

ST. MARY'S COUNTY BOARD OF APPEALS

Morelli Auto Group
Lots 1 and 2 of the Wingate Subdivision

Case No. VAAP #14-132-009

DECISION AND ORDER**Introduction**

Morelli Auto Group (hereinafter "Applicant"), filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding Lots 1 and 2 of the Wingate Subdivision (hereinafter the "Property"). The application seeks a variance from Schedule 63.3.b of the Comprehensive Zoning Ordinance to reduce the required 65-foot Type B buffer to a variable-width buffer along Maryland Route 235.

After due notice, a public hearing was conducted at 6:30 p.m. on September 8, 2016, 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 "Property" consists of Lots 1 and 2 of the Wingate Subdivision, which was recorded in the Land Records of St. Mary's County in Plat Book MRB No. 14, page 80 on January 24, 1980. The Applicant plans to combine these two lots by recording a Boundary Line Adjustment Plat. The Applicant plans to develop the Property with a one-story building with a maximum height of 22 feet plus a seven-foot parapet for a total of 14,560 square feet. The building will be an auto sales building for a car dealership. According to the site plan, 20 parking spaces are required, and provided, to serve the auto sales building. The Applicant has provided a total of 49 parking spaces. The Property is constrained by Maryland Route 235 in the front and a publically-owned right of way in the rear.

A car dealership is classified as a commercial use, Use Type 75 - Auto Sales or Service, Vehicles, in accordance with Schedule 50.4 of the Ordinance. Use Type 75 is described in Schedule 50.4 as "Establishments engaged in the retail sale of new or used vehicles of all types – cars, trucks, recreational vehicles, motorcycles, ATV, bicycles, boats, watercraft, and outboard motors. They may have showrooms or open lots for selling vehicles, may provide repair and maintenance services and may sell related parts, accessories, and equipment. This use is considered a high intensity use for determining buffer requirements.

Pursuant to Schedule 63.3.b of the Ordinance a high intensity commercial use proposed adjacent to a public right-of-way with a road classification of major collector or higher 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 or conifers planted every 100 feet along the property line.

The Applicant requests a variance to reduce the 65-foot Type B buffer to a variable width buffer ranging in size from eight feet in depth to 27 feet in depth.

The properties adjacent to the proposed dealership, Hickory Hills Center and La Quinta Inn, were developed in 1981 and 1982 respectively and prior to the adoption of buffer yard standards. Properties directly across the public right-of-way, on Maryland Route 235 North, were developed in the 1980s and some as far back as the 1960s. Generally speaking, the commercial area surrounding the proposed car dealership was developed prior to zoning requirements for buffer yards.

The proposed project was reviewed by the Technical Evaluation Committee (TEC) in July 2014. At that time Wannamaker Properties was the applicant. The Planning Commission

approved the Concept Site Plan by a 6-0 vote at its October 27, 2014 public hearing, subject to approval of a variance from the buffer yard requirements and several other conditions.

Conclusions of Law

Because of constraints imposed upon the Property by public streets and rights of way, strict enforcement of the buffer requirements in the Ordinance will result in practical difficulty. The combination of buffer requirements and constraining rights of way are not applicable to other properties within the area, which were developed prior to the adoption of buffer requirements.

The purpose of the variance is to permit the location of vehicles for sale in a manner both necessary and customary in the Applicant's business.

Approval of the site plan by the St. Mary's County Planning Commission indicates that the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood, that the character of the district will not be changed by the variance, and that 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.

The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan, which encourages development of high intensity commercial uses in development districts.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of the St. Mary's County Comprehensive Zoning Ordinance have been met, a variance to reduce the required 65-foot Type B buffer to a variable-width buffer along Maryland Route 235, as shown on the Applicant's site plan, to be vegetated in accordance with the Landscape Plan attached hereto.

Date: October 13, 2016

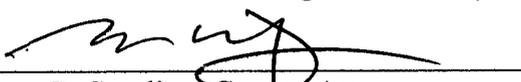

George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney