

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, January 27, 2011**

Members present were Howard Thompson, Chairman; Wayne Miedzinski, Randy Guy, Veronica Neale, and George T. Edmonds. Alternate Ronald Payne was also present. Department of Land Use & Growth Management (LUGM) staff present were Derick Berlage, Director; Yvonne Chaillet, Zoning Administrator; and Kelly Palmer, Environmental Planner. Attorney George Sparling was also present.

A sign-in sheet is on file at LUGM. The Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARINGS

VAAP#09-1485 – Lynch (*Continued from October 14, 2010*)

Mr. Thompson stated this case is continued being from October 14, 2010 where Mr. Longmore was in the process of calling witnesses. Mr. Thompson asked that Mr. Longmore continue presenting his case. Mr. Sparling stated in his legal opinion there is no different standard for after-the-fact and before-the-fact variances, therefore they would be judged upon the same standards. Mr. Sparling stated evidence was submitted at the last meeting in regards to a previous structure on the pier; the existence of a previous structure has no bearing on this case. Mr. Sparling recommended the Board consider the case based on the current conditions. Mr. Longmore agreed, stating the question is weather or not we can meet the current standards.

Mr. Longmore stated we had been discussing the after-the-fact variances and called Pat Mudd for testimony. Patt Mudd was sworn by the Chairman.

Patt Mudd

Mr. Mudd stated he was hired to design the stormwater management facility for the property. Mr. Mudd testified he has visited the property and viewed the shed, stairway, revetment and general conditions of the property. Mr. Mudd described the sediment trap which is designed to catch runoff and is located under the decking for the shed. Mr. Mudd stated the stairway does not show any evidence of erosion and does not seem to be of any concern. Mr. Mudd stated according to the topography of the property there does not appear to be any portion of the driveway which runs off into the water, even during a significant rain event. Mr. Mudd stated a trap door could be installed to check the sediment trap from time to time. Mr. Edmonds asked how the basin is emptied. Mr. Mudd stated the sediment trap would only fill up with a catastrophic event and if this happened, the material would need to be removed by hand. Mr. Miedzinski asked if Mr. Mudd would recommend a trap door for the sediment trap. Mr. Mudd stated a door would certainly make the sediment trap easier to monitor.

Ms. Rachel Eisenhauer, Assistant Attorney General, asked if there would be any other stormwater trapping devise for this area. Mr. Mudd stated there would be several however they all require digging a hole. Mr. Mudd stated he feels Mr. Lynch utilized his land in a good way by installing this sediment trap under the deck where a hole would not need to be dug.

Mike Stull (Mr. Stull was sworn by the Chairman)

Mr. Stull stated his property is directly to the right of the property in question and he has owned this property since July of 2003. Mr. Stull stated he has observed the property over the years and testified there were different stairs in the past. Mr. Stull stated the previous stairs were wooden timbers with gravel stones and were in approximately the same location. Mr. Stull stated he has not noticed any run-off from the new development and he believes the improvements have significantly improved the property and the amount of run-off into the water. Mr. Stull stated he believes the new shed is sturdier. Mr. Thompson asked if the previous shed could be seen from Mr. Stull's property and if it was unsightly. Mr. Stull stated yes and he was glad to see the new shed installed.

Joseph Lynch (Mr. Lynch was sworn by the Chairman)

Mr. Lynch provided the Board with a brief powerpoint presentation showing photos of the property in question. Mr. Longmore submitted a paper copy of the presentation for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Mr. Lynch testified to the width of the stairs being slightly less than four (4) feet wide and widening towards the bottom of the steps. Mr. Lynch stated there is gravel and sand under the pavers with no mortar or cement. Mr. Lynch stated water penetrates through the pavers crack. Mr. Lynch stated the shed is placed on six pilings which are part of the seawall therefore there were no more piling installed. Mr. Lynch testified the new shed is approximately in the same place as the old shed give or take two feet. Mr. Guy recalled a premixed product being laid when the steps were laid. Mr. Lynch stated his comment in regards to this at the last meeting is misleading; there is only sand and gravel under the pavers. Mr. Thompson asked when Mr. Mudd visited the property. Mr. Lynch stated it was after Christmas.

Chairman Thompson opened the hearing to public comment, hearing none, closed the hearing to public comment.

Mary Owens (Under Oath from October)

Ms. Owens stated some of the run-off is being generated by the stairs because they are not completely pervious. Ms. Owens stated our preference is to utilize a dry-well under the stairs and typically we want these located outside the buffer. Ms. Owens stated frequently these systems can be overtopped and sediment is spilled into the waterways. Mr. Guy asked if this trap is sufficient. Ms. Owens stated she is not a qualified engineer and has not seen any specifications on the system. Ms. Owens stated there is a lot more masonry in these stairs which means more run-off.

Yvonne Chaillet (Ms. Chaillet was sworn by the Chairman)

Ms. Chaillet stated the zoning ordinance prohibits solid pathways to the water. Ms. Chaillet stated even pervious pavers have run-off.

Mr. Guy asked if one row of pavers were removed and gravel placed underneath if it would help with the runoff. Ms. Owens stated without specific information in hand she can only say that she believes this would help the situation. Ms. Owens stated decking may be an even better idea. Ms. Chaillet stated the County is not opposed to a walkway however the Ordinance required materials that have gaps to allow water to penetrate. Ms. Chaillet stated if some of the pavers were removed to appear more as stepping stones this would be allowed. Mr. Sparling reminded the Board that the applicant is in fact requesting a variance from the Ordinance requirements.

Mr. Longmore gave his closing comments and asked that the record reflect that the Critical Area letter was not received until December which was two months after the original hearing.

Ms. Chaillet stated the point in this case is that the owner did not keep what was currently on the property, rather, he replaced it and added new structures without permits which means the applicant must demonstrate an unwarranted hardship. Ms. Chaillet stated after-the-fact variances are being requested for construction of the tiki bar, deck under the tiki bar, and disturbing steep slopes for the stairway. Ms. Chaillet stated the Board must find that the property is so constrained by its natural features that the applicant would be denied full use of the property. Ms. Chaillet reminded the Board each of these violations has taken place in the Critical Area Buffer.

BREAK

Ms. Eisenhauer pointed out that staff report attachment 10 is the letter from Mary Owens where she provides information for each of the criteria. Ms. Eisenhauer stated the Board must find an unwarranted hardship exists and in this case there is none considering it is a shed, a shower and a tiki bar. Ms. Eisenhauer stated the applicants must prove that without the variance the applicant

would be denied a significant portion of their lot. Ms. Eisenhower stated the applicants located the new septic system in the buffer based on the Health Department recommendation and that there is no other place on the property therefore the septic system in this case is an unwarranted hardship. Ms. Eisenhower stated the shed, the tiki bar and the shower are not considered an unwarranted hardship because these items are not necessary to achieve a reasonable use of the land. Ms. Eisenhower asked that all variance requests be denied except for the septic system which should be approved.

Mr. Longmore appreciates the Critical Area Commission and Staff's opinion however the Board has the right to apply reason to the applicant's project. Mr. Longmore stated the applicant is requesting reasonable variances.

Mr. Thompson stated he would like to review some of the information and allow Mr. Sparling to draft findings of fact based on the Board's opinions. Mr. Thompson stated we will not be voting tonight but rather voting on the matter at a later date.

The Board discussed each item to determine the findings of fact; the consensus seemed to be the shower is not necessary, the shed is necessary and the widened steps are necessary. Mr. Miedzinski recommended some type of trap door be installed to be able to inspect and maintain the sediment trap.

Mr. Miedzinski made a motion in the matter of VAAP #09-1485, Lynch to continue the case to March 10, 2011 and Mr. Guy seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of January 13, 2010 were approved as recorded.

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

VAAP#10-1732 – Newtowne Creek LLC Pier

VAAP#10-1770 – Tri-County Builders

ZAAP#08-131-030 – Buzz's Marina

ADJOURNMENT

The meeting was adjourned at 9:05 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: March 10, 2011

Howard Thompson
Chairman