

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, March 11, 2004**

Present: Marie Underwood, Chairperson  
George Allan Hayden, Vice Chair  
Greg Callaway, Member  
Ronald C. Delahay, Sr., Member  
Michael Hewitt, Member  
John B. Norris, III, County Attorney  
Yvonne Chaillet, Planner III, Department of Land Use  
& Growth Management  
Janice Blackistone, LUGM Fiscal Specialist

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

**PUBLIC HEARING**

**CUAP #99-1439 – AMERICAN TOWER**

Requesting a modification of Conditional Use to amend the conditions of approval. The property contains 205 acres, is zoned RPD, and is located on Chaptico Hill Lane in Chaptico; Tax Map 17, Block 8, Parcel 3.

**Withdrawn.**

**CUAP #03-131-063 – MARGARET BRENT ANNEX – BUS TRAINING FACILITY**

Requesting a Conditional Use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance to construct a paved surface for a school bus training program. The property contains 31.793 acres, is zoned RPD, and is located Point Lookout Road, Leonardtown; Tax Map 25, Block 20, Parcel 85.

Present: Jonathan Blasco, P.E., of Mehaffey & Associates, P.C.  
Owners: St. Mary's County Public Schools

Legal Ad published in The Enterprise on 2/25/04 & 3/3/04  
#A-1 Certified Receipts of notification to contiguous property owners

Ms. Chaillet stated St. Mary's County Public Schools is proposing to construct a paved surface for the school bus training program. She said currently the training program is located at the Margaret Brent Middle School Annex. When available, the bus training course takes place in the existing parking area.

Mr. Blasco stated this project is a clearing of an acre behind Banneker Elementary School. He said the Banneker Elementary School site shares several uses one being a training facility that handles the training of teachers and staff throughout the County; and it is also a part of the bus training facility. When they did the Banneker Elementary School renovations, they had to set up temporary classrooms behind the school building. That project has been completed and since then they have started on the Margaret Brent Middle School project with moving the 6<sup>th</sup> grade students to that complex.

At the time, Mr. Blasco said they realized they had a problem with parking, but he did not realize the parking would be a Board of Appeals conditional use. They were hoping to get the site built before the 6<sup>th</sup> grade students were brought back there but it did not happen that way and now they are faced with parking issues.

Mr. Blasco said that after Margaret Brent Middle School is completed, their intent is to move the students from Leonardtown Elementary School there during their renovations.

Mr. Blasco further stated there is a bus trainer on site to train people who are interested in driving buses for the school system. He said they currently have some classrooms there but they do not have any bus training courses, so the class has to go to the airport.

**Mr. Delahay moved to accept the Staff Report as written; seconded by Mr. Callaway and passed by 5-0.**

The Chair opened the hearing to public comment. Hearing no comments the Board closed testimony.

**Mr. Hewitt moved that, having adopted the 3/3/04 Staff Report and making a finding that the Conditional Use standards Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board granted conditional use approval to construct a paved surface for a school bus training program at the Benjamin Banneker Elementary School, as requested. The motion was seconded by Mr. Callaway and amended as set forth above, and passed as amended by a vote of 5-0.**

**VAAP #03-2194 – RIVERWOOD FARMS SUBDIVISION**

Requesting a Variance from Section 41.5.3, Section 71.7.3, and Section 71.8.3.b of the St. Mary's County Comprehensive Zoning Ordinance to construct a single family dwelling and appurtenances within the Critical Area Buffer expanded for steep slopes. The property contains .62 acres, is zoned RNC, LDA Overlay District, and is located on Cat Creek and fronts Cat Creek Road in Mechanicsville; Tax Map 15, Block 3, Lot 28.

Owners: S. Joseph Cerniglia  
Present: William Higgs, of LSR, Inc.  
Larry Miller, of A. L. Miller  
Jason Lewis

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Mr. Higgs presented an overview of the proposed construction for a single family dwelling. He said the existing lot area is .62 acres and without tidal wetlands it is .49 acres. He said they proposed to clear only 31.8 percent of the forest area on the lot with a total of impervious surface of 13.7 percent which is under the 15 percent that is allowed in the Critical Area Buffer.

Mr. Higgs said they are trying to minimize the clearance of trees by building the house then seed the property before building the deck on the house. He said in order to protect the property they have provided some roof top dry wells for the water runoff.

Mr. Higgs stated that the plan has been approved by the Health Department and Soil Conservation District (SCD). He said he has worked closely with SCD and they are using the super silt fence to ensure there will be no erosion problems and to contain erosion on site during construction.

Mr. Higgs addressed the issues for Critical Area standards for variance that were listed in the March 3, 2004 Staff Report:

- a) With the steep slopes on this property the expanded Critical Area Buffer covers almost 90 percent of the lot. There is only a very small spot at the top of the property where he would place the septic systems per the Health Department requirements;
- b) This request for variance is a direct result of the 1985 adoption of the Critical Area's regulations, after-the-fact. This subdivision was recorded in 1952 and other existing lots that were built prior to the Critical Area regulations which allowed development without meeting the regulations;
- c) Any grandfathering lot that is constrained by the regulations of the Critical Area regulations has the opportunity to request

variance for relief of these provisions and no special privileges would concur upon the applicant on this lot;

- d) This request for variance is a result of the Critical Area regulations coming into effect on an existing lot;
- e) They have been working with SCD and Health Department to make everything meet the regulations. They designed the house to fit this lot, they have used the best management practices per SCD request, they used super silt fence, they have roof top drywells and they are also in agreement with the plantings agreement; and
- f) The foot print of this house is 1,772 square foot and they did minimize the clearing by saving as many of the existing trees they could save. The house has been designed to best utilize the existing topography.

Mr. Miller said they have taken the added steps by hiring Hillis Carnes GO Technical Engineering and Ray Hillis has provided a proposal for building this house once approved. He said the first step that needs to be done is to have the GO Technical out to the site to make sure the foundation system is certified.

The Board asked Mr. Higgs what is a super silt fence. Mr. Higgs replied it is a stronger filter fence that has a chain link fence behind the silt fence to support the fence from large storms.

Ms. Chaillet said the March 3, 2004 Staff Report needed to be amended to add that she received several written comments.

**Mr. Callaway moved to accept the March 3, 2004 Staff Report as amended; seconded by Mr. Hayden and passed by 5-0.**

The Chair opened the hearing to public comment.

Mr. Larry Stoll, 42015 Gibson Drive, who lives on the other side of Cat Creek down near the mouth of the creek, stated his concern for the creek. He said he knows this creek well because he has been living there for 2 years and kayaks the creek to explore. He further said it is a lot less water in the creek and a lot more silt. He said if any additional sediment gets into the creek there will be more damage. He stated his biggest concern is all the care in the world in building silt fences will not stop accidents from happening to soil that is not very stable.

Mr. Miller replied that they are going to keep the silt fence perfect and this will improve the property. He said right now the water runoff is going down the hill and they are actually reducing the water runoff on this property through the dry wells.

Ms. Joan Ritchie, 27255 Cat Creek Road, who lives at the other end of the creek, said she purchased her existing home 14 years ago and at that time there was only 3 feet of water in the creek on low tide. She said there were nesting ducks and muskrats, and it was a great joy to take your coffee out on the deck and watch the eagle's fish. She said now at low tide it is a mud flat, and there are no more nesting ducks, no more muskrats and the wildlife is disappearing. She further said she does pay attention to the staff reports especially when they state there will be no impact to wildlife, she said she knows that is incorrect because she has lived there for 14 years and she has seen the impact on the wildlife.

Mr. Eric Bargar, 27279 Cat Creek Road, who lives next door, said he opposes the granting of a variance to build a house on this lot. He stated he tried to purchase this proposed lot in 1974 and Dutch Mass, of the Health Department, came to the lot to do a perc test and said he would not allow a perc test to be done on this property nor would he ever allow any building to be done.

Mr. Bargar said he is concerned that there are no policies to watch over the building sites in St. Mary's County in the Critical Areas. He said he spoke to Wanda Cole, of Chesapeake Bay Critical Area Commission, and Bruce Young, of SCD, and both stated because of low staffing there will be no one available to watch over the site.

Another concern of Mr. Bargar's, is the steep slopes, he said a home owner could buy their way out of a planting agreement by paying a fee to the County to send the planting of trees to another area located in the County.

Mr. Miller replied to Mr. Bargar that the septic system is going to be on an almost completely level area and the perc tests are strong. He said regarding the planting on this lot, it is their intent to plant the 45 – six foot trees on that property. He further said the silt fence will surround the property all the way up to the front of the property including the side of Mr. Bargar's property.

The Board asked Mr. Bargar, when he built his house did he have the same contours as the proposed house. Mr. Bargar replied he built his house in 1974 and he was able to stay back away from the sloop; he built his house on a slope less than 25 degrees.

Mr. Higgs stated he has heard some concerns regarding the dry well and he said there are two options that he could do: 1) turn the dry well around so it would be 8 foot from the property line; or 2) he could put the dry well on the other side of the house and pipe around to the front of the house under the deck.

The Chair requested for staff to inspect the construction to make sure the developer is living up to the conditions included in the variance. Ms. Chaillet said the Inspectors of Land Use & Growth Management (LUGM) and the Middle Department Inspection Agency's Inspectors inspect at different stages of a construction process. She said LUGM relies on citizens to notify us if there are any problems. The Chair replied in this particular case, LUGM needs to send an Inspector out. Mr. Canavan said LUGM would send an Inspector out.

Chair closed public hearing.

**Mr. Delahay moved that, having adopted the 3/3/04 Staff Report and making a finding that the Standards for Variance in the Critical Area and the objectives of Section 41.5.3, Section 71.7.3, and Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board approved a Variance to construct a single-family dwelling within the expanded Critical Area Buffer with the recommended condition to adhere to the Planting Agreement for planting of 29,520 square feet (three-to-one (3:1) mitigation for 2,995 square feet of impervious surface within the Critical Area Buffer and three-to-one (3:1) mitigation for 6,845 square feet of woodland clearing) with the condition that the Applicant have a GO Certified license engineer inspect the footings to assure they are on stable ground, meet the requirements the Soil Conservation District relating to drywells and move the drywell within 8 feet of the property line. The motion was seconded by Mr. Callaway and passed by a vote of 5-0.**

**VAAP #03-2841 – BURROUGHS**

Requesting Variance from Section 71.5.2, Section 71.6.2, and Section 72.2.1.c, of the Comprehensive Zoning Ordinance to clear in the Critical Area Buffer. The property contains 1.33 acres, is zoned RPD, RCA Overlay district, and is located on Ball Road, Piney Point; Tax Map 69, Block 16, Parcel 222.

**Withdrawn.**

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

**#VAAP #03-2304 - Medford and Barone – 3.14 acres  
#VAAP #03-2247 – McConaghy – 11,792 square feet  
#VAAP #04-0004 – San Souci Subdivision – 4,213 square feet  
#VAAP #04-0029 – San Souci Subdivision – 4,184 square feet**

**MINUTES AND ORDERS APPROVED**

The minutes of February 12, 2004 were approved as recorded.

The Board voted to authorize the Chair to sign the orders.

**Mr. Hewitt moved to authorize the Chair to review and sign the orders. The motion was second by Mr. Hayden and passed by a vote of 5-0.**

The Chair reviewed and approved as submitted the following Orders:

**CUAP #03-132-028, for Phillip Moore Mining Operation  
VAAP #03-132-028, for Phillip Moore Mining Operation  
VAAP #03-1330, for Leverings Subdivision – Lot 10  
VAAP #03-1331, for Leverings Subdivision – Lot 11  
VAAP #02-2542, for Leverings Subdivision – Lot 12**

**ADJOURNMENT**

The meeting was adjourned at 7:43 p.m.

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Janice C. Blackistone  
Fiscal Specialist

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Approved in open  
session: April 8, 2004

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Marie E. Underwood  
Chairperson