

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, May 10, 2007**

Members present were George Allan Hayden, Chair; Greg Callaway, Vice Chair; Ronald Delahay; Wayne Miedzinski; and Veronica Scriber. Department of Land Use and Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; and Jada Stuckert, Recording Secretary. George Edmonds, Board of Appeals First Alternate and Christy Holt Chesser, County Attorney, Amanda Sivak of LUGM was also present.

A sign-in sheet is on file at LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:40 p.m.

PUBLIC HEARINGS

Mr. Hayden stated that the board would take case VAAP #06-2434 – Snyder out of order to be heard first.

VAAP #06-2434 – SNYDER

The applicant is requesting a variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to add new impervious surface to construct a garage in the expanded Critical Area Buffer. The property contains 2.00 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District; and is located at 16105 Thomas Road, Piney Point, Maryland; Tax Map 69, Block 15, Parcel 101.

Owner: Donald and Becky Snyder

This property was advertised in St. Mary's Today on April 22, 2007 and April 29, 2007 and in the Enterprise on April 25, 2007 and May 2, 2007. The property was posted and certified mail receipts were submitted to staff for the files.

Mr. Hayden explained that the board would like to re-schedule this hearing for July 26, 2007 in order to give the board members ample time to conduct a site visit of the property.

Mr. Callaway moved that the hearing be re-scheduled for July 26, 2007. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #06-131-009 – VERIZON WILDEWOOD WATER TOWER SITE

The Applicant is requesting to vacate and re-consider at a later date the prior conditional use approval pursuant to chapter 25 of the Comprehensive Zoning Ordinance to add cellular antennas to an existing water tower. The property contains .49 acres; is zoned Planned Unit Development (PUD)/Residential, Low Density (RL) District; and is located at White Elm Court, California, Maryland; Tax Map 34, Block 14 Parcel 604.

Owner: St. Mary's County Metropolitan Commission (METCOM)
Present: Steve Resnick, Jeff Barns, Brian Stover and Jackie Karp of Verizon Wireless; Joe Capristo and Henry Camaioni.

Note: Mr. Edmonds sat in Mr. Callaway's place for this hearing due to original hearing attendance.

Mr. Capristo gave a brief overview of his clients (Mr. Camaioni) request for reconsideration. Capristo stated that Mr. Camaioni did not receive notice of the previous public hearings regarding this matter as is required in Section 21.3 of the Comprehensive

Zoning Ordinance (Ordinance). Mr. Capristo also stated that there were explicit violations of the Ordinance and rules of procedure, factually incorrect data contained in the application, health and safety concerns, and an easement issue. Mr. Capristo stated it is Mr. Camaioni's request that VAAP #06-131-009 be vacated and stricken, the Applicant be required to comply with the rules contained within the Ordinance and Rule of Procedure and that a new hearing be scheduled.

Ms. Chaillet verified that Mr. and Mrs. Camaioni were not notified due to incorrect information on the DAT website. Chaillet explained that this is not a Telecommunications Tower it is more like a co-location. Chaillet stated that staff is satisfied that Verizon has met the requirements for the conditional use but would recommend the board reconsider due to improper notification. Attorney Chesser stated that the board needed to be very clean in their motion to either reconsider, vacate, postpone, etc.

Steve Resnick apologized for not succeeding in following all the rules. There is no dispute that the Camaioni's were not notified. Resnick stated that while written notice is required, there was a sign posted on the property entrance as well as being advertised in the newspaper. Resnick stated that Ms. Karp could testify to Mr. Camaioni's presence at the original hearing.

Jacklyn Karp testified that she presented this application to the Board of Appeals on August 10, 2006 and a conditional use permit was received at that time. Ms. Karp testified that she met with Mr. Camaioni in the hallway after the meeting. Karp stated that there was no on record discussion but they did meet. Attorney Chesser asked if Camaioni was in the meeting room during the meeting. Karp testified that she did not remember.

Mr. Miedzinski asked Mr. Camaioni if he attended the August 10, 2006 meeting. Henry Camaioni testified that he was not present for the meeting and has not been in this building in years. Mr. Delahay asked Mr. Camaioni if he saw the sign posted on the property. Camaioni testified that he may have driven by it but did not notice it. Delahay asked why Camaioni waited so long to file a complaint. Camaioni testified that he began contacting people the day that construction started about a month ago. Camaioni testified that he knew about the antennas but not about the meeting. An antenna is a small thing but nobody knew that a large fence and building would be going up. Camaioni testified that all of this would lower his property value.

Mr. Resnick provided the board with pictures of the sign posted on the property clearly marking the time and date of the hearing of August 10, 2006. Said pictures were entered into evidence as VAAP#06-131-009 dated May 10, 2007.

Veronica Scriber made the motion in the case of CAUP #06-131-009 – Verizon Wildewood Water Tower Site the board re-schedule this hearing to June 28, 2007 with the understanding that joint property owners will be notified by certified mail and the property will be posted again and any work completed from day one until the hearing will be at Verizon's own risk. The motion was seconded by Wayne Miedzinski and passed by a 5-0 vote.

VAAP #05-0778 – LANEDON SUBDIVISION

The Applicant is requesting a variance from Section 72.3 of the Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains .46 acres; is zoned Rural Preservation District (RPD); and is located at 43915 Main Way, Leonardtown, Maryland; Tax Map 57, Block 19, Parcel 123.

VAAP #05-0779 – LANEDON SUBDIVISION

The Applicant is requesting a variance from Section 72.3 of the Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation to construct a single-family dwelling and appurtenances in the Critical Area. The property contains .46 acres; is zoned Rural Preservation District (RPD); and is located at 43925 Main Way, Leonardtown, Maryland; Tax Map 57, Block 19, Parcel 123.

Owner: Tri-Star Construction Inc.
Present: William Higgs

The property was advertised in St. Mary's Today on April 22, 2007 and April 29, 2007 and in the Enterprise on April 25, 2007 and May 2, 2007.

It was the consensus of the board to hear both cases at the same time but will make two decisions at the end of the discussion.

Mr. Higgs testified that this is exactly the same application presented before. Higgs stated that he would like to clear 7,731 square feet on lot 5 and 8,373 square feet on lot 6 which is 38.7 and 48.1 percent. Higgs stated that the lots are completely wooded and in order to build a house, septic system, and well the lots would need to be cleared to this extent.

Ms. Chaillet stated for the record that both lots are 20,000 square feet in size. Chaillet stated that this order was approved August 11, 2005 but expired because the building permit was not picked up within one year. Chaillet stated that staff recommends the applicant mitigate at a three-to-one ratio and approval of the application.

Mr. Callaway made a motion to accept the staff report. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

Mr. Callaway made a motion in the matter of VAAP #05-0778, 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 Ordinance have been met, I move that the variance to clear in excess of 30 percent of the existing woodland be approved with the recommended condition to adhere to the Critical Area Planting Agreement. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

Mr. Callaway made a motion in the matter of VAAP #05-0779, 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 Ordinance have been met, I move that the variance to clear in excess of 30 percent of the existing woodland be approved with the recommended condition to adhere to the Critical Area Planting Agreement. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

VAAP #04-2045 – HICKORY HILLS NORTH LOT 88N

The applicant is requesting an After-the-Fact variance from Section 32.1 of the Comprehensive Zoning Ordinance to encroach into the required front yard setback to construct a covered porch. The property contains .22 acres; is zoned Residential High Density (RH) District, Limited Development Area (LDA) Overlay District; and is located at 45494 Moycashel Place, Great Mills, Maryland; Tax Map 42, Block 6, Parcel 235.

Owner: Liability Company
Present: Guy Curley and Dennis Atlas

Both variance requests were advertised in St. Mary's Today on April 22, 2007 and April 29, 2007 and in the Enterprise on April 25, 2007 and May 2, 2007.

Ms. Chaillet stated that lot 88 is 9,525 square feet in size and is requesting an after-the-fact variance to encroach into the required front yard setback for a covered porch.

Mr. Callaway made a motion to accept the staff report for VAAP #04-2048 and VAAP #04-2045. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

Mr. Hayden stated that it seems that we have come to this point several different times in the past and asked how is it that we are here again. Mr. Curley stated that he did not know. After further discussion

Mr. Miedzinski made a motion in the matter of VAAP #04-2045, Lot 88, Hickory Hills North Subdivision, having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, I move that the variance to reduce the required 25-foot front yard setback to 22 feet be denied. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #04-2048 – HICKORY HILLS NORTH LOT 91N

The applicant is requesting an After-the-Fact variance from Section 32.1 of the Comprehensive Zoning Ordinance to encroach into the required front yard setback to construct a stoop and to encroach into the required side yard setback to construct a single family dwelling. The property contains .19 acres; is zoned Residential High Density (RH) District, Limited Development Area (LDA) Overlay District; and is located at 45485 Moycashel Place, Great Mills, Maryland; Tax Map 42, Block 6, Parcel 235.

Owner: Liability Company
Present: Guy Curley and Dennis Atlas

The variance request was advertised in St. Mary's Today on April 22, 2007 and April 29, 2007 and in the Enterprise on April 25, 2007 and May 2, 2007.

Ms. Chaillet stated that lot 91 is 8,368 square feet in size and is requesting an after-the-fact variance to reduce the required 25-foot front yard setback for a covered porch and to reduce the seven and one half foot side yard setback.

Mr. Miedzinski made a motion in the matter of VAAP #04-2045, Lot 88, Hickory Hills North Subdivision, Having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, I move that the variance to reduce the required seven and one-half foot (7.5') side yard setback to five (5) feet on the south side of the property be denied. The motion was seconded by Mr. Delahay and passed by a 5-0 vote.

The board called a recess at 8:52 p.m.
The meeting was called to order at 9:08 p.m.

VAAP #06-1860 – JULIAN JOHNSON

The applicant is requesting an After-the-Fact variance from Section 41.5.3 of the Comprehensive Zoning Ordinance to exceed the allowed amount of impervious surface to construct additions to a single family dwelling in the Critical Area. The property contains .75 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District; and is located at 45184 Clarkes Landing Road, Hollywood, Maryland; Tax Map 27, Block 17, Parcel 724.

Owner: Julian Johnson

Present: Julian Johnson Jr., Cynthia Ann Lee, and Sandy Tibitt

The property was advertised in St. Mary's Today on April 22, 2007 and April 29, 2007 and in the Enterprise on April 25, 2007.

Ms. Chaillet stated that Mr. Johnson has a grandfathered lot recorded in 1972 which was prior to the Critical Area. Since the time of building permit approval for the house in 1999, the Applicant has constructed a wood deck, a front porch, sidewalks, a concrete driveway leading to the basement garage in the rear of the house, and a shed which is still under construction. Said improvements were constructed without permits, resulting in an increase of 5,035 square feet of impervious surface for a total of 10,145 square feet of impervious cover. The allowable amount of impervious surface on a grandfathered lot of this size is 5,445 square feet.

The front porch, the concrete driveway leading to the basement garage, and the retaining walls alongside this driveway were built at the time the house was constructed and were visible at the time of final inspection prior to the issuance of the Certificate of Use and Occupancy. Unfortunately, these additions were overlooked by two Zoning Inspectors, who in turn, certified the final inspection.

Mr. Miedzinski made a motion to accept the staff report. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

Julian Johnson Jr. testified that he was not aware of the building laws and that he needed a permit to make additions to his property. Mr. Johnson Jr. stated that he was willing to reduce the existing shared driveway to 10 feet and substitute the remaining gravel area with BALCON or a similar approved product with a 60 percent impervious rating, place six inches of gravel under the wood deck and plant the perimeter of the deck, and remove the octagonal deck. Then the impervious surface will be reduced by 3,285 square feet. The amount of impervious surface left on the Property will be 6,860 square feet.

Cindy Lee testified that she has made complaints for years directly to Mr. Johnson Jr. and after total disregard, to the County regarding these violations. Ms. Lee stated that her specific issues are the house, shed, decks, and walkways. Ms. Lee stated that all the work done to the property and removal of trees, grading and fill has changed the flow of the surface water. Ms. Lee testified that all the water from this property drains onto her property.

Sandie Tippett testified she was attending to learn about the situation. Ms. Tippett stated she has called Planning and Zoning a couple of times to see if the regulations had changed. Tippett further stated she was assured by Planning and Zoning that the regulations had not changed and they would send someone out to inspect the Johnson property. Ms. Tippett stated she only wanted to learn how to get the same privileges in the Critical Area as her neighbor Mr. Johnson.

After further discussion on how to correct the problem with the impervious surface Mr. Miedzinski made a motion in the matter of VAAP #06-1860 – Julian Johnson Property 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 Ordinance have been met, I move that the variance to exceed the allowable amount of impervious surface on the Property, be approved with the condition that the excess impervious surface shall not exceed 600 square feet and that the Applicant will work with staff to reduce the impervious surface to comply with this condition. The Applicant shall work with The Department of Public Works to reroute stormwater drainage to the front yard area and to appropriately manage

stormwater on the property. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

VAAP #06-2026 – DENNISON

The applicant is requesting a variance from Section 51.3.119 of the Comprehensive Zoning Ordinance to reduce the required 100-foot setback from the property lines for a stable; after-the-fact variance from Section 71.7 of the Comprehensive Zoning Ordinance to disturb steep slopes and highly erodible soils; and after-the-fact variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the expanded stream buffer. The property contains 3.37 acres; is zoned Rural Preservation District (RPD); and is located at 28969 Shannon Court, Mechanicsville, Maryland; Tax Map 5, Block 21, Parcel 309.

Owner: Wendy Dennison
Present: Wendy Dennison, Timothy Reid, and Nancy Heiner

Mr. Hayden asked the Applicant to produce copies of the certified mail receipts. Ms. Dennison provided the receipts. Ms. Chaillet stated that two abutters in the audience were not notified of the hearing. Mr. Hayden asked the abutters for testimony.

Timothy Reid testified that he was not notified of the hearing by certified mail.

Ms. Heiner testified that she was not notified of the hearing by certified mail.

After discussion Mr. Miedzinski made a motion to continue case VAAP #06-2026 - Dennison to July 26, 2007 with the condition that staff verifies that all abutting properties are notified. The motion was seconded by Mr. Callaway and passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of April 12, 2007 were approved as recorded.

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

CUAP #06-132-026 – Hetzler Pit

ADJOURNMENT

The meeting was adjourned at 10:35 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: June 14, 2007

George Allan Hayden
Chairman

