

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Toyota Annex North
Lexington Properties, LLC

Case No. VAAP #18-132-003

ORDER

Lexington Properties, LLC filed an application for variances from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding Toyota Annex North, Lexington Park, Maryland (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 Type A Buffer along the property's frontage with MD Route 235; and requests a variance from 32.1 to reduce the required amount of undeveloped open space in the Corridor Mixed Use (CMX) District from 20 percent to six (6) percent and to use the Type C buffer on the north side of the property as the undeveloped open space.

After due notice, a public hearing was conducted at 6:30 p.m. on November 8, 2018, 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 the site of a proposed 15,000 square-foot, Retail Sales or Service building. The one-story building will include 10 service bays and a 4,000 square-foot showroom. The remaining 11,000 square feet will be devoted to office space and a parts area.

The Planning Commission approved the Concept Site Plan for the project on June 11, 2018. Planning Commission Minutes of this meeting are attached. The Technical Evaluation Committee (TEC) had previously reviewed the project during its February 2018 review cycle. TEC comments are also attached.

The oddly-shaped Property is located in the Lexington Park Development District and contains a stormwater management facility, which serves the adjacent commercial condo units and the WaWa service station and convenience store.

A car dealership is classified as a commercial use, Use Type 75 - Retail 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. Three Notch Road meets this standard of road classification.

The Applicant requests a variance to reduce the required 65-foot Type B buffer to a variable width Type A buffer, ranging in size from 10 feet in depth to 26 feet in depth. 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 A buffer is 15 feet in depth and contains 2 canopy trees, 4 understory trees, and 10 shrubs planted every 100 feet along the property line.

The Applicant's second request is a variance from Schedule 32.1 of the Ordinance to reduce the required amount of undeveloped open space in the Corridor Mixed Use (CMX) District from 20 percent to six (6) percent, and to use the 30-foot Type C buffer on the north side of the property as the undeveloped open space.

A Type C Buffer is 30 feet in depth and contains 5 canopy trees, 7 understory trees, 27 shrubs, and 14 evergreens / conifers planted every 100 feet along the property line.

Footnote 4 of Schedule 32.1 of the Ordinance specifies that the required buffer yard in the CMX District shall be twice the depth and plantings of a "C" buffer. Section 63.3.3.a of the Ordinance states, "Bioretention facilities may contribute toward landscaping or buffer yard requirements if they are not fenced."

Staff has determined that the existing stormwater management easement shown on the site plan satisfies the requirements of Schedule 32.1 and Section 63.3.3.a of the Ordinance.

Pursuant to Section 63.3.3 of the Ordinance, "Required buffer yards shall be developed along the perimeter of the proposed development site extending inward from the property line of the development site. Buffer yards shall not be located within any dedicated public or private right-of-way."

Undeveloped Open Space is defined in Chapter 90 of the Ordinance as: Land within the tract and outside of the development envelope. To the extent practicable, sensitive areas and their environmental buffers, mapped green infrastructure, and forest conservation easements outside of lot boundaries should be encompassed by required undeveloped open space.

The footprint of unpaved hiking trails developed onsite within undeveloped open space is not deducted from the area of required Undeveloped Open Space.

Buffer yards are a part of the development envelope. Undeveloped open space must be located outside the development envelope. Therefore, undeveloped open space and a buffer yard cannot be considered one and the same in order to meet two different requirements of the Ordinance.

CONCLUSIONS OF LAW

The Property fronts one State Road and the applicant is requesting to reduce the buffer requirement between the property and the State Road, Maryland Route 235. The applicant is supposed to install a type B buffer, but a Type C Buffer would be appropriate in this circumstance. The modified buffer will be sufficient to provide screening. It will also be consistent with the adjacent property that is owned by the applicant. It is also appropriate for the required amount of undeveloped open space to be reduced from twenty percent to six percent and to use the Type C buffer on the north side of the property as the undeveloped open space.

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 type C 30 foot buffer along the property's frontage with Maryland Route 235; and having made a finding that the standards for variance and the objectives of Section 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the following variance is **granted**: that the required amount of undeveloped open space is to be reduced from twenty percent to six percent and to use the Type C buffer on the north side of the property as the undeveloped open space.

This Date: December 13, 2018



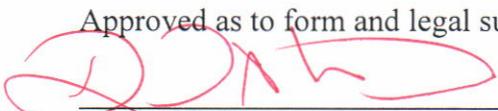
John Brown
Vice-Chair

Those voting in favor of the request:

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

Those voting against the requested variance:

Approved as to form and legal sufficiency:



David A. Weiskopf, Acting County Attorney