

# St. Mary's County Board of Appeals Annual Report



## Calendar Year 2018

Prepared By:  
The Department of Land Use and Growth Management

**ST. MARY'S COUNTY BOARD OF APPEALS 2018 MEMBERSHIP**

George Allan Hayden, Sr., Chair  
John Brown, Vice Chair  
Lynn Delahay, Member  
William Greene, Member  
David (Wayne) Miedzinski, Member  
Rich Richardson, Alternate

***ATTORNEY TO THE BOARD***

David W. Weiskopf, Acting County Attorney  
James Tanavage, Assistant County Attorney

***DEPARTMENT OF LAND USE AND GROWTH MANAGEMENT STAFF***

William B. Hunt, AICP, Director  
Kathleen Easley, AICP, Deputy Director  
Yvonne Chaillet, Zoning Administrator  
Kelly Palmer, Planner III  
Benjamin Cohen, Planner II  
Jacqueline Green, Planning Specialist  
Sandie Greene, Recording Secretary

**Department of Land Use and Growth Management**

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## **I. INTRODUCTION**

### **A. Formation of the Board of Appeals in St. Mary's County**

The Board of Appeals (hereinafter the "Board") was created pursuant to Subtitle 3, §4-301, *Land Use Article, Annotated Code of Maryland*.

The Board consists of five (5) members and one (1) alternate appointed by the Commissioners of St. Mary's County. Board members can serve no more than two consecutive, three-year, staggered terms. To ensure the Board can meet its quorum requirements and hold public hearings, the *Land Use Article* authorizes a local legislative body to designate one alternate member who has been empowered to sit on the Board in the absence of any member.

### **B. Functions of the Board of Appeals in St. Mary's County**

The Board is a quasi-judicial body responsible for presiding over public hearings on appeals, variances, and conditional uses. By doing so, the Board, as a whole, is responsible for defending the public interests as defined by the St. Mary's County Comprehensive Zoning Ordinance Z-10-02, as amended, (hereinafter the "Ordinance"). The purpose of the Board is to ensure that zoning is fair, correctly interpreted, and does not cause excessive hardship upon landowners in St. Mary's County.

As outlined in the Ordinance and the *Land Use Article*, the Board has four (4) main functions to ensure that the goals and objectives of the Comprehensive Plan are met and that the regulations of the Ordinance are implemented. These powers and duties include:

- 1) To hear and decide appeals when it is alleged there is an error in any order, requirement, decision, or determination made in regard to the enforcement of the Ordinance or of any amendments adopted thereto;
- 2) To authorize, upon application in specific cases, a variance from specific regulations of the Ordinance. The modifications in a variance may be only of density, bulk, dimensional, or area requirements of the Ordinance in accordance with Section 4-206 of the *Land Use Article*.
- 3) To adopt and promulgate such rules and regulations as it shall deem necessary in the conduct of its hearings; and
- 4) To hear and act upon conditional use applications as provided in Chapter 25 of the Ordinance.

All decisions and findings of the Board on appeals or on applications for a standard variance or conditional use are final administrative decisions and are subject to judicial review. All final decisions must be rendered in writing within 60 days of the close of the public hearing in accordance with Section 20.3.6 of the Ordinance.

All decisions and findings of the Board within the jurisdiction of the Critical Area Commission are final administrative decisions and are subject to judicial review. Pursuant to Section 20.3.6 of the Ordinance, all final decisions must be rendered in writing within 30 days of the close of the public hearing. The Board may extend the 30 days to a maximum of 45 days upon findings that the complexity of the case requires an extended decision period or that changes in the Board's schedule preclude a decision within 30 days.

The official written record of all Board proceedings is maintained in the Department of Land Use and Growth Management.

## **II. 2018 CASELOAD**

### **A. Board of Appeals Variance Cases for 2018**

The Board of Appeals (the "Board") has the authority to vary the density, bulk, dimensional, or area requirements of the Ordinance in accordance with allowed modifications specified in the *Land Use Article* of the *Annotated Code*. A variance may only be allowed where, owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the Ordinance would result in unnecessary hardship or practical difficulty as specified in the Ordinance. A variance may not be contrary to the public interest.

Standard variance requests are often made to the Board to enable a property owner to make modest improvements to an existing single-family dwelling, or to construct a detached accessory structure such as a garage, or shed, where the property is constrained by various setback requirements. The Board also hears requests from developers to reduce setbacks, or buffer yards on proposed commercial projects where a property is so constrained that development would be prohibited without the variances.

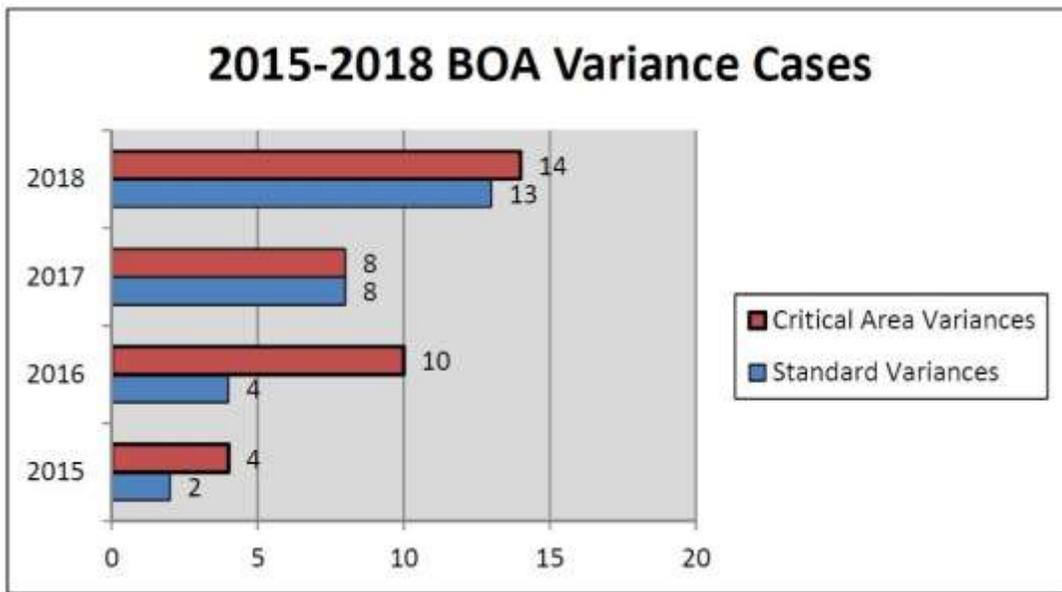
The Board heard thirteen (13) standard variance requests in 2018: four (4) to reduce setbacks to construct single family dwellings on a residential property; one (1) to reduce the setback between structures on residential property; four (4) to reduce a required buffer yard on a proposed commercial site; one (1) to construct a waste water pump station in the floodplain; one (1) to reduce the required amount of open space for a commercial project; and four (4) to reduce buffer for a commercial center. Ten (10) variance requests were approved and two (2) were denied. The Board also heard and approved one (1) variance from the forest conservation priority retention areas to remove 1 specimen trees to construct a commercial center.

Variances may be granted from the provisions of the Critical Area Program as implemented in Chapter 41 of the Ordinance, Chesapeake Bay Critical Area Overlay Districts, and Chapter 71, Resource Protection Standards, when it has been found that the literal enforcement of those provisions would result in unwarranted hardship on the landowner. The most common Critical Area variance request is to disturb the Critical Area Buffer,

which is a protected area measured a minimum of 100 feet landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams in the Critical Area.

The Board heard fourteen (14) Critical Area variance requests in 2018 compared to eight (8) requests in 2017: seven (7) to disturb the Critical Area Buffer to construct a decks and porches; five (5) of the requests were to disturb the Critical Area Buffer to construct new and replacement single-family dwellings; one (1) was heard to reduce the required 100' buffer for a perennial stream to 50' for an emergency service building; and one (1) to construct a boatlift within 25 feet of the extended property line. All fourteen (14) requests were approved.

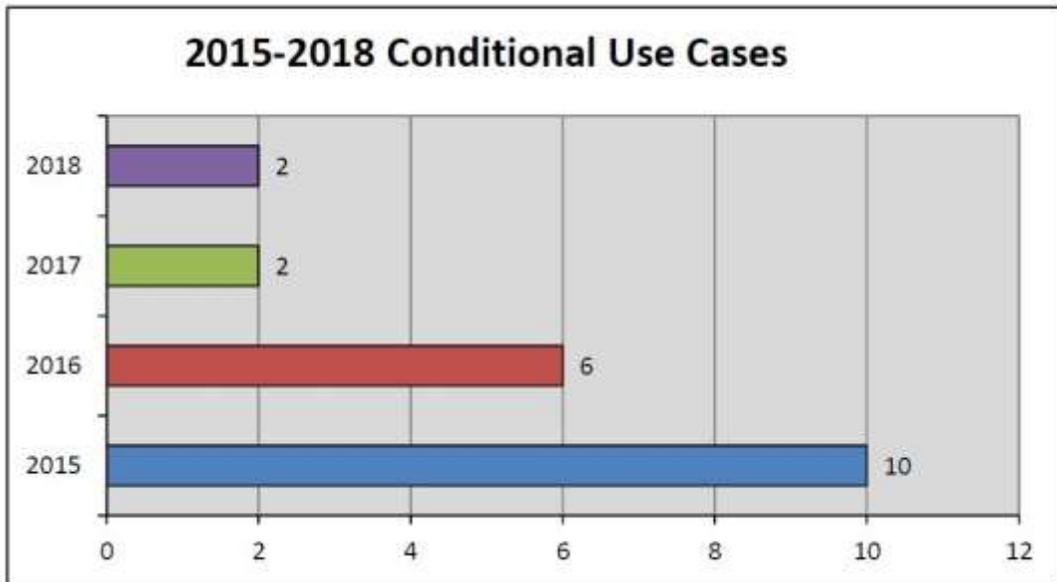
The chart below provides an itemization of Board of Appeals variance requests heard and decided in calendar years 2015 through 2018. As shown in the chart, the Board heard a total of thirty-seven (37) Critical Area variance requests during this period, an average of about nine (9) cases per year. During this same time the Board heard twenty-seven (27) standard variance requests, an average of seven (7) cases per year.



### **B. Board of Appeals Conditional Use Cases for 2018**

The Board heard two (2) conditional use requests in 2018: one request to a modification to an existing conditional use for additional parking on property located in the RPD zoning district, and one request to modify an existing conditional use to utilize additional buildings for a slaughter house located in the RPD zoning district. The Board approved both conditional use requests.

The following chart provides an itemization of Board of Appeals conditional use cases heard and decided in calendar years 2015 through 2018.



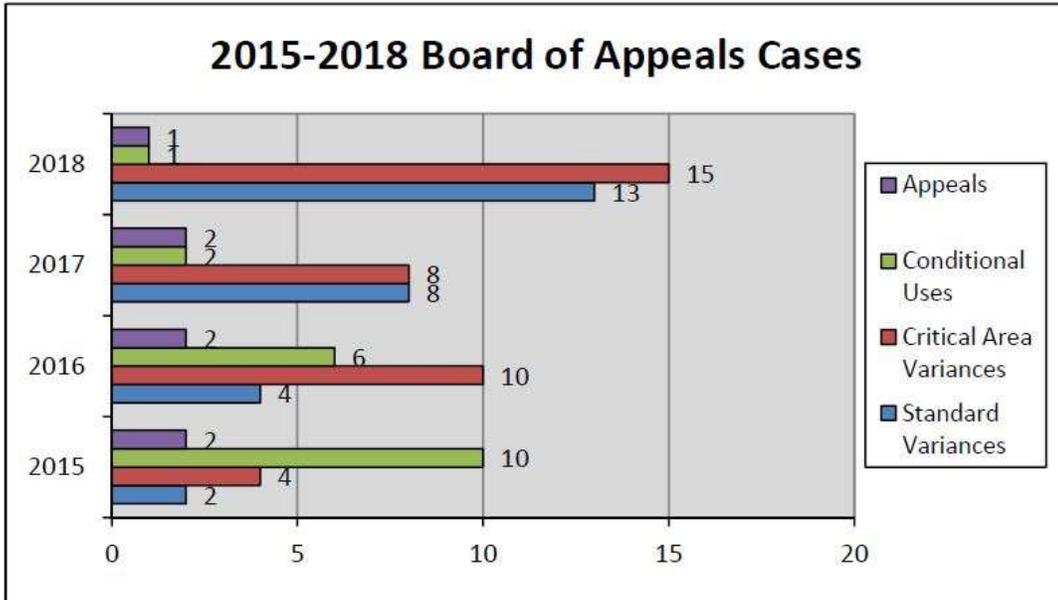
**C. Board of Appeals Appeal Cases for 2018**

The Board decided one appeal cases in 2018.

The case was an appeal of the March 26, 2018 decision of the St. Mary’s County Planning Commission to approve the Applicant’s request for concept site plan approval for Hollywood Auto Center to include 29,969 square foot retail auto sales and service center with parking. The Board found that the Applicant had met all requirements for concept site plan approval and approved the plan subject to the following condition: The approval of concept site plan for the property is conditioned the following:

1. Dean Partnership, L.L.P/Winegardner Motor Co. shall install “No Tractor Trailers” signs on Old Tree Notch Road for the purpose of restricting tractor-trailers from using the site entrance located off of Old Three Notch Road.
2. The St. Mary’s County Department of Public Works and Transportation will review the entrance to the Hollywood Commercial Center from Old Three Notch Road with the intention to restrict the turn radius into the site to prohibit tractor-trailers.
3. The Concept Site Plan reference to sidewalks should be completed.

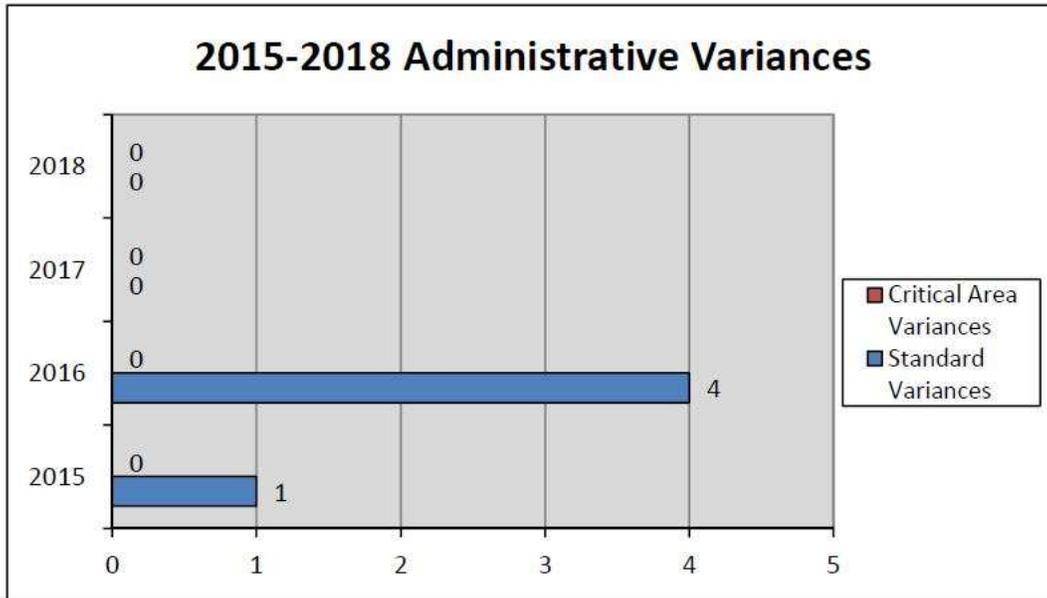
The following chart is a summary of all Board of Appeals cases, variances, conditional uses, and appeals, beginning with calendar year 2015 through calendar year 2018. The Board heard an average of 23 cases over the past four years.



### III. Administrative Variance Cases for 2018

Section 4-205 of the *Land Use Article* stipulates that a legislative body may authorize the Planning Director or another designee to grant an administrative adjustment from the following requirements of a zoning law enacted by the legislative body: 1) height; 2) setback; 3) bulk; 4) parking; 5) loading, dimensional, or area; or 6) similar requirements. An administrative variance is governed under the Ordinance by the standards for granting a variance. The procedures for obtaining an administrative variance are similar to those applicable to obtaining a variance from the Board of Appeals.

In addition to the types of variances explained above, the Planning Director may also grant a variance from Forest Conservation Priority Retention Areas in accordance with Section 24.10 of the Ordinance. Four (4) of the seven (7) administrative variances granted over the past five years have been to remove trees having a diameter of 30 inches or more when measured at a height of 4.5 feet above the ground. The three (3) other variances were to reduce required front and side yard setbacks as identified in Schedule 32.1 of the Ordinance pertaining to development standards.



#### IV. Administrative Hearing Examiner

The Commissioners of St. Mary’s County appointed a part-time Administrative Hearing Examiner in June 2011 with the adoption of Resolution No. 2011-08. A Hearing Examiner is a quasi-judicial officer and is not subject to the direction or supervision of any board or agent of the St. Mary’s County government, or the personnel or procurement policies of County government.

A Hearing Examiner is appointed by the County Administrator upon request by the Director of Land Use and Growth Management, or the Chair of the Board of Appeals, or the County Attorney. Once a case has been referred to the Hearing Examiner, the public hearing for a variance or conditional use request or for an appeal of an administrative decision is conducted by the Hearing Examiner. The Hearing Examiner hears and receives evidence, makes findings of fact, states conclusions of law, and recommends an action by the Board of Appeals. All testimony and documentary evidence received is transmitted to the Board of Appeals. All findings of fact and conclusions of law are reported to the Board in the Hearing Examiner’s written decision. The Board, in an open hearing, may adopt the findings, conclusions and recommendations of the Hearing Examiner; or adopt different findings or conclusions based on the record of proceedings before the Hearing Examiner; or, for good cause, hear the matter *de novo* (anew).

The Administrative Hearing Examiner did not hear any cases in 2018.

#### V. 2018 Summary of Cases – SEE ADDENDUM