

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

**VAAP NUMBER 19-132-00001**

---

**CALLAWAY 7-ELEVEN**

**SECOND ELECTION DISTRICT**

**DATE HEARD: JANUARY 14, 2021**

---

**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

---

**DATE SIGNED: February 11, 2021**

### **Pleadings**

George & Lorianne Bowes (“the Applicants”) seek a variance (VAAP # 19-132-00001) to reduce the required 65-foot Type B buffer yards along Maryland Routes 5 and 249 as shown on Concept Site Plan approved by the Planning Commission on August 17, 2020.<sup>1</sup>

### **Public Notification**

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on December 25, 2020 and January 1, 2021. 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 January 6, 2021. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

### **Public Hearing**

A public hearing was conducted virtually at 6:30 p.m. on January 14, 2021 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 20915 Point Lookout Road, Callaway,

---

<sup>1</sup> The legal advertisement included the request “to reduce the required 30- foot Type C buffer yard along the east side of the property”; however, this was in error.

Maryland (the “Property”). The Property is in the Village, Mixed Use (“VMX”) zoning district and is identified on Tax Map 50, Grid 16, Parcel 117.

### **The Variance Requested**

The Applicants request a variance from Schedule 63.3.a of the St. Mary’s Comprehensive Zoning Ordinance (“CZO”) to reduce the required 65-foot Type B buffer yards along Maryland Routes 5 and 249 as shown on Concept Site Plan approved by the Planning Commission on August 17, 2020, which was admitted into evidence at the hearing as Attachment 10 of Exhibit 2.

### **The St. Mary’s County Comprehensive Zoning Ordinance**

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.

### **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 located at the intersection of Maryland Route 5, also known as Point Lookout Road, and Maryland Route 249, also known as Piney Point Road. It has approximately 170 feet of road frontage on Maryland Route 5 and approximately 250 feet of road frontage on Maryland Route 249.
- The Property is in the Callaway Village Center, a Growth Area, per CZO § 30.2.1.c. 3.
- The Concept Site Plan proposes to remove the existing structures and redevelop the property with a 3,500-sf convenience store and a 3,183-sf fuel sales canopy. The Property currently has a single-family home according to the Maryland Department of Assessment and Taxation.

- Staff Review memo, dated January 29, 2019 (attachment 2), includes the following comments:
  - “18. Section 62.8.2.d & Schedule 63.3.b: A Type B buffer yard is required for both a scenic corridor and a commercial high use where adjacent to a right-of-way with a major collector or higher road classification. Therefore, a Type B buffer yard is required where adjacent to Point Lookout Road and Piney Point Road.
  - 19. Section 63.6.b & Schedule 63.3.b: Please confirm current use of adjacent property to the east (parcel 22). If vacant and not agricultural, the proposed use shall provide one-half of the buffer yard as if the adjoining vacant lot was occupied by a low-intensity residential use.”
  - Note: The use of parcel 22 was determined to be vacant and not agricultural, therefore, a 15-foot Type C buffer yard is the minimum required along this property line, per CZO § 63.6.b.
- The final Staff Report prepared for the Planning Commission meeting of July 13, 2020, (attachment 3) includes the final findings:
  - “g. Section 63.3. Buffer Yard Requirements: A Type B buffer yard is required on Point Lookout Rd. and Piney Point Rd. The applicant must make application to the Zoning Board of Appeals for a reduction in the Type B buffer yard requirements. A Type C buffer yard, reduced from 30’ to 15’, is required on the East property line. A Type C buffer yard is required on the Southern property line.
  - Note: The portion of the third sentence above, “reduced from 30’ to 15’,” was misinterpreted by staff to mean that this too required a variance, thus leading to the erroneous inclusion in the legal ad.

- The Planning Commission approved the Concept Site Plan on 08/17/2020. Their approval included “(Condition) 3. Buffers that were presented at Concept Site Plan will be a condition of the Board of Appeals.” The complete minutes of this meeting are provided. Ex. 2, Att. 4.
- A Type B buffer is 65 feet in depth and contains 4 canopy trees, 5 understory trees, 22 shrubs, and 11 evergreens / conifers planted for every 100 feet along the property line. Ex. 2, Att. 5
- 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 Christopher Longmore
  - # 2: Staff Review Comments dated January 29, 2019
  - # 3: Planning Commission Meeting of July 13, 2020, Staff Report
  - # 4: Planning Commission Minutes of August 17, 2020
  - # 5: Schedule 63.3.a. Buffer Yard Standards
  - # 6: Director’s memo of Planning Commission’s Concept Approval

- # 7: Location Map
- # 8: Zoning Map
- # 9: Existing vicinity conditions aerial photo
- # 10: Approved Concept Site Plan
- # 11: Concept Site Plan Details

### **Applicants Testimony and Exhibits**

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

- The Applicants are not proposing a consistently single sized buffer because the frontage along Route 5 is not perpendicular; in contrast, along Piney Point Road, the frontage is consistently 15 feet.
- However, approaching the parking lot, the Applicant is able to meet the 65 feet, though generally the buffer ranges between 65 and 19 feet deep.
- The variance is required because the 65-foot buffer would not allow any drive aisles for larger vehicles and fuel trucks to traverse the site and access the site.
- Absent a variance, the Applicant could barely construct the convenience store as planned, thus eliminating the access for the proposed use. In fact, the site would be too small for most proposals without the variance.
- The Applicants are not seeking or proposing a reduction in landscaping; rather, they are only requesting a reduction in the width of the buffer. Thus, they are proposing to create a more dense buffer, thereby providing the shade and visual buffer that would normally be given—but in a more compact setting. As a result, they argue that they are meeting the intent of the CZO while reducing the size to make the use work.

- Concerning the existing house to the southern portion the property, that home will remain, and the Applicants are providing the 30-foot buffer and meeting the planting requirement.
- As for the vacant lot on the east side, they are meeting the 15 feet and landscaping.
- Although fencing is required because the Applicants will meet the buffer width requirement, they are installing a board-on-board fence as a full visual screening measure. Moreover, this particular fence will trap any trash or paper from leaving the site.
- The sidewalks will be within the right of way, the sidewalks will not reduce the width or planting requirement
- The Property is in Callaway Village Center where development is targeted, and the use is permitted and encouraged there.

### **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 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 Route 5, and Maryland Route 249. The existing dimensions of these two properties creates the particular physical condition for this proposed development, which intends to utilize the two parcels as one site. Strictly interpreting the CZO would only barely allow the Applicants to construct the convenience store without fuel sales, as the site constraints would eliminate drive aisles for larger vehicles and fuel trucks to traverse the site and access the site. Given these considerations, the Applicants seek a variance to reduce the required 65-foot Type B buffer yards.

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. Other properties within the VMX have their own unique dimensions and resulting shapes and sizes, and the site's present conditions make it too small for most proposals without a variance.

Third, the purpose of seeking the variance are not "based exclusively upon reasons of convenience, profit or caprice." Rather, the Applicant is requesting to reduce the required buffers to provide space for the proposed development, within the confines of the existing exterior property lines and is encouraged within this zoning district.

Fourth, the need for the variance does not arise from actions of the Applicants. Instead, the existing size and shape of the two parcels predate the proposed development plan.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. The neighboring property

owners have been notified of the variance request to provide them with an opportunity to speak on the matter. Moreover, as there is a dearth of landscaping in this area of Callaway, the dense buffer proposed would increase the aesthetics of the surrounding location. Additionally, the board-on-board fencing will provide both a visual screen of the property and prevent trash and any other debris from escaping.

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. The project has received TEC and Planning Commission approval, which during each process, the Traffic Impact Study was reviewed in accordance with the St. Mary's County Zoning Ordinance standards for Concept site plan approval.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan because Section 4.1.1 of the Comprehensive Plan encourages development in the Development Districts. The Plan also supports preserving the rural character of the County by encouraging commercial redevelopment in village centers, such as Callaway. The policies establish a standard criterion 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 George & Lorianne Bowes, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Critical Area Regulations to reduce the required 65-foot Type B buffer yards along Maryland Routes 5 and 249 as shown on Concept Site Plan approved by the Planning Commission on August 17, 2020; 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.a of the St. Mary's Comprehensive Zoning Ordinance to reduce the required 65-foot Type B buffer yards along Maryland Routes 5 and 249 as shown on Concept Site Plan approved by the Planning Commission on August 17, 2020.

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.

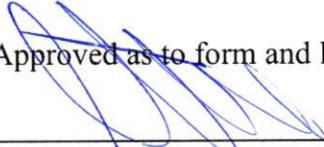
Date: February 11, 2021

  
Daniel F. Ichniowski, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency  
  
Steve Scott, Board of Appeals 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.