

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, October 23, 2008**

Members present were George Hayden, Chairman; Wayne Miedzinski, Ronald Delahay, and Veronica Neale. George Edmonds and Ronald Payne were excused. Department of Land Use & Growth Management (LUGM) staff present were Yvonne Chaillet, Zoning Administrator; Jenn Ballard, Environmental Planner; and Jada Stuckert, Recording Secretary. George Sparling, Attorney and County Attorney Christy Chesser were 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

ZAAP #06-132-017 – FDR Holdings, LLC

Remanded by Circuit Court to the Board of Appeals for further proceedings consistent with the Circuit Court's opinion reversing the Board of Appeals' decision on February 14, 2008 to uphold the Planning Commission's denial of a concept site plan for an office building. The property contains .72 acres; is zoned Downtown Core Mixed Use (DMX) District; and is located at 21975 FDR Boulevard, Lexington Park, Maryland; Tax Map 43, Block 22, Parcel 83.

Owner: FDR Holdings, LLC
Present: John Norris III and Rick Benefield

Ms. Chaillet stated the Circuit Court has decided that the Planning Commission can not use the right-of-way alignment as the determining factor for denying the case. Ms. Chaillet stated staffs recommendation is to remand the case back to the Planning Commission for decision. Mr. Norris reviewed the standards in Article 66B stating the Board of Appeals does not have the power to remand the case back to the Planning Commission. Mr. Sparling stated he agrees with Mr. Norris to the extent that he believes the Board of Appeals is not prohibited from remanding the case back to the Planning Commission for decision. Mr. Sparling referenced footnote 8 on page 5 of the Circuit Court Ruling which states, "The Court does not reach that issue at this time; rather, the Court holds that, as a matter of law, the 2006 Transportation Plan is not inconsistent with the Petitioner's Concept Site Plan." Mr. Sparling stated the Court only addresses the consistency of the Transportation Plan as did the Planning Commission. Mr. Sparling stated the Planning Commission needs to review the concept site plan in its entirety.

Ms. Chesser stated per Section 60.5 of the Zoning Ordinance the Planning Commission is required to make specific findings in regards to approval of a concept site plan. Ms. Chesser stated she is in agreement with Mr. Sparling and recommended the Board of Appeals remand the case to the Planning Commission for further findings.

Mr. Rick Benefield read a statement which stated the Planning Commission has heard this case three times and the Circuit Court only addressed Article 66B. Mr. Benefield requested the Board of Appeals make a decision on the case.

Chairman Hayden ordered a 10 minute recess. Meeting came to order again. ***Mr. Miedzinski made a motion in the matter of ZAAP #06-132-017, FDR Holdings, LLC I move to continue the case to December 11, 2008 and to have staff provide the Board of Appeals with all original documentation and exhibits as well as the video recordings from the three Planning Commission hearings for the Board of Appeals to review prior to the December 11, 2008 hearing and Ms. Neale seconded. The motion passed by a 4-0 vote.***

VAAP #08-1437 - Bacon

The applicant is requesting variance to add new impervious surface in the expanded Critical Area Buffer to construct a detached garage and after-the-fact decks. The property contains 37,000 square feet; is zoned Residential, Low-Density District (RL), Intensely Developed Area (IDA) Overlay; and is located at 45148 Lighthouse Road, Piney Point, Maryland; Tax Map 65, Block 17, Parcel 225.

Owner: Jeffery and Caryn Bacon
Present: Floyd Graham

The property and the variance request were advertised in The Enterprise on October 8, 2008 and October 15, 2008.

Mr. Graham gave an overview of the request stating the owners would like to construct a garage to store their vehicle, boat, jet skis, etc. Mr. Graham stated the owners would like to request the garage be placed more than 25 feet away from the house rather than 10 feet which was recommended by staff. Mr. Graham stated staff has recommended removing the concrete pad and asked that this not be required as the pad is very old and overgrown.

Ms. Neale asked about the shed behind the house. Mr. Graham stated this shed is to be removed and mentioned the two after-the-fact decks were already there when the current owners purchased the house. Mr. Hayden asked the elevation of the flood plain height. Ms. Ballard stated the garage would have to be elevated 5 feet above sea level.

Ms. Ballard read the staff report which recommended approval of the variance request. Mr. Miedzinski asked about the after-the-fact decks. Ms. Chaillet stated the new Critical Area Regulations per HB 1253 require the owners to post a bond for removal of the decks. Ms. Chaillet stated the deck would have to be removed only if the Board denies the variance request.

Mr. Miedzinski made a motion to accept the staff report as findings of fact in this case and that the presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law. The Board of Appeals must make affirmative finding that the applicant has overcome this presumption, based on the evidence presented and Ms. Neale seconded. The motion passed by a 4-0 vote.

Chairman Hayden opened the hearing for public comment, hearing none, closed the hearing to public comment. Mr. Graham asked that the Board make findings on the concrete pad and the location of the garage. Mr. Graham stated the 3:1 mitigation is also of concern to the owners. Ms. Ballard explained there are many alternate options regarding the mitigation.

Ms. Neale made a motion in the matter of VAAP #08-1437 having made a finding that the standards for granting a 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, I move to approve the variance request to add impervious surface to the Critical Area Buffer subject to adherence to the Critical Area Planting Agreement and Buffer Management Plan, storm water management plan that satisfies the '10 percent rule,' removal of the concrete remnants along the edge of Piney Point Creek, removal of the shed, and relocation of the proposed detached accessory structure toward the front property line until it is no farther than 20 feet from the principal structure and Mr. Miedzinski seconded. The motion passed by a 4-0 vote.

CUAP #07-131-019 & VAAP #07-131-019 - Jacob Fisher Surface Mine– Continued from 9/25/08

Mr. Jerry Sodaberg gave a brief overview stating the owners wish to mine the site by removing the two hills, removing all minerals, and reclaiming the site for farming. Mr. Sodaberg stated is requesting 100 loads per day for both this operation and the mining operation across the street.

Mr. Jimmy Richards III stated he owns and operates his own trucks and has had only three complaints about the trucks. Mr. Richards stated out of the three complaints only one of trucks was one of his. Mr. Richards stated he encourages his employees to abide by the safety rules and has done so for the past 10 years of mining on Woodburn Hill Road.

Mr. Miedzinski asked which direction the trucks travel when entering and exiting the site. Mr. Sodaberg stated they use Route 236 to Route 5 the majority of the time and seldom use Route 234.

Mr. Sodaberg stated the adjoining neighbors have signed letters in regards to the variance request to reduce the setbacks.

Mr. Chaillet read the staff reports which recommend approval for both applications.

Mr. Miedzinski made a motion to accept the staff reports as findings of fact in both cases and Ms. Neale seconded. The motion passed by a 4-0 vote.

Chairman Hayden opened the hearing for public comment. Ms. Linda Crandall stated she is not in favor of another mining operation on this road. Ms. Crandall stated the road is very narrow, in some places only as wide as 13 feet. Ms. Crandall stated the county has to grade and repave the road once a year due to the runoff from the pits, farms, and heavy weight of the trucks. Ms. Crandall gave a power point presentation containing 40 pictures of Woodburn Hill Road. After the power point presentation Ms. Crandall asked the Board to view Woodburn Hill Road as a resource.

Mr. David Fisk stated he shares the same safety concerns as Ms. Crandall and agreed that the road is very narrow. Mr. Hayden asked if the trucks utilizing the road ever operate in a dangerous manner. Mr. Fisk stated yes other trucks. Mr. Fisk stated the drivers often utilize the loop which leads back to Woodburn Hill Road which is an un-named road.

Ms. Crandall referenced 9th Edition ADC Map 3, Locations 3H-6H to show the un-named road. Chairman Hayden closed the hearing to public comment. There was mention of an unpermitted pit on Woodburn Hill Road.

Ms. Chaillet stated after hearing the testimony staff is no longer comfortable with items "b" and "d" of the staff report. Mr. Hayden explained once the unpermitted pit is closed the traffic will slow.

Mr. Miedzinski made a motion in the matter of VAAP #07-131-019 having made a find that the standards for granting a variance and the objectives of Section 51.3.80 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to reduce the required 200-foot setback to zero along the shared boundary with the Reuben L. Swarey property (EWA 576/177) and the Joseph R. Stoltzfus property (JWW 2919/507) and to reduce the 200-foot setback to 75 feet along the shared boundary with the Jacob F. King property (EWA 2062/710), subject to the conditions of the approved conditional use and Ms. Neale seconded. The motion passed by a 4-0 vote.

Mr. Sparling asked if staff is orally amending the staff report. Ms. Chaillet asked the record to read that staff considered testimony however accepts the staff report as written. Mr. Miedzinski asked if the Board could require the applicant to come back in three years for a public hearing to update the Board and members of the public on the process.

Mr. Hayden stated the truckloads per day would be amended to read 100 truckloads per day for both mining operations on Woodburn Hill Road meaning the 100 trips would be cumulative which would correct condition #5.

Mr. Miedzinski made a motion in the matter of CUAP #07-131-019 having made a finding that the standards for granting a conditional use and the objectives of Section 25 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to mine 15.6 acres, subject to the conditions stated in the staff report containing an amendment to condition #5 which will read "100 truckloads per day cumulative for both mining operations located on Woodburn Hill Road and adding condition #15 to read the Conditional Use shall be reviewed in three years from the commencement of extraction in light of comments of the staff and neighbors and Ms. Neale seconded. The motion passed by a 4-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of October 9, 2008 were approved as recorded.

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

VAAP #08-1380 – Brinsfield

VAAP #08-0184 – Hall

VAAP #08-0767 – The Tech Group (Calevas/Ferat)

ADJOURNMENT

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

Jada Stuckert, Recording Secretary

Approved in open session: November 6, 2008

George Allan Hayden
Chairman