Public Hearings (Land use & Growth Management):

1.) Proposed Amendment to the Comprehensive Plan to Include the 87 acres described as Tax Map 42, p/o Parcel 24, Parcels A and B (known as the "Johnson Property") in the Lexington Park Development District

Present: Jeff Jackman, Sr. Planner, LU&GM

The public hearing commenced at 6:00 PM in Room 14 of the Potomac Building (Governmental Center). Mr. Jackman stated for the record that notice of the public hearing was advertised in the June 6, and June 11, 2008 editions of the Enterprise newspaper.

The purpose of the public hearing was to receive public testimony and to consider the proposed amendment to the St. Marys County Comprehensive Plan to include the Johnson Property in the Lexington Park Development District, in response to a recommendation from the St. Mary's County Planning Commission, and in recognition of the need for reconciling differences between the Comprehensive Water and Sewerage Plan (CWSP), the Zoning Ordinance and the St. Mary's County Comprehensive Plan.

On February 28, 2008, in anticipation of the Planning Commission conducting a hearing on the proposed amendments to the Comprehensive Plan, staff provided copies of the proposed plan amendments to all adjoining planning jurisdictions and to all state and local jurisdictions that have responsibility for financing or constructing public improvements necessary to implement the plan.

Upon completion of a public hearing on May 12, 2008, by a vote of 4 in favor, 1 opposed and 1 abstained, the Planning Commission adopted PC Resolution No. 08-05 to approve the amendments, and to transmit to the Board of County Commissioners its recommendation that the Comprehensive Plan be amended as follows: Amend Figures 2-1 through 2-5 of the Lexington Park Development District Master Plan (adopted per County Commissioners Ordinance 05-11, and incorporated by reference into the Comprehensive Plan) to change the boundary of the Lexington Park Development District to include therein approximately 87 acres described as Tax Map 42, p/o Parcel 24, Parcels A and B; these acres are generally known as being a portion of the proposed St. Marys Crossing

Planned Unit Development, or as the Johnson Property. The property in question is in the low-density residential (RL) zoning district and adjoins similarly zoned property within the Lexington Park Development District.

Mr. Jackman reviewed an aerial map of the 87 acres in relation to surrounding properties and provided a chronological history of the property that was at one time believed to be owned by the State, as incorrectly indicated by the tax maps.

1988	March 4, 1988 - court confirmed Johnson ownership of Parcels 24A and 24B. State tax maps continued to indicate State of Maryland as owner.
	October 25, 1988 - County comprehensive plan adopted. Johnson property included in LPDD, designated as open space along with state watershed lands.
1990	Comprehensive zoning to implement the 1988 plan placed the Johnson property in an RPD zone.
1993	CWSP adopted - subject property placed in NPS (no planned service) category.

1996 - 1998	Preparation of a new Comprehensive Plan - subject property placed in RPD. In 1997, letters from Mr. Johnson to the County clarifying ownership of the property did not result in a change in the draft Plan.
1999	Comprehensive Plan revised, adopted - Lexington Park and Leonardtown development districts were reduced in size. Subject property placed in RPD.
2000 - 2001	Preparation of new zoning ordinance and map. Mr. Johnson again provided letters to the County to clarify property ownership.
2002	Comprehensive Plan revised and readopted February 19, 2002 - no change relative to the two development districts as established in 1999. Comprehensive rezoning adopted in April, took effect May 13, 2002 - subject property zoned RL.
2003	Draft CWSP proposed NPS for all areas removed from development districts, including subject property - never adopted.
2004 - 2005	February 8, 2005 - St. Mary's Crossing, comprising Parcels 24 (including Parcel A and Parcel B), 101, 128 and 196, recategorized from W-6, S-6 to W-3D, S-3D; on November 22, 2005, BOCC executed agreement to grant MetCom a 20-foot easement across lands owned by the County for the purpose of extending sewer to St. Mary's Crossing.

As indicated, the Board proceeded to confirm the W-3D and S-3D classification of subject property. The history of events indicates that the County intends to protect the state watershed lands by excluding them from the Development District and further suggests that the County intends to accommodate development of lands west of these watershed lands. In light of this history of these 87 acres, staff recommends that the Comprehensive Plan be amended as proposed.

During the pre-hearing comment period, staff received a letter dated May 12, 2008 from the Maryland Department of Planning, which was reviewed at the May 12, 2008 Planning Commission Public Hearing. The Maryland Department of Planning listed four concerns, but did not oppose the proposed amendment to the Comprehensive Plan. The Planning, Land Use and Planning Analysis Division offered the following:

> 1) The proposed amendment is to add approximately 87 acres to the County's Lexington Park Development District. Access for this property would be from St. Andrews Church Road (MD Route 4) through land that already falls within the Lexington Park Development District. It is our understanding that the 87 acres will be incorporated into the RL Planned Unit Development.
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> 2) The property is zoned Residential Low Density (RL) and has a base zoning of one unit per acre. However, this site is not located within a Priority Funding Area (PFA) and we cannot guarantee that land zoned RL will meet the minimum density requirements needed to designate land as a PFA.
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> 3) The MDP is concerned about this site being located within the St. Mary's River watershed and adjacent to conservation land owned and protected by the Department of Natural Resources. The County should consider eliminating or reducing development on the 87 acre parcel and use that land as a buffer area between the development and conservation lands owned by DNR.

4) If this area is not amended into the Lexington Park Development District then the existing water and sewer category designation ofW-3D and S-3D area should be re-amended to No Planned Service (NPS), which is appropriate for surrounding property outside of the Lexington Park Development District.

Commissioner President Russell opened the hearing for public testimony at 6:20 pm.

Public Testimony

John Norris, NG&O Engineering

Mr. Norris said he is assisting the applicant and introduced Mr. Stefan Kozzerzuk, as the project manager, representing the applicant. Mr. Norris provided a brief introduction prior to Mr. Victor Johnsons testimony. Mr. Victor Johnson (son of the former property owner) will provide testimony in relation to the error (state zoned property that was actually part of the Johnson property).

Mr. Norris presented a Boundary Survey engineering drawing exhibit, displaying each of the parcels (parcel 101, 24, 196, 128, and 24) that make up the Johnson Property (the original 250 acres).
Note: Parcel 24 is comprised of 24A and 24B.

In closing, Mr. Norris noted that some of the text in the Comprehensive Land Use Plan talks about development district boundaries and lands beyond state property.

The Boundary Survey drawing presented by Mr. Norris, dated Nov. 2006, plotted May 6, 2008, titled "St. Marys Crossings, Planned Unit Development, Eighth Election District, St. Marys County, Maryland" was submitted for the record by Mr. Denis Canavan.

Victor Johnson (son of former property owner), P. O. Box 365, California, MD 20619

1. My name is Victor Johnson. I live at 22550 Johnson Pond Lane, California, Maryland. My mailing address is P. O. Box 365, California, Maryland, 20619. I am the son of Claude and Agnes Johnson, who owned a large farm off of St. Andrews Church Road that included the 87 acres that are the subject of this public hearing.

2. These 87 acres were the subject of a boundary dispute between the State of Maryland and my parents in the late 1980s.

3. Judge Jacob Levine decided the dispute in March 1988 and awarded my parents ownership of that land.

4. The Comprehensive Land Use Plan of 1988 that followed this decision identified the 87 acre area as being within a development district.

5. I was discovered in 1997 that the 87 acres were incorrectly identified by the States Department of Assessments and Taxation as being owned by the State. It was also discovered that the Countys Department of Planning and Zoning was relying upon the records of the Department of Assessments and Taxation to define who owned the 87 acres.

6. Because of the error in the records of the Department of Assessments and Taxation, Planning and Zoning proposed in 1997 that the 87 acres be excluded from the development district.

7. It submitted letters regarding this error to the Planning Director, Planning Commission, and County Commissioners between January 24 and Jan 31, 1997.

8. Similarly, in 2000, I was assured that my parents land was in the development district. What I did not know at the time was that the same mistake made in 1997 regarding ownership of the 87 acres was to occur again; Planning and Zoning presumed that the State owned the 87 acres. It appears that the sole reason for excluding this 87 acre area from the development district in 2000 was the incorrect premise that the area was owned by the State and, therefore, would not be developed. By three separate letters dated July 7, 2000, including a letter to County Commissioner Guazzo, I requested that the County correct its records regarding ownership of the 87 acres and include these acres within the development district and be zoned RL.

9. Despite the direction given to staff that the Johnson Farm was within the development district, these 87 acres were not included. I can only assume that this is because staff forgot about the error in Department of Assessments and Taxation records regarding ownership of the land.

10. Despite the letters I have submitted to County Commissioners and Planning Commissioners over the years, there have been allegations that the 87 acres are outside of the Lexington Park Development District and that this information was kept from decision makers when granting public water and sewer to this property. In addition to the letters and the court order, I dont know what more we could have done to inform the County that my family owned the property, not the State. Since the County knowingly granted access to public water and sewer for these 87 acres, it is clear that the County intends this land be used as part of the Development District, since water and sewer cannot be extended outside of the development district.

11. My family has owned the land since 1947 until it was sold to St. Marys Crossing. Planning Commission members have said that their intent has been that my familys land be in the development district, only the state-owned land and the County landfill are outside of the development district in this area. The 87 acres are adjacent to the remainder of my parents farm, all of which is in the development district since the only reason for excluding it has been errors in County and State records incorrectly reflecting State ownership of the land.

Mr. Johnsons testimony was also submitted in writing for the record by Mr. Jeff Jackman.

Eileen M. Hislop, 44163 St. Andrews Lane, California, MD 20619

Ms. Hislop questioned if the taxes have been forgiven on the property (returned to Johnson family or still part of the St. Marys Crossing). Mr. Norris responded that St. Marys Crossing, LLC owns all of the 250 acres and they pay the taxes. Mr. Johnson said his father was charged agricultural taxes, and every year he followed-up with the (tax assessment) office.

Ms. Hislop said that the St. Marys Crossings is being constantly referred to as a Planned Unit Development, and questioned if that has been granted. The response was no. It was clarified by Commissioner Raley that the application has gone through the Planning Commission stage, and now it is up to the applicant to submit it (application) to the BOCC, which of this date, has not

happened. It was further clarified that (granting a PUD) will involve another public hearing. Ms. Hislop said she will be concerned about a traffic problem.

Having no one else wishing to provide testimony, Commissioner President Russell closed the public hearing at 6:31 PM and set the 10-day open record period. The Board recessed until 6:45 PM.

2.) Proposed Accessory Apartment Zoning Text Amendments (in and outside of the Critical Area)

Present: Yvonne Chaillet, Planner IV, Zoning Administrator

Sue Veith, Environmental Planner

The Public Hearing commenced at 6:45 PM in Room 14 of the Potomac Building (Governmental Center). Ms. Chaillet stated for the record that notice of the public hearing was advertised in the June 6, and June 11, 2008 editions of the Enterprise newspaper.

Ms. Chaillet provided a brief overview of the documents provided to the Commissioners (public hearing green sheet contents); i.e.,

Notice of the Public Hearing,

Staff Memo dated June 20, 2008 that provides background, Planning Commission actions, and staff recommendations,

Mark-up (red text) of proposed changes to the St. Marys County Comprehensive Zoning Ordinance.

Copy of PC Resolution No. 08-06, "Accessory Apartments in the Critical Area, Recommended amendments to Chapters 41, 51, 64 and 90 of the St. Marys County Comprehensive Zoning Ordinance".

Copy of PC Resolution No. 08-07, "Accessory Apartments, Recommended amendments to Chapters 50, 51, and 90 of the St. Marys County Comprehensive Zoning Ordinance".

Ms. Chaillet also provided a memo to the Board, dated June 24, 2008, "Chart of Accessory Apartment Standards". The memo provides a table summarizing the key criteria of the proposed text amendments to allow accessory apartments in the Resource Conservation Area (RCA) and to amend the regulations pertaining to Use Type 105, accessory dwelling units. The table indicates a change in terminology from accessory dwelling unit to accessory apartment. Additionally, the table indicates two primary distinctions between the accessory standards in the RCA and the accessory standards outside the RCA: 1.) An accessory apartment in the RCA must be on the same septic disposal system as that of the principle dwelling; and 2.) If an accessory apartment is located in a detached accessory structure in the RCA, the entire perimeter of the detached accessory structure must be within 100 feet of the principle dwelling.

Ms. Chaillet provided an overview of concerns raised by the Board of County Commissioners and the Planning Commission, and how those concerns are being addressed.

On September 4, 2007 the Board of County Commissioners (BOCC) completed the first reading of the amendment to modify existing language pertaining to accessory dwelling units. The primary purpose of

that text amendment was to reduce the occasions where newly constructed homes containing an accessory dwelling unit were built with the intent of leasing both the primary residence and the accessory dwelling unit. This could be accomplished by requiring that the owner occupy either the primary residence or the accessory dwelling unit.

Further evaluation of that draft amendment led to the complexity of enforcing an occupancy requirement and to the conclusion that, as proposed, the amendment would preclude renting both the primary residence and the accessory dwelling unit, which would eliminate an option for affordable and workforce housing. Additionally, the occupancy requirement would penalize military personnel who wanted to rent both dwellings while deployed oversees. Apart from the occupancy issue, the draft text amendment did not address size, appearance, and access issues associated with the principle dwelling and the accessory dwelling.

Staff concluded that the modifications needed to the existing language pertaining to accessory dwelling units were beyond the scope of the original draft amendment authorized by the BOCC in September 2007. Consequently, staff reintroduced the text amendment in December 2007. The substitute text amendment would eliminate the occupancy requirement and address the more substantive issues of size, appearance, and access. The BOCC authorized staff to proceed to the Planning Commission with the substitute text amendment.

The Planning Commission held its public hearing on February 11, 2008. Concern was expressed by several citizens and Planning Commission members over the proposed maximum size of an accessory dwelling unit, the potential effects on adequate public facilities, and the lack of design standards. As a result, the Planning Commission continued the hearing to March 10, 2008 and directed staff to revise the recommended maximum size of an accessory dwelling unit and to

draft design standards.

The Planning Commission and staff held a work session on May 5, 2008 to resolve outstanding concerns and come to agreement on the proposed amendments. It was decided that owner-occupancy would be a necessary element of the proposed amendment in order to prevent future dual tenancy situations.

Discussion:

Commissioner Raley questioned how the owner occupancy requirement would be enforced. Ms. Chaillet said an affidavit is required at the time the building permit is granted. Exceptions, such as for military personnel, can be granted by the Director, Land Use & Growth Management (LUGM). Also, neighbors may contact LUGM to report violations.

It was also noted that there is no impact on APF (Adequate Public Facilities) relative to accessory apartments.

A breezeway between the primary dwelling and the accessory apartment is not permitted. Mr. Denis Canavan called attention to the requirement that the accessory apartment must share a common wall with the principle dwelling (if it located in the principle dwelling) and explained this is related to the side yard set back (of the principle dwelling), that the accessory apartment should be innocuous, and also, factors in the 900 sq. ft. maximum size regulation.

An economic impact fee will be imposed (collected by LUGM).

Commissioner Raley said that if a live in caregiver is required, such as for elderly parents or an individual with a disability, 900 square feet may not be adequate. Ms. Chaillet responded that the concern was if the accessory apartment is too large, it may give the appearance of a duplex.

Proposed accessory apartment regulations:

Maximum size: 900 square feet (however, for non-critical area, there is an exception that a basement accessory apartment can be the full size of the basement).

Minimum size: 300 square feet.

Owner occupancy required may be located in principle dwelling or in detached accessory structure.

Must share common wall with principle dwelling if located in principle dwelling.

Parking required (one space).

Single septic system serving principle dwelling and accessory dwelling if in the critical area.

Detached accessory structure with an accessory apartment must be located with 100 feet of principle dwelling if located in the critical area.

LUGM permit approval is required.

Ms. Chaillet also stated, regarding design standards, that the design and materials used for the accessory apartment must compliment the primary dwelling and surroundings. It should not look different and should be in character with the primary dwelling and surroundings.

On May 12, 2008 the Planning Commission voted 4 to 2 to recommend approval of the proposed zoning text amendments to Chapters 41, 50, 51, 64, and 90 of the Ordinance to allow accessory apartments in the RCA overlay zone; re: PC Resolution Number 08-06.

On May 27, 2008 the Planning Commission voted 7 to 0 to recommend approval of the proposed zoning text amendments to Chapters 50, 51, and 90 of the Ordinance to amend the accessory dwelling unit standards in the non-Critical Area of the County; re: PC Resolution Number 08-07.

Commissioner President Russell opened the hearing for public testimony at 7:11 pm.

Public Testimony

Teresa Leard, 41525 Trace Ct., Leonardtown, MD

Ms. Leard provided testimony on behalf of the Justice and Advocacy Council of St. Marys, Archdiocese of Washington.

The proposed changes to the zoning ordinance better define the concept of accessory apartments and continue to make them an option for reasonably priced housing in the County. While the new size limit of 900 square feet and the requirement for owner occupancy are

somewhat restrictive, such accessory apartments can be a source of additional income or other help needed for owners to stay in their homes as well as provide others with affordable living area.

While we support this legislation, the situation that brought this issue to light underscores the need for additional affordable housing in St. Marys County. The council applauds your ongoing efforts to address the issue of affordable housing, including your recent relaxed restriction allowing trailer home replacement in a non-conforming area without Board of Appeals review or associated fees and also the transfer of county property to Habitat for Humanity for five homes. However, these recent actions continue to point out the need for a comprehensive strategy to address the housing needs in the County, particularly those of people who are most vulnerable.

Ms. Leards testimony was also provided in writing for the record.

Tom Benefield, P. O. Box 70, Hollywood MD, 20636

Mr. Benefield is with Crossroads Construction. As a builder in this area, have dealt with this issue on many occasions. Many clients have benefited; all but one use accessory apartments to accommodate elderly parents.

The 900 sq. ft. has been commented on tremendously; and has concerns that may be small to accommodate, for example, elderly parents. He has also had clients that want to have an accessory apartment for a child or a small family (to keep them on the same property).

LUGM does collect an additional impact fee for that dwelling. A number of clients have been gratefully willing to do that when they are able to accommodate their parents.

Commented on recent dealings with the Health Department; required a separate septic tank (for the accessory dwelling) and separate drain field lines, but they have worked with us on the drain field easement. Additional expense, especially considering the timing of the issue, PERC test, space requirements, it does get very involved.

Another concern was the term "apartment". IBC 2003 code requires apartments to have sprinkler systems. Ms. Chaillet responded that Adam Knight said one single apartment does not fall under that building code requirement (applies to multi-family type apartments, a building with three or more units). Commissioner Mattingly questioned if the primary dwelling is required to have a sprinkler system, does the accessory apartment. Ms. Chaillet said she would need to look into this.

Also regarding the 900 sq. ft. size limit, Mr. Benefield said some of their more affluent clients, a lot of times bring in a full-time care provider, such as for elderly parents.

The ordinance requirement (the County has also done this with commercial properties) that the appearance of the appearance of the primary dwelling with an accessory apartment shall that be that of a single family dwelling. This is somewhat subjective and open to interpretation.

Interpretation of Section 2B, 1c maximum gross floor area 40% of principle area of the principle dwelling unit. One example typically when we apply for a permit, principle area includes the basement (not living but condition space), it is shown on the permit as well. I took the liberty to sketch out an example of a dwelling that has a certain gross floor area and then an accessory apartment that is 40% of that. These sketches show my interpretation of the ordinance.

I think the ordinance may defeat what the purpose is. I am familiar with the background. I really feel that going to owner occupied dwelling will stifle a lot of that. Im concerned with transfer of properties and how that property is then maintained. Property has met the requirements, when transferred, have potential that it will be rented out.

Three 8 x 11 sketches (drawings) were submitted for the record by Mr. Benefield.

Julie Randall, 19711 Teddy Way, Lexington Park, MD 20653

Ms. Randall provided testimony in opposition to the proposed changes. Believes the problem (loophole) is being over corrected with unintended consequences. Ms. Randall is the Chair, Commission for People with Disabilities, for St. Marys County.

Our concern from the commission is the need to be able to use the accessory dwelling unit to provide for elderly parents, who may be disabled, or other elderly relatives, and children that are disabled. Typically, will come along with a requirement for a caregiver to live in and be there 24/7. This will require a two bedroom / two bath arrangement, for a minimum, to do what has been done for years in this County and what was the vision of the original ordinance.

Wheelchairs require universal design, big wide open spaces, and roll in showers; 900 square feet is not going to be adequate for the very basics.

Reviewed the minutes of the Planning Commission meetings and tried to determine where the 900 square foot requirement came from. Appreciates a limit has to be set. There was quite a bit of discussion on percentage of the principle dwelling (started at 30, some wanted 50, and settled at 40%). But the 900 sq. ft. as a maximum, I could not find in the minutes, where the entire Planning Commission discussed and voted. If I had of been there, I would have thought 40% of the principle dwelling is the maximum.

I am very concerned, and I feel 900 square feet is not adequate. I did some research on other two bedroom/two bath apartments (in Wildewood). One that is handicapped accessible starts at 1000 square feet.

Im very concerned about the requirement for an accessory apartment to have to share a principle wall of the primary dwelling. What is the purpose of this requirement? I did not understand Mr. Canavans explanation as to why a breezeway, for example, would not be allowed if attached to the house, but you dont have to share a common wall necessarily. Appears very restrictive, I dont believe this restriction is required.

Appreciate concern for whats trying to be done. Dont kill this fly with a hammer. Dont over react and consider folks with disabilities.

Mr. Denis Canavan requested that Ms. Randall submit the data that she has.

Rick Benefield, Hollywood, MD

Brother and business partner of Tom Benefield.

Also expressed concern regarding the 900 square foot maximum, built several (accessory apartments) and cannot come up with one that does not exceed the 900 sq. ft. One of my clients is here tonight that we built an accessory apartment for (for an elderly parent). That particular dwelling, as most, will not be allowed by this proposed ordinance. Entrance location, size, and other design requirements (architecture) would not be allowed.

I was at a couple of the Planning Commission meetings and I heard some of the folks that represented homeowner associations speak. I truly didnt hear any other of the public speak out against the current ordinance as it is written. I believe the intent of this ordinance is to prevent a builder/developer to do what had been done in that specific community.
If thats what we dont want, then lets say that. The requirement for the owner to be an occupant for a certain period and sign an affidavit, addresses that.

Gerry Ferris, 23838 Louise Lane

Client of Crossroad Builders. Thankful we did the house ten years ago and didnt have to go through any of this. At that time, my mother was 76 years old. Shes feisty, she drives, her house has her own garage. She has two bedrooms (not an apartment, its part of our house), she has out of town company that would just assume stay with her and not us. She does her own laundry. She has her own laundry room. Anything less than what she has now would not be acceptable to her. She is now 86 and shes still takes care of herself. She could not do it if she was not from my kitchen to her dining room away from us. If anyone wants to see the house, youre welcome to stop by. Its just incredible that Id have to go through this now. Its a tradition not only in St. Marys County, but everywhere, that you take care of your parents and this is the easiest way for me to do it.

Having no one else wishing to provide testimony, Commissioner President Russell closed the public hearing at 7:35 PM and set the 10-day open record period.

The BOCC meeting adjourned at 7:35 PM.

Minutes Approved by the Board of County Commissioners on _____

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Betty Jean Pasko, Sr. Admin. Coordinator