

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, September 9, 2004**

Present: Marie Underwood, Chairperson
Greg Callaway, Member
Ronald C. Delahay, Sr., Member
David Wayne Miedzinski, 2nd Alternate
John B. Norris, III, County Attorney
Denis Canavan, Director, Department of Land Use & Growth Management
(LUGM)
Sharon Sharrer, LUGM Recording Secretary
Conchita Acupanda, Planner, LUGM

A sign-in sheet is on file in the 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.

Since only four members of the Board of Appeals were present at the meeting, the Chair explained that two votes against approval of any request would be all that would be required for a denial of that request. Each case was given the option of proceeding with their request, as scheduled, or postponing their hearing to another date.

PUBLIC HEARING

VAAP #03-1567 – WILKES

Requesting a Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to replace an existing single-family dwelling in the Critical Area Buffer. The property contains 27,007 square feet, is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District, and is located at 20765 Waterside Drive in Leonardtown, MD (lots 6-9 & 160-161 Brubacher Subdivision); Tax Map 48, Block 13, Parcel 47.

Owner: Donald & Darlene Wilkes
Agent: Jerry Soderberg, of DH Steffens Co.

This hearing was continued from April 8, 2004, to give all of the Board members an opportunity to view the tree and make sure that the property line was properly staked out. Further continuances were granted to allow time for the well on Mr. DiPreta's property to be located and to resolve Health Department issues. For the record, David Wayne Miedzinski, the Board of Appeals' 2nd Alternate was present at the hearing on the original hearing date when the legal description was read and information was presented to the Board.

Mr. Soderberg said that one of the main unanswered issues at the original hearing was the Health Department and the placement of the septic holding tank in relation to Mr. DiPreta's well. The Health Department, Maryland Department of the Environment, and the Wilkes have signed a Holding Tank Agreement. The tank will be ten (10) feet from the proposed house and a great distance from the DiPreta's well.

Mr. Soderberg explained that the nearest proposed corner of the house is 33 feet from the edge of the trunk of the Champion tree located on Mr. Diedrich's property. The recommended minimum required distance is 25 feet from the center of the trunk of the tree.

The Chair opened the hearing to public comment.

Carl Diedrich, who owns property next to the subject property, explained that his main concerns are the health of the tree and the ponding of water on the Wilkes' property. He is concerned that construction on the subject property will move this water onto his property or into Breton Bay.

Mr. DiPreta, who lives next to the subject property, was concerned about the distance from his well to the proposed septic holding tank. Mr. Soderberg measured the distance on the site plan between the well and the holding tank and said it would be approximately 120 feet.

The Chair asked about the ponding of the water. Mr. Soderberg explained that the ponding issue is very difficult to solve. The Chair asked if there is anything that the proposed house would do to make that situation worse. Mr. Soderberg responded that he could not foresee that happening.

The Chair closed the hearing to public comment.

Mr. Delahay moved that having accepted the September 7, 2004 Staff Report and having made a finding 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 been met, the Board grant a variance to construct a single-family dwelling within the Critical Area Buffer subject to the following conditions:

- 1) The applicants shall adhere to the Planting Agreement that requires three-to-one (3:1) mitigation for 188 square feet of impervious surface within the Critical Area Buffer and three-to-one (3:1) mitigation for clearing of 400 square feet in the Buffer: and**
- 2) The Champion tree will be staked and inspected during construction.**

The motion was seconded by Mr. Callaway and passed by a 4-0 vote.

CUAP #04-132-016 – LOVEVILLE PRODUCE AUCTION

Requesting Conditional Use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance (Z02-01) to construct an auction house. The property contains 5.27 acres, is zoned Rural Preservation District (RPD), and is located at 40454 Bishop Road in Mechanicsville, MD; Tax Map 19, Block 13, Parcel 81.

Owner: Joseph & Loretta Wathen
Agent: William Mehaffey, of Mehaffey & Associates
Joseph Mitchell, Attorney

Property was posted and legal ad was published. Adjoining property owners were notified. Mr. Mitchell provided receipts from the certified mailing.

Exhibit A-1 – Concept Site Plan – Loveville Produce Auction

Mr. Mitchell explained that currently producers of produce in St. Mary's County must take their crops to be sold to a wholesale auction house in Cheltenham, Maryland, over thirty (30) miles to the north. Mr. Mehaffey added that with the establishment of an auction house as a use in the County it would be much more convenient for the local sellers and buyers to have a place to sell and purchase these items for use in St. Mary's County.

Mr. Mehaffey explained that while they expect the actual hours of operation will be fairly limited, the group who will actually be operating the facility is concerned about having the flexibility to do what they need to do on the site. The Loveville Produce Auction GP would like to establish the core hours of auction on Monday through Saturday between 7AM and 7PM.

The Board had concerns about traffic issues that the additional volume of traffic might create. They asked when trucks would be arriving in the morning. They were concerned that trucks arriving before 7AM, or during the hours that school buses would be running in the area, could cause problems. Mr. Mehaffey said that it is possible that trucks would be arriving that early in the morning since it is typical that the auction would start around 9AM, but that much of the growing season is when school is not in session. The Board also asked if the auction would be solely for wholesale purposes, or if they would also sell to the public, further increasing the volume of traffic. Elmer Brubacher, Chairman of the Board of Governing Partners of Loveville Produce and Auction GP, explained that while the public can attend and make purchases, the volume of the lots being sold would be too large to make it practical in most cases.

Mr. Miedzinski moved to accept the August 31, 2004 Staff Report. The motion was seconded by Mr. Callaway and passed by a 4-0 vote.

The Chair opened the hearing to the public.

Trish Combs Henry, of Point Lookout Road in Callaway, spoke in support of the Loveville Produce Auction. She runs a produce stand and currently must travel to Cheltenham twice a week for the auction. Having the auction facility in St. Mary's County would save her a tremendous amount of time, as well as the cost of traveling to Cheltenham regularly.

John Milliman, of Friendship Court in Mechanicsville, spoke in support of the Loveville Produce Auction. Since Mr. Milliman currently derives a part-time income from hauling produce up to Cheltenham, it is not in his own personal economic best interest to support this facility. He does feel that it is in the best interest of the community to approve the Loveville Produce Auction, and supports this Conditional Use request.

Bubby Norris, President of St. Mary's County Farm Bureau who lives in Chaptico, also spoke in support of the Auction House. He hopes that his auction house will benefit the entire farming community.

The Board expressed concern that there is not enough room for all of the trucks that might go to the auction facility. Mr. Canavan explained that there are about 35 parking spaces in addition to the loading zones. There is also a large area of grass, which could be used for the horses and buggies. There is room to expand the parking facilities in the future, if needed.

The Board closed the hearing to the public.

Mr. Callaway moved that having accepted the August 31, 2004 Staff Report and 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, and finding that the hours of operation between 7AM and 7PM Monday through Saturday do not have an adverse impact on surrounding uses, the Board grant Conditional Use approval to construct an auction house. The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.

VAAP #04-0408 – ABELL

Requesting a Variance from Section 72.3 of the Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation and a Variance from Section 71.8.2 of the Comprehensive Zoning Ordinance to construct a single-family dwelling and appurtenances in the Critical Area Buffer. The property contains 13,847 square feet, is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay, and is located at Lots 176 & 177 of the Breton Beach Subdivision on Waterside Drive in Leonardtown, MD; Tax Map 48, Block 13, Parcel 189.

Owner: Mike Abell

Property was posted, legal ads were published, and adjoining property owners were notified.

Mr. Canavan explained that 83.9% of the property is covered by vegetation. He went on to explain that a letter dated 9/2/04 was received from the Critical Area Commission (CAC) after the staff report was prepared. While CAC does not oppose a clearing variance on this lot, they recommend a field verification of tidal and non-tidal wetlands be performed to determine whether this project will have a Critical Area Buffer impact and that a Buffer Variance be required, if so.

Mr. Miedzinski moved to accept the September 1, 2004 Staff Report, as amended. The motion was seconded by Mr. Callaway and passed by a 4-0 vote.

The Chair opened the hearing to the public. The public hearing was closed with no comments.

Mr. Delahay moved that having accepted the September 1, 2004 Staff Report, as amended, and having made a finding that the standards for variance in the Critical Area have been met, the Board grant a variance to clear in excess of 30 percent of the existing woodland and a variance to develop in the Critical Area Buffer subject to the following conditions:

- 1) The applicants shall adhere to the Planting Agreement for planting of 16,440 square feet, which represents a three-to-one (3:1) mitigation for 5,480 square feet of clearing within the Critical Area Buffer; and**
- 2) Verification of tidal and non-tidal wetlands boundaries by field location be performed to determine whether this project will have a Critical Area Buffer impact and, if necessary, the applicant would return to the Board of Appeals to request a Buffer Variance at that time.**

The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.

VAAP #03-2880 – CARBONE PROPERTIES

Requesting a Variance from Section 72.3 of the Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation and a Variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to construct a single-family dwelling and appurtenances in the expanded Critical Area Buffer. The property contains 3.76 acres, is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Overlay, and is located at the end and on the west side of Scotland Beach Road in Scotland, MD; Tax Map 73, Block 17, Parcel 60.

Owner: Carbone Properties, LLC
Agent: Jerry Soderberg, of DH Steffens Company

Property was posted, legal ads were published, and adjoining property owners were notified. Mr. Soderberg provided receipts of certified mailings.

Mr. Canavan noted that two different pieces of correspondence had been received from CAC since the Staff Report was prepared. The first letter, dated 9/2/04, did not support the variances. CAC noted that there is opportunity to reduce the amount of clearing and recommended that the porch and septic disposal chambers be moved away from the 100-foot buffer. Mr. Soderberg said that they will move these back from the 100-foot buffer by about four to five feet. The second letter, dated 9/9/04, stated that they have no objection to the forest mitigation plantings being located in an offsite area, provide the planting area is located within the Critical Areas and enhances the FIDS habitat. The letter said that CAC would be conducting a site visit to the properties in the next week.

The Chair opened and closed the hearing to the public.

Mr. Callaway moved to accept the August 31, 2004 Staff Report, as amended. The motion was seconded by Mr. Delahay and passed by a 4-0 vote.

Mr. Miedzinski moved that having accepted the August 31, 2004 Staff Report, as amended, and having made a finding that the standards for variance in the Critical Area have been met, the Board grant a variance to clear in excess of 30 percent of the existing woodland and a variance to develop in the Critical Area Buffer subject to the following conditions:

- 1) The applicants shall adhere to the Planting Agreement for planting of 96,900 square feet, which represents a three-to-one (3:1) mitigation for 32,300 square feet of clearing within the Critical Area Buffer;**

- 2) **The forest mitigation plantings be located in an offsite area, provide the planting area is located within the Critical Area and enhances the FIDS habitat, a finding which would be made by the Critical Area staff upon their visitation to the subject property and concurred with by the staff of the Department of Land Use and Growth Management; and**
- 3) **The house location, including the porch and septic disposal, would be moved away from the 100-foot buffer line to avoid disturbing the buffer area during construction.**

The motion was seconded by Mr. Delahay and passed by a 4-0 vote.

MINUTES AND ORDERS APPROVED

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

BOARD OF APPEALS RETREAT

The Board requested that Staff coordinate a retreat toward the end of October. The Harry Lundenberg School was suggested as a possible location. It was suggested that the retreat could begin with lunch and finish by 5:00 p.m.

ADJOURNMENT

The meeting was adjourned at 9:04 p.m.

Sharon J. Sharrer
Recording Secretary

Approved in Open Session: October 14, 2004

Marie E. Underwood
Chairperson