

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, November 9, 2006**

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

A sign-in sheet is on file at LUGM. All participants in this case were sworn in. The Chair called the meeting to order at 6:50 p.m.

PUBLIC HEARINGS

CUAP #05-132-050 – STS BUS SHELTER

The Applicant is requesting modification of an approved conditional use pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to construct a bus shelter. The property contains 210.70 acres; is zoned Rural Preservation District (RPD); and is located at 44825 St. Andrew's Church Road, California, Maryland; Tax Map 42, Block 4, Parcel 104.

Owner: St. Mary's County Commissioners
Present: Gary Whipple, Department of Public Works and Transportation (DPW&T)

All cases heard at this meeting were advertised in *St. Mary's Today* on 10/22/06 and 10/29/06. The properties were posted and certified mail receipts were submitted to staff for the files.

Applicant's Exhibit 1: Map of the St. Andrew's Maintenance Facility

Mr. Whipple explained a bus shelter is needed for the current St. Mary's Transit System (STS) bus fleet. The shelter will be constructed at the County maintenance facility, which is located on a 10-acre section of land independent of the County landfill. Mr. Whipple gave several reasons a shelter is needed for the buses: to provide protection for the buses; to provide protection for the drivers while they perform required pre-trip and post-trip inspections; to provide sufficient power outlets for the engine block heaters; to consolidate all of the buses to one area out of the way of other County vehicles; and to block snow and ice from the buses, which will allow the buses to begin routes earlier in the winter months. The planned shelter is a 180-foot by 60-foot pre-constructed steel building with 14-foot by 27-foot bays doors. Mr. Whipple noted all of the conditions of the original conditional use order authorizing the maintenance facility will still be met. He emphasized there will be no traffic impact because the buses are already parked on this property and the buses will use existing access roads. He added the shelter will be used for storage only and no maintenance will take place in the building. The shelter will not be visible from MD 4 and no water or sewer service will be provided to the shelter.

Mr. Edmonds inquired about the number of buses in the STS fleet. Mr. Whipple responded the fleet currently contains 24 buses. Mr. Edmonds asked if the shelter will hold the entire current fleet. Mr. Whipple replied each bay will hold 4 buses and the planned shelter will hold all 24 buses. Mr. Edmonds asked if the County plans to buy additional buses. Mr. George Erichsen, Director of DPW&T, replied purchase of new buses will be subject to approval of additional routes, which are needed due to an increase in ridership; however, the State has not approved any new routes for the past two years. Mr. Edmonds asked if there will be room for expansion of the shelter if the fleet is increased in the future. Mr. Whipple responded the County can look at building additional bus shelter space elsewhere if needed. Mr. Miedzinski expressed

concern over the clearing of trees in the wooded buffer. Mr. Whipple responded only a very small corner of the wooded area will need to be cleared and there will still be adequate buffer space between the shelter and MD 4. Mr. Miedzinski asked why bay doors are only planned for one side of the shelter. Mr. Whipple responded the doors on the other side were left off due to budget constraints; however, they can be added later.

Ms. Chaillet explained the proposed shelter will go before the Planning Commission for site plan approval if the Board of Appeals approves the modified conditional use.

Mr. Miedzinski moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

The chair opened the hearing to public comment. The hearing closed with no public comments.

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 proposed bus shelter pursuant to Chapter 25 of the Ordinance, subject to the following conditions:

- 1. The conditional use approval is for the 10 acres depicted on the site plan and is independent of the conditional use approval for the landfill site. The 10-acre boundary shall be clearly delineated on the approved site plan.**
- 2. All outdoor storage and parking areas, including the fleet of STS buses, shall be clearly labeled on the approved site plan.**
- 3. A minimum 100-foot setback shall be established from MD Route 4 (St. Andrews Church Road) and the proposed parking lot shall be labeled as such on the site plan.**

The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

**CUAP #06-132-030 – ST. ANDREW'S LANDFILL TRANSFER STATION
(Moved to 12/14/06)**

The Applicant is requesting modification to an approved conditional use pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance to construct and operate a processing facility and transfer station. The property contains 210.70 acres; is zoned Rural Preservation District (RPD); and is located at 44825 St. Andrew's Church Road, California, Maryland; Tax Map 42, Block 4, Parcel 104.

Owner: St. Mary's County Commissioners

Ms. Chaillet explained the applicant would like this case to be moved to the December 14, 2006 meeting in order to allow the Board to review their variance request in concurrence with their conditional use request. The Applicant needs the additional time to advertise the variance request and notify adjoining property owners.

Ms. Scriber moved to continue this case at the December 14, 2006 meeting. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

CUAP #06-132-008 – MODIFICATION E OF THE ZIMMERMAN MINE NO. 2

The Applicant is requesting modification of an approved conditional use to mine an additional 31.15 acres. The property contains 212.14 acres; is zoned Rural Preservation District (RPD); and is located on the north side of the intersection of Friendship School Road and Parsons Mill Road where they meet at Maypole Road; Tax Map 25, Block 2, Parcels 21, 22 and 115.

Owner: Harvey S. Zimmerman, Jr., and Thelma M. Zimmerman of Parcels 21 and 22; Marvin and Debbie Lou Martin of Parcel 115
Present: Randal Sloan, Applicant; John Norris of Norris and Dudderar, attorney for the Applicant; Jerry Soderberg of DH Steffens Company, Project Manager

Mr. Soderberg explained there will be no additional traffic increase associated with the mining operation because the applicant is not requesting additional truckloads. He noted the additional 31.13 acres of land will not be stripped all at one time.

Mr. Norris explained the mining operation has met the conditional use standards since it was first approved in 1988. He expressed concern over the recommendation made by staff to restrict haul traffic associated with the mine to Parsons Mill Road west of the entrance to the mining operation and prohibiting haul trucks from using Friendship School Road east of this same entrance and Maypole Road. He explained this is a new condition since the first conditional use approval of the mine and he feels this condition will unfairly penalize Mr. Sloan. He noted the \$25,000 road maintenance bond will be renewed to cover any repairs needed to Friendship School Road, Parsons Mill Road or Maypole Road. Mr. Norris agreed illegal vehicle operation is a concern on Friendship School Road; however, he noted the speeding traffic is not specific to the mine and it should be corrected by law enforcement. He added directing 100 trucks per day to Parsons Mill Road will require the trucks to divert to the intersection of MD 247 and MD 235, which is more hazardous than the Friendship School Road and MD 235 intersection. He noted there is no record of the haul trucks being a hazard on Friendship School Road. Mr. Norris asked the Board to reject this condition of the modified conditional use.

Ms. Chaillet responded the condition was not imposed before because this is the first time residents have expressed concerns over the number and speed of haul trucks traveling on Friendship School Road. She noted the trucks can weigh up to 80,000 pounds when loaded and the mine is approved for 100 truck trips per day. Mr. Miedzinski noted there are more houses on the road than there were in the past. Mr. Hayden asked if there is a weight restriction posted on Friendship School Road. Ms. Chaillet responded there is no weight restriction posted. Mr. Hayden asked how many complaints were received by staff. Ms. Chaillet replied staff received one written complaint and staff also received a call from Commissioner Mattingly, who stated he received complaints from neighbors.

Mr. Miedzinski moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Ms. Scriber and passed by a 5-0 vote.

The Chair opened the hearing to public comment.

Eddie Guy, a business owner who regularly hauls from Mr. Sloan's mine, expressed concern routing all of the truck traffic to Parsons Mill Road is unsafe due to the location of a Mennonite school that is very close to Parsons Mill Road. He explained drivers often vary the route they take based on the location of a job; therefore, removing route options for the mine traffic is unfair. He noted keeping the trucks off of Friendship School Road will place a larger burden on Parsons Mill Road.

Bill Peterson, who hauls from the mine, explained Mr. Sloan does not allow overloaded trucks to leave the site. He further explained all trucks must be covered and the mine site is very clean. Mr. Peterson noted all three of the roads are in great shape. Mr. Canavan asked Mr. Peterson which road has the best line of site. Mr. Peterson replied he does not see a difference between the three. Mr. Canavan asked Mr. Peterson to look at a map of the area and pick the road that is the straightest. Mr. Peterson responded the map shows Parsons Mill Road is shorter and straighter, but he does not notice a difference when he drives the three roads. Mr. Canavan asked which of the three roads is most elevated. Mr. Peterson responded Friendship School Road. Mr. Canavan asked Mr. Peterson which road is the shortest distance to a State road. Mr.

Peterson responded Parsons Mill Road. Mr. Canavan asked Mr. Peterson if he personally observed any increase in traffic on these three roads in the years he has been hauling from this mining site. Mr. Peterson replied no. He stressed the drivers need to have the ability to choose between all three routes because driving further increases the cost of a job. Mr. Norris asked Mr. Peterson if those costs are passed on to the consumer. Mr. Peterson replied yes. Mr. Hayden asked Mr. Peterson which road he feels is safest. Mr. Peterson replied they are all the same and all have plenty of room. Mr. Edmonds expressed concern Friendship School Road is hard to drive with all of the turns, which causes safety issues for the local Mennonites who travel the road by horse and buggy. Mr. Peterson replied haulers pass these Mennonites safely every day.

Denis Atlas, who has hauled from the mine for ten years, explained he has not witnessed any accidents at the intersection of Friendship School Road and MD 235. He noted it is a better idea to spread the 100 trucks per day over three roads rather than send them all over one road. Mr. Atlas explained the trucks are capable of handling turns and hills safely and they cannot travel faster than 15-20 miles per hour on the hills of Friendship School Road when fully loaded. Mr. Hayden inquired about speed limits on Friendship School Road and Parsons Mill Road. Mr. Atlas responded the speed limit on Friendship School Road is 35 miles per hour and Ms. Chaillet responded the speed limit on Parsons Mill Road is also 35 miles per hour. Mr. Atlas noted he prefers exiting the mine site via Friendship School Road because its intersection with MD 235 is signaled.

Jim Moore, who hauls from the mine, stated it is impossible for one of these haul trucks to exceed 55 miles per hour on Friendship School Road, whether loaded or empty.

Curtis Grice, neighboring resident, explained he is not aware of a serious accident involving a haul truck on Friendship School Road in the 18 years Mr. Sloan has operated the mine. He pointed out upgrades to Friendship School Road were made possible eight to ten years ago due to material provided by Mr. Sloan's mine. He explained traffic of all kinds has increased on this road since it was upgraded and it is not fair to residents on Parsons Mill road if all of the truck traffic is directed their way. Mr. Grice referenced a study prepared by the County Sheriff's office and noted in the staff report, which states 85 percent of traffic on Friendship School Road traveled at 47 to 50 miles per hour at the time the study was conducted. He noted these speeds are impossible for a gravel truck on this road, so the speeding traffic cannot be due to the trucks affiliated with the mining operation. He explained it is unfair to refuse access to a public roadway for the gravel trucks and he feels the County needs to make an effort to enforce the speed limits on Friendship School Road.

Daniel Good, a contractor who hauls from the mine, stated safety always comes first for business owners. He noted Mr. Sloan cannot control the traffic that enters or exits his mining operation. Mr. Good explained the truck drivers are not the reason Friendship School Road is unsafe because the liability to them and their business is too great to operate in an unsafe manner.

James P. Thomas, resident of Friendship School Road, stated he has witnessed haul trucks speeding and he has been run off the road by the trucks in the past. He noted he has contacted the County Sheriff's office to try and get them to enforce the speed limit on the road but nothing has been done. He is worried about the safety of himself and others who drive on the road.

Kathy York, resident of Friendship School Road, stated she has called several County and State departments to seek help with the traffic violations on the road, but the situation has not improved. She contacted several of her neighbors and found out trucks have been witnessed waiting at the mine site as early as 4 a.m. She said several neighbors are concerned and have witnessed trucks speeding and crossing the center line. Other neighbors expressed concerns over the dirt mess at the mine entrance and some of the Mennonite residents told her the truck breaks scare their animals. She noted the Mennonite that once farmed her land decided to quit

because crossing the road to access her property was too unsafe for him and his horse. Ms. York explained the driving population on the road has increased since the mine first began operating and there is also now a produce auction on the road that many area Mennonites must travel to with loaded wagons. She further explained there is a Mennonite school off of Friendship Court and the school children must travel along Friendship School Road on bicycles or on foot to get there.

David Edwards, resident of Friendship School Road, explained he believes the truck drivers should be allowed to use the road; however, something needs to be done about the unsafe drivers on the road. He noted not all of the trucks are part of the problem.

Sam Smith, resident of Friendship School Road, expressed concern the haul trucks are dangerous and he noted the road has already needed repairs twice since it was upgraded due to damage from the trucks. Mr. Hayden asked Mr. Smith if he believes everyone is speeding on the road or just the haul trucks. Mr. Smith replied he is sure everyone is speeding but the trucks need to be slowed down too.

Gil James, resident of Friendship School Road, explained he lives on a sharp turn and has observed dark marks on the road where the truck breaks drug on the ground. He has personally witnessed trucks speeding and he pointed out an 80,000 pound truck cannot stop as fast as the other traffic. Mr. Miedzinski asked Mr. James if he feels the loaded trucks are not able to get up to speed traveling uphill. Mr. James responded the haul trucks coming in to access the mine site are more of a problem than the exiting trucks, but the loaded trucks can still go up the hills at a high rate of speed.

Marvin Martin, local Mennonite, explained not all of the residents of the local Mennonite community are against Mr. Sloan's mining operation.

Sherry James, resident of Friendship School Road, explained she has witnessed horses pulling loaded wagons past her house and she is concerned for their safety with the large haul trucks passing by.

The Chair closed the hearing to public testimony.

Mr. Norris expressed concern removing the haul trucks from Friendship School Road will open the road up for other vehicles to drive even faster. He explained forcing the drivers to go further out of their way to the job site will drive up construction costs.

Mr. Hayden asked for Mr. Sloan's opinion on the traffic issues. Mr. Sloan explained he is in regular contact with DPW&T regarding repairs on the road. He noted he regularly cleans the dirt off the road around the mine areas. Mr. Hayden inquired about the frequency of the cleanings. Mr. Sloan responded he cleans up to ten times per week in wet conditions and two to three times per week in dry conditions. Mr. Hayden inquired about the pit located across Friendship School Road from the current mining area. Mr. Sloan replied the pit was used in the past but has since been depleted. Mr. Miedzinski asked Mr. Sloan if he will be okay with forbidding incoming trucks associated with his mine from using Friendship School Road. Mr. Sloan replied he can live with that condition; however, he expressed concerned he will not be able to keep all of the drivers from entering via Friendship School Road. Mr. Miedzinski responded it will be Mr. Sloan's job to inform all of the drivers. Mr. Edmonds asked if the 100 trucks per day equates to 100 hauls or 100 different trucks. Mr. Sloan responded 100 hauls per day are allowed but the mine rarely reaches that limit. Mr. Hayden asked if trucks are waiting at the mine entrance as early as 4 a.m. Mr. Sloan responded he is not sure why that particular driver was waiting at 4 a.m. and he stressed he does not want them there that early. Mr. Hayden asked how many trucks were hauling from the mine when it began operations in 1988. Mr. Sloan responded he had one truck of his own and four to five independents. Mr. Hayden asked how long the 100 truck maximum has been allowed. Mr. Sloan replied eight to ten years.

Mr. Miedzinski suggested restricting the haul trucks from using Friendship School road when they are driving in to access the mine site and allowing them to use Friendship School Road to exit the mine site. He added this will give exiting trucks the option of making a left-hand turn onto MD 235 at the Friendship School Road intersection. Mr. Hayden noted any type of restriction on the truck traffic is still not going to fix the speeding problems on Friendship School Road. Mr. Miedzinski pointed out the truck drivers are more likely to speed when they are driving in empty. Mr. Delahay questioned the ability of the County or Mr. Sloan to keep truck drivers from entering through Friendship School Road. Mr. Hayden agreed Mr. Sloan can only control the trucks he owns. Mr. Edmonds expressed concern the road cannot be restricted for the haul trucks without restricting the road for all trucks over 10,000 pounds. Ms. Scriber explained law enforcement needs to be present on the road to stop the speeding. Mr. Delahay noted law enforcement cannot be there every day.

Mr. Hayden expressed concern the County cannot enforce this restriction and there is no way to know if the speeding is due solely to mine-related traffic. He feels the total burden should not be placed on Mr. Sloan. Mr. Hayden asked if staff received any complaints from residents of Maypole Road. Ms. Chaillet replied no. Mr. Delahay explained restricting only the incoming trucks is a start but he noted not all of the drivers will listen. Mr. Hayden added restricting only the incoming trucks will keep the entire burden from Parsons Mill Road. Ms. Scriber explained it is a good idea if Mr. Sloan is willing to try to enforce it. Mr. Sloan stated he can try to enforce the condition. Ms. Chesser noted the Board can ask staff to bring comments from tonight's meeting to the attention of the County Sheriff's Department. Mr. Canavan responded he will send a letter to the Sheriff's Department.

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 a Conditional Use for an extractive industry involving the mining of more than five acres pursuant to Chapter 25 of the Ordinance, subject to the following conditions:

- 1. A \$25,000 road maintenance bond shall be renewed for continued maintenance of Friendship School Road and Parson's Mill Road. The bond shall be in place prior to final approval of the site plan and shall be released once the mining operation and conditional use approval have ceased.**
- 2. All Technical Evaluation Committee agency comments shall be addressed prior to final approval of the site plan.**
- 3. The subject mining operation shall be carried out in accordance with all federal, state and local regulations in effect as of the date of this approval. Where the Board of Appeals' conditions are more restrictive than federal or state requirements, the Board of Appeals' conditions shall apply.**
- 4. This conditional use approval shall expire five years from the date of the Board of Appeals approving Order.**
- 5. The number of truckloads per day shall not exceed 100.**
- 6. Hours of operation shall be from 6:30 a.m. to 5:00 p.m., Monday through Friday, and from 7:00 a.m. to 1:00 p.m. on Saturdays. The proposed conditional use shall not operate on standard holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).**
- 7. There shall be no burning on site except for wood products derived from site clearing and grubbing areas from the site.**
- 8. No topsoil shall be removed from the site. All topsoil shall be used on site for reclamation purposes.**
- 9. The site shall be stabilized and seeded within six months following cessation of operations in accordance with final approvals from the Soil Conservation District and the Maryland Department of the Environment.**

10. The property shall not be used as a salvage yard or landfill operation. No concrete, asphalt, or other debris shall be stored on the site beyond the expiration of the approval of this mining operation.
11. The applicant shall abide by the standards contained in Section 51.3.80 (Extractive Industry) of the Ordinance.
12. Signs shall be erected to alert traffic that there are trucks entering and exiting the property to the satisfaction of the Department of Public Works and Transportation. Signs shall be erected at the entrance of the access road to indicate the road is for private access only and to discourage commercial truck traffic.
13. All approved conditions shall be listed on the site plan submitted for approval.
14. Any additions, changes or modifications of the approved conditional use on this site shall require Board of Appeals' approval.
15. The empty haul trucks affiliated with the mining operation shall be restricted from using Friendship School Road as a way of ingress.

The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

The Chair called a recess at 9:35 p.m.

The Chair called the meeting back to order at 9:40 p.m.

ZAAP #05-2934 – TILLEY'S MARINA

The Appellants are requesting an appeal of the Planning Director's determination regarding the scope of the non-conforming use pursuant to Chapter 23 of the St. Mary's County Comprehensive Zoning Ordinance. The property contains 22,252 square feet; is zoned Commercial Marine District (CM), Limited Development Area Overlay District (LDA); and is located at 45970 Wild Rose Lane, California, Maryland; Tax Map 35, Block 2, Parcel 9.

Owner: Walter Tilley and Frank Miller, Appellants
 Present: Kara Doyle of Dugan, McKissick, Wood & Longmore LLC, attorney for the Appellants

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| Appellants' Exhibit 1: | Copy of Chapter 52 of the Ordinance with Section 52.2.1, <i>Continuation and Maintenance</i> , highlighted |
| Appellants' Exhibit 2: | Select copies of the pages of the <i>Webster's II New College Dictionary</i> highlighting the definitions of "berth, slip, dock and mooring" and a copy of Section 23.02.04.03, Definitions, of the <i>Annotated Code of Maryland Regulations</i> |
| Appellants' Exhibit 3: | Portion of Walter Tilley's original State Wetlands License authorizing work on the subject pier |
| Appellants' Exhibit 4: | Portion of Walter Tilley's State Wetlands License revised November 30, 2005 |
| Appellants' Exhibit 5: | Portion of Walter Tilley's State Wetlands License revised December 6, 2005, final revision |
| Appellants' Exhibit 6: | Copy of plan proposed by Sue Veith, Environmental Planner, LUGM |

Appellants' Exhibit 7:	Picture of property illustrating proximity of witness Harold Husmann's residence to the subject property
Appellants' Exhibit 8:	Location drawing of subject property signed by witness Harold Husmann
Appellants' Exhibit 9:	Location drawing of subject property signed by witness Joe Stone

Ms. Doyle explained Section 52.2 of the Ordinance states that a nonconforming use may be continued as long as it is not abandoned. She further explained the pier on the property was built in the 1950s and at that time as many as 18 to 20 boats rented space there. When the Thomas Johnson Bridge was built in the 1970s, a portion of the pier was cut off and the owners were left with enough space to dock eight to ten boats. Ms. Doyle noted the pier has rented space to eight to ten boats consistently from the 1970s to the present. She explained staff does not recognize the presence of more than six slips at the pier even though eight or more boats have been observed there. Ms. Doyle explained neither the Annotated Code of Maryland nor the Ordinance provides definitions for the following terms: "slip, berth, dock or mooring." The Annotated Code of Maryland clearly states if a term is not defined, it will have the meaning attributed to common use. Ms. Doyle provided copies of definitions for these four terms found in the *Webster's II New College Dictionary*. According to Ms. Doyle's exhibits, a slip is considered a "docking place for a boat or ship." She explained if eight or more boats have always been docked at this pier, then staff should recognize the presence of more than six slips according to this definition of a slip.

Ms. Doyle explained the Appellants decided to renovate the pier after purchasing the property and they met with Sue Veith, of LUGM, who drew up a proposal illustrating how they should undertake the project. According to the Appellants, Ms. Veith told them they needed to get approval for the renovation plans from the State and from the Army Corps of Engineers. She also told them the County would approve whatever the State and Corps approved, and she gave them the necessary applications to fill out. The Appellants obtained approval through the State and the Corps using the proposal drawn up by Ms. Veith. Ms. Doyle explained staff issued a stop-work order during the renovation of the pier because the Appellants had failed to pay the necessary permit fee. They paid the fee but were stopped again when it was determined the fee was not the right amount. They paid the corrected fee and continued renovating the pier. Ms. Doyle summarized the Appellants have completed the expensive renovations and are now seeking the right to continue using the pier, as it is renovated, to rent eight to nine slips.

Mr. Edmonds asked if the Appellants were led to believe they were in compliance when they were completing the renovations. Ms. Doyle replied yes and explained after paying the fees required by staff, they were never told not to continue with the renovations. Mr. Hayden asked if the Appellants had anything in writing from Ms. Veith stating what they needed to do to get approval for the renovations. Ms. Doyle replied no, but she entered copies of Ms. Veith's proposal and the State licenses into evidence.

Ms. Doyle called Harold Husmann and questioned him on his background and the history of the pier. Mr. Husmann explained he has lived in California, Maryland his whole life and the property in question was owned by his wife's family in the past. He stated he helped build the pier in the mid 1950s and it had 18 to 20 slips at that time. He confirmed his father-in-law rented space at the pier for various sizes and types of boats on a daily basis. He explained he still lives one tenth of a mile from the subject property. Mr. Husmann confirmed part of the pier was cut off when the bridge was built, but the family continued to rent pier space at the remaining portion of the pier. He explained after his father-in-law passed away, the succeeding owners all continued to rent space at the pier.

Ms. Doyle called Joe Stone and questioned him on his background and the history of the pier. Mr. Stone explained he is a waterman who lives in California, Maryland and he is a lifelong resident of the County. His grandparents were Mr. Husmann's in-laws, who built the pier. He explained he helped his grandmother take care of the boats renting space at the pier and confirmed there were eight to ten boats renting space since the construction of the bridge. Mr. Stone explained he still lives a quarter mile from the property and regularly observes eight to ten boats at the pier.

Mr. Canavan objected every boat tied to a pier does not represent a slip and just because eight to ten boats have been tied to the subject pier, does not mean there are eight to ten slips. Ms. Doyle restated a slip is anyplace you moor a boat and the witnesses testified there have been eight to ten boats docked at the pier over the past several decades at any one time. Ms. Chaillet noted there were 13 to 14 boats tied to the pier over the past week; therefore, by Ms. Doyle's definition of a slip, the pier would have 13 to 14 slips, which would make it a commercial marina.

Mr. Delahay opinioned his understanding of the common definition of a slip is anyplace you can tie a boat four ways. Ms. Chaillet added she spoke with Doldon Moore, Jr., Wetlands Administrator with the Maryland Department of Public Works who approved the license, and he explained a slip is a place for mooring a boat and it must have mooring piles. Mr. Hayden asked how many boats were tied four ways at the pier after the bridge was constructed. Mr. Stone responded there were six to eight boats tied to pilings. Mr. Canavan explained a former staff member counted the slips (with mooring piles) over time and never found more than six slips. He stated the Appellants cannot build additional slips without permission for a non-conforming use, even though the pier may have had several more slips prior to construction of the bridge.

Ms. Doyle noted the staff report mentions a survey performed by the former staff member where zero slips were counted on the subject pier. She informed the Board this survey was actually performed on a different piece of property.

Ms. Scriber moved to continue this case at the November 30, 2006 meeting. The motion was seconded by Mr. Miedzinski and passed by a 5-0 vote.

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

VAAP #05-2456 – Denham – 0.48 acres – The applicant is requesting a variance from Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the front yard setback to construct a detached garage. **Variance approved.**

VAAP #06-0229 – Ball – 0.27 acres – The applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the expanded Critical Area Buffer to construct a detached garage, parking area and shed. **Variance approved with conditions.**

MINUTES AND ORDERS APPROVED

The minutes of September 14, 2006 and October 12, 2006 were approved as recorded.

No orders were authorized for signature at this meeting.

ADJOURNMENT

The meeting was adjourned at 10:30 p.m.

Cindy R. Koestner, Recording Secretary

Approved in open session: November 30, 2006

George Allan Hayden
Chairman