

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 20-133-010

RE MICHEL COMPANY

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: AUGUST 11, 2022

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: September 8, 2022

Pleadings

Skywater Hollywood LLC (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 51.81.a(2) to reduce the required Type “C” buffer yard.

Public Notification

The hearing notice was advertised in The Southern Maryland News, a newspaper of general circulation in St. Mary’s County, on July 22, 2022 and July 29, 2022. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before July 27, 2022. The agenda was also posted on the County’s website on August 3, 2022. Therefore, the Board of Appeals (“Board”) finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on August 11, 2022 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 subject property is located at 43970 Airport View Drive, and has approximately 495 feet of road frontage on Airport View Drive and can be found at Tax Map 34, Grid 1, Parcel 548, Lot 9. It is zoned Industrial and is in the Lexington Park Development District, a Growth Area, per CZO § 30.2.1.a.

The Variance Requested

Applicant seeks a variance from CZO Section 51.81.a(2) to reduce the required Type “C”

buffer yard.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 63.3.b of the Zoning Ordinance details Buffer Yard Requirements. One of the proposed businesses on the Property is a fast-food restaurant. For purposes of determining Buffer requirements, Use Type 81, Wholesaling and Distribution Center, is considered a “high intensity use,” and requires a “C” buffer yard shielding it from sight of any public road. CZO § 50.4.81.

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 Property is located on Airport View Drive and has approximately 495 feet of road frontage on Airport View Drive.
- The Major Site Plan was approved by LUGM Director Bill Hunt on September 1, 202. The site plan proposed a 14,000 square foot wholesaling and distribution center.
- Per CZO § 51.3.81.a, general site plan approval for this project shall be required and a “C” buffer yard shall be provided to screen the facility from a public road and from adjacent dissimilar uses.
- A 30-foot “C” buffer yard requires 5 canopy trees, 7 understory trees, 27 shrubs, and 14 evergreens/conifers planted for every 100 feet along Airport view Drive and a fence or berm is required.
- The Applicant has completed the project but is requesting a variance from the obligation to place the required plantings in the required Type C Buffer Yard west of the entrance.

- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Schedule 63.3.a Buffer Yard Standards
 - #3: Location Map
 - #4: Land Use Map
 - #5: Zoning Map
 - #6: Minor Site Plan

Applicant's Testimony and Exhibits

Applicant was represented by Austin B. Davis, of W.M. Davis, Inc. The following testimony was presented:

- Given the slopes on the particular area of plantings upkeep would be difficult and mowing impracticable, particularly considering the need to maneuver around the numerous types of plantings required.
- No other properties in the Industrial Park have the Type-C buffer yards at the front of the property.
- Traffic on Airport View Drive is minimal compared to traffic on Route 235 or residential roads.

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 Applicant. Applicant testified that the unique topography and steep slopes of the planting ground would make maintenance onerous and demanding; impracticable, if not outright impossible, for typically employed maintenance equipment. The same uniqueness of the topography of this site satisfies the second standard, insofar as such physical conditions are not typically encountered in similar parcels.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, 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 particular physical characteristics of the Property.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. 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. Applicant also points out that no other properties have a similar buffer yard property, and that the adjoining properties are not residential or recreational facilities. The Property is located in one of the County's few purely industrial zones; the policy considerations behind the required buffer yard, designed to shield and protect members of the public and neighboring property values from unappealing appearances, strike with significantly less force in such a zoning district than an area with more mixed uses.

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. As noted above, the need for a buffer yard would be felt more keenly if located near residential properties or amenities designed for public use and enjoyment. The salutary effects of a buffer yard – vital in other projects – are simply not as present in Applicant's project. Consequently, the Board finds granting the variance, in this instance, would strike an appropriate balance.

ORDER

PURSUANT to the application of Skywater Hollywood LLC, petitioning for a variance from CZO Section 51.81.a(2) to reduce the required Type “C” buffer yard; 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 CZO Section 51.81.a(2) to reduce the required Type “C” buffer yard;

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: Sep 13, 2022, 2022

Daniel F. Ichniowski
Daniel F. Ichniowski (Sep 13, 2022 14:48 EDT)
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

Stephen H. Scott
Stephen H. Scott (Sep 12, 2022 11:00 EDT)
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.

RE MICHEL ORDER VAAP 20-133-010

Final Audit Report

2022-09-13

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By:	Amanda Yowell (amanda.yowell@stmarysmd.com)
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