

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, April 8, 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  
April Bahner, Environmental Planner  
Janice Blackistone, LUGM Fiscal Specialist (backup for  
Recording Secretary)

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 6:33 p.m.

**PUBLIC HEARING**

**VAAP #03-1567 – WILKES**

Requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to replace an existing single family dwelling in the Critical Area Buffer. The property contains 27,007 square feet acres, is zoned RPD, LDA Overlay, and is located on Waterside Drive, approximately 300 feet south of its intersection with Breton Bay Road, in Leonardtown; Tax Map 48, Block 13, Parcels 35 & 47.

Owners: Donald & Darlene Wilkes  
Present: Jerry Soderberg, of DH Steffens Company

Legal Ad published in The Enterprise on 3/24/04 and 3/31/04  
#A-1 Certified Receipts of notification to contiguous property owners

Ms. Chaillet stated the applicant is proposing to replace an existing single family dwelling in the Critical Area Buffer. She said the property is an old recorded lot that is entirely constrained by the Critical Area Buffer. The existing one-story frame dwelling, built long before the adoption of the Critical Area provisions of the Ordinance, will be removed and replaced with a new single-family dwelling that will utilize most of the existing footprint.

Mr. Soderberg said there is a cottage on this lot and that the owner would like to replace it with a more modern cottage which he would move it further away from the water. He said the lots were recorded in the 1950's, long before the Critical Area provisions were established.

The Chair said she noticed a wet area on one side of the lot with a puddle of water and at first she thought the new house would not extend into that area but she now realizes the new house would extend into that area. Mr. Soderberg replied it would only take 4 to 6 inches of topsoil to fill in that area.

The Chair asked if the road would drain through there. Mr. Soderberg replied yes and they will make sure it is a positive drainage that goes towards the river.

The Chair asked if this lot has been before the Board before regarding a tree issue in the neighbor's lot. Mr. Soderberg replied yes he believes it was but he did not handle that variance. The Chair said she thinks it was a Champion tree. Ms. Chaillet replied yes this variance was before the Board in 2000. Mr. Soderberg stated the 4 to 6 inches of topsoil would not injure the Champion tree.

Ms. Chaillet stated she has a letter from Mr. Carl Dietrich, an adjoining property owner in lot 10, expressing his concerns regarding the Champion tree located on his property.

The Chair asked if Mr. Wilkes was a different applicant or was it a different site plan. Ms. Chaillet replied no, it is the same applicant but a different site plan.

Ms. Chaillet said she received comments from Mr. Dipreda, another neighbor located on lot 6, regarding his well. She said Mr. Dipreda believes his well is buried in the location of the proposed septic system and the Health Department is unable to locate the well. The Chair asked if the neighbors well was located on his own property or Mr. Wilkes. Mr. Soderberg replied yes the well is located on his property but it is unknown where the well is located at but the well needs to be 50 feet from the center of the mound system. Mr. Soderberg said they are in the process of locating the well and if the well is too close they are proposing to drill Mr. Dipreda a new well.

Mr. Carl Dietrich, 20748 Waterside Drive and owner of lot 10 and 11, said he is concerned about the 4 to 6 inches of topsoil that Mr. Wilkes is using might harm the tree. The Board asked how many feet was the tree located from the property line? Mr. Dietrich replied about two feet.

The Chair asked Mr. Soderberg if they could move the house over by 10 feet. Mr. Soderberg replied yes.

Mr. Donald Wilkes said the only reason he did not build at that time was the builder he had never built on the water before. He said the builder told him he had to

build 7 feet above ground and with 15 grand children and his age he did not pursue the issue of building. He stated he did not have any water issues at that time until Mr. Dietrich built his house and put fill dirt in. He said with the build up of the fill dirt, of at least four to five inches, the water was diverted to his property. The Chair asked if Mr. Dietrich's fill dirt were on the tree roots. Mr. Wilkes replied yes.

The Board stated they would like to wait 30 days to go back and look at the tree.

**The Board continued the hearing until the May 13, 2004 meeting to give all the Board members an opportunity to review the tree and make sure the property line is staked out.**

**VAAP #01-0952 – BLACKISTONE FARM – LOT 1**

Requesting a variance from Section 41.5.3 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) to increase the overall impervious surface amount with construction of a single-family home. The property contains 1.1 acres, is zoned CM, LDA Overlay, and is located on Lot 1 of Blackistone Farm and is located at the intersection of Marina Way and Blackistone Circle in Hollywood; Tax Map 27, Block 11, Parcel 308.

Owner: Leslie L. Gould

Present: Jerry Soderberg, of DH Steffens Company

Legal Ad published in The Enterprise on 3/24/04 and 3/31/04

#A-1 Certified Receipts of notification to contiguous property owners

Ms. Chaillet stated the applicant is proposing to increase the overall impervious surface amount with construction of a single-family home. She said in 2001 Mr. Gould received a letter from Robin Guyther, Director of the Department of Permits and Inspections, advising him to remove the dilapidated former dwelling because it was deemed an unsafe structure under the terms of the Building Code.

Mr. Soderberg said this property has a long history with a marina, commercial fishing operation, an existing house that was located on this site and torn down with no replacement dwelling. He said Mr. Gould decided he wanted to put another house there then he came across the Critical Area Regulations which stated after one year he could not put a replacement dwelling home once the dwelling home was taken away. He stated this house is basically a rambler with a garage underneath. He said this house is further from the water then the originally dwelling home.

The Chair asked if Mr. Soderberg was arguing the fact that this the right reason for Mr. Gould or to undo hardship done to Mr. Gould by the Critical Area Commission. Mr. Soderberg said for both reasons because it is the right reason and to

undo the hardship done to Mr. Gould from the Critical Area Commission. Mr. Soderberg stated the house was taken away from Mr. Wilkes after the Critical Area Regulations were established.

Mr. Leslie Gould, owner of the property, said he brought the property 40 year ago and has been operating the marina for the past 40 years. He stated the property had an old farmhouse that had fallen into disarray and about a year ago he received a letter from the County stating he had to tear down the house because it was in such bad shape and he could not argue with that, so he tore down the old house. He said he could not build right away because there was a hold on the septic system for a year and when that was lifted he then tried to build again.

The Chair asked Mr. Gould if he had any dates of when the building was tore down and when the moratorium started? Ms. Chaillet said it was 2001 and Robin Guyther sent the letter. The Board asked Mr. Gould if there were any impervious surface that could be given back to the property since he was over the limit maybe the gravel road could be given back to grass area? Mr. Gould replied he needs the area for cars of parking, hauling boats and the operation of the marina. The Board asked if the proposed dwelling home would be bigger than the old farm home. Mr. Gould replied no smaller. The Chair asked if this would be a rental home. Mr. Gould replied he has not decided but yes it could be a rental home.

**Mr. Hewitt moved to accept the March 30, 2004 Staff Report as amended; seconded by Mr. Delahay and passed by 5-0.**

The Chair opened and closed the hearing to public comment.

**Mr. Hewitt moved that, having made a finding that the standards for variance in the Critical Area and the objectives of Section 41.5.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board denied variance to exceed the overall impervious surface limit in the Critical Area with the recommended condition to adhere to the Critical Area Planting Agreement to provide planted mitigation totaling 5,394 square feet for construction of a single-family home. The motion was seconded by Mr. Delahay and denied by a vote 2-3.**

**CUAP #03-132-031 – ROBERT JARBOE MINING OPERATIONS**

Requesting a conditional use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance (Z02-01) for an extractive industry involving mining more than five acres. The property contains 275 acres, is zoned RPD, and is located on south side of Maryland Route 244 at Hunters Hill Lane, approximately ½ mile west of Chingville Road, in Leonardtown; Tax Map 57, Block 8, Parcels 279 & 38.

Owner: Robert T. Jarboe

Present: Bob Trautman, Land Surveyor

Legal Ad published in The Enterprise on 3/24/04 and 3/31/04  
#A-1 Certified Receipts of notification to contiguous property owners

Ms. Chaillet stated the applicant is requesting approval to extract natural resources greater than an extractive industry involving mining more than five acres.

Mr. Trautman said this pit has been activated for 25 years and probably predates any mining regulations from Maryland Department of the Environment. He said the pit is divided into two parts, the first pit will be extended approximately two acres, which is an extension of the original 10 acres and now has been reduced to 5+ acres in one area and an additional area of 11.27 acres pit further away.

The Board asked Mr. Trautman if he was extending pit # 2. Mr. Trautman replied no they are extending pit #1 by two acres and pit #2, the larger operation, will be able to be lowered down and eventually turned into farm fields in a lower level.

The Chair asked if he is mining in violation because he is located in the Maryland Agricultural Land Preservation District (ALPD). Mr. Trautman replied no not until Mr. Jarboe is paid by ALPD so he is not in violation. He said Mr. Jarboe has put an application in for the ALPD and they assume Mr. Jarboe's property is in the ALPD.

Robert Jarboe, owner of the property, said he placed both of his farms in the ALPD about 20 years ago. He said he has submitted the paperwork for ALPD four times but their offer has always been too low. He further said the only reason he has never pulled his property out of the ALPD was for the simple reason the state needs his agricultural acreage land. He stated there has been no development rights sold, the land is still his and if he wants tomorrow to pull his land out of ALPD he could. He said he gave his son about 3 ½ acres to build a house on the farm and he had to exclude that 3 ½ acres from the ALPD. Donna Sasser told him that he might need to exclude the pit operation also. He stated he plans on leaving the property in ALPD.

The Chair opened and closed the hearing to public comment.

Lee Dyson, owner of the farm next to Mr. Jarboe, said one thing he likes about a gravel pit is when the owner of the gravel pit is finished; they restore the property with a grassy area farm pond.

**Mr. Hayden moved to accept the March 25, 2004 Staff Report; seconded by Mr. Delahay and passed by 5-0.**

**Mr. Callaway moved that, having adopted the 03/25/04 Staff Report and made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance (Ordinance) have been met, a Conditional Use for an extractive industry involving the mining of more than five**

**(5) acres pursuant to Chapter 25 of the Ordinance, the Board granted conditional use approval subject to the following conditions:**

- 1. The Applicant shall demonstrate to the Department of Land Use and Growth Management prior to final site plan approval that he has either removed the subject property from the Maryland Agricultural Land Preservation District or modified his district and obtained a partial district termination.**
- 2. The subject mining operation shall be carried out in accordance with all federal, state, and local regulations in effect as of the date of this approval. Where the Board of Appeals' conditions are more restrictive than federal or state requirements, the Board of Appeals' conditions shall apply.**
- 3. This conditional use approval shall expire five years from the date of the Board of Appeals approving Order.**
- 4. The number of truckloads per day will average 25, with the average computed monthly.**
- 5. Hours of operation shall be from 7:00 a.m. to 5:00 p.m., Monday through Friday, and from 7:00 a.m. to 12:00 p.m. on Saturdays. The proposed conditional use shall not operate on standard holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).**
- 6. There shall be no burning on site except for wood products derived from site clearing and grubbing areas from the site.**
- 7. No topsoil shall be removed from the site. All topsoil shall be used on site for reclamation purposes.**
- 8. Only materials extracted on site shall be stockpiled on site including the materials currently stockpiled.**
- 9. The site shall be stabilized and seeded within six months following cessation of operations in accordance with final approvals from the Soil Conservation District and the Maryland Department of the Environment.**
- 10. The property shall not be used as a salvage yard or landfill operation. No concrete, asphalt, or other debris shall be stored on the site beyond the expiration of the approval of this operation.**
- 11. The applicant shall abide by the standards contained in Section 51.3.79 (Extractive Industry) of the St. Mary's County Zoning Ordinance.**
- 12. Signs shall be erected to alert traffic that there are trucks entering and exiting the property to the satisfaction of the Department of Public Works and Transportation. Signs shall be erected at the entrance of the access road to indicate the road is for private access only and to discourage commercial truck traffic.**

13. All approved conditions shall be listed on the site plan submitted for approval.
14. Any additions, changes, or modifications of the approved conditional use on this site shall require Board of Appeals' approval.

The motion was seconded by Mr. Hewitt, and passed by a vote of 5-0.

**CUAP #03-132-020 – ZIMMERMAN PIT #2 –  
MODIFICATION “D”**

Requesting a conditional use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance (Z02-01) for an extractive industry involving mining more than five acres. The property contains 100 acres, is zoned RPD, and is located on north side of Maypole Road, Parsons Mill Road, and Friendship School Road in Loveville; Tax Map 25, Block 3, Parcel 22.

Owner: Harvey S. Zimmerman Jr. and  
Thelma M. Zimmerman  
Developer: Randal H. Sloan  
Present: Jerry Soderberg, of DH Steffens  
Company

Legal Ad published in The Enterprise on 3/24/04 and 3/31/04  
#A-1 Certified Receipts of notification to contiguous property owners

Ms. Chaillet stated the applicant is seeking conditional use approval for an extractive industry involving mining more than five acres. She said the mine first began operating in 1988 when it received a permit to mine less than five acres and in 1990 the Board approved a second five-acre tract and an additional 12 acres was approved in 1992.

Mr. Soderberg said this continuation of an existing operation with several areas completely reclaimed. He said Mr. Sloan has a pit across the road and is coming close to running out of material on this sight. He stated Mr. Sloan plans on closing the existing entrance which has serious site distance problems especially down the hill. He said they will relocate the scale and well house. He further said this pit has been in operation for over 20 years with very few complaints. He stated he is in discussions with the Department of Public Works & Transportation (DPW&T) regarding repairing the road and posting a bond. He said the road is in the process of being fixed now and the bond will be posted prior to getting a permit. He stated he had a meeting with John Groeger on April 12, 2004 to discuss exactly what the bond will cover.

The Board stated one of their concerns is between pit #1 and pit #2, there is a lot of mining operation equipment that is piled up that might have been out dated or

replaced. This area is hidden with trees and overgrown grass. Mr. Sloan replied if this is a problem he would clean this area up.

The Chair asked if they will continue to run 100 trucks. Mr. Soderberg replied yes.

The Chair opened and closed the hearing to public comment.

The Chair asked Legal what department's responsibilities would this fall under to enforce the conditions on the mining owner to keep the property up to standards. Mr. Norris replied it would be the responsibilities of the Department of Land Use & Growth Management's to enforce the conditions of the Board and DPW&T's will enforce the road ordinance damages.

**Mr. Delahay moved to accept the March 23, 2004 Staff Report; seconded by Mr. Callaway and passed by 5-0.**

**Mr. Hewitt moved that, having adopted the 03/23/04 Staff Report and made a finding that the Conditional Use Standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance (Ordinance) have been met, a Conditional Use for an extractive industry involving the mining of more than five (5) acres pursuant to Chapter 25 of the Ordinance, the Board granted conditional use approval subject to the following conditions:**

- 1. A \$25,000 road maintenance bond shall be required for continued maintenance of Friendship School Road and Parson's Mill Road. The bond shall be in place prior to final approval of the site plan and shall be released once the mining operation and conditional use approval have ceased.**
- 2. The pavement damage along Friendship School Road, which was caused by the existing mining operation, shall be repaired in accordance with requirements of the Department of Public Works and Transportation prior to final approval of the site plan.**
- 3. All Technical Evaluation Committee agency comments shall be addressed prior to final approval of the site plan.**
- 4. The new commercial entrance shall be bonded and constructed prior to commencement of the mining operation.**
- 5. The subject mining operation shall be carried out in accordance with all federal, state, and local regulations in effect as of the date of this approval. Where the Board of Appeals' conditions are more restrictive than federal or state requirements, the Board of Appeals' conditions shall apply.**
- 6. This conditional use approval shall expire five years from the date of the Board of Appeals approving Order.**
- 7. The number of truckloads per day shall not exceed 100.**

8. **Hours of operation shall be from 6:30 a.m. to 5:00 p.m., Monday through Friday, and from 7:00 a.m. to 1:00 p.m. on Saturdays. The proposed conditional use shall not operate on standard holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).**
9. **There shall be no burning on site except for wood products derived from site clearing and grubbing areas from the site.**
10. **No topsoil shall be removed from the site. All topsoil shall be used on site for reclamation purposes.**
11. **The site shall be stabilized and seeded within six months following cessation of operations in accordance with final approvals from the Soil Conservation District and the Maryland Department of the Environment.**
12. **The property shall not be used as a salvage yard or landfill operation. No concrete, asphalt, or other debris shall be stored on the site beyond the expiration of the approval of this operation.**
13. **The applicant shall abide by the standards contained in Section 51.3.79 (Extractive Industry) of the St. Mary's County Zoning Ordinance.**
14. **Signs shall be erected to alert traffic that there are trucks entering and exiting the property to the satisfaction of the Department of Public Works and Transportation. Signs shall be erected at the entrance of the access road to indicate the road is for private access only and to discourage commercial truck traffic.**
15. **All approved conditions shall be listed on the site plan submitted for approval.**
16. **Any additions, changes, or modifications of the approved conditional use on this site shall require Board of Appeals' approval.**

**The motion was seconded by Mr. Callaway, and passed by a vote of 5-0.**

**VAAP #03-132-020 – ZIMMERMAN PIT #2 – MODIFICATION “D”**

Requesting a variance from Section 51.3.79 of the Comprehensive Zoning Ordinance (#Z-02-01) to reduce the setback requirement from an external property line. The property contains 100 acres, is zoned RPD, and is located on the north side of the intersection of Maypole Road, Parsons Mill Road, and Friendship School Road in Loveville; Tax Map 25, Block 3, Parcel 22.

Owners: Harvey S. Zimmerman, Jr. and Thelma M.

Zimmerman

Present: Jerry Soderberg, of DH Steffens  
Company

Legal Ad published in The Enterprise on 3/24/04 and 3/31/04  
#A-1 Certified Receipts of notification to contiguous property owners

Ms. Chaillet stated the applicant is seeking a variance to reduce the setback from an external property line. She said the mine first began operating in 1988 when it received a permit to mine less than five acres and in 1990 the Board approved a second five-acre tract and an additional 12 acres was approved in 1992.

Mr. Soderberg said they requested the variance for several reasons, one reason there is good material located much closer than 200 feet to the road and the second reason it will be better than to have it 75 feet from the road because if this variance is approved they will be required to use screening a combination of berm and plantings. He said the main reason they want the variance is because there is excellent material underground. He stated under the former ordinance 75 feet from the road was the requirement and it makes it much easier to grade the site out and do the final exclamation plan with the 75 feet it gives them more material to work with and gives them a larger area of work.

The Chair asked if the berm would make it harder to see on the haul road on the corner. Mr. Soderberg replied the 75 foot berm will allow enough site distance and if there are any problems he would discuss the road details with DPW&T.

**Mr. Callaway moved to accept the March 25, 2004 Staff Report; seconded by Mr. Hayden and passed by 5-0.**

The Chair opened and closed the hearing to public comment.

**Mr. Hewitt moved that, having adopted the 03/25/04 Staff Report and made a finding that the Standards for Variance of Section 24.3 of the St. Mary's County Comprehensive Zoning Ordinance (Ordinance) have been met, the Board approved a Variance from Section 51.3.79 of the Ordinance to allow the reduction of the setback from an external property line from 200 feet to 75 feet, as shown on the site plan submitted by DH Steffens Company, with the following conditions:**

- 1) **The cut within the reduced setback area; that is, the area between the required 200-foot setback and the approved 75-foot setback shall not exceed 50 feet.**
- 2) **A "B" buffer yard shall be provided along the reduced setback area from Parsons Mills Road and Friendship School Road to shield the mining operation from the view of passing motorists.**
- 3) **A 6 foot high berm be installed, seeded and covered with grass before the applicant can start their operation.**

**MINUTES AND ORDERS APPROVED**

The minutes of March 11, 2004 were approved as recorded.

The Chair reviewed and approved as submitted the following Orders:

**VAAP #03-2194 – Riverwood Farms Subdivision**

**CUAP #03-131-063 – Margaret Brent Annex – Bus Training Facility**

**ADJOURNMENT**

The meeting was adjourned at 8:40 p.m.

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Janice C. Blackistone  
Fiscal Specialist

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Approved in open  
session: May 13, 2004

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Marie E. Underwood  
Chairperson