

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 15-132-015

JASON & KRISTIN PENROD

SECOND ELECTION DISTRICT

DATES HEARD: December 19, 2019 and February 13, 2020

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: May 7, 2020

Pleadings

Jason and Kristin Penrod (“the Applicants”) seek a variance (VAAP # 15-132-015) to waive the required 65-foot Type B front and rear buffer yards and to reduce the planting requirements for the 30-foot Type C side buffer yards.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on December 4, 2019 and December 11, 2019. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred 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 December 11, 2019. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

Public hearings were conducted at 6:30 p.m. on December 19, 2019 and February 13, 2020 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 about the proposed variance requested by the Applicants.

The Property

The Applicants own the subject property located at 45190 Happyland Road, Valley Lee, Maryland (the “Property”). The Property is split between the Rural Preservation District (“RPD”) and Rural Commercial Limited (“RCL”) zoning districts and is identified on Tax Map 57, Grid

17, Parcel 320.

The Variance Requested

The Applicants request a variance from Schedule 63.3.b of the St. Mary's Comprehensive Zoning Ordinance ("CZO") to waive the required 65-foot Type B front and rear buffer yards and to reduce the planting requirements for the 30-foot Type C side buffer as shown on the Site Plan of the Property, which was admitted into evidence at the hearing as Attachment 6 of Exhibit 2.

The St. Mary's County Comprehensive Zoning Ordinance

Pursuant to Schedule 50.4 of the CZO, Use Type 61, "Motor Vehicle Maintenance Service, Major," is defined as:

Repair of automobiles, trucks, motorcycles, tractors, motor homes, and recreational vehicles, including the sale, installation, and servicing of related equipment and parts. This classification includes towing, engine repair, body and fender shops, vehicle painting, wheel repairs, tire sales and installation and/or repair of heavy trucks or construction vehicles, but excludes vehicle dismantling or salvage, tire re-treading and recapping.

Includes facilities providing services for major repair and maintenance of recreational or commercial watercraft and marine engines. (Use may be accessory to a marina or boatyard use).

Id.

A "Motor Vehicle Maintenance Service, Major" is considered a high intensity use for purposes of determining buffer requirements. *Id.* Under CZO Schedule 63.3.b, a proposed high-intensity commercial use adjacent to a "Public Road right-of-way having a Major Collector or higher road classification" requires a minimum 65-foot Type B buffer yard. Where a proposed high-intensity commercial use is adjacent to residential low-intensity, it requires a minimum 30-foot Type C buffer yard. *Id.*

Under Schedule 63.3.a, a Type B buffer is a minimum of 65 feet in depth and requires 4

canopy trees, 5 understory trees, 22 shrubs, and 11 evergreens and shrubs, all planted every 100 feet along the property line. In contrast, a Type C buffer is a minimum of 30 feet in depth and requires 5 canopy trees, 7 understory trees, 27 shrubs, and 14 evergreens and shrubs, all planted every 100 feet along the property line and along either a 6-foot tall fence or berm.

The Evidence Submitted at the Hearing by LUGM

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The Property is a corner lot at the intersection of MD Route 249 and Happyland Road in Valley Lee. It has approximately 125-linear feet of road frontage on MD Rte. 249 and 157-linear feet of road frontage on Happyland Road.
- The Applicants plan to develop the property with 3,600 square foot motor vehicle maintenance shop with the required parking. The Planning Commission approved the Concept Site Plan for the project on 06/13/16. The Director of LUGM approved the Major Site Plan on 05/12/17.
- The Applicants request a waiver from the Type B buffer requirements.
- The Applicants also request a reduction of the plantings for the Type C buffer requirements, as shown on Sheets 3 and 4 of the Approved Major Site Plan and the As-built Construction Site Plan set.
- Pursuant to CZO § 24.8 pertaining to lapse of variance, variances shall lapse one year from the date of the grant of the variance by the Board of Appeals unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) A longer

period for validity is established by the Board of Appeals; or (3) The variance is for future installation or replacement of utilities at the time such installation becomes necessary.

- The following Attachments to the Staff Report were introduced:

#1: Standards Letter from Jay Hopson

2: Planning Commission Minutes of June 13, 2016

3: Land Use Map

4: Location Map

5: Zoning Map Click

6: Approved Major Site Plan (Sheets 3 and 4)

7: As-Built Major Site Plan (Sheet 3)

8: Thompson Family Corporation September 16, 2016, Letter

9: Thompson Family Corporation May 28, 2018, Letter

10: Iva Micheau April 2, 2019, Letter

11: Nathaniel Lawrence, Sr. November 13, 2018, Letter

Applicants Testimony and Exhibits

The Applicants appeared in person before the Board. The following evidence was presented:

- Three letters of support from adjoining property owners, including Iva Micheau, Nathaniel Lawrence, Sr., and the Thompson Family Corporation.
- The letter from Ms. Micheau provides that she reserves the right to revoke her consent if she decided to sell or develop the property. According to the Applicants, however, Ms. Micheau has no intentions of developing the property, but Ms. Micheau wished to keep that language so she could “be protected.”

- The Applicants are in the process of trying to purchase Mr. Lawrence's property.
- The Thompson Family Corporation requested that the Applicants plant double rows of Leyland Cyprus because these trees would provide double lining to reduce the sound from the Property.
- The front buffer yard runs to the entrance of the Property.
- There is a canopy of three trees within the front buffer.
- The Applicants have a temporary use and occupancy permit.

Decision

County Requirements for Granting Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a variance to be issued:

- (1) Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of this 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. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding;
- (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; and

- (7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

Id.

Findings

Upon review of the facts and circumstances, the Board finds and concludes that the Applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. Several factors support this decision.

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical surroundings of the Property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Court of Appeals established the standard by which a zoning board is to review "practical difficulty" when determining whether to grant a variance:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.

Id. at 214–15.

Here, the Applicants have demonstrated that, were the Board of Appeals to strictly interpret the CZO, the particular physical surroundings of the property would result in practical difficulty for the Applicants. Specifically, the Property is located at the intersection of Maryland State Route 249 and Happyland Road and surrounded by three properties. The two properties to the rear of

the commercial portion of the Property are currently undeveloped and one has a failed percolation test. The zoning of the property is split between RCL and RPD; as a result of the current zoning configuration, all of the development is limited to the front of the property. Given these considerations, the Applicants seek a variance to waive the required 65-foot Type B front and rear buffer yards. The 65-foot buffer yard along Maryland State Route 249 intrudes on an area of the Property on which large oak trees are present, and the Applicants seek a variance on this section of the Property to preserve these trees. The Applicants also seek a variance to reduce the planting requirements for the 30-foot Type C side buffer yards that abut the Thompson Family Corporation's property. As part of an agreement between the Applicants and Thompson Family Corporation to remove asphalt surfaces beyond the Property line, the parties agreed to the Applicants' requested buffer yard along the side yard. Although the CZO buffer yard requirements mandate a more diverse and aesthetic buffer yard along this property line, the Thompson Family Corporation has asked for only double rows of Leyland cypress trees that will provide year-round screening and grow substantially faster.

Second, the specific physical conditions creating the practical difficulty are not generally found on other properties in the RPD and RCL. That the Property is located between Maryland Route 249 along its front and a zoning boundary to the rear creates a unique situation that restricts much of the development on the Property. While eliminating the 65-foot buffer yard along Maryland State Route seeks to preserve the existing trees, the change of planting types in the Type C buffer yards seeks to satisfy the terms of the agreement with the Thompson Family Corporation. Consequently, granting a variance would alleviate the practical difficulty inherent in the specific physical conditions.

Third, the purpose of seeking the variance are not "based exclusively upon reasons of

convenience, profit or caprice.” Rather, the Applicants’ proposed variance seeks to preserve an existing tree line and further development on the parcel.

Fourth, the need for the variance does not arise from actions of the Applicants. Instead, the difficulty was created in part by the Property’s split zoning and its past and ongoing commercial uses.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. The aesthetic character or setting of the RCL and the RPD in the immediate area of the Property will not be adversely altered if the Board grants the variance.

Sixth, while the proposed buffer will increase the commercial use of the property the Board does not find that it will increase congestion or the risk of fire, endanger public safety, or substantially diminish or impair property values in the neighborhood.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan because the Comprehensive Plan encourages redevelopment of existing commercial properties.

The Board, however, finds that the following conditions must be present to grant the Applicants’ proposed variance:

1. The required 65-foot Type B front and rear buffer yards are waived, and the Type B front buffer yard is reduced to a Type A buffer from the existing canopy trees to the entrance of the Property; and
2. The planting requirements for the 30-foot Type C side buffer yards are reduced to double rows of Leyland Cypress.

ORDER

PURSUANT to the application of Jason and Kristin Penrod, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Critical Area Regulations to allow them to waive the required 65-foot Type B front and rear buffer yards and to reduce the planting requirements for the 30-foot Type C side buffer yards; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Applicants are granted a variance from Schedule 63.3.b of the St. Mary's Comprehensive Zoning Ordinance to with the following conditions:

1. The required 65-foot Type B front and rear buffer yards are waived, and the Type B front buffer yard is reduced to a Type A buffer from the existing canopy trees to the entrance of the Property; and
2. The planting requirements for the 30-foot Type C side buffer yards are reduced to double rows of Leyland Cyprus.

Additionally, the foregoing variance is also subject to the following condition that the Applicants shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for the Applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: May 7, 2020

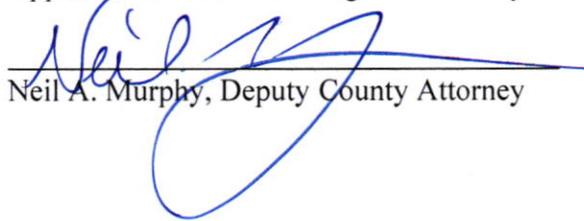

George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency


Neil A. Murphy, Deputy County Attorney

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 Circuit Court for St. Mary's County.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one year from the date the Board of Appeals granted the variance unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the variance is for future installation or replacement of utilities at the time such installation becomes necessary.

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