Road via Quatman Road. Mr. Gibbs explained that the number of trucks per hour may fluctuate, but that 250 truckloads per day are permitted.

Ms. Scriber moved that having accepted the staff report, dated March 7, 2006, and having made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met the Board approve the expansion of the approved Conditional Use for an extractive industry pursuant to Chapter 25 of the Ordinance, subject to the following: 1) conditions stated in the staff report, 2) the Applicant shall provide a statement of operations and phasing plan, 3) the Applicant shall mine sequentially in accordance with the statement of operations and phasing plan, and 4) the Applicant shall fence the mining operation as approved by LUGM.

Ms. Scriber moved that having accepted the staff report, dated March 7, 2006, and having made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board approve the request to remove condition #19 of the approved Conditional Use for an extractive industry pursuant to Chapter 25 of the Ordinance, subject to the approval of an amendment to the PUD pursuant to the PUD agreement. The motions were seconded by Mr. Callaway and passed by a 5-0 vote.

EXECUTIVE SESSION: DISCUSSION OF PENDING LITIGATION

The discussion on the pending litigation for the Gollahon decision was carried forward to the April 13, 2006 agenda.

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

VAAP #05-3310 – Reilly – 15,750 square feet – The applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer with additions to a single family dwelling. **Variance approved with signed Planting Agreement.**

VAAP #03-1158 – Kirk – 7,614 square feet – The applicant is requesting variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the side yard setbacks to replace a single family dwelling. **Variance approved.**

VAAP #05-2981 – Maclin – 16,000 square feet – The applicant is requesting after-the-fact variance from Section 41.7.4 of the St. Mary's County Comprehensive Zoning Ordinance to place a structure closer to the water than the principal structure on the adjoining property. **Variance approved with conditions.**

MINUTES AND ORDERS APPROVED

The minutes of February 9, 2006 were approved as recorded.

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

VAAP #05-2761 - Windsor

VAAP #05-3121 – Hutchinson

VAAP #05-2540 - Wittenberg

COMMENTS FROM THE CHAIRMAN

Mr. Hayden thanked County Attorney John Norris on behalf of the Board for his support, and wished him well in his endeavors.

ADJOURNMENT

The meeting was adjourned at 10:50 p.m.