

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 17-110-005

ANTHONY AND CANDLIST GREENWELL

FOURTH ELECTION DISTRICT

DATE HEARD: July 11, 2019

ORDERED BY:

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

DATE SIGNED: August 8, 2019

PLEADINGS

Anthony and Candlist Greenwell, the Applicants, seek variances (VAAP # 17-110-005) to subdivide their farmstead and create Lots 25 and 26 in Phase Two of the Grandview Haven Subdivision without providing the required public water system. The requested variances are from Section 70.9.1.1 of the Comprehensive Zoning Ordinance and Section 30.6.4.f(5)a.i. of the Subdivision Ordinance.

PUBLIC NOTIFICATION

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on June 26, 2019 and July 3, 2019. The hearing notice was also posted on the property. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within Two Hundred (200) feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County's website on Friday, July 5, 2019. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

FINDINGS

A public hearing was conducted at 6:30 p.m. on July 11, 2019, 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 with regard to the proposed variance requested by the applicants.

The Property

That the applicants own the subject property located at 25853 Morganza Turner Road, Mechanicsville, Maryland 20659. It is located in the Rural Conservation District (RPD) and is

known as Grid 11 in Parcel 13 on Tax Map 18. It is a part of Phase Two of the Grandview Haven Subdivision. The Grandview Haven subdivision consists of 24 Lots on private wells.

The Proposed Work

The Applicants propose to subdivide their farmstead and create Lots 25 and 26 in Phase Two of the Grandview Haven Subdivision without providing the required public water system. Both the St. Mary's County Comprehensive Zoning Ordinance and the St. Mary's County require that all residential subdivisions with 25 lots or more must connect to a public water system.

The St. Mary's County Comprehensive Zoning Ordinance

& St. Mary's County Subdivision Ordinance

§ 70.9.1.a of the Zoning Ordinance specifically states: "All residential subdivisions of 25 lots or more in any zoning district must connect to a public water system."

§ 30.6.4.f(5)a.i. of the Subdivision Ordinance, "Method of water supply and fire suppression proposed: "...All residential subdivisions of 25 lots or more must connect to a public water system."

Pursuant to Chapter 90 of the Zoning Ordinance and Article 5, Chapter 50 of the Subdivision Ordinance, the term "Variance" is defined as:

A modification only of density, bulk, or area requirements of this Ordinance where such modification will not be contrary to the public interest and where owing to conditions peculiar to the property, and not the results of any action taken by the applicant, a literal enforcement of the Ordinance would result in unnecessary hardship in the Chesapeake Bay Critical Area or practical difficulty in other areas of the County.

The Variance Requested

The Applicants are requesting a variance from the St. Mary's County Comprehensive Zoning Ordinance and a variance from the St. Mary's County Subdivision Ordinance to allow them to proceed with their proposed Minor subdivision without being required to connect to or

construct a public water system for creating the 25th and 26th lots in the Grandview Haven Subdivision.

The Evidence Submitted At The Hearing

The Following evidence was submitted at the hearing:

- Exhibit 1 Staff Report
- Exhibit 2, Attachment 3
- Exhibit 3 Applicant Presentation
- Exhibit 4 Deed Liber 3400 Folio 341
- Exhibit 5 Letter from S McCauley 090915
- Exhibit 6 TEC Report
- Exhibit 7 Water Sewer Connection Waiver 022619
- Exhibit 8 Water Sewer Connection Waiver 021119
- Exhibit 9 Email BHunt 022719
- Exhibit 10 Major Subdivision Plat Phase II
- Exhibit 11 Minor Subdivision Plat Phase II
- Exhibit 12 SMC MD Comprehensive Plan
- Exhibit 13 Caldes vs Elm Street Development

Applicants Testimony

The Applicants were represented at the hearing by Christopher T. Longmore, their attorney, from Dugan, McKissick & Longmore, LLC. Barrett Vukmer, their surveyor, from Chesapeake Trails Surveying, LLC and the Applicant, Candlist Greenwell, testified that:

- The Applicants have Sufficient acreage to subdivide their property into two additional lots. This is one of a few farmsteads within the original parcel of property that can serve as a "landing" for TDRs, therefore it is the Applicants understanding that they are one of a few lot owners in the neighborhood that can add any additional lots.
- This property is of a size and location that would support the development of this property into two additional lots. In fact, Applicants previously received written confirmation from Department that this property can be subdivided further, only to later determine that this

was not the case. Therefore, this property is one of the only properties within the current neighborhood that can seek and receive the relief requested herein and the most additional lots they can create are two lots.

- The practical difficulty in this case is that it would be entirely cost prohibitive, and most likely practically impossible for the Applicants to be required to construct or build a public water system for only two lots, particularly when they were not the original developer of the other 24 lots within the neighborhood.
- This is the only farmstead within the original parcel of property that can serve as a "landing" for TDRs. Therefore, this property is the only property, within the current neighborhood that can seek and receive the relief requested herein.
- The purpose of this variance is to allow the Applicants to achieve an appropriate use of the property given the allowable density and use of TDRs. It is also to allow them to subdivide their property as they in good faith believed they could do based on their prior communications, with Department staff.
- The difficulty was not created by the Applicants, it is because of the unique nature of the property and the project as set forth in the other standards.
- The variance will not change the character of the district or be detrimental to the public welfare. The Applicants are proposing to subdivide their property to create two additional single-family lots which is entirely consistent with the other properties in this area.
- The variance will not significantly increase any congestion or cause any other such adverse consequences of any kind. It would simply allow the Applicants to subdivide their property within the allowable density as set forth in the applicable County Ordinances. In

addition, there were no traffic concerns raised during the prior TEC Review of the Applicants proposed subdivision.

- The variance complies with the Comprehensive Plan and does not run afoul of any of the provisions of the Plan. It is in line with other, similar properties in the area. It supports an appropriate use within the RPD zone. The Comprehensive Plan does not prevent or restrict this kind of variance.
- This property is one of the few properties within the current neighborhood that can seek and receive the relief requested herein. The most additional lots they can create are two lots and there is not a risk that the granting of this variance could lead to the overdevelopment of this neighborhood. The variance request does not run afoul of any provisions within the applicable plans.

TESTIMONY OF LAND USE AND GROWTH MANAGEMENT DIRECTOR

The Director of Land Use and Growth Management, Bill Hunt, testified to the following:

- That the term density means the number of dwelling units allowed per acre of land.
- That this is not a property “density” variance because the Applicants have enough density to put two additional houses on the property, but that they cannot meet the adequate public facilities requirement.
- The adequate public facilities requirement is that once a residential subdivision becomes 25 lots or more, the subdivision must be connected to a central water system.
- That you cannot get a variance from the adequate public facilities requirements.
- That the variance request is not consistent with the spirit and intent of the St. Mary’s County Comprehensive Plan.

- The Comprehensive Plan states that the County should continue to enforce the requirement for public water systems for subdivisions of 25 lots or more, so that negative impacts can be avoided.

DECISION

Upon review of the facts and circumstances, the Board finds and concludes that the applicants are not entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance or from the St. Mary's County Subdivision Ordinance. There are a number of factors that support this decision. First, the Board does not believe that this variance request involves density. The Applicants are requesting a variance from an adequate public facilities requirement, which is not allowed in either the zoning ordinance or the subdivision ordinance. Variances can only be given for density, bulk, setbacks, height, frontage or area requirements and this is not one. Second, even if this was a density variance the Applicants did not meet three of the general standards for granting variances under Chapter 24.3 of the zoning ordinance, specifically, numbers three, four and seven.

ORDER

PURSUANT to the application of Anthony and Candlist Greenwell, petitioning for variances from the St. Mary's County Comprehensive Zoning and from the St. Mary's County Subdivision Ordinance; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 8th day of August, 2019,

ORDERED, by the St. Mary's County Board of Appeals, that the Applicants are denied variances from § 70.9.1.a of the Zoning Ordinance and from § 30.6.4.f(5)a.i. of the Subdivision Ordinance.

Date: August 8, 2019



George K. Hayden, Chairman

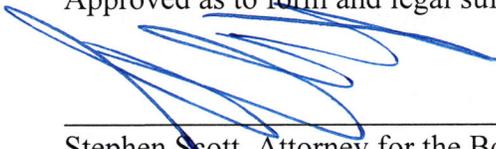
Those voting to deny the variance:

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

Those voting to grant the variance:

Mr. Richardson

Approved as to form and legal sufficiency



Stephen Scott, Attorney for the Board of Appeals

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.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.