

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP 23-0018

235 FARM & OUTDOOR SPORTS

EIGHTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: MAY 11, 2023

ORDERED BY:

**Mr. Ichniowski, Mr. Bradley, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: June 8, 2023

Pleadings

231 Materials & Recycling Products, LLC (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 63.3.a to remove a portion of the 65’ Type B Buffer Yard along Maryland Route 235 and to remove a portion of the 30’ Type C Buffer Yard along the northwestern property line adjacent to a residential use property.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on April 21, 2023 and April 28, 2023. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before April 26, 2023. The agenda was also posted on the County’s website on May 5, 2023. Therefore, the Board of Appeals (“Board”) finds and concludes that there has been compliance with the hearing’s notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on May 11, 2023 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed amendment requested by the Applicant.

The Property

The property (“the Subject Property”) is located at 23200 Three Notch Road, California, consists of 40,414 square feet, more or less, and may be found at Tax Map 34, Grid 16, Parcel 43, Lot 8 of the By the Mill Subdivision. It is zoned Medium Intensity Mixed Use (“MXM”) and has an AE-4 AICUZ overlay.

The Variance Requested

Applicant seeks a variance from the St. Mary's County Comprehensive Zoning Ordinance ("CZO") Schedule 63.3.a to remove a portion of the 65' Type B Buffer Yard along Maryland Route 235 and to remove a portion of the 30' Type C Buffer Yard along the northwestern property line adjacent to a residential use property.

St. Mary's County Comprehensive Zoning Ordinance

CZO Schedule 63.3.a of the Zoning Ordinance prescribes the standards required of the A, B, and C-type buffers when such buffers are required for new development or development. For purposes of determining Buffer requirements, Use Type 75 – Retail Sales or Service, Vehicle, is considered a "high intensity" commercial use and requires a 65' Type B Buffer yard when adjoining a road and a 30' Type C buffer yard when adjoining a residential use.

Departmental Testimony and Exhibits

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented the following evidence:

- The Subject Property is 40,414 square feet in size and contains one existing 2,156 square foot building constructed in 1951. All measurements and the year of the construction are provided by the State Department of Assessments and Taxation.
- The Property is in the Lexington Park Development District. The Applicant is proposing the retail sales of trailers, tractors, ATVs, etc., with an outdoor display on existing residential property, a use LUGM staff determined is most substantially similar to existing Use Type 75.
- A change of use from residential to commercial use requires a Concept Site Plan. During the review process it was determined that the application, to be developed

as presented, needed a variance from the buffer yard standards of CZO Section 63.3.

- The site plan is currently has been approved or received a “no comment” by the St. Mary’s County Health Department, Maryland State Highway Administration, Soil Conservation District, Southern Maryland Electric Cooperative, the Maryland Department of the Environment, the Department of Natural Resources, the Board of Education, St. Mary's County Recreation and Parks, the Department of Public Works and Transportation, and Patuxent River Naval Air Station. The Metropolitan Commission requires a water sewer waiver.
- The Applicant has made an application to the Board of Appeals for a variance to the front buffer by removing a portion of it to allow the existing pavement to remain. Additionally, the residential property adjoining the project site to the north will require a 30’ Type C buffer yard by removing a portion of the buffer yard to allow the existing pavement and structure to remain.
- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Location Map
 - #3: Land Use Map
 - #4: Zoning Map
 - #5: Existing Features Map
 - #6: Site Plans
 - #7: Schedule 63.3.a Buffer Yard Standards
 - #8: Schedule 63.3.b Buffer Yard Requirements

- #9: Staff TEC Comments

Applicant's Testimony and Exhibits

Applicant was represented by Joe Kadjeski of COA Barrett, LLC and Erin Kimbro of 235 Farm and Outdoor Sports, the operator of the intended facility. The following testimony was presented:

- The variance is being requested to allow utilization of the existing building and existing paved driveway, which are located within the required buffer yards.
- Drive is minimal compared to traffic on Route 235 or residential roads.
- The property has been utilized commercially since 2017, although a change of use permit was not filed at that time. The proposed use will fit the intent of the MXM zoning district which promotes commercial and residential uses adjacent to existing transportation corridors.
- The proposed use will create minimal additional traffic and maintain existing access on MD-235. The project will not negatively impact public safety or property values of adjoining parcels.

Public Testimony

No members of the public appeared to offer testimony related to this matter.

Decision

County Requirements for Granting Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a variance to be issued:

- (1) Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of this

Ordinance will result in practical difficulty;

- (2) The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification;
- (3) The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding;
- (4) The alleged difficulty has not been created by the property owner or the owner's predecessors in title;
- (5) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance;
- (6) The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and
- (7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

Id.

Findings – Standard Variance Requirements

Upon review of the facts and circumstances, the Board finds and concludes that the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. Several factors support this decision.

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical surroundings of the Property. § 24.3(1). In *McLean v. Soley*, 270

Md. 208 (1973), the Maryland Court of Appeals established the standard by which a zoning board is to review “practical difficulty” when determining whether to grant a variance:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Id. at 214–15.

Denial of this variance would impose a practical difficulty upon the Applicant. Without the variance, Applicant would be forced to reconfigure existing buildings and improvements that have stood in their present locations for decades; the cost of such reconstruction would render conformity with the required buffer yards burdensome. On balance, it does not appear to the Board that there would be significant salutary effects to strict enforcement of the buffer yard requirements. The improvements will stay as they have for years, and site conditions will grow no worse; if anything, the façade improvements described by Applicant will bring cosmetic appeal to the area.

Given that the need for this variance is driven solely by the location of existing buildings on this particular parcel the Board finds the need for this variance does not arise from conditions

generally present on other similarly zoned parcels.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” The Applicant has demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, Applicant’s need for a variance stems from the location of existing site improvements built long prior to the advent of the County’s buffer yard standards.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. All appropriate agency approvals have been received and no reviewing agency has commented negatively. The neighboring property owners were notified of the variance request and given an opportunity to speak on the matter; none have availed themselves of this opportunity.

Sixth, the proposed development will not increase the residential use of the property and the Board does not find that it will increase congestion or the risk of fire, endanger public safety, or substantially diminish or impair property values in the neighborhood.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. Consequently, the Board finds granting the variance, in this instance, would strike an appropriate balance.

ORDER

PURSUANT to the application of 231 Materials & Recycling Products, LLC, petitioning for a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 63.3.a to remove a portion of the 65’ Type B Buffer Yard along Maryland Route 235 and to remove a portion of the 30’ Type C Buffer Yard along the northwestern property line adjacent to a

residential use property; and

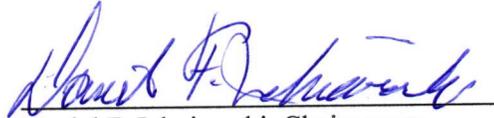
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 21.1.3.a and CZO § 24.8, that the Applicant is granted a variance from the St. Mary's County Comprehensive Zoning Ordinance ("CZO") Schedule 63.3.a to reduce a portion of the 65' Type B Buffer Yard along MD Route 235 by 80 feet and to remove a portion of the 30' Type C side Buffer Yard from the right of way line of MD Route 235 into the property by 150 feet;

UPON FURTHER CONDITION THAT, Applicant shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for Applicant to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: JUNE 8, 2023

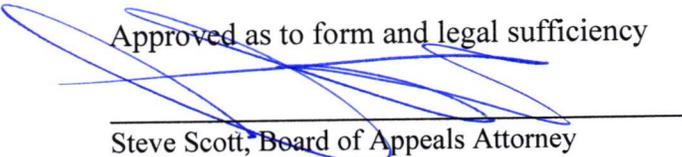

Daniel F. Ichniowski, Chairperson

Those voting to grant the amendment:

Mr. Ichniowski, Mr. Bradley, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson

Those voting to deny the amendment:

Approved as to form and legal sufficiency


Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the St. Mary's County Circuit Court.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one year from the date the Board of Appeals granted the variance unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the variance is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.