

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**VAAP NUMBER 18-132-015**

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**GUY PROPERTIES, LLC**

**THIRD ELECTION DISTRICT**

**DATE HEARD: AUGUST 27, 2020**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: September 10, 2020**

### **Pleadings**

Guy Properties, LLC (“the Applicant”) seeks a variance (VAAP #18-132-015) to modify the required 65-foot Type B front buffer yard, 35-foot Type C side buffer yard, and to disturb the stream buffer to replace an existing commercial building with a new commercial building.

### **Public Notification**

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on August 7, 2020 and August 14, 2020. 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 August 19, 2020. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

### **Public Hearing**

A public hearing was conducted at 6:30 p.m. on August 27, 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 Applicant owns the subject property located at 23490 Budds Creek Road, Clements, Maryland (the “Property”). The Property is split between the Village, Mixed Use (“VMX”) and Rural Preservation District (“RPD”) zoning districts with a Resource Conservation Area (“RCA”) Overlay and is identified on Tax Map 31, Grid 3 Parcel 32.

### **The Variance Requested**

The Applicants request a variance from Schedule 63.3.b and § 71.4.2.a(2) of the St. Mary's Comprehensive Zoning Ordinance ("CZO") to modify the required 65-foot Type B front buffer yard, 30-foot Type C side buffer yard, and to disturb the stream buffer to replace an existing commercial building with a new commercial building.

### **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. Finally, CZO § 71.4.2.a (2) requires a 100' buffer for all perennial streams.

### **The Evidence Submitted at the Hearing by LUGM**

Harry Knight, Deputy Director for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The subject property is a triangular lot on Maryland Route 234, also known as Budds Creek Road. It has approximately 686-linear feet of road frontage on Maryland Route 234.
- The Property is in the Clements Village Center per CZO § 30.2.1.
- The Concept Site Plan proposes to remove an existing 6,872 sf commercial building and construct a new 5,120 sf motor vehicle maintenance shop with the required parking, thus reducing the footprint by 1,762 sf. The property is also currently occupied by a two-story house.
- Although part of the property falls under a Critical Area Overlay, the proposed construction is not within the Critical Area Overlay. In fact, the existing building encroaches closer to the stream than the proposed building, but the existing construction predates the current regulations. Further, there will be a net reduction in the footprint of the building.
- The side buffer yard is occupied by the driveway, the rear buffer yard is slightly forward of the forested area of the stream, and the right buffer yard is deep into the property. Moreover, the bulk of the lawn in the front of the property is in the State Highway Administration right of way.
- The Planning Commission approved the Concept Site Plan for the project on 06/08/2020.

- A Motor Vehicle Maintenance Service, Major is considered a high intensity use for purposes of determining buffer yard requirements. Pursuant to Schedule 63.3.b of the Ordinance, a high-intensity commercial use proposed adjacent to a public road right-of-way having a Major Collector or higher road classification requires a 65-foot Type B front buffer yard. Adjacent to Residential low-intensity, it requires a 30-foot Type C buffer yard.
- 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. The required buffer yard area is currently occupied by existing vegetation and an existing dual entrance onto the highway. Therefore, the applicant requests a variance to accept the existing vegetation as shown on the approved Concept Plan.
- 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, along with either a 6 ft tall fence or berm. The Applicant proposes a 35' Type C buffer to eliminate the need for a fence or a berm per Schedule 63.3.a. footnote 2. However, the full 35' width is not entirely existing forest cover and, on the west side of the property there is an existing driveway access for neighboring properties. Therefore, the applicant requests a variance to accept the existing vegetation as shown on the approved Concept Plan.
- Section 71.4.2.a (2) of the St. Mary's County Comprehensive Zoning Ordinance, requires a 100' buffer for all perennial streams. The existing commercial building already occupies a portion of the required stream buffer. Therefore, the applicant requests a variance to allow disturbance of the stream buffer to demolish the existing commercial building and construct a new commercial building, with a net reduction of building footprint in the stream buffer.

- The following Attachments to the Staff Report were introduced:

#1: Standards Letter from Laura Clarke

# 2: Planning Commission Minutes of June 8, 2020

# 3: Land Use Map

# 4: Zoning Map Click

# 5: Critical Area Map

# 6: Approved Concept Site Plan

### **Applicants Testimony and Exhibits**

The Applicants appeared via WebEx before the Board. The following evidence was presented:

- The Applicants are proposing to reduce the size of the building, thereby also decreasing the encroachment of the stream and rear property line.
- The Applicants are requesting a Type C Buffer reduction for side buffer, and the neighbors whose home faces that buffer are approximately 400 feet from the property line. Moreover, large canopy trees also buffer that area already.
- The rear buffer has mature woodlands, and the houses that abut the rear buffer are approximately 700 to 800 feet away.
- The 65 foot Type B buffer faces Maryland Route 234, and much of the length of that buffer is achieved by the natural woodlands. Additionally, plantings exist where the two entrances presently sit.
- As for the stream buffer, the Applicants aver that their proposed building is the most environmentally appropriate for the site. As the Applicants have been performing repairs on the Property outside, moving the repairs inside will also improve environmental impacts

from oil during rainstorms.

- The Applicants are not proposing a new commercial use for the site. Rather, they intent to redevelop a historically commercial site that has been part of the community for years.

### **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, set backs, 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 Applicant has 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 Applicant. Specifically, the Property is located at the intersection of Maryland State Route 234 and surrounded by a stream, driveways, and farmsteads. The locations of existing driveways and entrances onto Budds Creek Road, within the proposed buffer yards, on this triangular-shaped property and a stream that defines the rear property line creates the particular physical condition for this property. Given these considerations, the existing plantings satisfy the requirements of a 65-foot Type B buffer yard, as the buffer yard runs along Maryland State Route 234 and is currently occupied by existing woodlands, vegetation, and an existing dual entrance onto the

highway. The Applicant's proposed 35-foot Type C buffer is similarly satisfactory, as the distance to the closest neighbor is 400 feet from the property line and the large canopy trees that buffer the area eliminate the need for a fence or berm. Finally, as the Applicant intends to reduce the net footprint of the Property in the stream buffer, they are required to disturb the stream buffer, even if the disturbance will improve the environmental impact of the Property on the stream.

Second, the specific physical conditions creating the practical difficulty are not generally found on other properties in the VMX, RPD, and RCA. That the Property is located between Maryland Route 234 along its front, has significant mature vegetation and woodlands surrounding the property, a gravel driveway and farmsteads to the side and rear, and a stream to the rear creates a unique situation that restricts much of the development on the Property. Moreover, other properties within the VMX and RPD usually do not have the unusual triangular shape and rear property line defined by a stream. Modifying the 65-foot buffer yard along Maryland State Route 234 and along the side buffer yard allows the Applicant to preserve existing trees, and allowing the Applicant to disturb the stream buffer will reduce environmental consequences from the Property to the stream. 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 not to add a commercial use to the existing mixed-use Property, but instead redevelop the historic use, respect the neighbor's right of way, maintain the current safe lines of sight from the existing entrance onto the State highway, and decrease any environmental impacts of the Property on the neighboring stream.

Fourth, the need for the variance does not arise from actions of the Applicants. Instead,

the difficulty was created in part by the age of the Property, which predates the existing zoning regulations, and the location of a stream in close proximity to the Property. The existing dwelling was built in 1925 and the existing entrances were constructed after the realignment of Budds Creek Road, as depicted in the 1938 and 1952 St. Mary's County GIS aerial maps. Traditionally, streams were used to define property lines when subdividing, as a definitive visual representation of a property boundary. The entrances and subdivision of the property both predate the current regulations. That the Applicant needs to disturb the stream buffer to reduce the footprint and increase the distance of the stream to the Property should militate against granting the variance.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. Neither the commercial use permitted in the VMX nor the aesthetic rural character of the RPD will be adversely altered if the Board grants the variance.

Sixth, the Applicant does not intend to add new commercial uses to the site. Accordingly, the Board does not find that there will be increase congestion or the risk of fire, endanger public safety, or substantially diminish or impair property values in the neighborhood. In fact, the Board finds that the reduced footprint, covered workspace, and increased buffer between the Property and the stream will benefit the stream.

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 § 4.1.1 Comprehensive Plan encourages development of existing commercial properties. The Comprehensive Plan also supports preserving the rural character of the County by encouraging commercial redevelopment in village centers, such as Clements. The policies establish a standard criteria for development activity, such as, proximity to public water and sewer access, transportation needs, and design of

buildings to ensure the rural character the County is seeking to preserve.

**ORDER**

PURSUANT to the application of Guy Properties, LLC, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Critical Area Regulations to modify the required 65-foot Type B front buffer yard, 35-foot Type C side buffer yard and to disturb the stream buffer to replace an existing commercial building with a new commercial building; and

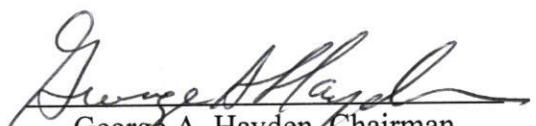
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Applicants are granted a variance from Schedule 63.3.b and § 71.4.2.a(2) of the St. Mary's Comprehensive Zoning Ordinance to modify the required 65-foot Type B front buffer yard, 35-foot Type C side buffer yard, and to disturb the stream buffer to replace an existing commercial building with a new commercial building.

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: Sept 10, 2020

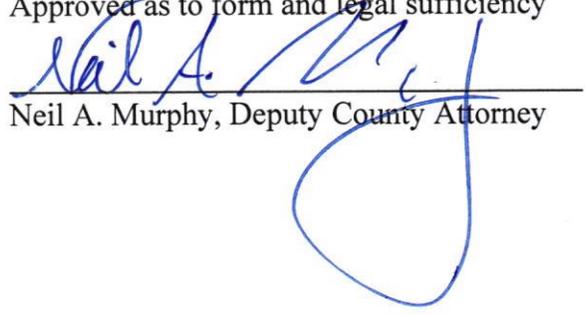
  
George A. Hayden, Chairman

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 County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

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.