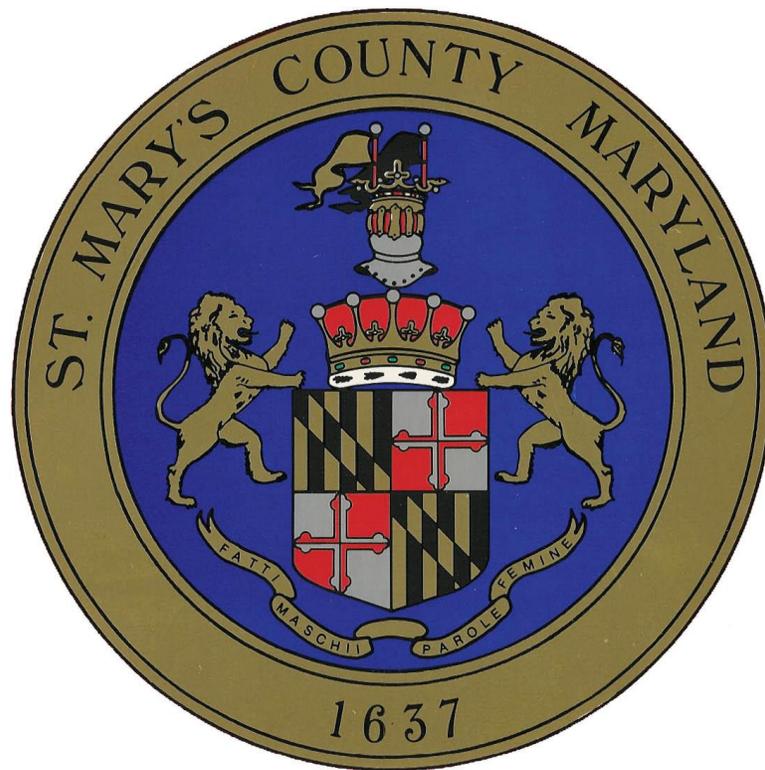


*St. Mary's County
Board of Appeals
Annual Report*



Calendar Year
2016

Prepared By:
The Department of Land Use and Growth Management
23150 Leonard Hall Drive
P.O. Box 653
Leonardtown, MD 20650

ST. MARY'S COUNTY BOARD OF APPEALS 2016 MEMBERSHIP

George Allan Hayden, Sr., Chair
John Brown, Vice Chair
William Greene, Member
David (Wayne) Miedzinski, Member
Ronald Payne, Member
Peter (Stuart) Egeli, 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 III
Benjamin Cohen, Planner II
Ashley Renshaw, Recording Secretary
Jacqueline Green, 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 Commissioners of St. Mary's County. 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, as amended, (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 and the *Land Use Article*, 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 specific regulations of the Ordinance. The modifications in a variance may be only of density, bulk, dimensional, or area requirements of the Ordinance in accordance with Section 4-206 of the *Land Use Article*.
- 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. 2016 CASELOAD

A. Board of Appeals Variance Cases for 2016

The Board of Appeals (the "Board") 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 *Annotated 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 also hears requests from developers to reduce setbacks, or buffer yards on proposed commercial projects where a property is so constrained that development would be prohibited without the variances.

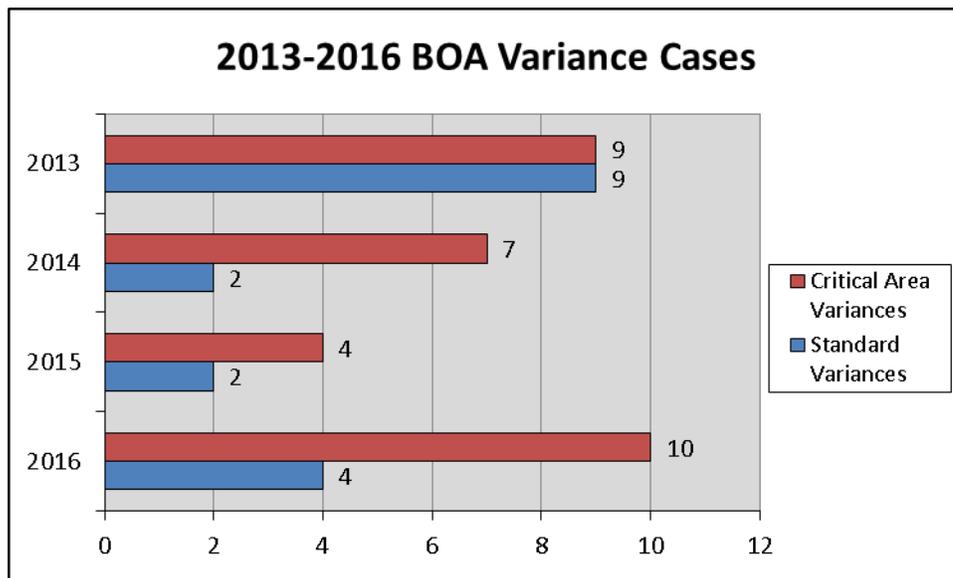
The Board heard four (4) standard variance requests in 2016: one (1) to reduce the lateral line setbacks to construct a pier; two (2) to reduce the required buffer yards for two commercial developments; and one (1) to build in the expanded buffer from nontidal wetlands. All four requests were approved as the Board found that the standards for granting a variance were met in each case.

Variances 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 request is to disturb the Critical Area Buffer, which is a protected area measured a minimum of 100 feet landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams in the Critical Area.

The Board heard ten (10) Critical Area variance requests in 2016 compared to four (4) requests in 2015. All ten requests were approved. Eight of the requests were to disturb the Critical Area Buffer to construct a new, or replacement single-family dwelling, and two of the requests were to disturb the Buffer to add onto existing dwellings.

The chart below provides an itemization of Board of Appeals variance requests heard and decided in calendar years 2013 through 2016. As shown in the chart, the Board heard a total of 30 Critical Area variance requests during this period, an average of about eight (8) cases per year. During this same time the Board heard 17 standard variance requests, an average of about four (4) cases per year.

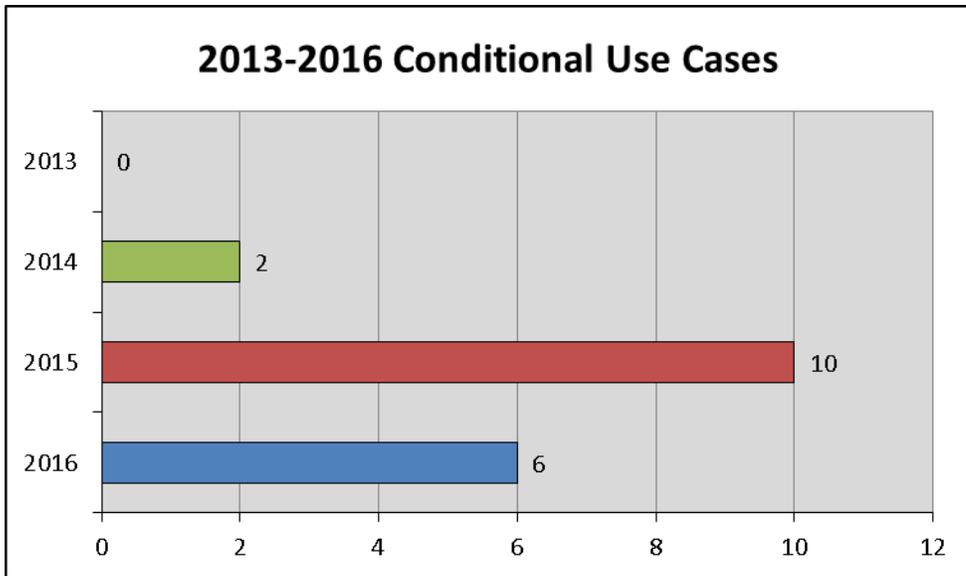
The number of Critical Area permits issued in 2016, approximately 400, was essentially the same as the number of permits issued in 2015. However, the number of Critical Area variance requests more than doubled in 2016 compared to 2015 as we saw more property owners building new and improving existing structures on their waterfront properties.



B. Board of Appeals Conditional Use Cases for 2016

The Board heard a total of six (6) conditional use requests: two requests to construct a commercial communications tower; three requests to operate an extractive industry involving mining more than five acres; and one request to operate a slaughterhouse facility. The Board granted all but one of the conditional use requests. The Board denied the request to replace an existing commercial communications tower on property owned by Besche Oil.

The following chart provides an itemization of Board of Appeals conditional use cases heard and decided in calendar years 2013 through 2016.

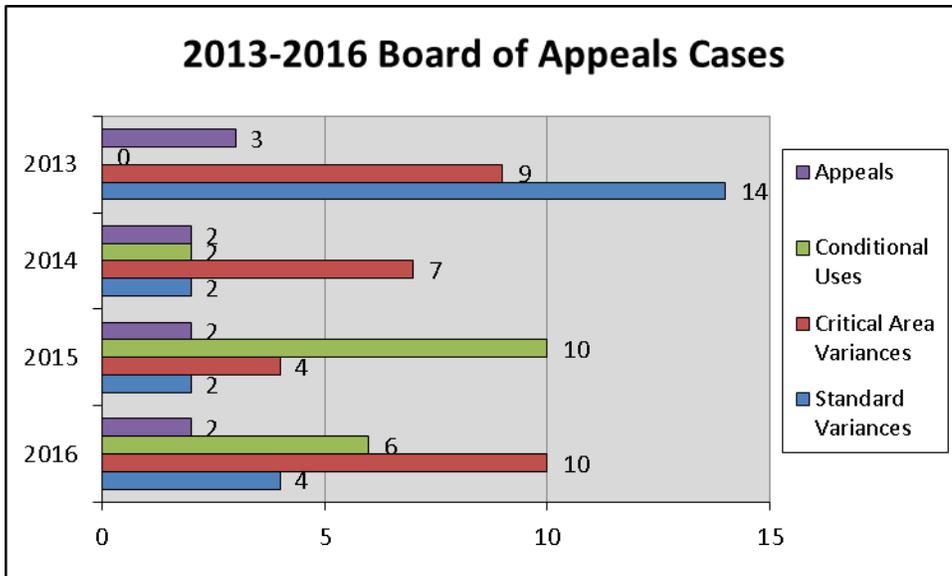


C. Board of Appeals Appeal Cases for 2016

The Board decided two appeal cases in 2016. The first case was an appeal of the Planning Director’s decision to disregard certain regulations pertaining to temporary signs in the County. The Administrative Hearing Examiner conducted the public hearing on the appeal; accepted evidence and testimony; and made his findings of fact, conclusions of law, and recommendation to the Board. The Board accepted the Hearing Examiner’s findings and conclusions of law and subsequently voted to affirm the Planning Director’s decision.

The second case involved the appeal of the decision by the Planning Commission denying a concept site plan for a multi-use commercial center. The Board considered the Applicant’s appeal and conducted the request for concept site plan approval *de novo*, exercising the powers of the Planning Commission. The Board found that the Applicant had met all requirements for concept site plan approval and approved the plan subject to the Applicant meeting five conditions imposed by the Board.

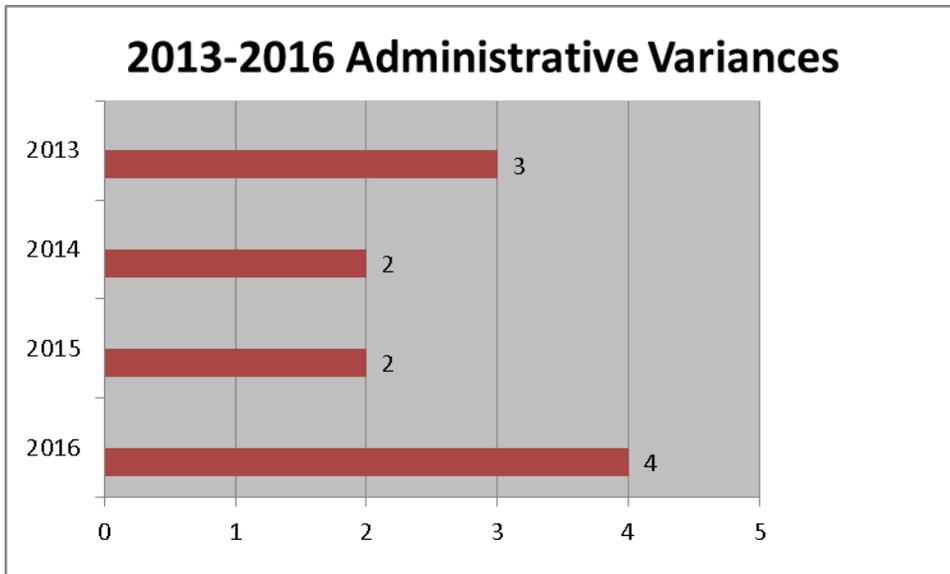
The following chart is a summary of all Board of Appeals cases, including appeal cases, beginning with calendar year 2013 through calendar year 2016. The Board has heard an average of 20 cases over the past four years.



III. Administrative Variance Cases for 2016

Section 4-205 of the *Land Use Article* stipulates that a legislative body may authorize the Planning Director or another designee to grant an administrative adjustment 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 a 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.

In addition to the types of variances explained above, the Planning Director may also grant a variance from Forest Conservation Priority Retention Areas in accordance with Section 24.10 of the Ordinance. Seven of the 11 administrative variances granted over the past four years have been to remove trees having a diameter of 30 inches or more when measured at a height of 4.5 feet above the ground. The four other variances were to reduce required front and side yard setbacks as identified in Schedule 32.1 of the Ordinance pertaining to development standards.



IV. 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 Director of Land Use and Growth Management, or the Chair of the Board of Appeals, or the County Attorney. 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).

One case was heard by the Administrative Hearing Examiner in 2016 and decided by the Board of Appeals. This case is included in the attached summary of cases.

V. 2016 Summary of Cases – SEE ADDENDUM