

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, April 13, 2006**

Members present were George Allan Hayden, Chair; Greg Callaway, Vice Chair; Ronald Delahay; Gertrude Scriber; Wayne Miedzinski, and George Edmonds. Department of Land Use and Growth Management (LUGM) staff present was Denis Canavan, Director; Yvonne Chaillet, Planner, Zoning Administration; Staci Merriman, Critical Area Plans Reviewer; Jean Wathen, Office Specialist; and Keona Courtney, Recording Secretary. Joe Densford, Attorney, and Deputy County Attorney Colin Keohan, were present.

A sign in sheet is on file in LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30pm.

EXECUTIVE SESSION: DISCUSSION OF PENDING LITIGATION

Present: Mr. Hayden, Mr. Callaway, Mr. Delahay, Ms. Scriber, Mr. Miedzinski, Mr. Edmonds, Mr. Densford, Mr. Canavan, Ms. Chaillet, and Ms. Courtney

Time Held: 6:44 – 8:12pm

The Board returned to open session.

On February 10, 2005, the Board of Appeals unanimously adopted a Decision and Order in the appeal filed by the County to oppose the phasing plan for Section 1, Phase 1 of the Southern Resources Management property known as Section 1, Phase 1 of McIntosh Subdivision. The Board's Decision and Order approved the phasing plan for residential development, subject to four specific conditions. Southern Resources Management appealed that decision to the Circuit Court for St. Mary's County, and the Circuit Court reversed the Board's decision and remanded the case to the Board for further consideration. The Circuit Court ruled that the burden of proving the property or portions of it were unsafe for residential development was on the County, which was the appellant in the case, and that the burden of proof had not been satisfied. The County chose not to appeal the Court's ruling.

Mr. Callaway moved that, based on the ruling of the Circuit Court, and the fact that the County will not be providing additional evidence that the property may be unsafe for residential development, the Board affirm the decision of the Planning Commission to approve Section 1, Phase 1 of McIntosh Subdivision, and the phasing plan submitted by the applicant for residential development of other portions of the property on February 28, 2000, subject to the following conditions:

1. Copies of all reports, including those issued by Federal, State, and County agencies, as well as public and private investigatory and remedial contractors, will be made available to all St. Mary's County public libraries and the Southern Maryland Regional Library in Charlotte Hall.
2. All subdivision plats or phasing plans submitted to the Department of Land Use and Growth Management shall contain a reference to the former use of a portion of the property as a munitions manufacturing plant, and advise the purchaser of the availability of the reports described above.
3. The original plant site and existing deed restricted area(s), comprising a total of approximately seventy (70) acres, will continue to be deed restricted, and that area shall be posted as not being a part of the McIntosh Subdivision. Such signs shall be maintained by the property owner or its successor.

The motion was seconded by Ms. Scriber and passed by a 4-1 vote, with Mr. Miedzinski voting against the motion.

PUBLIC HEARING

VAAP #04-3124 – BLAZER (continued from March 9, 2006)

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 Road in Drayden, Maryland; Tax Map 66, Block 9, Parcel 30.

Owner: John and Cheryl Blazer
Present: Chris Longmore, Attorney representing the Applicants

All cases being heard at this meeting were advertised in *St. Mary's Today* on 3/26/06 and 4/2/06 and in *The Enterprise* on 3/29/06 and 4/5/06. The properties were posted and certified mail receipts were submitted to staff for the files.

Mr. Edmonds sat on the Board in Mr. Callaway's place for all cases heard.

Ms. Chaillet's Exhibit 1: Blazer Clearing and Mitigation Summary, dated 4/13/06
Ms. Chaillet's Exhibit 2: Blazer Clearing and Mitigation Summary (chart), dated 4/13/06

Ms. Chaillet explained that staff met with Ms. Blazer, Mr. Longmore, and Mr. Trautman since the last hearing and were able to work out a planting agreement for the property that the Applicants are satisfied with. The Applicants have also submitted a declaration of intent to the Soil Conservation District (SCD) to farm Lot 1 and the adjoining farmstead on the property; however, the adjoining farmstead is not under review for a variance. A separate planting agreement will be created for the farmland at a three-to-one (3:1) ratio, and will not be implemented until farming on the property stops. Mr. Canavan added that a positive outcome resulted from the Applicants working with staff since the last hearing, and that he is pleased to be moving forward with the planting agreement. He explained that the Applicants desire to keep the record open until the next meeting, and during this time the planting agreement will be finalized. Mr. Longmore explained that he does not believe that it will be necessary to present additional evidence to the Board at the next hearing.

Mr. Miedzinski moved that the case be continued to the May 11, 2006 meeting. The motion was seconded by Mr. Edmonds and passed by a 5-0 vote.

CUAP #06-0224 – BANNEKER ELEMENTARY SCHOOL

The Applicant is requesting a modification of Conditional Use Approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to add relocatable classrooms to the school site. The property contains 66 acres; is zoned Rural Preservation District (RPD); and is located at 27110 Point Lookout Road in Leonardtown, Maryland; Tax Map 25, Block 20, Parcel 85.

Owner: St. Mary's County Public Schools
Present: Jackie Meiser and Daryl Barricklow

Ms. Meiser's Exhibit 1: Diagram of the Banneker Elementary School Site
Ms. Meiser's Exhibit 2: Letter from Ms. Miller

Ms. Meiser explained that this request also includes the Leonardtown Elementary School Annex, which is a separate building located on the same parcel of land. The Annex is used to house students while their school is being renovated. She explained that they are proposing to add two relocatable classrooms to the school to ease overcrowding, and 11 relocatable

classrooms to the Annex. Students from Leonardtown Elementary School will be relocated to the Annex while their school is being renovated. Ms. Meiser explained that there will be no additional bus trips generated by adding the relocatable classrooms to Banneker Elementary School, since these will serve students who are already attending the school. The addition of relocatable classrooms to the Annex will add two bus trips, and will result in a total of 12 bus trips. Regarding traffic, Ms. Meiser explained that buses serving the Annex will use the northern entrance near the Division of Supporting Services, and buses serving the Banneker Elementary School will use the southern entrance at MD Route 5. Ms. Meiser explained that a lane has been left open in the center of the relocatable classrooms at the Annex to allow emergency vehicle access. She explained that all of the relocatable classrooms have a comprehensive fire alarm system and this system is connected to the school.

Mr. Hayden expressed concern about emergency vehicle access to the relocatable classrooms due to site design, and about where the students are to evacuate if there is a fire. Mr. Barricklow, Supervisor of Design and Construction, explained that the lane is not a grass area and therefore a fire truck could not sink. There is also a gravel area that is currently used for bus parking, and it can withstand the weight of a heavy vehicle. He explained that in the past, students have evacuated to the parking lot at the front of the school during fire drills, and to a building with concrete walls and metal roof during other threats. Mr. Hayden asked if there are any other evacuation methods. Mr. Barricklow explained that there are pathways, steps, and a ramp that students can use to evacuate, and various staging areas, including one to the rear of the property. Mr. Hayden requested that a representative of Leonardtown Fire Department perform a walk-thru of the site to work out any potential problems.

Ms. Chaillet explained that the modification to the conditional use for a bus training facility on the site has expired, and this area will be used to house the relocatable classrooms. The Applicant would have to submit an application to the Boards of Appeals to modify the conditional use if they decided to have the Facility in the future.

Mr. Miedzinski 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. Chaillet explained that the Leonardtown waste and water facility is at capacity, and asked that the Applicant or a representative of the St. Mary's County Metropolitan Commission (MetCom) address the number of equivalent dwelling units (EDUs) and whether there is available capacity for the additional number of students. Ms. Meiser explained that EDUs are used to measure the flow and allocation of waste water, and the number of EDUs required for the school must be calculated based on the number of students. The EDU calculation will be used to estimate the amount of flow that will come from the school and the capacity required to treat the waste water. She explained that there is no way to determine that a certain number of students will generate a certain amount of waste water flow, and that the actual flow has been reviewed and is well under the capacity that can be handled by the Facility. Ms. Meiser explained that Ms. Miller and MetCom have discussed this issue and agree that there is enough capacity at the Facility to handle the additional flow created by these additional relocatable classrooms as well as those located at Leonardtown Middle and High Schools. Ms. Meiser explained that there is a plan in the works to add additional capacity at the Facility, but that it has not been finalized. Mr. Canavan recommended that the Board consider a condition that would require confirmation from MetCom that there is sufficient capacity at the Facility.

Charlotte Armstrong, Assistant Engineer for MetCom, explained that documentation suggests that allocations are at capacity; however, design flows have been studied and there is adequate flow coming into the Facility. She said that there will be no problem in treating the additional flow because the actual waste water flow that is coming from the schools is lower than what was allocated for them. Mr. Hayden asked if the flow is at capacity. Ms. Armstrong

explained that the flows are not at capacity, and that the additional students at the school will not have an adverse affect on treatment of the flow. Mr. Canavan requested that MetCom provide this in writing for LUGM's files. Mr. Delahay asked why MetCom is involved if the waste water is going to Leonardtown. Ms. Meiser explained that MetCom has a certain amount of total capacity reserved at the treatment facility. Properties that are surrounding Leonardtown are served by this facility instead of having to send the sewage to the Marlay-Taylor treatment facility.

Ms. Scriber moved that 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 modify the approved conditional use with the addition of relocatable classrooms with the following conditions: 1) A letter of confirmation from the St. Mary's County Metropolitan Commission (MetCom) be obtained for adequate facilities and 2) the Board of Education contact the Leonardtown Fire Department and have them review the site. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

CUAP #06-0222 – LEXINGTON PARK ELEMENTARY SCHOOL

The Applicant is requesting Conditional Use Approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to add relocatable classrooms to the school site. The property contains 14.22 acres; is zoned Downtown Core Mixed Use (DMX) District; and is located at 46763 South Shangri La Drive in Lexington Park, Maryland; Tax Map 51, Block 4, Parcel 202.

Owner: St. Mary's County Public Schools
Present: Jackie Meiser and Daryl Barricklow

Ms. Meiser explained that this school currently does not have any relocatable classrooms on site; however, this will not be a new use to the property because there were up to 10 of them in the past. She explained that there will not be an increase in bus trips or traffic with the addition of the two relocatable classrooms because they will be used to ease overcrowding for students who currently attend the school.

Mr. Miedzinski asked if any of the relocatable classrooms previously used on the site were located in the proposed location of these two units. Mr. Barricklow explained that they were not in the proposed location. Mr. Hayden asked why the 10 relocatable classrooms were removed. Mr. Barricklow explained that the school was renovated two years ago, increasing the size of the building so the relocatable classrooms were no longer needed at that time.

Ms. Chaillet explained that the Applicant will be able to seek a modification of Conditional Use if they desire to expand the school in the future.

Mr. Miedzinski 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. Meiser explained that the fire alarm system will be tied into the school's fire alarm system and that if there was a fire, all students would be evacuated.

Mr. Miedzinski expressed concern about the location of trash dumpsters, on the site as it seems like they will be an obstruction for emergency vehicle access to the relocatable classrooms, and asked if they can be relocated. Ms. Meiser said that they can look into relocating the dumpsters. Mr. Hayden requested that the Bay District Fire Department review the site so that they are aware of the site design.

Ms. Scriber moved that 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 for conditional use with the addition of relocatable classrooms with the condition that the Bay District Fire Department review the site to insure that the relocatable classrooms can be accessed in the event of an emergency. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

CUAP #06-0223 – LEONARDTOWN MIDDLE SCHOOL

The Applicant is requesting Conditional Use Approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to add relocatable classrooms to the school site. The property contains 121.08 acres; is zoned Rural Preservation District (RPD); and is located at 24005 Point Lookout Road in Leonardtown, Maryland; Tax Map 41, Block 14, Parcel 194.

Owner: St. Mary's County Public Schools
Present: Jackie Meiser, Daryl Barricklow, and Kim Howe

Ms. Meiser explained that the request is to add two relocatables to the school site, with one unit being a classroom and the other a restroom. The relocatable classroom will be used by students who already attend the school, and therefore this will not generate more bus trips or have any adverse impacts. The relocatables will have the same fire alarm system as the previous schools.

Mr. Hayden asked Ms. Meiser to explain why only one relocatable classroom is being added given the fact that the school is over capacity by 125 students. Ms. Meiser explained that the over capacity figure that was provided was based on the school's capacity figures as of September 30th, and that these numbers are not the same now. She explained that the additional relocatables will not solve all issues pertaining to overcrowding at this school. Ms. Howe explained that the relocatable classroom will be a quad unit, which contains four classrooms and will be able to accommodate 100 students. Mr. Hayden stressed that more than one relocatable classroom may be needed to ease overcrowding because the school may require additional space in the future and this could be accomplished ahead of time. Ms. Howe explained that that she feels confident that they can meet the students' needs for the next school year, and they have a redistricting plan that will come into effect for the school at a later date which will also help ease overcrowding. The recent expansion of Margaret Brent Middle School will also help. Mr. Hayden asked about the capacity at Margaret Brent Middle School. Ms. Howe explained that the school should have approximately 200 seats available, and that capacity figures will continue to be monitored.

Ms. Chaillet explained that the Applicant can seek a modification of Conditional Use if they desire to expand the school in the future. Expansion can be by 50 percent.

Mr. Miedzinski 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.

Mr. Hayden asked if there is access within 100 feet of the relocatable units. Mr. Barricklow explained that there is, and that the school has drive-around access for emergency vehicles. Mr. Hayden asked if this access is paved, or hard enough to withstand the weight of a heavy vehicle. Mr. Barricklow explained that a sub-compacted base is located under the top soil. There is access to the school by the side parking lot to the south of the school and access to the north parking lot.

Ms. Meiser explained that the same waste water capacity issue and findings exist here and at Leonardtown High School, and that the Facility has adequate capacity to accommodate the additional flow from these locations. Mr. Canavan stated that one letter addressing adequate

facilities from MetCom will be sufficient, and that it should include a reference to each applicable school site.

Mr. Miedzinski expressed concern about access to the relocatable units, and whether or not it should be marked. Mr. Hayden realized this concern and requested that the Leonardtown Fire Department review the site to make sure that it will meet their requirements.

Mr. Miedzinski moved that having made a finding that the Conditional Use Standards of Section 25.6 of St. Mary's County Comprehensive Zoning Ordinance have been met, the Board approve the request for conditional use with the addition of relocatable classrooms with the condition that access to the relocatable units be inspected by the Leonardtown Fire Department. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

CUAP #06-0225 – LEONARDTOWN HIGH SCHOOL

The Applicant is requesting modification of Conditional Use Approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to add relocatable classrooms to the school site. The property contains 121.08 acres; is zoned Rural Preservation District (RPD); and is located at 24005 Point Lookout Road in Leonardtown, Maryland; Tax Map 41, Block 14, Parcel 194.

Owner: St. Mary's County Public Schools
Present: Jackie Meiser, Daryl Barricklow, and Kim Howe

Ms. Meiser explained that the request is for one relocatable quad unit, and will not generate more bus trips. The school currently has 12 relocatable units, with 10 of them used for classrooms. The fire alarm system will be the same as the other schools.

Mr. Hayden asked Ms. Meiser for the over capacity figure for the school. Ms. Meiser explained that the school is projected to be over capacity by approximately 300 students by next year. Ms. Howe explained that one of the relocatable units is used for ROTC and the others are used for the Alternative Learning Center (ALC), which serves middle and high school students throughout the County. The ALC will be moved to the Lexington Park Annex, and these relocatable classrooms will be used solely by the school. Mr. Hayden asked if there is mobile access to the ROTC relocatable unit, which is located behind the school. Mr. Barricklow said that it is accessible. Ms. Howe explained that a new elementary school in Wildewood is currently under design, a new middle school is proposed on the site, and they are also looking for a site for a new high school; all of which will help ease overcrowding in the school system.

Ms. Chaillet explained that the School received Conditional Use approval in September 1992, and that this request will not have any adverse impacts.

Ms. Scriber 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. Miedzinski expressed concern about the location of the proposed relocatable classroom because there are steep grades on the site. Mr. Barricklow explained that the relocatable classroom will not be located in this area, but to the right of the school.

Ms. Scriber moved that 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 modify the approved conditional use with the addition of relocatable classrooms. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

VAAP #05-1302 – DOWNEY

The Applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the Critical Area Buffer. The property contains 3.65 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 50181 Hays Beach Road in Scotland, Maryland; Tax Map 73, Block 4, Parcel 170.

Owner: James and Vivian Downey

Mr. Downey's Exhibit 1: E-mail from April Bahner dated 6/21/06 regarding permit number 05-1302

Mr. Downey explained that the structure of the existing house was damaged by Hurricane Isabel in 2003, and he was advised not to remodel the house by his engineer and builder. For these reasons, he applied for a building permit in 2005 to replace the existing house on the current footprint. Mr. Downey explained that he was informed by staff that he could add the square footage of an old chicken coop on the property to the square footage of the existing house, but that he could not add the square footage to a new house without a variance due to the Critical Area Buffer provisions. Staff also informed Mr. Downey that he would have to request a variance to add the square footage of the chicken coop to the new house after it was built, but he wanted to accomplish this all at once before construction began. When he requested this, so that he could add a wrap-around porch to the new house, his request was denied.

Mr. Downey explained that the total amount of traded impervious surface he wants to add to the new house is 740 square feet, with 620 square feet from the chicken coop, 40 square feet from the outside shower, and 80 square feet from the deck. He explained that he is willing to compromise having the outside shower and deck if he is granted a 320 square foot wrap-around porch, which will run along the south side of the house and is the farthest point from the water. He stated that this trade of impervious surface for the porch is over a two-to-one (2:1) ratio. Mr. Downey also explained that the new house will not have a basement and that he will meet the flood plain requirements. Mr. Hayden asked Mr. Downey if he communicated this information to staff. Mr. Downey explained that he discussed the wrap-around porch with staff and addressed the six standards for granting a variance. He stressed that he would like the new house to be given the same consideration as the existing house. Mr. Hayden asked about the deck on the existing house and whether or not it faces the water. Mr. Downey explained that it is an enclosed deck, and that the new porch would not be enclosed and would measure approximately 32 feet in length and 10 feet in width. Mr. Downey noted that the chicken coop is approximately two feet from the water and the house is approximately 25 to 30 feet from the water at its closest point. The porch would be 75 to 80 feet from the water.

Mr. Delahay explained that the staff report indicates that there is sufficient space outside of the Buffer to construct the new house, and asked Mr. Downey why he objects to this. Mr. Downey explained that he does not desire this because the house would be farther from the water and there would not be a good view of the water, which is one of the reasons why he purchased the property. He explained that the house would also be next to a barn and a mound septic system. Mr. Downey said that locating the house outside of the Buffer may also involve removing some trees. He explained that, by using the existing footprint, the new house would not disturb any vegetation. Mrs. Downey stressed that their proposal to trade impervious surface is fair.

Ms. Chaillet explained that a letter dated 12/7/05 from staff informed the Applicant that a variance would be needed to expand the footprint of the existing house and add new impervious surface in the Buffer. She explained that a letter dated 5/20/05 from Ms. Bahner also informed the Applicant that the existing dwelling could only be replaced in the same location, if the dimensions of the new dwelling were the same as the original dwelling. The Applicant was also informed that if the building permit application was for an addition to the existing dwelling, then

impervious surface could be traded or the Applicant could seek a variance for the new impervious surface in the Buffer. Ms. Chaillet explained that this was based on the understanding that the existing house would be kept and renovated. If the existing house was going to be removed and replaced, then this would have to occur on the existing footprint and no additional impervious surface would be approved without a variance. She explained that, in the past, staff allowed the replacement of dwellings on the same footprint by trading existing impervious surface; however, staff realized that this practice conflicted with the Ordinance provisions. She cited Sections 41.2.1 and 41.5.3.i(3)(b) of the Ordinance, explaining that if there is no other area on property where the impervious surface can be placed, it can be placed in the Buffer. Ms. Chaillet explained that the mound system has not been constructed yet, and that there is sufficient room for the new house outside of the Buffer. Staff also honors the approved building permit to replace the existing house with a new one on the exact footprint of the old house; however, staff recommends that the house be placed outside of the Buffer if the Applicant is going to expand the existing footprint or that a variance be obtained.

Mr. Hayden asked if the building permit was granted based on the existing footprint of the old house. Ms. Chaillet said that it was. Mr. Hayden asked if the permit only included the concrete foundation of the house. Ms. Chaillet explained that it also included the front enclosed porch of the new house, which was part of the footprint. There is a deck on the waterfront side of the house that can be replaced. Mr. Hayden asked what is considered the front of the house and what is considered the back of the house. Ms. Chaillet explained that the waterfront side of the house is the back of the property and the front of the house is the side that faces the street. Mr. Hayden explained that he feels that the concrete foundation is the footprint of the house and that the covered porch is not a part of that. Ms. Chaillet explained that the existing footprint is the existing impervious surface, and that a covered porch can be converted to living space. Mr. Hayden asked what the square footage is of the existing house. Mr. Downey explained that the house is approximately 1,500 square feet and that he is asking to add 320 square feet of impervious surface to this for a total of 1,820 square feet.

Ms. Chaillet explained that the chicken coop straddles the property line and therefore only part of its square footage can be traded. Mr. Downey stated that this is incorrect. Ms. Chaillet explained that the site plans shows that the property line goes through a portion of the chicken coop. Mr. Downey explained that he owns the entire property heading toward the water, and that the chicken coop is not far from the water. Mr. Miedzinski asked if the house will have to be elevated on stilts because the property is located in a floodplain, and Ms. Chaillet said that the house must be elevated. Mr. Downey explained that the existing house has a basement, and that he is aware that he must elevate the living space.

Ms. Chaillet explained that staff disputes the impervious surface of the outside shower. She explained that staff visited the site and the walls of the outside shower are not impervious surface; however, the shower itself is impervious surface. The deck is also considered impervious surface. Mr. Hayden asked if the square footage of the chicken coop will be a one-to-one (1:1) trade considering the fact that only a portion of it is located on the property. Mr. Downey asked whose property the other portion of the chicken coop is on, if he does not own it. Ms. Chaillet explained that it is covered by tidal waters jurisdiction. Mr. Hayden explained to Mr. Downey that years ago the chicken coop was entirely on his property; however, due to storms and erosion of the shoreline it may longer be. Mr. Downey reiterated that he would be tearing down the entire chicken coop. Mr. Densford explained the law regarding accretion on tidal waters. Mr. Hayden asked if this changes the property lines. Mr. Densford explained that this does not change the deeded property line; however, it does not mean that Mr. Downey does not own the area between the property line and the mean high water.

Mr. Delahay asked if the outside shower is considered a part of the house. Ms. Chaillet explained that the outside shower is next to the house, but not attached to the house. Mr. Downey said that it is attached to the house and that even though only half of its square footage

may be considered impervious surface, he is still willing to trade over 700 square feet of total impervious surface.

Mr. Miedzinski made a motion to accept the staff report. 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.

Regarding the fifth standard for granting a variance, Mr. Downey explained that his proposal to trade impervious surface will be beneficial to the fish and wildlife because the new impervious surface will be farther from the water. He stated that his property is 3.65 acres in size; however, the amount of land outside of the Buffer is considerably less than this and there would be disturbance of vegetation to move the house to another location.

Ms. Chaillet explained that the property is subject to floodplain regulations of Section 76.6 of the Ordinance, which indicates the following: "Due to the inherent hazards and risks involved, development may not occur in the regulated floodplain where alternative locations exist on site outside of the floodplain. Before a permit is issued, the applicant shall demonstrate that new structures cannot be located out of the regulated floodplain and that necessary encroachments onto the floodplain are minimized." Mrs. Downey explained that when Hurricane Isabel struck, water came up onto their property but did not touch their house, and that the basement was completely dry. Mr. Downey explained that he thinks the entire 3.65 acres of property is in the floodplain, and that even if the house were moved outside of the Buffer it would still be in the floodplain. Mr. Hayden asked if the entire property is in the floodplain. Ms. Chaillet said that it is not, that the floodplain follows the same pattern as the Buffer. Mr. Hayden asked if the Critical Area Commission opposes the request. Ms. Chaillet said that they did not. She explained that staff's practice in the past was to allow impervious surface in the Buffer when an existing dwelling was being replaced and the Commission has supported such variances in the past. Now that staff has recognized its error, this is an issue that needs to be addressed with the Commission.

Mr. Miedzinski asked about Section 41.2.1 of the Ordinance, which refers to uses or structures that have not been abandoned for more than one year and can continue, and if the same provisions would apply if the use or structure is abandoned for more than one year. Ms. Chaillet explained that a use or structure that is abandoned for more than one year is considered a non-conforming use or structure and is no longer recognized as legitimate. If it is replaced, then it must comply with the provisions of the Ordinance. Mr. Downey explained that the property has not been abandoned. Mr. Miedzinski clarified that the chicken coop has been abandoned.

Mr. Canavan explained that it is feasible to locate the house outside of the Buffer, considering that the new house will be larger than what was originally approved by the permit. He stated that LUGM will honor the building permit as approved. He explained that the Board must have evidence to justify why it would not be feasible to locate the new house outside of the Buffer in order to grant the variance. Mr. Hayden explained that staff's process has changed since the issuance of the building permit and he is concerned as to whether or not this is fair to the Applicant. Mr. Canavan recognized this also, and reiterated that LUGM will honor the permit based on the Applicant's original building permit request. Ms. Chaillet noted that Ms. Bahner's letter indicated that impervious surface can only be traded if the existing dwelling is kept. Mr. Hayden asked Mr. Downey if he is aware of this. Mr. Downey said that he is. Mr. Downey explained that he met with Ms. Bahner to get clarification on the letter and it was his understanding that he could trade impervious surface to the existing house but that he could not trade impervious surface to the new house until after it was built. He explained that it seemed more economical to him to do all of the construction in one phase, as opposed to building the new house and adding on to it later. Mr. Downey stated that he proceeded with the understanding that he could build the new house and then apply for the variance. He also read the e-mail from Ms. Bahner which states: "...as far as the porch building, the only answer I can give at this point is that the house must be complete before you can ask for the porches." Ms. Chaillet explained that

Ms. Bahner was incorrect and her e-mail does not suggest that a variance would be approved. She explained that when staff realizes an error they do not ignore it, and try to correct it.

Mr. Downey explained that during his meeting with Ms. Bahner in June 2005, it was made clear to him that he could successfully seek a variance once the house was built, and that the new house would be given the same considerations as the old house. He stated that they proceeded with this information and chose to build a new house as opposed to remodeling the existing house. Mr. Delahay asked if the damage to the existing house was caused by wind, and if he was living in the house at the time. Mr. Downey said that it was damaged by wind, and that the house is a weekend home. Mr. Miedzinski explained that he visited the site, and that most of the damage that he saw was to the porches and not to the foundation of the house.

The Board discussed the information provided. Mr. Edmonds explained that he feels that the Applicant should be able to have the porch. Mr. Delahay reiterated that Ms. Bahner did not guarantee the Applicant a variance. Mr. Miedzinski explained that he does not see where the Applicant has suffered a hardship and Ms. Scriber agreed.

Mr. Miedzinski moved that having accepted the staff report 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 not been met, the Board deny the variance to add new impervious surface in the Critical Area Buffer. The motion was seconded by Ms. Scriber and passed by a 3-2 vote, with Mr. Edmonds and Mr. Hayden objecting.

VAAP #05-3840 – SWEENEY

The Applicant is requesting variance from Section 71.9.6.h of the St. Mary's County Comprehensive Zoning Ordinance to reduce the lateral line setback to renovate and add onto an existing pier. The property contains .415 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 24571 Little Creek Lane in Hollywood, Maryland; Tax Map 27, Block 18, Parcel 888.

Owner: William Sweeney

The Board continued the hearing until May 11, 2006 at 6:30 p.m. in Room 14 of the Governmental Center in Leonardtown, Maryland.

VAAP #05-3786 – SPORE

The Applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the expanded Critical Area Buffer to construct a single family dwelling and appurtenances. The property contains 1.33 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay; and is located at 16395 Ball Road in Piney Point, Maryland; Tax Map 69, Block 9, Parcel 222.

Owner: David Allen & Vickey M. Spore

The Board continued the hearing until May 11, 2006 at 6:30 p.m. in Room 14 of the Governmental Center in Leonardtown, Maryland.

VAAP #05-3752 – ECKER

The Applicant is requesting an after-the-fact variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the expanded Critical Area Buffer to construct a patio. The property contains 26,681 square feet; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay; and is located at 24305 Mariner Lane in Hollywood, Maryland; Tax Map 27, Block 23, Parcel 886.

Owner: Dunlop & Carolyn Ecker

The Board continued the hearing until May 11, 2006 at 6:30 p.m. in Room 14 of the Governmental Center in Leonardtown, Maryland.

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

VAAP #05-3347 - Barber – 6.58 acres – The applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the expanded Critical Area Buffer to construct a detached garage. **Variance denied.**

VAAP #04-2717 – O'Toole – 2.5 acres – The applicant is requesting reconsideration of an after-the-fact variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the rear yard setback to construct a single family dwelling and appurtenances. **Variance approved with conditions.**

VAAP #05-3011 - Hayden – 1.96 acres – The applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add new impervious surface in the expanded Critical Area Buffer to construct a single family dwelling and appurtenances. **Variance denied.**

MINUTES AND ORDERS APPROVED

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

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

CUAP #05-131-027 – Stauffer Mennonite Church School
VAAP #05-3265 – Windsor
VAAP #05-0738 – Aley
CUAP #05-131-026 – Stewart's Grant Mining Pit Expansion

ADJOURNMENT

The meeting was adjourned at 10:53 p.m.

Keona L. Courtney
Recording Secretary

Approved in open session: May 11, 2006

George Allan Hayden
Chairman