

ST. MARY'S COUNTY BOARD OF APPEALS

Oxford Chase Development, Inc.
23848 Mervell Dean Road, Hollywood, Maryland

Case No. VAAP #16-132-005

DECISION AND ORDER

Introduction

Oxford Chase Development, Inc. (hereinafter "Applicant"), filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding 23848 Mervell Dean Road, Hollywood, Maryland (hereinafter the "Property"). The Applicant requests a variance from Section 63.3.b of the St. Mary's County Comprehensive Zoning Ordinance to reduce the required 65-foot Type B Buffer to a 30-foot Type C Buffer on the south side of the property.

After due notice, a public hearing was conducted at 6:30 p.m. on August 10, 2017, 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 is the site of a proposed one-story, 10,640 square-foot Dollar General. The Applicant plans to abandon the well and septic system in place and remove all other existing structures as part of the redevelopment of the Property.

The Property is encumbered by steep slopes, ranging in grade from 15 percent to greater than 25 percent, and Evesboro Westphalia (EwD2) soils which are considered highly erodible. Both these environmental features constrain development on a large portion of the Property. Additionally, the Property's frontage on Mervell Dean Road is approximately 157 linear feet less than the Property's rear or eastern boundary.

The Planning Commission voted unanimously at its July 10, 2017 public hearing to approve the Concept Site Plan of the proposed Dollar General. A public hearing on an amendment to the Comprehensive Water and Sewerage Plan to change the service categories is scheduled before the Commissioners on August 22, 2017.

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. A Type C buffer is 30 feet in depth and consists of five (5) canopy trees, seven (7) understory trees, 27 shrubs, and 14 evergreens / conifers planted every 100 feet along the property line. A Type C buffer requires a six-foot tall berm or fence in addition to the planted buffer. The Applicant plans to install a fence.

Conclusions of Law

Because of constraints imposed upon the Property by erodible soils and the configuration of the lot, strict enforcement of the buffer requirements in the Ordinance will result in practical difficulty. The combination of buffer requirements, soils and lot dimensions are not applicable to other properties within the area, which were developed prior to the adoption of buffer requirements.

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 30-foot Type C Buffer on the south side of the property is **granted**, subject to the following condition:

1. The required fence shall be located on the south side of the buffer.

Date: September 14, 2017

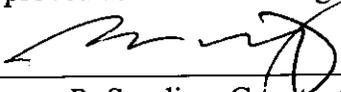

George A. Hayden, Chairman

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