

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP NUMBER CUAP # 17-1296

GEORGE & STEPHANIE HALL

SEVENTH ELECTION DISTRICT

DATE HEARD: June 17, 2020

ORDERED BY:

**Mr. Hayden, Mr. Brown, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: July 9, 2020

Pleadings

George & Stephanie Hall (the “Applicants”) seek conditional use approval, CUAP #17-1296, for a private landing strip and hangar within the Rural Preservation District (“RPD”) and Resource Conservation Area (“RCA”) overlay.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County (“County”), on May 27, 2020 and June 3, 2020. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished by the Department of Land Use and Growth Management. The agenda was also posted on the County’s website on June 9, 2020. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes that the Applicants have complied with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on June 17, 2020 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed conditional use requested by the Applicants.

The Property and the Site

The Applicants own a property of approximately 36.88 acres (the “Property”) at 39200 Hodges Road, Avenue, Maryland. The Property is located in the RPD with an RCA overlay and is identified on Tax Map 39, Grid 15, Parcel 281.

The proposed conditional use would encompass a 20-foot wide x 1,600-foot long grass landing strip with a 6,000 square foot hangar (the “Site”) for private, non-commercial use only. The landing strip stretches east-northeast and includes a turnaround at its western end that is approximately forty-five feet from Hodges Road. The nearest property line is 30 feet from the Site, the nearest structure is a barn located approximately 250 feet from the Site, and the nearest residence is approximately 500 feet from the Site, all of which are the same adjacent property and owned by the Cervinos. Moreover, powerlines are situated on the opposite side of Hodges Road on the other side of a ditch.

The location of the landing strip allows the Applicants to take off from and land on either end. The takeoff and landing paths do not require the Applicants to fly over any residences, though the Cervinos’ barn is in the takeoff and landing path to the west.

The Conditional Use Requested

The Applicants seek a conditional use pursuant to St. Mary’s Comprehensive Zoning Ordinance (“CZO”), Chapter 25, Schedule 50.4 Use # 88, Section 51.3.88, as amended by Ordinance 2019-03, for a 20-foot wide x 1,600-foot long grass landing strip with a 6,000 square foot hangar for private, non-commercial use only.

The St. Mary’s County Comprehensive Zoning Ordinance

Pursuant to Schedule 50.4 of the CZO, Use Type 88, as amended by Ordinance 2019-03, “Airport, Landing Strip and Heliport” is defined as:

Facilities open to aviation or operated for the takeoff and landing of aircraft, including runway, landing strip, heliports, helipads, passenger and cargo facilities, facilities for air traffic control, emergency service, information devices, maintenance and overhaul, fueling, service, storage, tie-down areas, hangars, and other necessary open spaces. May include office and facilities for flight instruction, charter, and cargo service, and related services for airport customers as accessory uses.

The Evidence Submitted at the Hearing by LUGM

Harry Knight, Deputy Director of the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The Property is family owned and occupied, consisting of approximately 36.88 acres and is assessed "AGRICULTURAL" by the Maryland Department of Assessments and Taxation. The Property consists of a single-family dwelling, accessory structures, six acres of forest, and twenty-two acres of open farm fields.
- The Applicants are requesting Conditional Use approval a 20-foot wide x 1,600-foot long grass landing strip with a 6,000 square foot hangar for private, non-commercial use only within the RPD and RCA overlay.
- In this zone and overlay, the Site can only be approved as a conditional use. The site plan is currently under review at the St. Mary's County Health Department, St. Mary's County Soil Conservation District, the St. Mary's County Department of Public Works and Transportation, and LUGM. The Critical Area Commission has conditioned its approval on the Applicants' satisfaction of all other Critical Area requirements.
- Pursuant to Section 25.9 of the CZO, "Limitations on Conditional Use Approval," "Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period."
- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter;

- #2: Location Map;
- #3: Land Use Map;
- #4: Zoning Map;
- #5: Site Plan; and
- #6: Ordinance No. 2019-03, allowing private landing strips in the RCA.

Applicants' Testimony and Exhibits

The Applicants appeared over WebEx before the Board. The following evidence was presented:

- George Hall is a licensed pilot, recently licensed as an instrument-rated pilot. The Applicants own their own plane and have a hangar at the St. Mary's County Regional Airport.
- The Applicants' plane will be used for recreation and not for commuting. The Applicants anticipate using their plane three to four times per month.
- When the Applicants originally applied for a permit for the proposed conditional use in July 2017, the permit was denied because the proposed conditional use was not allowed in the RCA overlay. Subsequently, the Applicants applied for, and the Commissioners of St. Mary's County approved, a text amendment to the CZO. *See* Ordinance 2019-03; Ex. 2, Attachment 6.
- The Applicants were emphatic that the proposed conditional use is not an airport, but rather a private landing strip that will not be used commercially. As a private, non-commercial landing strip, only the Applicants and pilots in an emergency may use the Site.
- Moreover, there is no helipad, and the Applicants do not anticipate a helipad in the

future. If the Applicants sought to build a helipad in the future, the Applicants would need to obtain a new conditional use permit and appear before the Board.

- The Applicants will not store fuel at the Site.
- There are six private landing strips in rural areas of St. Mary's County, one of which is within one mile of the Site and the other is within two miles of the Site.
- There will be no nighttime flying, no lights at the Site, and no alteration to electrical lines.
- The nearest property line, residence, and structure are owned by the Cervinos, who do not object to the proposed use.
- Under the CZO, the minimum lot size for the proposed use is 20 acres, and the Applicants' property is approximately 36.88 acres.
- The Site shall be maintained in grass or similar low vegetation, and most of the farmland on the Property will remain in its current agricultural use.
- The Site will not generate any increased traffic.
- The Applicants have not contacted any local fire department concerning the Site.

Decision

County Requirements for Granting Conditional Uses

The St. Mary's County Comprehensive Zoning Ordinance § 25.6 sets forth eight separate standards that must be met for a conditional use to be granted:

1. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;
2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, morals, order, or

- general welfare;
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood;
 4. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district;
 5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided;
 6. Adequate measures have been or will be taken to provide ingress and egress following a design that minimizes traffic congestion in the public streets;
 7. The proposed conditional use is not contrary to the goals, objectives, and policies of the St. Mary's County, Maryland Comprehensive Plan ("Comprehensive Plan"); and
 8. The conditional use, in all other respects, conforms to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in the Ordinance.

Id. Moreover, CZO § 51.3.88.a, as amended by Ordinance 2019-03, requires the following seven specific standards that must be met for Use # 88:

1. Permit approval shall be required for landing strips, and helipads;
2. Landing strips and helipads shall be prohibited in the Critical Area Buffer. Variances for these uses in the Critical Area Buffer shall not be granted;
3. Publicly owned airports, landing strips, helipads, and heliports. and privately-owned airports and heliports are not allowed;

4. Private landing strips and helipads are allowed;
5. The minimum lot size shall be 20 acres;
6. All businesses such as the sale or leasing of aircraft, maintenance, or flight school and any other type of commercial operations as defined in the Federal Aviation Administration regulations shall be prohibited; and
7. Shall be maintained in grass or similar low vegetation.

Conclusions

Upon review of the facts and circumstances, the Board concludes that the Applicants have met the general standards for granting a conditional use under CZO § 25.6 and the specific standards under CZO § 51.3.88.a. Several factors support this decision.

a. General Standards under CZO § 25.6

First, the proposed conditional use, “Airport, Landing Strip, and Heliport,” complies with the standards of the RPD and RCA because the proposed conditional use is permitted in this zoning district pursuant to CZO § 51.3.88.a, as amended by Ordinance 2019-03.

Second, the Property has been and is currently in private, non-commercial, residential, and agricultural use. Moreover, Mr. Hall is a licensed pilot, certified in both visual and instrument flight rules. The Site is situated away from residential uses, and the closet structure—though within the landing and takeoff paths to the west—is a barn approximately 250 feet away from the Site. Moreover, the construction, maintenance, and operation of the Site will be subject to numerous County, State, and Federal regulations specifically intended to ensure the public’s health, safety, and welfare.

Third, the current uses on neighboring properties are residential and agricultural. The Site, as proposed, will be approximately 500 feet away from the nearest residence, 250 feet from the

nearest structure, and 30 feet from the nearest property line, all of which belong to the Cervinos, who, according to the Applicants, do not oppose ~~X~~ the Site. At the hearing, several neighbors voiced their objections to the proposed use, citing wildlife, noise, and safety concerns. The Board acknowledges those concerns but recognizes that there are six other private landing strips in St. Mary's County, and there is little to no evidence that those private landing strips have contributed to the harms advanced by the opposing neighbors. Furthermore, no evidence was presented that the Site would diminish or impair property values in the neighborhood, and, likewise, no evidence was presented that similarly situated private landing strips in St. Mary's County have had those effects.

Fourth, given the rural character of the surrounding agricultural and residential properties, the proposed Site is less likely to have an adverse effect at its location than it would in a more densely populated and/or intensely used area of the RPD or RCA. Moreover, the minimum lot size for Use Type 88 is 20 acres, and at approximately 36.88 acres the Property has nearly double the required acreage.

Fifth, the site plan addresses and ensures that adequate facilities, including utilities, access roads, and drainage, will be provided. As for access roads, a driveway exists on Hodges Road to the Property, and a gravel road will connect from Hodges Road to the proposed hangar site. That gravel road will not increase traffic in the neighborhood. Furthermore, the permit site plan review process, administered by LUGM, will ensure that adequate utilities, road access, and stormwater management will be provided.

Sixth, the existing point of ingress and egress is an existing driveway onto Hodges Road, a secondary class road that is owned and maintained by St. Mary's County. Moreover, the Site will construct a gravel drive from Hodges Road, but this private landing strip will not generate any traffic congestion.

Seventh, the proposed Site comports with the Comprehensive Plan, which seeks to “limit non-farm residential development outside of growth areas to be in scale and consistent with the rural character of the surrounding area” by “[p]reserv[ing] open space and limit[ing] impacts to environmentally sensitive areas.” Comprehensive Plan, §§ 4.4.1.B. The Site will be maintained in grass or similar low vegetation, and most of the farmland—presently 22 acres of open farm fields—on the Property will remain in its current agricultural use. Moreover, the recent text amendment highlights that this type of conditional use was specifically anticipated in the RCA, particularly as other private landing strips exist in other areas of the St. Mary’s County RPD.

Finally, the Site is consistent with RPD and RCA development standards, as the Site will be a private, non-commercial landing strip that is maintained in grass or low vegetation and will be situated on a property with approximately 36.88 acres. To reiterate above, most of the existing farmland will remain in its current agricultural use. Consequently, the Site will not inhibit the activities are promoted within the RPD or RCA, and further compliance with the standards specific to the private landing strip and hangar is evidenced by the site plan and multi-agency review at the County, State, and Federal levels. Moreover, the permit site plan review process, administered by LUGM, will ensure that the private landing strip and hangar, as proposed, complies with the requirements of the CZO, as it pertains to Use # 88, as amended by Ordinance No. 2019-03, in the RPD and RCA.

b. Specific Standards under CZO § 51.3.88.a

First, the Applicants are before the Board as part of the permit approval process and cannot obtain a permit prior to Board approval of their proposed conditional use. Pursuant to the below order., this Board is conditionally approving that proposed conditional use.

Second, the proposed runway is not within the Critical Area Buffer.

Third, the Site is a private landing strip and hangar. It is neither a publicly-owned airport, landing strip, helipad, or heliport nor a privately-owned airport or heliport.

nearest structure, and 30 feet from the nearest property line, all of which belong to the Cervinos, who, according to the Applicants, do not oppose the Site. At the hearing, several neighbors voiced their objections to the proposed use, citing wildlife, noise, and safety concerns. The Board acknowledges those concerns but recognizes that there are six other private landing strips in St. Mary's County, and there is little to no evidence that those private landing strips have contributed to the harms advanced by the opposing neighbors. Furthermore, no evidence was presented that the Site would diminish or impair property values in the neighborhood, and, likewise, no evidence was presented that similarly situated private landing strips in St. Mary's County have had those effects.

Fourth, given the rural character of the surrounding agricultural and residential properties, the proposed Site is less likely to have an adverse effect at its location than it would in a more densely populated and/or intensely used area of the RPD or RCA. Moreover, the minimum lot size for Use Type 88 is 20 acres, and at approximately 36.88 acres the Property has nearly double the required acreage.

Fifth, the site plan addresses and ensures that adequate facilities, including utilities, access roads, and drainage, will be provided. As for access roads, a driveway exists on Hodges Road to the Property, and a gravel road will connect from Hodges Road to the proposed hangar site. That gravel road will not increase traffic in the neighborhood. Furthermore, the permit site plan review process, administered by LUGM, will ensure that adequate utilities, road access, and stormwater management will be provided.

Sixth, the existing point of ingress and egress is an existing driveway onto Hodges Road, a secondary class road that is owned and maintained by St. Mary's County. Moreover, the Site will construct a gravel drive from Hodges Road, but this private landing strip will not generate any traffic congestion.

Seventh, the proposed Site comports with the Comprehensive Plan, which seeks to “limit non-farm residential development outside of growth areas to be in scale and consistent with the rural character of the surrounding area” by “[p]reserv[ing] open space and limit[ing] impacts to environmentally sensitive areas.” Comprehensive Plan, §§ 4.4.1.B. The Site will be maintained in grass or similar low vegetation, and most of the farmland—presently 22 acres of open farm fields—on the Property will remain in its current agricultural use. Moreover, the recent text amendment highlights that this type of conditional use was specifically anticipated in the RCA, particularly as other private landing strips exist in other areas of the St. Mary’s County RPD.

Finally, the Site is consistent with RPD and RCA development standards, as the Site will be a private, non-commercial landing strip that is maintained in grass or low vegetation and will be situated on a property with approximately 36.88 acres. To reiterate above, most of the existing farmland will remain in its current agricultural use. Consequently, the Site will not inhibit the activities are promoted within the RPD or RCA, and further compliance with the standards specific to the private landing strip and hangar is evidenced by the site plan and multi-agency review at the County, State, and Federal levels. Moreover, the permit site plan review process, administered by LUGM, will ensure that the private landing strip and hangar, as proposed, complies with the requirements of the CZO, as it pertains to Use # 88, as amended by Ordinance No. 2019-03, in the RPD and RCA.

b. Specific Standards under CZO § 51.3.88.a

First, the Applicants are before the Board as part of the permit approval process and cannot obtain a permit prior to Board approval of their proposed conditional use. Pursuant to the below order., this Board is conditionally approving that proposed conditional use.

Second, the proposed runway is not within the Critical Area Buffer.

Third, the Site is a private landing strip and hangar. It is neither a publicly-owned airport, landing strip, helipad, or heliport nor a privately-owned airport or heliport.

Fourth, this is a private landing strip and hangar and thus is permitted under the CZO.

Fifth, the Property is approximately 36.88 acres and therefore exceeds the minimum 20-acre lot size requirement for this conditional use.

Sixth, there are no air-related business, as defined by the Federal Aviation Administration, proposed for the Site.

Seventh, the Site is to be maintained in grass or similar low vegetation.

c. Conditional Approval

The Board, however, finds that the following conditions must be present to grant the Applicants' proposed conditional use:

1. There shall be no night flights;
2. There shall be no fueling tanks on the Site; and
3. There shall be no heliport.

ORDER

PURSUANT to the application of George and Stephanie Hall, requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance for use type 88, Airport, Landing Strip and Heliport (CUAP #17-1296); 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, that the Applicants are granted a conditional use to allow a private landing strip and hangar, Use # 88, within the Rural Preservation District and Resource Conservation Area overlay, with the following three conditions:

1. There shall be no night flights;
2. There shall be no fueling tanks on the Site; and

3. There shall be no heliport.

Additionally, the foregoing conditional use is also subject to the following condition that the Applicants shall comply with any instructions and necessary approvals from the Department of Land Use and Growth Management.

This Order does not constitute a building permit. In order for the Applicants 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: July 9, 2020


George A. Hayden, Chairman

Those voting to grant the conditional use:

Mr. Hayden, Mr. Brown, Mr. Miedzinski,
and Mr. Richardson

Those voting to deny the conditional use:

Ms. Delahay

Approved as to form and legal sufficiency

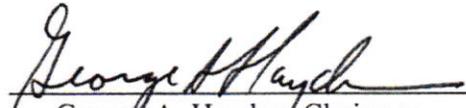
Neil A. Murphy, Deputy County Attorney

3. There shall be no heliport.

Additionally, the foregoing conditional use is also subject to the following condition that the Applicants shall comply with any instructions and necessary approvals from the Department of Land Use and Growth Management.

This Order does not constitute a building permit. In order for the Applicants 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: July 9, 2020


George A. Hayden, Chairman

Those voting to grant the conditional use:

Mr. Hayden, Mr. Brown, Mr. Miedzinski,
and Mr. Richardson

Those voting to deny the conditional use:

Ms. Delahay

Approved as to form and legal sufficiency


Neil A. Murphy, Deputy County Attorney

NOTICE TO APPLICANTS

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 County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 25.9 provides, "Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period."

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

3. There shall be no heliport.

Additionally, the foregoing conditional use is also subject to the following condition that the Applicants shall comply with any instructions and necessary approvals from the Department of Land Use and Growth Management.

This Order does not constitute a building permit. In order for the Applicants 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: July 9, 2020


George A. Hayden, Chairman

Those voting to grant the conditional use:

Mr. Hayden, Mr. Brown, Mr. Miedzinski,
and Mr. Richardson

Those voting to deny the conditional use:

Ms. Delahay

Approved as to form and legal sufficiency


Neil A. Murphy, Deputy County Attorney