

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, May 28, 2009**

Members present were Howard Thompson, Chairman; Wayne Miedzinski, Ronald Delahay, Veronica Neale, and George T. Edmonds. Alternate Ronald Payne was also present. Department of Land Use & Growth Management (LUGM) staff present were Derick Berlage, Director; Yvonne Chaillet, Zoning Administrator; and Jada Stuckert, Recording Secretary. Attorney George Sparling 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 6:30 p.m.

PUBLIC HEARINGS

VAAP #05-132-046 – River Creek Lodge

The applicant is requesting variance to modify the required buffer yard. The property contains 1.42 acres; is zoned Commercial Marine (CM) District, Limited Development Area (LDA) Overlay; and is located at 16810 Piney Point Road, Piney Point, Maryland; Tax Map 66, Grid 19, Parcel 47.

Owner: Charles Kimball
Present: Howard Kimball

The property and variance were advertised in The Enterprise on May 13, 2009 and May 20, 2009.

Ms. Chaillet read the staff report which recommended approval of the request to modify the required buffer yard. Ms. Chaillet submitted three (3) photos of the buffer yard hereby labeled as Exhibit 4 by the recording secretary. Mr. Miedzinski asked if the applicant notified the adjoining property owners. Mr. Kimball submitted the certified mailing receipts hereby labeled as Exhibit 1 by the recording secretary. Mr. Thompson stated he feels some sort of barrier needs to be placed in this buffer yard. Mr. Edmonds stated he also feels some sort of barrier should be constructed.

Howard Kimball stated the lodge has underground parking therefore there are no windows on the lower level. Mr. Kimball stated if a barrier is going to be required he asked that it be a split rail fence. Mr. Thompson stated his concern is people crossing the property line. Mr. Kimball stated if a split rail fence is required it could be placed on the property line so that it parallels the neighbor's split rail fence.

Chairman Thompson opened the hearing for public comment, hearing none, closed the hearing to public comment.

Mr. Miedzinski made a motion in the matter of VAAP #05-132-046, River Creek Lodge, having made a finding that the standards for granting a variance and the objective of Section 63.4 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to eliminate the requirement for a solid visual barrier with the condition the applicant install a split rail fence along the property line parallel to the Blackwell neighbors and Ms. Neale seconded. The motion passed by a 5-0 vote.

VAAP #09-0498 - Superior

The applicant is requesting and after-the-fact variance to reduce the required side yard setback for construction of a deck around a pool. The property contains 18,043 square feet; is zoned Residential Neighborhood Conservation District (RNC), Airport Environs (AE) Overlay; and is located at 23250 Oak Drive, California, Maryland; Tax Map 34, Grid 17, Parcel 428.

Owner: Andrew and Patricia Superior
Present: Andrew Superior

The property and variance were advertised in The Enterprise on May 13, 2009 and May 20, 2009.

Ms. Chaillet read the staff report which recommended denial of the request to reduce the required side yard setback for construction of a deck around a pool. Ms. Chaillet stated staff would be willing to allow the deck to encroach over the property line five (5) feet maximum. Mr. Thompson asked if all pools have to have a fence surrounding them. Ms. Chaillet stated yes, this is in the building code. Ms. Neale stated there is not much space here.

Mr. Andrew Superior submitted the certified mailing receipts hereby labeled Exhibit 1 by the recording secretary. Mr. Superior stated the railing going around the pool is so narrow his grandchildren were falling off it. Mr. Superior stated he decided to build a small deck around the pool to make it safer. Mr. Superior stated he was unaware a permit was needed for the deck. Mr. Superior stated he is willing to cut a corner off the deck to meet a five (5) feet setback.

Ms. Neale asked if the five (5) foot setback would be acceptable to staff as it would be 12 feet from the roads edge. Mr. Edmonds stated there is seven (7) feet between the pool and roadway today and asked how much more space cutting off part of the deck would add. Ms. Chaillet stated with the corner removed there would be 12 feet between the deck and the roadway.

Chairman Thompson opened the hearing to public comment.

Francis R. Hazzard stated there are three properties on this road, the third not being developed to date. Mr. Hazzard stated he was not notified by certified mailing. Ms. Chaillet stated if your property does not touch the property under question the Ordinance does not require you be notified by certified mailing. Mr. Hazzard stated the way the property was posted it was almost impossible to see the sign. Mr. Hazzard stated he uses and takes care of the road but he does not have a right to be notified; and further stated this is very unfair. Mr. Hazzard stated the lot plat requires a 25 foot setback. Ms. Chaillet stated the Zoning Ordinance requirements supersede the plat setbacks. Ms. Chaillet stated the side yard setback is only 10 feet. Mr. Sparling stated the vision of the Ordinance would supersede the plat however the plat may have covenants of its own. Mr. Hazzard stated the applicant has also planted trees to close to the property line which creates a hazard to the roadway.

Mr. Superior stated he keeps the trees trimmed to four foot to keep the dust from the Hazard property from getting into the pool. Mr. Hazzard stated it's not the height that is an issue it is the diameter.

Chairman Thompson closed the hearing to public comment.

Mr. Miedzinski asked how far the pool itself is from the property line. Mr. Superior stated it is 13 feet from the property line. Ms. Chaillet stated if the deck was not attached to the house the applicant would not be seeking a variance.

Ms. Chaillet stated if the Board desires to allow this the Board would be required to make findings of fact for the order. Ms. Neale asked if the applicant had applied for a deck when he built the pool would this have been acceptable or would it have been denied. Ms. Chaillet stated if the deck would have been built in 1999 yes as long as the pool remained detached from the house. Mr. Superior asked what would happen if he detached the pool from the house. Mr. Thompson asked if he needed more time to work with staff. Mr. Superior stated yes.

Mr. Miedzinski made a motion to continue the case to the June 11, 2009 meeting and Ms. Neale seconded. The motion passed by a 5-0 vote. Mr. Miedzinski asked that an order be prepared in advance of this meeting to be signed on June 11, 2009.

CUAP #09-131-016 – Dynard Elementary School

The applicant is requesting conditional use approval to add modular classroom units to the school property. The property contains 14.53 acres; is zoned Rural Preservation District (RPD); and is located at 23510 Bushwood Road, Chaptico, Maryland; Tax Map 30, Grid 11, Parcel 81.

Owner: St. Mary's County Board of Education
Present: Kim Howe and Larry Hartwick

The property and conditional use were advertised in The Enterprise on May 13, 2009 and May 20, 2009.

Ms. Chaillet read the staff report which recommended approval of the request to add modular classroom units to the school property.

Ms. Howe gave a brief overview of the request stating the re-locatable will not have water and sewer and all precautionary measures are being taken in regards to fire safety. Mr. Miedzinski made Ms. Howe aware of a potential oil dump in the proximity of the playground. Ms. Howe stated she would look into this.

Chairman Thompson opened the hearing for public comment, hearing none, closed the hearing to public comment.

Ms. Neale made a motion in the matter of CUAP #09-131-016, Dynard Elementary School, having made a finding that the standards for granting a conditional use and the objectives of Section 51.3.27, education facility, of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to modify an approved conditional use with the construction of two modular classroom units on the school's property and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

CUAP #09-131-017 – Lettie Dent Elementary School

The applicant is requesting conditional use approval to add modular classroom units to an existing elementary school. The property contains 15 acres; is zoned Rural Preservation District (RPD); and is located at 37840 New Market Turner Road, Mechanicsville, Maryland; Tax Map 4, Grid 11, Parcel 66.

Owner: St. Mary's County Board of Education
Present: Kim Howe and Larry Hartwick

The property and conditional use were advertised in The Enterprise on May 13, 2009 and May 20, 2009.

Ms. Chaillet read the staff report which recommended approval of the request to add modular classroom units to an existing elementary school.

Ms. Howe gave a brief overview of the request stating these modular classrooms are part of the master plan for re-locatable classrooms. Ms. Howe stated the re-locatable will not have water and sewer and all precautionary measures are being taken in regards to fire safety. Mr. Miedzinski asked what the two modular classrooms would be used for. Ms. Howe stated this classroom has been there for eight (8) years. Mr. Miedzinski asked if the renovations are complete at Lettie Dent. Mr. Hartwick stated the renovations are complete.

Chairman Thompson opened the hearing for public comment, hearing none, closed the hearing to public comment.

Ms. Neale made a motion in the matter of CUAP #09-131-017, Lettie Dent Elementary School, having made a finding that the standards for granting a conditional use and the objectives of Section 51.3.27, education facility, of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to validate Lettie Dent Elementary School as a conditional use and to construct two modular classroom units on the school's property and the conditional use approval shall be valid for two (2) years from the date of the signed order and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

Chairman Thompson stated we should revise the Dynard Elementary School motion to include the two year approval. Mr. Sparling concurred.

Mr. Miedzinski made a motion in the matter of CUAP #09-131-016, Dynard Elementary School, I move that the conditional use approval shall be valid for two (2) years from the date of the signed order and Mr. Edmonds seconded. The motion passed by a 5-0 vote.

CUAP #09-131-019 – Spring Ridge Middle School

The applicant is requesting conditional use to add modular classrooms. The property contains 35.65 acres; is zoned rural Preservation District (RPD); and is located at 19856 Three Notch Road, Lexington Park, Maryland; Tax Map 59, Grid 10, Parcel 268.

Owner: St. Mary's County Board of Education
Present: Kim Howe and Larry Hartwick

The property and conditional use were advertised in The Enterprise on May 13, 2009 and May 20, 2009.

Ms. Chaillet read the staff report which recommended approval of the request to add modular classrooms.

Ms. Howe gave a brief overview of the request stating there are a couple changes she needs to make to staff's analysis. Ms. Howe stated we will only have one (1) modular unit at 2,160 square feet which will have water connection for a lab sink all precautionary measures are being taken in regards to fire safety. Ms. Howe stated a fire lane will be constructed for this site. Mr. Miedzinski asked if the renovation is complete at Spring Ridge. Mr. Hartwick stated it will probably be another month before it is complete. Mr. Hartwick stated they looked closely at the modular location due to the fire lane and the helicopter med evacuation landing pad.

Chairman Thompson opened the hearing for public comment, hearing none, closed the hearing to public comment.

Mr. Edmonds made a motion in the matter of CUAP #09-131-019, Spring Ridge Middle School, having made a finding that the standards for granting a conditional use and the objectives of Section 51.3.27, education facility, of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to validate Spring Ridge Middle School as a conditional use and to construct a modular classroom unit on the school's property and the conditional use approval shall be valid for two (2) years from the date of the signed order and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of May 14, 2009 were approved as recorded.

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

VAAP #08-131-032 – Patuxent Baptist Church

ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: June 11, 2009

Howard Thompson
Chairman