

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * GOVERNMENTAL CENTER * LEONARDTOWN, MARYLAND
Thursday, October 11, 2007**

Members present were George Hayden, Chairman; Greg Callaway, Ronald Delahay, David Miedzinski, and Veronica Scriber. Alternates present were George Edmonds, 1st Alternate; and Ronald Payne, 2nd Alternate. Department of Land Use & Growth Management (LUGM) staff present were Denis Canavan, Director; Phil Shire, Deputy Director; Yvonne Chaillet, Zoning Administrator; Joni Lauman, Senior Planning Specialist; Sue Veith, Environmental Planner; and Jada Stuckert, Recording Secretary. Christy Holt Chesser, County Attorney was also present.

A sign-in sheet is on file at LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARINGS

ZAAP #07-110-017 – Lot 3, Fraser Farmstead Subdivision

The applicant is requesting an appeal of the Planning Director's approval of lot 3 of W.A. Fraser Farmstead Subdivision. The property contains 15.83 acres; is zoned Rural Preservation District; and is located at the intersection of Wills Land and Alexandra Way off Maryland 235, Maryland; Tax Map 15, Block 19, Parcel 415.

Owner: Joan and George Nussberger
Appellant: Michael and Kathleen Landmann

The property was advertised in The Enterprise on September 26, 2007 and October 3, 2007.

Mr. Landmann stated the subdivision plat note #13 states "There shall be no further subdivision of these farmsteads nor shall there be more than one (1) dwelling unit permitted until the road is upgraded and made public." Mr. Landmann stated the note is clear as to its intent to prevent further subdivision. Mr. Landmann stated he and his wife purchased a lot because they wanted to be in the country, away from densely populated areas. Mr. Landmann stated the original recorded declaration of covenants, conditions, restrictions and reservations states "Each of the purchasers of lots shall annually contribute to a road maintenance fund an amount equal to 12.5% of the total cost for the repair and maintenance of said rights of way."

Mr. Landmann stated the TEC report of April 5, 2007 states "This plan is not approvable until, the road is upgraded and made public or a confirmatory plat is submitted, approved and recorded extinguishing general note 13 of the original subdivision plat. The confirmatory plat must be signed by all current subdivision property owners." Mr. Landmann stated the reviewer clearly understands the intent of the plat note, and rightly made a determination that the plan is not approvable until the plat note problem is resolved.

Mr. Richard Surdacki stated he is concerned with the safety issue because the road is so small, approving this subdivision will increase traffic and hazards. Mr. Cutler Fenwick stated the community is set for its size and further subdividing of the lots would warrant an upgrade to the road to meet County standards.

Mr. George Nussberger stated he only wants to add two lots to the already existing eight houses in the community. Mr. Nussberger stated he does not feel two lots would change the character of the community or increase the traffic in any way. Mr. Nussberger stated he spoke with Mr. Dave Chapman of Land Use and Growth Management several times in regards to this issue, "I have done everything by the book and up to County standards."

Ms. Chaillet read the staff report which recommended the Planning Director's decision be upheld.

Ms. Joan Nussberger stated the original tract of land was over 176 which was subdivided into eight lots. Ms. Nussberger stated the land was cheap because there was no power running to the lots and this is why people purchased the land. Ms. Nussberger stated she and her husband planned to subdivide their lot into three lots so they can retire and move out of the country. Ms. Nussberger stated the plat note is based on ordinance law at the time the plat was recorded and now the ordinance law has changed.

Mr. Callaway asked to see a copy of the Home Owners Association documents. Ms. Nussberger submitted Exhibit A – Declaration of covenants, conditions, reservations, and restrictions undated. Mr. Landmann submitted Exhibit B – Declaration of covenants, conditions, restrictions, and reservations dated January 19, 1993. Ms. Kathy Landmann stated the intent of the plat CCNR was to make sure no one further subdivided the land.

Mr. Shire stated he was employed with Land Use and Growth Management at the time of the original subdivision. Mr. Shire stated the intent of the plat note was to restrict further subdivision of the land at the time. Mr. Shire stated the purpose of the plat note was to pose a red flag for any reviewer looking at the plat between the time it was recorded and the time the ordinance changed. Ms. Chesser asked if the road would need to be modified to meet County road standards. Mr. Shire stated the current ordinance requires the subdivider to upgrade the road to county private road standards.

Mr. Landmann asked that the ordinance reads (or) and not (and/or). Mr. Shire stated page 30-10 (5.c) is correct however other sections of the ordinance prevail for any number of farmsteads. Mr. Shire further stated the definition of terms in the ordinance clearly states (or) is interchangeable with (and).

After discussion, ***Ms. Scriber made a motion to accept the staff report and adopt the findings of fact contained therein as the Board's exhibits in this matter and Mr. Callaway seconded. The motion passed by a vote.***

After further discussion, ***Mr. Miedzinski made a motion in the matter of ZAAP #07-110-017, I move that the Board of Appeals hereby uphold the decision by the Planning Director to approve Lot 3 W.A. Fraser Farmstead Subdivision Minor Subdivision and Mr. Callaway seconded. The motion passed by a 3-2 vote with Mr. Delahay and Ms. Scriber opposed.***

ZAAP #07-0118 - Rice

The applicant is requesting an appeal of the Planning Director's decision to issue a building permit to expand an existing garage; appeal of the Planning Director's decision regarding compliance with the chapters 32, 41, 51, and 52 of the Comprehensive Zoning Ordinance. The property contains 12,800 square feet; is zoned Rural Preservation District, Limited Development Area Overlay, Buffer Management Overlay; and is located at 18856 McKay's Beach Road, Leonardtown, Maryland; Tax Map 61A, Block 7, Parcel 5.

Owner: Michele and Christian Rice
Appellant: Robert and Nancy Kuzmick

The property was advertised in The Enterprise on September 26, 2007 and October 3, 2007.

Mr. Kuzmick submitted Exhibit A – 07-0118 Permit Content (8/7/07); Exhibit A1 – 2 Major Issues, Open Violations Issue; Exhibit A2 – 2 Major Issues, Flawed Permit Issue; and Exhibit A3 – Summary. Mr. Kuzmick stated there are four major issues being the deck and hot tub, play station, second story garage addition, and first floor garage walls. Mr. Kuzmick stated Land Use and Growth Management (LUGM) is saying the Rice's have all the proper permits however evidence will differ.

Mr. Kuzmick submitted Exhibit B – Enforcement in Maryland’s Critical Area: Perception and Practice. Mr. Kuzmick stated LUGM staff says the property is in compliance with all applicable regulations including the impervious surface limit. Mr. Kuzmick stated the Comprehensive Zoning Ordinance Section 41.5.3.I.(1) allows the expansion from 25% to 31.25% where, impervious surfaces have been minimized to the extent possible. Mr. Kuzmick stated the impervious surface worksheet shows 3,950 square feet of impervious surface which is incorrect. Mr. Kuzmick stated there was a math error on the worksheet so the actual total is 5,400 square feet meaning the buffer limit is exceeded. Mr. Kuzmick stated LUGM allowed the applicant to move the outer wall “just enough” to meet the side yard requirements.

Mr. Kuzmick submitted Exhibit C1-10 – Photographs of play station and Kuzmick’s view of the water off his rear deck. Mr. Kuzmick stated there is no permit for the play station and it is considered impervious surface which it is not calculated in the impervious surface worksheet.

Mr. Kuzmick submitted Exhibit D – Deed Book 329, Page 350, three pages. Mr. Kuzmick stated LUGM says some of the structures were existing when Mr. Rice purchased the property therefore he is not responsible for gaining permits for them. Mr. Kuzmick stated the deed clearly shows that the structures were not present on the property when Mr. Rice purchased the property.

Mr. Kuzmick submitted Exhibit E – Letter to Nancy and Robert Kuzmick From LUGM Dated August 3, 2007. Mr. Kuzmick quoted from the letter the following, “staff has confirmed that all required building permits have been obtained by Mr. and Mrs. Rice.”, “The improvements on the property and the amount of impervious surface matched the existing conditions on the property at the time of purchase by Mr. and Mrs. Rice.”, “Everything on the Rice property is in compliance with the Zoning Ordinance, particularly the Critical Area regulations.”, “Once this is done, the garage can be expanded as desired.”

Mr. Kuzmick submitted Exhibit F – Four (4) photos on one sheet, of the fence and house; Exhibit G – Three (3) photos on one sheet, of the garage and fence; and Exhibit H – Five (5) photos on one sheet, of the dock. Mr. Kuzmick stated if the LUGM and Health Department records are correct the Rice’s have inadequate septic system, the drain fields are too close to the water, there is a fire hazard, structural hazards, and environmental hazards. Mr. Kuzmick asked that the Board of Appeals prohibit any new construction until the use of the property and structures is shown to comply with all applicable requirements of the Ordinance and the Maryland Critical Area Laws. Mr. Kuzmick asked that the existence of all required permits, variances, inspection records, and approvals be shown.

Mr. Kuzmick submitted Exhibit I – Packet of information containing Letter dated February 26, 2007 to LUGM from Mr. Kuzmick, description of the Rice’s construction projects, 1986 record plat, notification letter dated September 17, 1998 to Nancy Kuzmick from Chris and Michele Rice. Mr. Kuzmick submitted Exhibit J – Department of LUGM August 3 letter Dated September 18, 2007 Packet of information containing Enclosure (1) Yvonne Chaillet August 3 letter, Enclosure (2) Table of Rice permits/construction, Enclosure (3) DH Steffens Co survey of december 23, 1986, Enclosure (4) Records from Maryland Department of Assessments and Taxation, Enclosure (5) Site plan and Critical Area Environmental Worksheets, permit 07-0118, Enclosure (6) Susan Mahoney letter dated April 17.

Mr. Kuzmick submitted Exhibit K – Achieving the Impossible Winter 2001 Issue. Mr. Kuzmick quoted the following from Exhibit K, “Rice’s original three bedroom home”, “After two years of living with the house basically as they had purchased it”, “Michele’s father Ken Gerred offered to act as their general contractor”, “Outside little remains of the former dwelling. In fact, the previous owners thought that the Rice’s had completely demolished the old house and started from scratch.”

Mr. Kuzmick submitted Exhibit L – Permits versus Construction. Mr. Kuzmick stated on 8/24/89 a permit was issued to enlarge the kitchen and family room however the tax records and survey

state the permit expired without construction. Mr. Kuzmick stated on 6/24/90 a permit was issued to add a 277 square foot front porch however the tax records and survey state a 434 square foot wrap around porch was constructed. Mr. Kuzmick stated in 1990/1991 there were no permits inspections or approvals however the Rice's added 2,200 square feet by expanding the ground floor on all four sides, added a full second story with three bedrooms and two bathrooms, and added a one-half (½) third story to the existing house.

Mr. Kuzmick submitted Exhibit M – Archive of LUGM Permits containing 14 pages. Mr. Kuzmick submitted Exhibit N – Impervious Surface. Mr. Kuzmick stated all permits issued were in violation of the Comprehensive Zoning Ordinance without obtaining variances. Mr. Kuzmick stated the Rice's are in excess of 50% for a nonconforming structure, they have excessive impervious surface both in the buffer and for the total lot, and they are closer to the water than adjoining principal structures.

Mr. Kuzmick submitted Exhibit O – Copies of fax transmittals containing September 14, 1998 letter to Chris and Michele Rice, Notification Letter from Chris and Michelle Rice dated September 14, 1998, and Letter to Jon Grimm from Laura Clark dated September 24, 1998.

Mr. Kuzmick stated all he wants is the Board of Appeals to not allow any more new construction until the use of what is already there is brought into compliance with the Comprehensive Zoning Ordinance and State of Maryland Laws.

Mr. Kuzmick thanked the Board for their time and submitted Exhibit P – Billboard showing 1986-2007 Living Area and Impervious Foot Print Increases; Exhibit Q – Billboard showing Mark Up of Critical Area Environmental Worksheets; Exhibit R – Summary of Testimony containing 23 pages.

Mr. Miedzinski made a motion in the matter of ZAAP #07-0118 to continue the case to December 13, 2007 and Mr. Callaway seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

No minutes were presented at this time.

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

VAAP #07-1840 - Helldorfer

ADJOURNMENT

The meeting was adjourned at 9:45 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: November 8, 2007

George Allan Hayden
Chairman