

1 January 29, 2014



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3
4 **Talbot County Planning Commission**
5 **Final Decision Summary**

6 Wednesday, October 2, 2013 at 9:00 a.m.

7 Bradley Meeting Room

8 11 N. Washington Street, Easton, Maryland

9 **Attendance:**

10 Commission Members:

11
12 Thomas Hughes
13 William Boicourt
14 Michael Sullivan
15 John Trax
16 Paul Spies

17 Staff:

18
19 Sandy Coyman, Planning Officer
20 Mary Kay Verdery, Assistant Planning Officer
21 Brett Ewing, Planner I
22 Mike Mertaugh, Assistant County Engineer
23 Carole Sellman, Recording Secretary
24

25 **1. Call to Order**—Commissioner Hughes called the meeting to order at 9:00 a.m.

26
27 **2. Decision Summary Review**—September 4, 2013—The Commission noted the
28 following corrections to the draft decision summary:

29
30 a. Line 76: change the word balcony to “deck”.

31
32 Commissioner Spies moved to approve the Planning Commission Decision
33 Summary for September 4, 2013, as amended; Commissioner Sullivan seconded
34 the motion. The motion carried unanimously.

35
36 **3. Old Business**—None was brought before the Commission.

37
38 **4. New Business**

39
40 a. Chateau Bu-De, LLC, #528—Riverside Lane, Trappe, MD, (map 62, grid 17,
41 parcel 49, zoned Rural Conservation), Rick Van Emburg, Lane Engineering,
42 LLC, Agent

43
44 Brett Ewing stated staff had no objection to the extension. Commissioner Hughes
45 questioned whether the project is being held up due to law suits and other issues.

46
47 Mr. Van Emburg representing the applicant asked for an extension to deal with
48 the project’s remaining legal and other issues.

49
50 Commissioner Boicourt moved to recommend the planning officer to approve a
51 one year extension for the major site plan for Chateau Bu-De, LLC;
52 Commissioner Trax seconded the motion. The motion carried unanimously.
53

- 54 b. Administrative Variance—David Dunn and Amy Bondurant, #A196—8112 Ruby
55 Harrison Road, Bozman, MD, (map 31, grid 10, parcel 24, zoned Rural
56 Conservation), Elizabeth Fink of Fink, Whitten & Associates, LLC, Agent.
57

58 Mr. Ewing presented the staff report of the applicant’s request for construction of
59 a master bedroom expansion and a breezeway to a garage with a guest room
60 totaling 507 square feet of new gross floor area. The proposed expansion will be
61 located no closer to mean high water than the existing dwelling at 50.9 feet. The
62 applicant also proposes to remove a total of 412 square feet of lot coverage from
63 the site (352 square feet within the buffer). The variance shall not exceed the
64 minimum adjustment necessary to relieve the unwarranted hardship. The Critical
65 Area Commission questioned whether the project minimizes the adjustment
66 necessary.
67

68 Staff recommendations include:
69

- 70 1. The applicant shall apply to the Planning and Permits Department and follow
71 all rules, procedures, and construction timelines as outlined by regarding new
72 construction.
- 73 2. The applicant shall commence construction on the proposed improvements
74 within eighteen (18) months from the date of the Planning Department’s
75 “Notice to Proceed”.
- 76 3. Natural vegetation three times the approved disturbance area in the buffer
77 shall be planted in the buffer or on the property if planting in the buffer cannot
78 be reasonably accomplished. Disturbance outside the buffer shall be mitigated
79 at a 1:1 ratio. A buffer management plan application may be obtained from the
80 Planning and Permits Department.
- 81 4. The proposed guest room above the attached garage shall not be used as an
82 accessory dwelling (see §19-208 *Talbot County Code*).
83

84 Commissioner Hughes stated he believed the project would be within the lot
85 coverage standards and is akin to previously approved projects. Mr. Ewing stated
86 the majority of expansion is outside the buffer and will be connected by a
87 breezeway. The project limits expansion within the buffer.
88

89 Mrs. Fink and Lars Erickson of East Bay Construction appeared for the applicant.
90 She stated that the applicant wanted to point out the connection to the garage and
91 the room above would be located outside the shoreline buffer.
92

93 Commissioner Hughes asked for comments from the public, Commission or staff
94 and there were none. Commissioner Boicourt moved to recommend the Planning
95 Officer approve the administrative variance for David E. Dunn and Amy L.
96 Bondurant, 8112 Ruby Harrison Road, Bozman, Maryland, provided compliance
97 with the staff conditions occurs; Commissioner Spies seconded. The motion
98 carried unanimously
99

- 100 c. Administrative Variance—Peter Ackerman and JoAnne Leedom Ackerman
101 Trustees, #A197—26890 Double Mills Road, Easton, MD, (map 41, grid 16,
102 parcel 254, zoned Rural Conservation), represented by Charles P. Goebel,
103 Architect, Agent.

104
105 Mr. Ewing presented the staff report of the applicant’s request to improve and
106 convert an existing workshop to a roofed and screened therapy pool enclosure.
107 The proposed expansion will be located no closer to tidal waters/wetlands than the
108 existing structure at 30 feet. The Critical Area Commission’s letter questioned
109 whether the variance request minimizes the disturbance necessary to relieve the
110 hardship. The Planning Officer responded to applicant’s request to the Planning
111 Officer and he made the determination that the project requires an administrative
112 variance.

113
114 Staff recommendations include:

- 115
116 1. The applicant make application to the Planning and Permits Department for a
117 building permit and follow all rules, procedures, and construction timelines as
118 outlined by regarding new construction.
119 2. The applicant shall commence construction on the proposed improvements
120 within eighteen (18) months from the date of the Planning Department’s
121 “Notice to Proceed”.

122
123 Commissioner Hughes asked if the existing workshop had water and electric. It
124 was confirmed that they did. He then asked about the septic in the shoreline
125 development buffer; it has been abandoned.

126
127 Mr. Goebel appeared on behalf of the applicants. Steve and Teresa Gadow, the
128 caretakers for the applicants and previous owners also testified. Mr. Goebel stated
129 two buildings had been removed from the buffer as well as some other impervious
130 surfaces.

131
132 Commissioner Hughes asked for comments from the public, staff and the
133 Commission. None were offered. Commissioner Trax moved to recommend to the
134 Planning Officer to approve the administrative variance for Peter Ackerman and
135 JoAnne Leedom Ackerman Trustees, 26890 Double Mills Road, Easton, MD, to
136 convert a workshop into a therapy pool enclosure, provided compliance with staff
137 conditions occur; Commissioner Boicourt seconded. The motion carried
138 unanimously.

- 139
140 d. Dependable Sand and Gravel Company, Inc.—Ocean Gateway, Queen Anne, MD
141 (map 4, grid 6, parcel 15, zoned Agricultural Conservation), Rick VanEmburch,
142 Lane Engineering, LLC, Agent.

143
144 Commissioner Hughes explained that this project tabled from the September
145 agenda on the request of the applicant due to the Commission attendance was less

146 than five members. Mr. Ewing summarized site plan No. 540, Dependable Sand
147 and Gravel product recycling building (100 feet by 170 feet). A recommendation
148 to the Board of Appeals for the special exception modification will be requested
149 from the Planning Commission at a later date.

150
151 Staff recommendations include:

- 152 1. The applicant shall obtain a modification to special exception no. 975 from
153 the Board of Appeals prior major site plan approval.
- 154 2. The applicant address all staff report issues and the Technical Advisory
155 Committee's comments.
- 156 3. The applicant shall make a building permit application to and follow all
157 applicable rules, procedures, and time lines.
- 158 4. The applicant shall commence construction on the proposed project within
159 one year from the date of the "Notice to Proceed".
160

161
162 Commissioner Hughes questioned the need for a new sewage disposal area
163 (SDA). Mr. Van Emburg appeared on behalf of the applicant, Kevin Quinn, and
164 stated they are in the process of establishing a sewage disposal area.

165 Commissioner Hughes questioned if there would be an increase in large truck
166 traffic. Mr. Quinn stated there would not be any larger trucks. They hoped to have
167 a cloverleaf in the future. There is no need to make a U-Turn. Eastbound traffic
168 turns around behind Wye Tree Experts. Westbound traffic enters from US 50.

169
170 Mr. Quinn pointed the environmental advantages to recycling gypsum and its
171 benefits to agriculture. Commissioner Hughes asked if they will only accept clean
172 material. Mr. Quinn stated they will accept clean product only, no painted or
173 stained material. They will be accepting clean product to include pallets, scrap
174 wood and will take asphalt shingles to grind up to make road materials.

175
176 Commissioner Hughes asked how the applicant will prevent deposition of
177 hazardous materials. Mr. Quinn stated they inspect all trucks and do not accept
178 new unknown companies without intense scrutiny. Mr. Quinn stated the final
179 product would be sold directly to farmers and landscapers. Mr. Van Emburg noted
180 the materials will be stored in the pole barn to keep the product dry.

181
182 Mr. Quinn stated the process is simple and would be completed inside the
183 building and would not produce significant noise. Commissioner Hughes asked
184 for comments from the Commission, the Staff and the public.

185
186 Mr. Coyman stated that the use of gypsum is being looked at as a best
187 management practice for improving water quality. He viewed a couple of
188 installations that are being monitored with very impressive results.

189
190 Paige Bethke, Talbot County Economic Development Director, stated she
191 supported this project as a good for a local business and the agricultural

192 community while providing environmental benefits. Mr. Ewing pointed out only
193 clean product would be accepted and this would be an approval condition.

194
195 Mr. Ewing presented the landscape waiver request to waiver of Section 190-122
196 requiring site plans include a landscaping plan. He noted the site is now fully
197 screened. Commissioner Hughes asked Mr. Mertaugh if the road was up to par for
198 the needs of the project. Mr. Mertaugh stated it is acceptable. Commissioner
199 Hughes asked for comments from the public, there were none.

200
201 Commissioner Boicourt moved to grant the landscape waiver to Dependable Sand
202 and Gravel, provided compliance with staff comments occurs; seconded by
203 Commissioner Sullivan. The motion carried unanimously.

204
205 Commissioner Spies moved to approve the major site plan for Dependable Sand
206 and Gravel, Inc., 13155 Ocean Gateway, Queen Anne, Maryland, provided
207 compliance with staff comments occurs; Commissioner Sullivan seconded.
208 Commissioner Spies amended the motion to include a condition that only clean
209 recycling material be accepted on site for recycling; Commissioner Sullivan
210 seconded. The motion carried unanimously.

211
212 e. Chapter 190 Zoning Text Amendment—Piers and Related Boat Facilities—Sandy
213 Coyman, Planning Officer, Talbot County

214
215 Ms. Verdery stated the amendments' primary purpose was to expand the
216 cumulative total platform area permitted for community piers to include the
217 launching facilities and to define the limits of finger piers, catwalks and boatlifts
218 on private piers. Also included are several recommendations previously
219 discussed.

220
221 Commissioner Hughes questioned if the 85 percent functionality requirement was
222 a state regulation and is the County able to amend it. Ms. Verdery explained that
223 it is a state requirement and if a nonconforming pier is destroyed, the owner has
224 12 months to replace it in kind. Conforming replacements have no time limit if
225 they are at least 85% functional.

226
227 Brandon Weems, of Weems Brothers, Inc. stated it is a long standing practice that
228 repair and replace in kind piers do not require state approval per Code of
229 Maryland Regulations (COMAR). Mr. Weems asked that the County revise its
230 regulations to be consistent with the state and eliminate the need to document a
231 destroyed pier's legality and the ability for a homeowner to replace it in kind
232 without the 85% rule applying.

233
234 Ms. Verdery referred to Section 190-169(f) which states that a non-conforming
235 structure can be demolished and replaced in the same location or restored after
236 damage or destruction caused by fire or natural cause without approval of a

237 variance provided that it meets the following; that it is in kind, that it's the same
238 owners, that it be replaced within twelve months.

239
240 Mr. Weems was concerned about paragraph d.1, "or the landward edge of title
241 wetlands, whichever is more restrictive" and suggested to focus on the width of
242 open water and to separate the definition of pier from the definition of tidal
243 walkway, resulting in definitions for a non-tidal walkway, a tidal walkway and a
244 pier. By combining tidal and nontidal walkway lengths with the pier limits access
245 in some cases may be gained to open water.

246
247 Commissioner Hughes asked about riparian rights and did it allow a pier through
248 a marsh, or just a walkway. Mr. Coyman stated his understanding was that
249 riparian rights grant the land owner reasonable access to the water as defined by
250 case law.

251
252 Commissioner Sullivan asked if the state has a walkway length limit. Staff
253 responded that Maryland Department of the Environment and Army Corps of
254 Engineers require pier length over tidal wetlands be minimized. The Commission
255 expressed concerns for structural integrity and aesthetics of excessively long
256 piers. Both Commissioner Boicourt and Hughes questioned if there were any
257 provisions for special exception, or an appeal procedure with the state.

258
259 Ms. Verdery stated there are two different ways to deal with the pier length limit,
260 if the commission desired to change this requirement. The Ordinance defines a
261 pier as the structure length over tidal wetlands and over open water. This would
262 be a limit of 150 feet. There is the option of striking "the landward edge of tidal
263 wetlands," or if you do the amendment proposed by Mr. Weems you would have
264 the non-tidal wetlands as a separate structure that currently as a 100 foot limit, a
265 walkway over tidal wetlands with a potential limit of 100 feet or greater, and then
266 your pier. You could end up with a structure that would potentially be 350 feet or
267 greater. It is going to look like a very long pier but be limited to three feet wide in
268 places.

269
270 Ryan Showalter, Esquire commented that the two areas of the County where this
271 occurs is the upper portion of the Choptank and headwaters of creeks. When you
272 apply to Maryland Department of the Environment and Army Corps of Engineers
273 you have to demonstrate minimization and avoidance of impacts. He suggested
274 that the County rely on the State to regulate length as they have an obligation to
275 make sure there is avoidance and minimization. Commissioner Hughes stated he
276 prefers local oversight.

277
278 Commissioner Hughes asked how many cases are we talking about that are denied
279 reasonable access to the water. Mr. Weems stated they are thinking about future
280 customers and business in general.

281

282 Mr. Showalter suggested a standard of pier length measured 150 feet from mean
283 high water and an allowance for tidal wetland walkways be established for the
284 portion over tidal wetlands. If the applicant desires to exceed the standard than the
285 Planning Commission would review the application. This would enable a local
286 review for piers exceeding the standard.
287

288 Commissioner Hughes cautioned that such approaches may result in unintended
289 consequences and an increased number of excessively long piers. Mr. Coyman
290 asked the commission if they had a number of feet they would allow over tidal
291 lands and anything over that the applicant could come to the Commission for
292 approval. Commissioner Boicourt stated he might be open to relying on state laws
293 if they had more information on the state criteria. Ms. Verdery stated they had
294 sent this document to April Stehr at Maryland Department of the Environment for
295 her comments and had not yet received them.
296

297 Commissioner Hughes asked if the Commission desired to postpone this item.
298 Commissioner Trax would like to explore Mr. Coyman's option of looking at how
299 the state and federal government handle the issue notwithstanding the need to
300 avoid unintended consequences. Commissioner Spies was in agreement and
301 requested the state regulations on this matter be provided.
302

303 Mr. Showalter is concerned there will still be an inconsistency in Ordinance 190-
304 165(f), a non-conforming structure may be demolished and replaced in the same
305 location or restored after damage or destruction caused by fire, which conflicts
306 with the 85% section requiring functionality. He suggested the section permitting
307 replacement in kind be the standard.
308

309 Commissioner Hughes observed that the applicant would have to start all over and
310 demonstrate the need for a pier there if the structure is not performing 85% of its
311 original designed purpose.
312

313 Mr. Weems stated the 85% rule is intended for and predominately applied to
314 bulkheads, timber bulkheads specifically, because bulkheads can deteriorate over
315 time. If it is damaged beyond 85% in the states eyes they will make you consider
316 other alternatives like a living shoreline. Mr. Weems has not run into the state
317 enforcing the 85% rule for piers.
318

319 Turning to community piers, the staff suggests providing some more flexibility
320 for community piers in order to encourage community piers rather than multiple
321 individual piers. Commissioner Boicourt supported this proposition.
322

323 Ms. Verdery stated that Section 190-75 A(1) has been amended to add a provision
324 for two (2) additional hoists for personal water craft.
325

326 Note: Mr. Coyman observed that a number of audience members were
327 attending for the village density policy issue which has been deferred.

328 Commissioner Hughes announced this issue would be deferred an
329 announcement would be published in the paper when it would be
330 rescheduled. The Planning Commission and County Council would allow
331 public comment at their advertised meetings.

332
333 Commissioner Spies suggested aligning with the state regulations for private piers
334 and Commissioner Boicourt and Trax supported the community pier proposal.

335
336 Ms. Verdery clarified that the proposal provides for an additional 150 square feet
337 of platform floating dock and launching facility area and finger piers and catwalks
338 would not be included in the total platform area, which would be a change from
339 current law. Ms. Verdery responding to a question stated private piers would be
340 limited to 60 square feet of finger piers or catwalks; this would continue.

341
342 Mr. Showalter asked that § D(3), “launching facilities” be clarified. He observed
343 that the intent is to include low kayak platforms or floating personal watercraft
344 docks, but to not include boat ramps. Commissioner Hughes stated if we are
345 going to use the term launching facilities, let’s also use the term floating docks.
346 Ms. Verdery suggested using and defining the terms floating docks and floating
347 launching facilities. The Commission concurred.

348
349 Mr. Showalter stated that § D(3)(a), defines the 200 square foot limit for private
350 piers, it includes the term boat lifts. What is the area of a boat lift that counts
351 against the 200 square feet? He asked what exactly is measured to determine the
352 square footage area. The Planning Commission will take this matter under
353 advisement and staff will provide a recommendation to identify specifically what
354 is measured.

355
356 Mr. Coyman noted that the state’s concern with the length of piers relates to their
357 providing access to dogs and cats that prey on marsh species.

358
359 Commissioner Boicourt moved to table the consideration of the pier amendment
360 until the noted issues can be further clarified and resolved; Commissioner Spies
361 seconded. The motion carried unanimously.

362
363 **5. Discussions Items**

- 364
365 a. Village density policy, zoning and boundary amendments—Postponed.

366
367 **6. Staff Matters**

- 368
369 a. Major Extensions of Site Plan/Subdivision Approvals— Talbot County Code
370 §190-184 (Site Plans) and Code §190-189 (Subdivisions), the Planning Officer
371 reviews and acts on requests for major project extensions of up to one year.
372 However, it has been standard practice to bring extension requests to the

373 Commission. After discussion the Commissioner expressed its desire that the
374 Planning Officer handle extension requests unless special circumstances exist.

375
376 b. Accessory commercial storage over 300 square feet—The Code specifies that
377 storage accessory to commercial/industrial uses require minor site plan review.
378 Staff intends handle such requests administratively per the Code; The Planning
379 Commission concurred. The Planning Officer may bring such a request to the
380 Commission for a recommendation. Mr. Coyman explained staff has been
381 discussing increasing the 300 sq. ft. threshold from minor to major review in
382 Code 190-184 *Site Plans*. Mr. Coyman asked for a recommendation of a new
383 threshold. Commissioner Boicourt suggested 1,000 square feet. The Commission
384 agreed.

385
386 **7. WorkSessions**

387
388 **8. Commission Matters**

389
390 **9. Adjournment**—Commissioner Hughes adjourned the meeting at 11:08 a.m.

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