

**ST. MARY'S COUNTY BOARD OF APPEALS**

In the Matter of PELBPS, LLC

Case No. VAAP #16-132-003

**ORDER**

PELBPS, LLC filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding the property located at 23458 Three Notch Road, California, Maryland 20619 (hereinafter the "Property"). The Application requests a variance from Section 63.3.b of the St. Mary's County Comprehensive Zoning Ordinance, as amended, (the "Ordinance"), to reduce the required 65-foot Type B buffer to a variable-width buffer along the property's northern boundary with the residential-use property.

After due notice, a public hearing was conducted at 6:30 p.m. on February 14, 2019, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

**Legal Standard**

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

1. Because of particular physical surroundings such as exceptional narrowness, shallowness size, shape or topographical conditions of the property involved, strict enforcement of the 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; provided, any development necessarily increases property value, and that alone shall not constitute a finding of an exclusive reason.
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.
7. The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

#### FINDINGS OF FACT

The subject property (the "Property") is triangular in shape with 195.50 linear feet of frontage on MD Route 235, gradually tapering to less than one foot at the northeastern point of the Property. The Property is densely wooded along its northern and southern boundaries and in the eastern portion of the Property.

The Property is located in the Lexington Park Development District and contains a single-family dwelling, detached garage, sidewalks, and a U-shaped driveway with two points of ingress and egress on MD Route 235. The existing house is unoccupied and will be removed together with the garage, walkways, and most of the existing driveway. The southern point of ingress and egress will be reconstructed with a commercial entrance and the northern access point will be closed.

The Applicant plans to redevelop the property with a 4-unit, 8,800 square-foot office building. The Planning Commission approved the Concept Site Plan for the project on September 10, 2018. The Technical Evaluation Committee (TEC) had initially reviewed the project during its October 2016 review cycle.

Pursuant to Schedule 50.4 of the Ordinance, Use type 63, office, is defined as: Offices of firm(s) or organization(s) providing professional, executive, management, or administrative services, such as architectural, data management, engineering, interior design, graphic design, real estate, insurance, investment, law offices, physicians, dentists or chiropractors, including medical/dental laboratories incidental to the medical office use, emergency medical care offices and communications facilities located entirely within buildings. This classification excludes financial institutions.

An office is considered a low intensity use for purposes of determining buffer requirements. Pursuant to Schedule 63.3.b of the Ordinance, a low-intensity commercial use proposed adjacent to a low-intensity residential use requires a Type B buffer.

A Type B buffer is 65 feet in depth and contains 4 canopy trees, 5 understory trees, 22 shrubs, and 11 evergreens / conifers planted every 100 feet along the property line. The Applicant requests a reduction of this buffer to six (6) feet along the Property's northern boundary with the residential-use property due to the exceptional narrowness of the Property in this area. The existing woodland in the northeast corner of the Property will remain undisturbed as shown on the site plan.

#### CONCLUSIONS OF LAW

The Property fronts one State Road and the applicant is requesting to reduce the buffer requirement between the property and the residential-use property along its northern border. The applicant is supposed to install a Type B buffer, but a Type A Buffer plantings in the variable width (seven feet) would be appropriate in this circumstance. The modified buffer will be sufficient to provide screening.

The Comprehensive Plan encourages growth and development in the development districts and the Property is located in the Lexington Park Development District.

**DECISION**

**NOW, THEREFORE, BE IT ORDERED**, that, having made a finding that the standards for variance and the objectives of Section 63.3.b of the St. Mary's County Comprehensive Zoning Ordinance have been met, the following variance is **granted**: that the required type B buffer is to be reduced to a seven feet wide buffer along the property's northern boundary with the residential-use property with the following conditions:

1. A notarized consent be obtained from the Residential-use property owners; and
2. Type A Buffer plantings in the seven feet wide buffer extended along the residential-use property to the end of parking lot of the subject property.

This Date: April 11, 2019

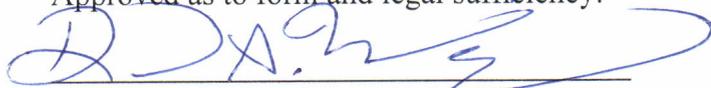
  
 George Allan Hayden  
 Chairman

Those voting in favor of the request:

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

Those voting against the requested variance:

Approved as to form and legal sufficiency:

  
 David A. Weiskopf, County Attorney