

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP 22-0256

---

VILLAS AT LEXWOOD

EIGHTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: FEBRUARY 8, 2024

---

ORDERED BY:

Mr. Hayden, Mr. Bradley, Mr. Payne,  
Mr. Richardson, and Ms. Weaver

ENVIRONMENTAL PLANNER: STACY CLEMENTS

---

DATE SIGNED: March 14, 2024

### **Pleadings**

AYDCO Holdings, LLC (“Applicant”) seeks variances from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 32.3.4 & Schedule 32.1 to reduce the required open space from 50% to 0%, from Section 51.3.14.a(4) to reduce the minimum 20’ width of a townhouse to 16’, and from Section 71.5.2.b to disturb a non-tidal wetland buffer.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 19, 2024 and January 26, 2024. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before January 24, 2024. The agenda was also posted on the County’s website on February 2, 2024. Therefore, the Board of Appeals (“Board”) finds and concludes that there has been compliance with the hearing’s notice requirements.

### **Public Hearing**

A public hearing was conducted at 6:30 p.m. on February 8, 2024 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed amendment requested by the Applicant.

### **The Property**

The property (“the Subject Property”) is an unaddressed 3.985 acre parcel located off Lexwood Drive in Lexington Park, MD. It can be found at Tax Map 51, Grid 8, Parcel 377. It is zoned Residential, High-Density.

### **The Variance Requested**

Applicant seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance

(“CZO”) Section 32.3.4 & Schedule 32.1 to reduce the required open space from 50% to 0%, from Section 51.3.14.a(4) to reduce the minimum 20’ width of a townhouse to 16’, and from Section 71.5.2.b to disturb a non-tidal wetland buffer.

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

CZO Schedule Section 32.3.4 and Schedule 32.1 require 50% undeveloped open space for development in the Residential, High-Intensity zoning district; this requirement may be reduced to 30% if a developer provides a certain percentage of their residential units as workforce housing, but no lower. Section 51.3.14.a contains the use standards applicable to attached dwelling units; standard four requires townhomes have a minimum width of 20 feet, measured at the building line.<sup>1</sup> Section 71.5.2.b establishes a 25’ non-tidal wetland buffer. Disturbance is not allowed within this buffer absent a variance.

### **Departmental Testimony and Exhibits**

Stacy Clements, an Environmental Planner for the St. Mary’s County Department of Land Use & Growth Management (“LUGM”), presented the following evidence:

- Applicant’s proposed housing is classified as Use Type 14, Dwelling Unit, Attached within the CZO.
- A concept site plan for the project was approved by the Planning Commission at its June 26, 2023 public hearing.
- If a variance is granted it shall lapse one year from the date of the grant, unless

---

<sup>1</sup> The fifth of these standards requires that rear yards be screened “from rear yards of adjacent dwelling units rear yards by a six-foot privacy fence.” Planning staff were not on hand at the hearing to explain why the need for this variance was not noted. This generated a certain amount of confusion at the hearing, and a variance for this requirement was also made by staff in the event it was determined a privacy fence would be required. Planning staff subsequently advised that LUGM’s historical interpretation of that standard – and the interpretation that will be applied to this project as it goes forward – is that this requirement only applies to townhome sticks that are back-to-back, and not to adjacent individual units. The variance addressing that standard will, therefore, not be included in this order.

building permits are attained.

- Attachments to the Staff Report:
  - #1: Standards Letter
  - #2: Site Plans
  - #3: Planning Commission Approval
  - #4: Maryland Department of the Environment Letter of Authorization
  - #5: Location Map
  - #6: Land Use Map
  - #7: Zoning Map

#### **Applicant's Testimony and Exhibits**

Applicant was represented by Christopher T. Longmore, Esq., of Dugan, McKissick & Longmore LLC. Applicant was also represented by its corporate officers to answer questions about particulars concerning the physical configuration and planned operation of the development. In addition to their oral testimony the Applicant also provided a PowerPoint presentation, a letter addressing the variance standards, and provided pictures, site plans, and other depictions of the property in its current and anticipated states, all of which are incorporated into the record.

#### **Public Testimony**

The following members of the public appeared to offer testimony related to the requested variance:

- *Joan Sullivan Cowan*, Lexington Park, MD

Mrs. Cowan is a self-described “community activist for the Lexington Park-Great Mills Corridor.” She and her husband became involved in the YMCA Steering Committee and have been involved in the greater Lexington Park area’s civic life ever since. She is very

supportive of the project and believes Lexington Park, and the County entire, will benefit greatly from the provision of quality, affordable housing such as that offered by the Applicant.

- *Troy Cowan*, Lexington Park, MD

Mr. Cowan is a self-described “Old Man from Lexington Park.” He and his wife became involved In the YMCA Steering Committee and have been involved in the greater Lexington Park area ever since. He is very supportive of the project and believes Lexington Park, and the County entire, will benefit greatly from the provision of quality, affordable housing such as that offered by the Applicant. He also noted the proposed rent is \$300 cheaper than the average rent of a comparable unit in St. Mary’s County currently.

### **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 – Standard Variance Requirements

Upon review of the facts and circumstances, the Board finds and concludes that the Applicant is 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.

Denial of this variance would impose a practical difficulty upon Applicant. Applicant spoke at length about the difficulty of locating the number of units it plans to offer on the Property, and that reducing the number of units would jeopardize viability of the project. Based upon Applicant’s testimony, the Board accepts and finds that reducing the number of units is not economically viable. As such, Applicant’s proposal strikes a careful and appropriate balance between providing adequate recreational facilities, quality structures, and environmental protections on the one hand – particularly considering the affordable cost at which these units will be offered to the public – and maintaining the overall viability of the project on the other.

The need for these variances is driven by the relatively small size of the parcel and the location of a stormwater management pond that must accept runoff from adjacent parcels. These considerations – particularly the practical realities of having to play host to the stormwater management pond – are not generally present on other properties.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” The Applicant has demonstrated a practical difficulty meeting the requirements of the Comprehensive Zoning Ordinance. It does not appear there is a way for Applicants to establish their intended use on the Property without seeking these variances.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, Applicant's need for a variance stems from limited size of the Property and, in particular, of the presence of a previously installed stormwater management pond that may not be relocated.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. All appropriate agency approvals have been received and no reviewing agency has commented negatively. The neighboring property owners were notified of the variance request and given an opportunity to speak on the matter; none availed themselves of this opportunity. Rather, the proposal strikes the Board as one that will be positively affect the public welfare of this County. The need for housing – particularly affordable housing – was noted by the Applicant and the members of the public who appeared. The Board is also reassured by Applicant's testimony that they will be good stewards of the Property and maintain it to the high standards depicted in their presentation.

Sixth, granting the requested variance will not increase the residential use of the property and 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. As noted above, this proposal will meet an immediate and acknowledged need in St. Mary's County: the provision of more housing units affordable to those who live here. Applicant's have carefully tailored a development proposal that will provide these units without depriving their residents of necessary recreational amenities or quality housing. Impacts to the environment will be appropriately mitigated. Therefore, the Board finds it to be in harmony with the general spirit, intent, and purpose of the County's Comprehensive



Plan.

**ORDER**

PURSUANT to the application of AYDCO Holdings, LLC petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Section 32.3.4 & Schedule 32.1 to reduce the required open space from 50% to 0%, from Section 51.3.14.a(4) to reduce the minimum 20' width of a townhouse to 16', and from Section 71.5.2.b to disturb a non-tidal wetland buffer; 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, pursuant to CZO § 21.1.3.a and CZO § 24.8, that the Applicant is granted a variance from the St. Mary's County Comprehensive Zoning Ordinance Section 32.3.4 & Schedule 32.1 to reduce the required open space from 50% to 0%, from Section 51.3.14.a(4) to reduce the minimum 20' width of a townhouse to 16', and from Section 71.5.2.b to disturb a non-tidal wetland buffer;

UPON CONDITION THAT, Applicant 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 Applicant 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: 3-14, 2024

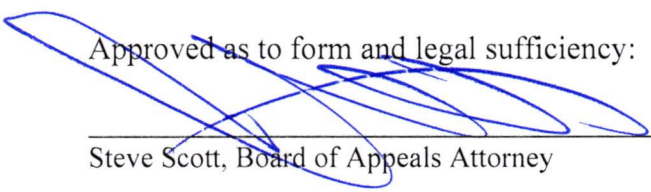
  
George Allen Hayden, Chairperson

Those voting to grant the amendment:

Mr. Hayden, Mr. Bradley, Mr. Payne, Mr. Richardson, and Ms. Weaver

Those voting to deny the amendment:

Approved as to form and legal sufficiency:



---

Steve Scott, Board of Appeals Attorney

### **NOTICE TO APPLICANT**

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 St. Mary's County Circuit Court.

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.