

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, December 8, 2005**

Present: Greg Callaway, Vice Chair
 Michael Hewitt, Member
 Wayne Miedzinski, Member
 Gertrude V. Scriber, 1st Alternate
 John B. Norris, III, County Attorney
 Denis Canavan, Director, Department of Land Use &
 Growth Management
 Yvonne Chaillet, Planner, Zoning Administration
 Keona Courtney, LUGM Recording Secretary

A sign-in sheet is on file in the Department of Land Use & Growth Management (LUGM). All participants in all cases were sworn in. The Vice Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARING

VAAP #05-2491 - JUBECK

The applicant is requesting a variance from Section 71.7.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb steep slopes, variance from Section 71.8.3 of the St. Mary's County Zoning Ordinance to disturb the Critical Area Buffer, and variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation to construct a single family dwelling and appurtenances. The property contains 0.57 acres; is zoned Residential Neighborhood Conservation (RNC), Limited Development Area (LDA) Overlay; and is located at 21945 Philip Drive in Leonardtown, Maryland; Tax Map 40, Block 16, Parcels 99.

Owner: Neil & Tracy Jubeck
Present: Billy Higgs, Little Silences Rest (LSR)

Applicant's Exhibit A-1: Letter to the Board of Appeals regarding
variance request dated 11/7/05
Ms. Owens' Exhibit 1: Letter to Staff giving recommendations to the
applicant dated 12/8/05

All cases being heard at this meeting were advertised in St. Mary's Today on November 20 and 27, 2005 and in The Enterprise on November 23, 2005 and November 30, 2005. The applicant posted the property on November 23, 2005. Certified mail receipts are in the file.

Mr. Higgs explained that the lot was recorded prior to the Critical Area provisions and that a variance is needed to disturb the Critical Area Buffer and to clear over 30 percent of the existing vegetation. Mr. Higgs addressed the letter submitted to staff by Mary Owens, Chief of the Program Implementation Division, Critical Area Commission. In the letter, Ms. Owens requested that the applicant obtain an engineered sediment and erosion control plan. Mr. Higgs explained that the applicant has a sediment and erosion control plan that was approved by the Soil Conservation District (SCD). He also explained that he is a professional surveyor and is qualified to do sediment and erosion control plans and stormwater management designs.

Mr. Higgs explained that he was unaware that there were issues with run-off from the property. He said that the applicant is willing to construct drop inlets or ditches to catch run-off from the property. Mr. Higgs explained that he has designed roof drains to catch run-off from the roof of the house, and that the applicant is willing to construct retaining walls if they are desired. The property has a retaining wall along the driveway that is approximately four feet tall.

Mr. Miedzinski clarified that Ms. Owens' request for a retaining wall is in the event that the current retaining wall fails. Mr. Higgs explained that the property has a retaining wall that is sufficient for the request and there is not a large amount of earth that needs to be held back from the property. He reiterated that the applicant is willing to have a retaining wall designed if the Board desires it.

Ms. Chaillet reviewed the staff report and explained that staff has the applicant's approved sediment and erosion control plan. She explained that staff reviewed the site plan and feels that the request meets the standards for a variance.

Mr. Hewitt made a motion that the staff report be accepted. The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.

The Vice Chair opened the hearing to public comment.

Don Peeling, a resident of Mulberry South Subdivision, explained that run-off from the property is flooding houses at the bottom of the hill. He explained that stormwater management had to be redone due to the run-off from houses at the top of the hill. Mr. Peeling said that the County reengineered the slope of the road through the subdivision so that run-off would be directed to the catch basins. He explained that he and the other residents of the subdivision do not object to the proposed request but are concerned about the run-off from the property. Run-off from the driveway was a strong concern. He requested that

the run-off from the property be directed to the catch basins to prevent an increase in water volume at the bottom of the hill.

Carl Raley, another resident of Mulberry South Subdivision, explained that run-off from the property does not affect his property, since his property is on a hill, but that it is a problem for residents who live at the bottom of the hill. He explained that he has lived there for 13 years and that during this time he has noticed a drop in the slope of the hill due to new houses being built on it. Mr. Raley explained that trees are being removed from the hill and that it is steadily declining. He mentioned that one person abandoned their lot due to the issues associated with the hill. He expressed concern about the amount of erosion occurring in the subdivision and requested that, if the request is approved, the applicant be held to the standards outlined by Ms. Owens' letter.

The Vice Chair closed the hearing to public comment.

Mr. Higgs addressed the neighbors' concerns. He explained that he will ensure that run-off is contained from the driveway of the property and that there will be a roof drain to catch run-off. He explained that the sediment and erosion control plan will be revised to better address the neighbors' concerns. Mr. Hewitt asked Mr. Higgs about his experience in designing retaining walls. Mr. Higgs explained that he does not design retaining walls but is willing to hire a contractor to design them for the property if they are desired.

Mr. Callaway explained that he feels Mr. Higgs is making an effort to address the stormwater management issues and the neighbors' concerns. Mr. Hewitt and Mr. Miedzinski recommended that the retaining walls be designed by a professional engineer.

Mr. Hewitt moved that having accepted the staff report, dated November 28, 2005; and having made a finding that the standards for variance in the Critical Area and the objectives of Sections 71.7.3, 71.8.3, and 72.3 of the Comprehensive Zoning Ordinance have been met; the Board approve the variances to disturb steep slopes, to disturb the Critical Area Buffer, and to clear in excess of 30 percent of the existing woodland with the recommended conditions: 1) to adhere to the Critical Area Planting Agreement, 2) that the Stormwater Management design be designed by a registered professional engineer or a licensed surveyor, and 3) any retaining walls, or dwelling structural walls functioning as retaining walls, be designed to ensure that the risk of failure and associated problems with sediment laden run-off are avoided. The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.

VAAP #05-0051 – Golden Beach Subdivision, Lot 421

The applicant is requesting a variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess

of 30 percent of the existing vegetation to construct a single family dwelling and appurtenances. The property contains 0.41 acres; is zoned Residential Neighborhood Conservation (RNC), Limited Development Area (LDA) Overlay; and is located on Holmes Road in Mechanicsville, Maryland; Tax Map 5A, Block 24, Parcel 112.

Owner: Metro Group LLC
Present: Barrett Vukmer, Chesapeake Trails Surveying LLC

Mr. Trinkley's Exhibit 1: Letter to Staff, received 12/5/05,
regarding water run-off

The applicant posted the property on November 22, 2005 and mailed notification letters.

Mr. Vukmer explained that the property was recorded prior to the Critical Area provisions. He said that the applicant will need to clear approximately 52 percent of the existing woodland in order to construct the proposed property.

Ms. Chaillet explained that the proposed house, garage, and porch are modest in size and will only result in 19 percent of impervious cover. The Critical Area Commission does not object to the request for a variance. She mentioned that the Health Department and Soil Conservation District (SCD) approve of the request. Ms. Chaillet explained that the property is located in the Airport Environs (AE) flood plain and a flood elevation certificate is required. The applicant must elevate the living space to seven feet. She explained that staff feels that the applicant has met the standards for variance, however, the applicant should adhere to the conditions of the Planting Agreement.

Mr. Hewitt made a motion that the staff report be accepted. The motion was seconded by Ms. Scriber and passed by a 4-0 vote.

The Vice Chair opened and closed the hearing to public comment. There were no comments from the public.

Mr. Norris requested that the Board accept Mr. Ronald Trinkley's letter regarding the request.

Mr. Hewitt made a motion that Mr. Trinkley's letter be accepted. The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.

Mr. Barrett addressed Mr. Trinkley's letter of concern regarding run-off from the proposed lot onto his property. Mr. Barrett explained that clearing the proposed lot will not increase run-off because the lot is extremely flat. Mr. Hewitt asked if the applicant has a sediment and erosion control plan. Mr. Barrett stated that the applicant has one.

Ms. Chaillet explained that the applicant must reforest approximately 20,000 square feet of the property by planting 49 trees, or 30 trees and 40 shrubs. The plantings will help to stabilize the land and prevent run-off. Mr. Hewitt asked where the plants will have to be located. Ms. Chaillet explained that the applicant can plant them anywhere on the property.

Ms. Scriber moved that having accepted the staff report, dated November 28, 2005; and 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 Zoning Ordinance have been met; the Board approve the variance to clear in excess of 30 percent of the existing woodland with the recommended condition to adhere to the Critical Area Planting Agreement. The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.

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

VAAP #04-0878 – Konecny – 1.94 – The applicant is requesting variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to add impervious surface in the Critical Area Buffer, expanded for steep slopes, to construct a single-family dwelling and appurtenances. Variance approved with signed planting agreement.

MINUTES AND ORDERS APPROVED

The minutes of November 10, 2005 were approved as recorded.

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

**CUAP #05-132-019 – Piney Point Elementary School
CUAP #05-132-049 – Wildewood School Site**

ADJOURNMENT

The meeting was adjourned at 7:10 p.m.

Keona L. Courtney
Recording Secretary

Approved in open session:
January 12, 2006

Greg Callaway
Vice Chair