

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP NUMBER CUAP # 22-1771

KYLE & JILL MATTHEW

SECOND ELECTION DISTRICT

DATE HEARD: November 11, 2022

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: Dec 8, 2022

Pleadings

Kyle & Jill Matthew (the “Applicants”) seek conditional use approval, CUAP #22-1771, to allow a private landing strip and hangar, Use Type 88, Airport, Landing Strip and Heliport.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County (“County”), on October 21, 2022 and October 28, 2022. 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. The agenda was also posted on the County’s website on November 2, 2022. 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 November 11, 2022 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

The subject property (hereinafter “the Property”) is family owned and occupied, consisting of 20.57 acres and is assessed “AGRICULTURAL” by the Maryland Department of Assessments and Taxation. The Property is comprised of open farm fields. The Property is located in the Rural Preservation District (“RPD”) with a Rural Conservation Area (“RCA”) overlay and is identified on Tax Map 61, Grid 22, Parcel 80.

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 for a 25-foot wide x 1,100-foot long grass run 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

Stacy Clements, Environmental Planner 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 20.57 acres and is assessed "AGRICULTURAL" by the Maryland Department of Assessments and Taxation. The Property consists of open farm fields.
- The Applicants are requesting Conditional Use approval for a 25-foot wide x 1,100-foot long grass landing strip 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 has received approval from the St. Mary's County Health Department, St. Mary's County Soil Conservation District, the Department of Land Use & Growth

Management, and the Critical Area Commission.

- 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

Applicant Kyle Matthew appeared before the Board. The following evidence was presented:

- Kyle Matthew is a licensed pilot, and a retired test pilot from the United States Navy. During his service, Mr. Matthew flew over 4,560 flight hours and completed 341 aircraft carrier landings.
- Including parcels besides the Property, Applicants’ entire real property owned in the subject area amounts to 31.6 acres, occupies the southern half of a peninsula abutting St. George Creek, and is improved by a single-family dwelling owned by the

Applicants. Pictures presented by Applicants confirm the Applicants' property and its immediate environs are void of any other structures.

- The nearest structure to the proposed landing strip is the Applicants' home, located 453' away from the proposed landing strip. The next nearest structure, a neighbor's house, is 1,731' away.
- Applicant has confirmed proposed approach/departure routes from the proposed landing strip comply with Patuxent River Naval Air Station airspace regulations.
- The full decibel level of Applicants' intended flight craft is 77 DPI, which was described as the same noise level as a washing machine or dryer operating in a house. Noise will be insulated by trees, and Applicant will only need full power for 12.5 seconds at take-off, after which Applicant can throttle down and reduce engine power.
- Applicant reached out to neighbors, all of whom withdrew their objections after Applicant spoke with them.
- Applicant has communicated with the Second District Fire Department, located 2.0 miles from the proposed landing strip, and confirmed that appropriate ingress/egress routes to the landing strip exist.
- There are a total of eight (8) other private airstrips across St. Mary's County.
- The proposed landing strip is not in the Critical Area Buffer.
- The proposed landing strip will not serve as a commercial airport or heliport.
- The Property exceeds the minimum lot size requirements.
- The proposed landing strip will be maintained in grass or similar low vegetation.
- The Maryland Department of Transportation and Federal Aviation Administration have both issued letters of no objection to the proposed airstrip. Applicant is awaiting a

Letter of Agreement from Naval Air Station Patuxent River, tentatively expected at the end of November.

- Applicant has no plans to expand the airstrip in the future.

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.

Public Testimony

No member of the public appeared to offer testimony at the hearing. A letter from Kirk Galiani is in the record. In his letter Mr. Galiani states that, out of a desire to be neighborly, he will not oppose the project as long as it is not expanded beyond the current site plans. Mr. Matthew stated that he has spoken to Mr. Galiani and believes he has resolved his neighbor's concerns.

Discussion

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.

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. Matthew is a licensed pilot, certified in both visual and instrument flight rules. The Site is situated away from residential uses, and the closest neighboring structure is over 1,000 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 450 feet away from the nearest residence (which is owned by Applicants), and over 1,000 feet from the nearest residence owned by a neighbor. Mr. Matthew described his efforts to communicate with his neighbors, and the Board notes no public testimony was offered opposing the project. Additionally, 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 the Applicants exceed this limitation.

Fifth, the site plan addresses and ensures that adequate facilities, including access roads, will be provided. 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 Peninsula Court, leading out to Andover Estates Road and Piney Point Road. As a non-commercial landing strip Mr. Matthew intends for his private use, it is unreasonable to expect the proposed landing strip will have any measurable bearing on the number of trips taken on these roads.

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. Moreover, the relatively 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 20.57 acres. The Site will not inhibit the activities promoted within the RPD or RCA, and further compliance with the standards specific to this use type 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.

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 Applicant's proposed 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. Applicants affirm the landing strip will not be put to commercial use.

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

Fifth, the Property is approximately 20.57 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.

Conclusion

As all standards under CZO § 25.6 and CZO § 51.3.88.a are satisfied, the Board concludes it is appropriate to grant Applicants conditional use approval for the proposed landing strip and hangar.

ORDER

PURSUANT to the application of Kyle & Jill Matthew, requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to allow a private landing strip and hangar, Use Type 88, Airport, Landing Strip and Heliport (CUAP # 22-1771); 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 at the Property.

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: Dec 8, 2022

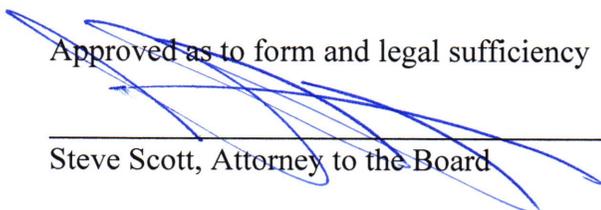

Daniel F. Ichniowski, Chairman

Those voting to grant the conditional use:

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

Those voting to deny the conditional use:

Approved as to form and legal sufficiency


Steve Scott, Attorney to the Board

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.