

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, January 12, 2012**

Members present were George Allen Hayden, Robert Moreland, Randy Guy, Ronald Payne, and George T. Edmonds. Alternate Mike Mummaugh was also present. Department of Land Use & Growth Management (LUGM) staff present were Yvonne Chaillet, Zoning Administrator; and Jada Stuckert, Recording Secretary. Attorney George Sparling was also present.

ELECTION OF OFFICERS

Mr. Guy nominated George Allen Hayden for Chairman and Mr. Moreland seconded. Mr. Edmonds nominated Mr. Guy as Chairman and Mr. Hayden seconded. Vote for Mr. Hayden passed 3-0-2 with Mr. Hayden and Mr. Guy abstaining. Vote for Mr. Guy was 0-0-2 with Mr. Hayden and Mr. Guy abstaining. Mr. Hayden was announced as Chairman. Mr. Guy was voted in as Vice-Chair.

A sign-in sheet is on file at LUGM. All participants in all cases were sworn in. The meeting was called to order at 6:40 p.m.

PUBLIC HEARINGS

ZAAP #07-0118 – Rice

Chairman Hayden set a time limit of 15 minutes for appellant and respondent respectively.

Mr. Richowsky, for the Kusmick's, summarized the Board has voted twice to reverse the Planning Director's decision and this case has been to the Circuit Court and the Court of Special Appeals before coming back to the Board of Appeals and then to the Hearing Examiner. Mr. Richowsky stated the Hearing Examiner report does not address the nonconforming issues on the property. Mr. Richowsky stated there's a troubling of the Department of Land Use and Growth Management Staffs interpretation of the Ordinance and the law.

Mr. Chris Longmore, for the Rice's, summarized and fully supported the Hearing Examiner's decision dated November 16, 2011. Mr. Longmore stated this is basically a reconsideration of the Board of Appeals March 2007 Order. Mr. Longmore stated the appellant has not proven the Board of Appeals or Hearing Examiner decision to be incorrect. Mr. Longmore stated when the Ordinance is not specifically clear he feels it appropriate that staff interpret the language within the Ordinance. Mr. Longmore referenced Section 52.3 of the Ordinance which specifically states Land Use and Growth Management was correct in issuing the permit.

Mr. Richowsky rebutted Mr. Longmore testimony in regards to the Hearing Examiners determination and the nonconforming use.

Mr. Sparling stated for the record that each member received a DVD of the Hearing Examiners meeting as well as all the exhibits presented at that meeting and all responses. Mr. Guy indicated that he is in agreement with the Hearing Examiner's decision to affirm the Planning Director's original decision. Mr. Edmonds stated he agrees fully with the Hearing Examiner's decision. Mr. Moreland indicated after reviewing the DVD and all the pleadings. Mr. Payne stated he is satisfied with the Hearing Examiner's decision.

Mr. Moreland made a motion to adopt the findings of fact from the Hearing Examiner for this case and Mr. Guy seconded. The motion passed by a 5-0 vote.

Mr. Moreland made a motion in the matter of ZAAP #07-0118 to affirm the Planning Director's decision and Mr. Guy seconded. The motion passed by a 5-0 vote.

VAAP #11-132-012 – Faith Bible Church

Ms. Yvonne Chaillet and Mr. Phil Shire, LUGM were sworn for the record. The applicant is requesting a variance to increase the floor area ration (F.A.R.) without purchasing Transferable Development Rights (TDRs) as specified in Schedule 32.2 of the Ordinance. The property contains 4.05 acres; is zoned Rural Preservation District; and is located at 26325 Three Notch Road, Mechanicsville, Maryland; Tax Map 61A, Grid 7, Parcel 5.

Owner: Faith Bible Church of Oakville, Inc.
Present: Steve Scott, Ken Crouse

The property and variance request were advertised in The Enterprise on December 28, 2011 and January 4, 2012. Ms. Chaillet submitted the certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave an overview of the staff report dated January 3, 2012 and the general standards for granting variances. Ms. Chaillet submitted the staff report for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Mr. Shire gave an overview of the 2002 regulations regarding Churches being placed on smaller lots. Mr. Shire indicated the very strict Floor Area Ratio (F.A.R) is strongly being considered for commercial uses only. Mr. Sparling asked if there is some ambiguity in the Ordinance in this case where a church does not fall in to either the residential or commercial categories. Mr. Shire stated yes, this is the case.

Mr. Steve Scott, Attorney for the Applicant, stated the intent of the Comprehensive Plan is to maintain the rural character of the County and indicated churches are part of the rural character and always have been.

Mr. Ken Crouse, Crouse Engineering, was sworn for the record. Mr. Crouse reviewed a PowerPoint Presentation with the Board.

Mr. Rob McNutt, Pastor, was sworn for the record. Mr. McNutt gave an overview of the church history and attendance rates. Mr. McNutt stated the ultimate goal of the church is not to build big buildings however the church's membership is to a point where we are in need of a bigger space to accommodate everyone.

Mr. Crouse continued with the PowerPoint Presentation stating the property is unique because it houses a church that provides support and religious services to the community. Mr. Crouse submitted a copy of the PowerPoint Presentation for the record, hereby labeled as Exhibit 3 by the Recording Secretary.

Mr. Moreland asked that Mr. Crouse indicate where this project meets the requirements of the Ordinance. Mr. Sparling is concerned that the right relief is not being sought here tonight. Mr. Sparling stated the applicant may consider appealing the Planning Director's decision. Mr. Hayden agreed stating either way the Board votes would seem to be bad for the community in one way or another. Mr. Scott asked if it would be improper for us to withdraw the request and come back to the Board another time.

Mr. Shire indicated the ambiguity comes from the Ordinance itself. Mr. Shire indicated a text amendment may be necessary and staff would have 125 days to prepare a text amendment however we would need to convince the Planning Commission and the Board of Appeals of the need for the text amendment.

Mr. Scott respectfully withdrew the case but reserved the right to re-file at a later date.

MINUTES AND ORDERS APPROVED

The minutes of November 17, 2011 were approved as recorded.

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

None

DISCUSSION

2013 Budget

ADJOURNMENT

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

Jada Stuckert, Recording Secretary

Approved in open session: January 26, 2012

George Allen Hayden
Chairman