

*St. Mary's County
Board of Appeals
Annual Report*



Calendar Year
2012

Prepared By:
The Department of Land Use and Growth Management
23150 Leonard Hall Drive
P.O. Box 653
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ST. MARY'S COUNTY BOARD OF APPEALS 2012 MEMBERSHIP

George Allan Hayden, Chairperson
James (Randy) Guy, Member
George T. Edmonds, Member
Ronald R. Payne, Member
Robert Moreland, Member
Michael Mummaugh, Alternate (p/o year)
John Brown, Alternate

ATTORNEY TO THE BOARD

George R. Sparling, County Attorney

DEPARTMENT OF LAND USE AND GROWTH MANAGEMENT STAFF

Phillip Shire, Director
William B. Hunt, AICP, Deputy Director
Yvonne Chaillet, Zoning Administrator
Kelly Palmer, Planner II
CarrieAnn Heinz, Planner I
Jada Stuckert, Recording Secretary
Hannah Pinkerton, Planning Specialist

Department of Land Use and Growth Management

23150 Leonard Hall Drive
Post Office Box 653
Leonardtown, Maryland 20650

I. INTRODUCTION

A. Formation of the Board of Appeals in St. Mary's County

The Board of Appeals (hereinafter the "Board") was created pursuant to Subtitle 3, §4-301, *Land Use Article, Annotated Code of Maryland*. The *Land Use Article* became effective in October 2012 and codified former *Article 66B* to include certain substantive changes.

The Board consists of five (5) members and one (1) alternate appointed by the County Commissioners. Board members can serve no more than two consecutive, three-year staggered terms. To ensure the Board can meet its quorum requirements and hold public hearings, the *Land Use Article* authorizes a local legislative body to designate one alternate member who has been empowered to sit on the Board in the absence of any member.

B. Functions of the Board of Appeals in St. Mary's County

The Board is a quasi-judicial body responsible for presiding over public hearings on appeals, variances, and conditional uses. By doing so, the Board, as a whole, is responsible for defending the public interests as defined by the St. Mary's County Comprehensive Zoning Ordinance Z-10-02 (hereinafter the "Ordinance"). The purpose of the Board is to ensure that zoning is fair, correctly interpreted, and does not cause excessive hardship upon landowners in St. Mary's County.

As outlined in the Ordinance, the Board has four (4) main functions to ensure that the goals and objectives of the Comprehensive Plan are met and that the regulations of the Ordinance are implemented. These powers and duties include:

- 1) To hear and decide appeals when it is alleged there is an error in any order, requirement, decision, or determination made in regard to the enforcement of the Ordinance or of any amendments adopted thereto;
- 2) To authorize, upon application in specific cases, a variance from the terms of the Ordinance as will not be contrary to the public interest, and when, owing to special conditions, the enforcement of the provisions of the Ordinance will result in practical difficulties or unwarranted hardships. Only those variances that accomplish the purpose and intent of the Ordinance and are consistent with the Comprehensive Plan can be approved;
- 3) To adopt and promulgate such rules and regulations as it shall deem necessary in the conduct of its hearings; and
- 4) To hear and act upon conditional use applications as provided in Chapter 25 of the Ordinance.

All decisions and findings of the Board on appeals or on applications for a standard variance or conditional use are final administrative decisions and are subject to judicial

review. All final decisions must be rendered in writing within 60 days of the close of the public hearing in accordance with Section 20.3.6 of the Ordinance.

All decisions and findings of the Board within the jurisdiction of the Critical Area Commission are final administrative decisions and are subject to judicial review. Pursuant to Section 20.3.6 of the Ordinance, all final decisions must be rendered in writing within 30 days of the close of the public hearing. The Board may extend the 30 days to a maximum of 45 days upon findings that the complexity of the case requires an extended decision period or that changes in the Board's schedule preclude a decision within 30 days.

The official written record of all Board proceedings is maintained in the Department of Land Use and Growth Management.

II. 2012 CASELOAD

A. Board of Appeals Variance Cases for 2012

The Board of Appeals has the authority to vary the density, bulk, dimensional, or area requirements of the Ordinance in accordance with allowed modifications specified in the Land Use Article of the Code. A variance may only be allowed where, owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the Ordinance would result in unnecessary hardship or practical difficulty as specified in the Ordinance. A variance may not be contrary to the public interest.

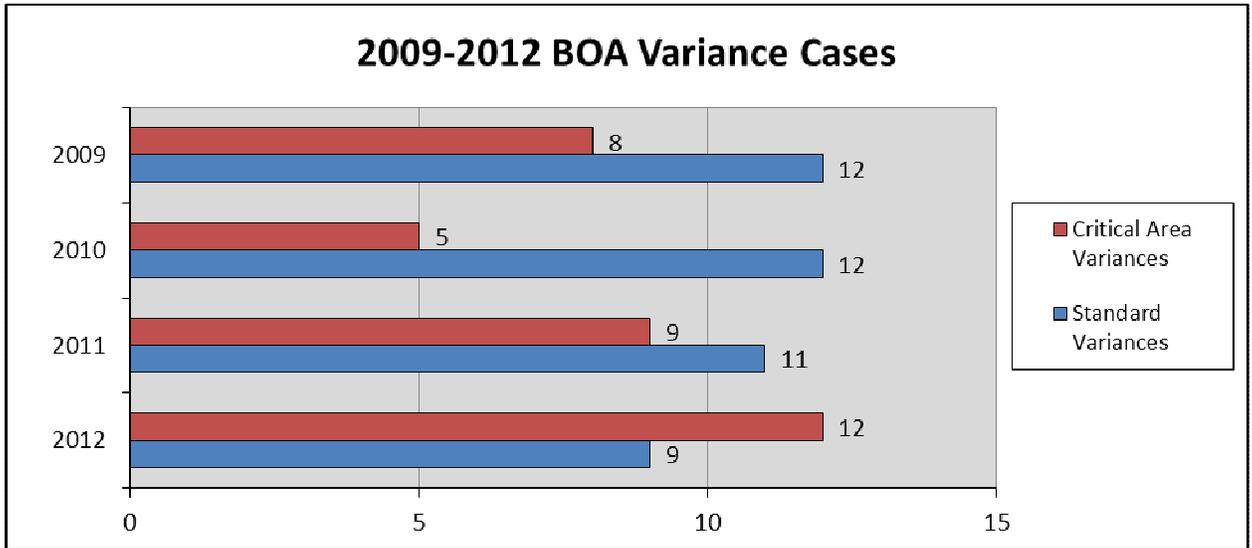
Standard variance requests are often made to the Board to enable a property owner to make modest improvements to existing single-family dwellings or to construct a detached accessory structure such as a garage or shed where the property is constrained by various setback requirements. The Board heard 9 standard variance requests in 2012. Eight (8) of these cases were approved and one (1) was denied. The denial pertained to a request to increase the residential density in the RPD by placing a second dwelling on a parcel less than five (5) acres in size.

Variations may be granted from the provisions of the Critical Area Program as implemented in Chapter 41 of the Ordinance (Chesapeake Bay Critical Area Overlay Districts) and Chapter 71 (Resource Protection Standards) when it has been found that the literal enforcement of those provisions would result in unwarranted hardship on the landowner. The most common Critical Area variance requests are to disturb the Critical Area Buffer, which is a protected area, measured a minimum of 100 feet from the edge of the mean high water line of tidal waters, tidal wetlands, and tributary streams.

The Board heard 12 Critical Area variance requests in 2012 and all 12 requests were approved.

The following chart provides an itemization of Board of Appeals variance cases heard in calendar years 2009 through 2012. As shown in the chart, the number of Critical Area variances declined between the years 2009 and 2010, but steadily increased over the

following years. Standard variances have basically remained level from year to year. The decline in the economy and the housing market over the past several years has influenced property owners' decisions on building and developing, in general, but particularly on waterfront properties. In 2008, for example, the Board of Appeals heard 26 Critical Area variance requests.



B. Conditional Use Cases for 2012

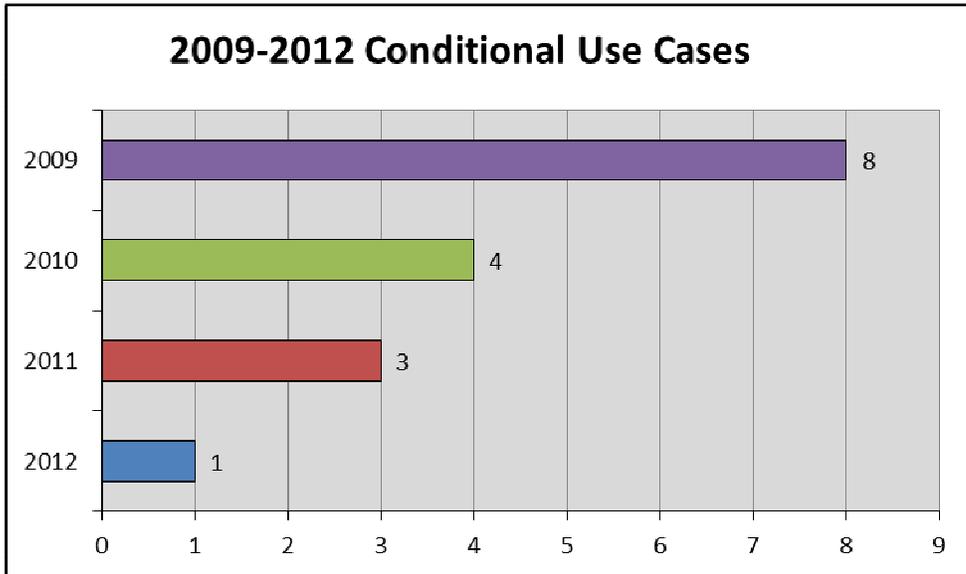
The Board of Appeals' case load for conditional use requests depends, in large part, on the economy. Conditional use requests are typically for new schools or modifications to existing schools in the RPD, new telecommunications towers, and new extractive industries, or expansions of existing mining operations. A recent determination by the County Attorney that schools are State agencies has eliminated the need for schools to seek any kind of approval from the Board.

The Board heard only one conditional use request in 2012, which was not a typical request but one that required conditional use approval nevertheless in the Rural Preservation District (RPD). The Board approved the request for a major agricultural industry in the RPD, which included a mobile meat processing facility. This conditional use request was approved after a long and complex public hearing.

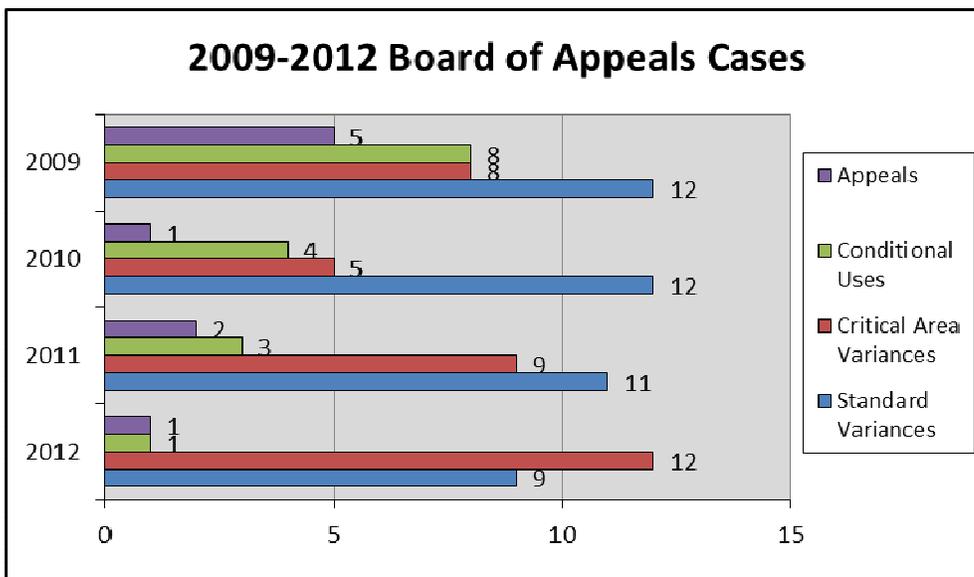
C. Appeal Cases for 2012

The Board of Appeals heard and decided one appeal case in 2012, which was an appeal of the Planning Director's decision in January 2012 that the location of a 12-foot high fence on a property located in the Town Center Mixed Use District was in compliance with prior orders of the Board. The property is the site of Seymour's Inc., an automobile salvage and recycling yard, which is classified as an industrial use. The Board upheld the Planning Director's decision.

The following chart provides an itemization of Board of Appeals conditional use cases heard in calendar years 2009 through 2012.



The following chart is a summary of all Board of Appeals cases beginning with calendar year 2009 through calendar year 2012.



III. Board of Appeals Retreat

The Board of Appeals traditionally has held an Annual Retreat which is designed primarily as a training session for the Board members and staff. The Maryland Department of Planning requires that new Board members obtain formal training within six months after their appointments to the Board. Staffs from the Department of Public Works & Transportation, the Department of Land Use and Growth Management, and the County Attorney's Office participate in the Retreat. The St. Mary's Soil Conservation District and the Maryland Critical Area Commission were represented at the retreat held in April 2012.

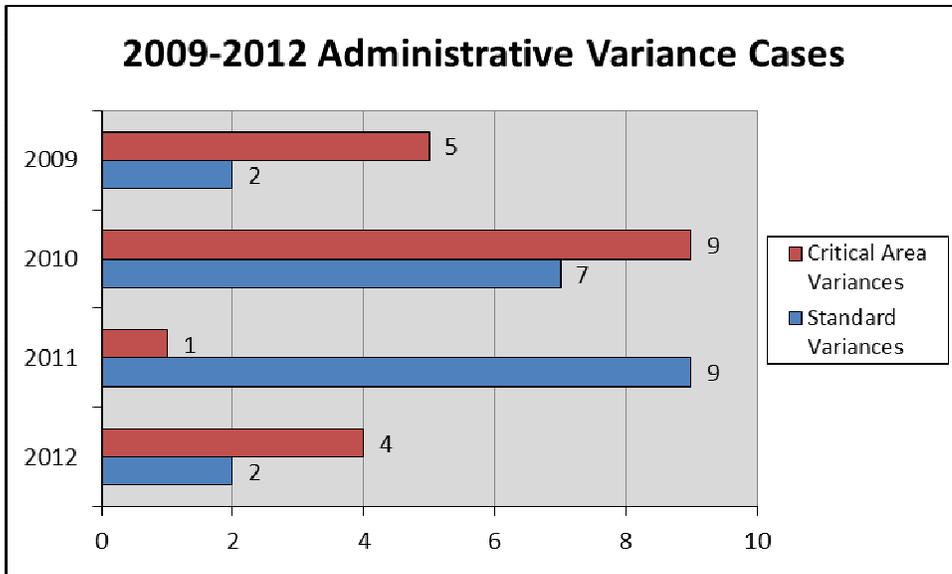
IV. Administrative Variance Cases for 2012

Section 4-205, *Land Use Article*, Annotated Code of Maryland stipulates that a legislative body may authorize the Planning Director or another designee to grant an administrative adjustment (variance) from the following requirements of a zoning law enacted by the legislative body: 1) height; 2) setback; 3) bulk; 4) parking; 5) loading, dimensional, or area; or 6) similar requirements. An administrative adjustment or variance is governed under the Ordinance by the standards for granting a variance. The procedures for obtaining an administrative variance are similar to those applicable to obtaining a variance from the Board of Appeals.

Subparagraph (G) of Section 4-205 prohibits a local jurisdiction from authorizing an administrative adjustment to State or local requirements that are intended to protect environmentally sensitive areas such as streams, slopes, wetlands, natural heritage areas, or Critical Areas. As stated earlier in this report, the *Land Use Article* became effective in October 2012.

The 2012 Administrative hearing case load consisted of four (4) Critical Area variances and two (2) standard variances. All six (6) variance requests were approved.

A breakdown of Administrative Standard and Critical Area Variances are provided in the chart below for the years 2009 through 2012.



V. Administrative Hearing Examiner

The Board of County Commissioners for the first time appointed a part-time Administrative Hearing Examiner in June 2011 with the adoption of Resolution No. 2011-08. A Hearing Examiner is a quasi-judicial officer and is not subject to the direction or supervision of any board or agent of the St. Mary’s County government, or the personnel or procurement policies of County government.

A Hearing Examiner is appointed by the County Administrator upon request by the County Attorney, the Director of Land Use and Growth Management, or the Chair of the Board of Appeals. Once a case has been referred to the Hearing Examiner, the public hearing for a variance or conditional use request or for an appeal of an administrative decision is conducted by the Hearing Examiner. The Hearing Examiner hears and receives evidence, makes findings of fact, states conclusions of law, and recommends an action by the Board of Appeals. All testimony and documentary evidence received is transmitted to the Board of Appeals. All findings of fact and conclusions of law are reported to the Board in the Hearing Examiner’s written decision. The Board, in an open hearing, may adopt the findings, conclusions and recommendations of the Hearing Examiner; or adopt different findings or conclusions based on the record of proceedings before the Hearing Examiner; or for good cause, hear the matter *de novo* (anew).

No cases were heard by the Administrative Hearing Examiner in 2012.

VI. 2012 Summary of Cases – SEE ADDENDUM

ADDENDUM SUMMARY OF 2012 BOARD OF APPEALS CASES

Hearing Date	Case No.	Address Zoning	Request	Written Decision	Admin or BOA?	CA/Non-CA
	FIRST QUARTER					
	JANUARY 2012					
	01/12/12 HEARING					
1/12/12	VAAP 11-132-012 Faith Bible Church	26325 Three Notch RD Mechanicsville, MD RPD	Variance from §32.1 of the CZO to increase the floor area ratio (F.A.R) in the RPD without purchasing Transferable Development Rights (TDRs) as specified in §32.2 of the CZO.	Withdrawn	BOA	NCA
	01/26/12 HEARING					
1/26/12	VAAP 11-1414 Blades	45942 Harbor LN Lexington Park, MD RNC/LDA	Variance request pursuant to §71.8.3 of the CZO to disturb the Critical Area Buffer to construct a two-story addition to the existing dwelling and to expand the existing driveway.	Approved 2/3/12	Admin	CA*
1/26/12	CUAP 10-131-022 Knott Family Farm Meat Processing Facility	38888 Reeves RD Mechanicsville, MD RPD	Conditional Use approval pursuant to §25 of the CZO for a major agricultural industry to include a mobile meat processing facility.	Continued to 2/9/12	BOA	NCA
	FEBRUARY 2012					
	02/09/12 HEARING					
2/9/12	CUAP 10-131-022 Knott Family Farm Meat Processing Facility	38888 Reeves RD Mechanicsville, MD RPD	Conditional Use approval pursuant to §25 of the CZO for a major agricultural industry to include a mobile meat processing facility.	Approved 3/22/12 5-0	BOA	NCA
	02/23/12 HEARING					

2/23/12	VAAP 11-0963 Milan	25136 Lindner LN Hollywood, 20636 RPD/LDA	Variance from §71.8.3 of the CZO to add lot coverage in the Critical Area Buffer and variance from §41.5.3.i (3) (b) of the CZO to trade more than 1,000 square feet of lot coverage in the Critical Area Buffer to construct a replacement single-family dwelling and appurtenances.	Approved for two variances 3/22/12 5-0	BOA	CA*
2/23/12	VAAP 09-1821 Hawes	40335 Drury LN Leonardtowntown, MD RPD/LDA	Variance from §71.8.3 of the CZO to add lot coverage in the Critical Area Buffer and variance from §41.5.3.i (3) (b) of the CZO to trade more than 1,000 square feet of lot coverage in the Critical Area Buffer to construct a replacement single-family dwelling and appurtenances.	Approved for two variances 3/22/12 5-0	BOA	CA*
	MARCH 2012					
3/22/12	VAAP 11-1998 Lexington Park Baptist Church	46855 South Shangri-La DR, Lexington Park, MD RL	Variance from §65.3 of the Comprehensive Zoning Ordinance to increase the square footage of a freestanding sign in the RL District	Approved 5/10/12 5-0	BOA	NCA
	SECOND QUARTER					
	APRIL 2012					
	NO HEARINGS					
	MAY 2012					
	05/10/12 HEARING					

5/10/12	VAAP 11-2116 Mazzocchi	21717 Fairway DR Leonardtown, MD RNC/RCA	Variance from §72.3.1.c of the CZO to clear in excess of 30 percent of the existing vegetation in the Critical Area to construct a single-family dwelling	Approved 6/14/12 5-0	BOA	CA*
	05/24/12 HEARING					
5/24/12	VAAP 11-1875 Ritchie	44722 Three Coves RD Hollywood, MD RPD/LDA	Variance from §71.8.3 of the CZO to replace an existing house in the C.A. Buffer	Approved 5/25/12	Admin	CA*
	JUNE 2012					
	06/14/12 HEARING					
6/14/12	VAAP 11-1831 Elrod	40330 Half Moon CR Mechanicsville, MD RNC/LDA	Variance from §72.3.1.c. of the CZO to clear in excess of 30% of existing vegetation in the Critical Area.	Approved 6/28/12 5-0	BOA	CA*
6/14/12	VAAP 10-1770 Tri-County Builders	29860 Washington RD Mechanicsville, MD RNC/LDA	Variance from §72.3.1.c. of the CZO to clear in excess of 30% of existing vegetation in the Critical Area.	Approved 6/28/12 5-0	BOA	CA*
6/14/12	ZAAP 98-1441 Seymour, Inc.	30085 Charlotte Hall RD, Charlotte Hall, MD TMX	Appeal of the decision of the Director of Land Use & Growth Management on January 20, 2012, that the location of a 12-foot high fence is in compliance with prior orders of the Board of Appeals.	Upheld Director's decision.	BOA	NCA
	06/28/12 HEARING					
6/28/12	VAAP 08-1313 Randall	45354 Daniels RD Hollywood, MD RNC/LDA	Variance, after the fact, from §32.1 of the CZO to reduce the required side yard setback to construct an attached garage.	Continued to 8/28/12	BOA	NCA

6/28/12	VAAP 12-0051 Mitchell	27308 Cat Creek RD Mechanicsville, MD RNC/LDA	Variance from §71.8.3 of the CZO to disturb the Critical Area Buffer to construct a deck, after the fact, and to construct a proposed deck.	Continued to 10/25/12	BOA	CA
6/28/12	VAAP 12-1012 Oakville School Sign	26410 Three Notch RD Mechanicsville, MD RPD	Variance from §65.3.4.i of the CZO to allow an electronic changeable copy sign in the RPD.	Approved 7/12/12 5-0	BOA	NCA
THIRD QUARTER						
JULY 2012						
7/12/12 HEARING						
7/12/12	VAAP 12-0502 Ropshaw	16166 Drury RD Ridge, MD RPD/LDA	Variance from §71.8.3 of the CZO to disturb the Critical Area Buffer to construct a replacement single-family dwelling and appurtenances.	Approved 7/23/12	Admin	CA*
7/12/12	VAAP 11-2040 Doussard Garage & Shed	16480 Sayre Point LN Piney Point, MD RPD/ LDA	Variance from §71.8.3 of the CZO to disturb the Critical Area Buffer to construct a shed and walkway; Variances from §51.2.4 of the CZO to reduce the required 10-foot setback between structures.	Approved 7/12/12 5-0	BOA	CA*
7/12/12	VAAP 12-0511 Medlin	45352 Sypher RD California, MD RL-T/LDA	Variance from § 71.8.3 of the CZO to disturb the Critical Area Buffer to construct an addition to a single-family dwelling.	Continued to 9/8/12	BOA	CA

7/12/12	VAAP 10-120-001 Kingswood Subdivision	22100 Point Lookout RD, Leonardtown, MD RPD	Variance from §32.1 of the CZO to increase the residential density in the RPD; variances from §32.1 of the CZO to reduce the required side yard setbacks in the RPD on proposed lots 1 through 5; variances from §32.1 of the CZO to reduce the front yard setbacks in the RPD on proposed lots 1 through 6; variances from §32.1 of the CZO to reduce the required minimum 150-foot lot width in the RPD on proposed lots 1 through 6; variances from §32.1 of the CZO to reduce the required 75-foot minimum lot frontage in the RPD on proposed lots 2, 3, and 4; and variance from §30.14.5.c of the St. Mary's County Subdivision Ordinance (No. S-10-01) to increase the number of residential lots on a private road.	Continued to 9/13/12	BOA	NCA
7/26/12	7/26/12 HEARING VAAP 10-1534 Pilkerton Property	43702 Lifelong Landing Way, Hollywood, MD RPD/RCA	Variance, after the fact, from §71.8.3 of the CZO to disturb the Critical Area Buffer to add lot coverage in the Buffer.	Continued to 9/13/12	BOA	CA
7/26/12	VAAP 10-1341 Sparks	25410 Vista RD Hollywood, MD RPD	Variance from §51.3.116 of the CZO to increase the allowed square footage of a home occupation in the RPD.	Approved 8/9/12 5-0	BOA	NCA
	AUGUST					
	8/9/12 HEARING					

8/9/12	VAAP 08-1313 Randall (Continued from 6/28/12)	45354 Daniels RD Hollywood, MD RNC/LDA	Variance, after the fact, from §32.1 of the CZO to reduce the required side yard setback to construct an attached garage.	Approved 9/9/12 5-0	BOA	NCA
SEPTEMBER						
9/13/12	VAAP 10-1534 Pilkerton Property (Continued from 7/26/12)	43702 Lifelong Landing Way, Hollywood, MD RPD/RCA	Variance, after the fact, from §71.8.3 of the CZO to disturb the Critical Area Buffer to add lot coverage in the Buffer.	Continued to 9/27/12. Withdrawn from 9/27 hearing prior to hearing. Resolved with Staff.	BOA	CA
9/13/12	VAAP 12-131-006 Loveville Surface Mine	24410 Dellie LN Leonardtown, MD RPD	Variance from §51.3.82 of the CZO to reduce the required 200-foot setback from the external property lines.	Continued to 10/25/12	BOA	NCA
9/13/12	CUAP 12-131-006 Loveville Surface Mine	24410 Dellie LN Leonardtown, MD RPD	Conditional Use approval pursuant to §25 of the CZO for an extractive industry involving the mining of more than five acres.	Continued to 10/25/12	BOA	NCA

<p>9/13/12</p>	<p>VAAP 10-120-001 Kingswood Subdivision (Continued from 7/12/12)</p>	<p>22100 Point Lookout RD, Leonardtown, MD RPD</p>	<p>Variance from §32.1 of the CZO to increase the residential density in the RPD; variances from §32.1 of the CZO to reduce the required side yard setbacks in the RPD on proposed lots 1 through 5; variances from §32.1 of the CZO to reduce the front yard setbacks in the RPD on proposed lots 1 through 6; variances from §32.1 of the CZO to reduce the required minimum 150-foot lot width in the RPD on proposed lots 1 through 6; variances from §32.1 of the CZO to reduce the required 75-foot minimum lot frontage in the RPD on proposed lots 2, 3, and 4; and variance from §30.14.5.c of the St. Mary's County Subdivision Ordinance (No. S-10-01) to increase the number of residential lots on a private road.</p>	<p>Continued to 10/11/12</p>	<p>BOA</p>	<p>NCA</p>
<p>9/13/12</p>	<p>VAAP 11-1852, Holt</p>	<p>26516 Holt LN Mechanicsville, MD RPD</p>	<p>Variance from §32.1 of the CZO to increase the residential density in the RPD with the addition of a second dwelling</p>	<p>Rescheduled failed to post sign by required deadline.</p>	<p>BOA</p>	<p>NCA</p>

9/13/12 Admin.	VAAP 12-1389 McNamara	45933 E. Quincy Terr. Lexington Park, MD RNC/RCA	Variance from §71.8.3 of the CZO to disturb the Critical Area Buffer to construct an addition and a deck to the existing house; variance from §32.1 of the CZO to reduce the required 25-foot front yard setback to construct a carport.	Approved 9/18/12	Admin.	CA*
9/13/12 Admin.	VAAP 12-1672 Meinecke	46564 Yorktown RD Lexington Park, MD RNC	Variance from §32.1 of the CZO to reduce the required 25-foot front yard setback to construct a porch.	Approved 9/18/12	Admin.	NCA
FOURTH QUARTER						
OCTOBER						
10/11/12	10/11/12 HEARING VAAP 10-120-001 Kingswood Subdivision (Continued from 9/13/12)	22100 Point Lookout RD, Leonardtown, MD RPD	Variance from §32.1 of the CZO to increase the residential density in the RPD; variances from §32.1 of the CZO to reduce the required side yard setbacks in the RPD; variances from §32.1 of the CZO to reduce the front yard setbacks in the RPD; variance from §32.1 to reduce a rear yard setback; variance from §32.1 of the CZO to reduce the 160-foot lot depth in the RPD; variance from §32.1 of the CZO to reduce the required 150-foot lot width in the RPD; variances from §32.1 of the CZO to reduce the required 75-foot minimum lot frontage in the RPD.	Continued to 10/25/12	BOA	NCA
10/25/12 HEARING						
10/25/12 HEARING						

10/25/12	VAAP 10-120-001 Kingswood Subdivision (Continued from 10/11/12)	22100 Point Lookout RD, Leonardtown, MD RPD	Variance from §32.1 of the CZO to reduce the front yard setback in the RPD.	Approved 10/25/12 5-0	BOA	NCA
10/25/12 (continued from 6/28/12)	VAAP 12-0051 Mitchell (Continued from 06/28/12)	27308 Cat Creek RD Mechanicsville, MD RNC/LDA	Variance from §71.8.3 of the CZO to disturb the Critical Area Buffer to construct a deck, after the fact, and to construct a proposed deck.	Approved 10/25/12 5-0	BOA	CA*
10/25/12	VAAP 12-131-006 Loveville Surface Mine (Continued from 09/13/12)	24410 Dellie LN Leonardtown, MD RPD	Variance from §51.3.82 of the CZO to reduce the required 200- foot setback from the external property lines.	Continued to 01/10/13	BOA	NCA
10/25/12	CUAP 12-131-006 Loveville Surface Mine (Continued from 09/13/12)	24410 Dellie LN Leonardtown, MD RPD	Conditional Use approval pursuant to §25 of the CZO for an extractive industry involving the mining of more than five acres.	Continued to 01/10/13	BOA	NCA
NOVEMBER						
11/15/12 HEARING						
11/15/12	VAAP 12-1562 Hackett	45174 Christman RD Hollywood, MD RNC/LDA	Variance from §71.8.3 of the CZO to disturb the Critical Area Buffer to construct a replacement dwelling.	Approved 12/13/12 5-0	BOA	CA*
11/15/12	VAAP 11-1852 Holt	26516 Holt LN Mechanicsville, MD RPD	Variance from §32.1 of the CZO to increase the residential density in the RPD with the addition of a second dwelling	Disapproved 12/13/12 3-2	BOA	NCA
11/15/12	VAAP 07-3195 Bright	40295 Rosebank LN Leonardtown, MD RPD/LDA	Variance from §71.8.3 of the CZO to disturb the Critical Area Buffer to add lot coverage in the Buffer; Variance from §32.1 of the CZO to reduce the side yard setback on the west side of the property.	Approved 12/13/12 5-0	BOA	CA*
DECEMBER						

12/13/12	12/13/12 HEARING	16340 Piney Point RD Piney Point, MD RPD/RCA/AE	Variance from §71.8.3 of the CZO to disturb the Critical Area Buffer to construct a replacement dwelling; variance from §41.5.3.i.(3)(b) of the CZO to trade more than 1,000 square feet of lot coverage in the Critical Area Buffer.	Approved 1/10/13 5-0	BOA	CA*
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"CZO" denotes Comprehensive Zoning Ordinance

Note: No (BOA) hearing was scheduled on 4/12/12, 5/24/12, 8/20/12 or 9/27/12.

Note: Scheduled hearing for 4/26/12 was cancelled upon case withdrawal prior to hearing.

*Decision/Orders have been mailed to Critical Area Commission.