

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

APPEAL NUMBER 19-0001

ANTHONY & CANDLIST GREENWELL

FOURTH ELECTION DISTRICT

DATE HEARD: July 11, 2019

ORDERED BY:

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

DEVELOPMENT FACILITATOR: BRANDY GLENN

DATE SIGNED: August 8, 2019

PLEADINGS

Anthony and Candlist Greenwell, the applicants, are appealing the Land Use and Growth Management Director's decision of February 15, 2019, when the Director denied the applicants request for a Waiver pursuant to Section 1.2.6.A of the St. Mary's Comprehensive Water and Sewerage Plan. The application for a waiver was made for their property located at 25853 Morganza Turner Road, Mechanicsville, Maryland 20659.

PUBLIC NOTIFICATION

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on June 26, 2019 and July 3, 2019. The hearing notice was also posted on the property. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within Two Hundred (200) 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 Friday, July 5, 2019. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

FINDINGS

A public hearing was conducted at 6:30 p.m. on July 11, 2019, 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 with regard to the applicants' appeal.

The Property

That the applicants own the subject property located at 25853 Morganza Turner Road, Mechanicsville, Maryland 20659. It is located in the Rural Preservation District (RPD) and is known as Grid 11 in Parcel 13 Lot 12 on Tax Map 18. The property is located in Phase Two of the Grandview Haven, which is a 24 lot Subdivision.

The Proposed Work

The applicants are requesting a waiver of Section 1.2.6.A of the St. Mary's County Comprehensive Water and Sewerage Plan, because the applicants believe they can demonstrate that connecting to or constructing a new water system would not be feasible in consideration of the property's linear distance from existing facilities, topography, environmental constraints, hydraulics, or denied off-site easements.

The St. Mary's County Comprehensive Water and Sewerage Plan

§ 1.2.6.A of the St. Mary's County Comprehensive Water and Sewerage Plan states:

A. Water: A community water system means a source of water and a distribution system, including treatment and storage facilities, whether publicly or privately owned, serving two (2) or more EDUs. Per the St. Mary's County Comprehensive Zoning Ordinance, Chapter 70, section 9, amended July 26, 2005, all residential subdivisions of 25 lots or more in any zoning district must connect to a public water system. All development in Development Districts,

Town Centers and Village Centers, that is designated for service under this Comprehensive Water and Sewerage Plan (i.e., within a W-1, W-3D or W-6D service area) must be served by a public water system of sufficient capacity. Also under Chapter 70, the Director may waive or defer this requirement with concurrence from the Metropolitan Commission and from the Office of Environmental Health if the applicant demonstrates that connecting to or constructing a new water system would not be feasible in consideration of the property's linear distance from existing facilities, topography, environmental constraints, hydraulics, or denied off-site easements. The applicant has the burden of proving that the waiver or deferral is justified based on the facts. A denial of a waiver by the Director may be appealed to the Board of Appeals.

St. Mary's County Comprehensive Zoning Ordinance

§ 70.9.1 of the St. Mary's County Comprehensive Zoning Ordinance states:

1. Types of Service. Proposed development shall be served by an adequate community water supply system, multi-user water supply system, or individual water supply system.

a. Public Water Systems Required. All residential subdivisions of 25 lots or more in any zoning district must connect to a public water system. All development in the Development Districts, Town Centers and Village Centers that is designated for service under the Comprehensive Water and Sewerage Plan (i.e., within a W-1, W-3D or W-6D service area) must be served by a public water system of sufficient capacity.

b. Waiver or Deferral. For development in a Development District, Town Center or Village Center and designated for service under the Comprehensive Water and Sewerage Plan (i.e., within a W-1, W-3D or W-6D service area), the Director may waive or defer the above requirement with concurrence from the Metropolitan Commission and from the Department of Environmental Health if the applicant (namely the owner, contract purchaser or their agent) demonstrates that connecting to or constructing a new water system would not be feasible in consideration of the property's linear distance from existing facilities, topography, environmental constraints, hydraulics, or denied off-site easements. The applicant has the burden of proof that waiver or deferral is justified based on the facts. Following a waiver or deferral, the resulting private water service shall be:

(1) Approved by the Office of Environmental Health;

(2) Designed for future connection to a public system when the Metropolitan Commission determines that a connection is feasible and the private water service shall be discontinued and the property shall be connected to the public system; and

(3) In compliance with Section 70.9.3 below.

c. Authorization for Use of Wells. Any development not required to connect to a public water system may be served by an individual well.

The Waiver Requested

The applicants are requesting a waiver of Section 1.2.6.A of the St. Mary's County Comprehensive Water and Sewerage Plan from having to connect or construct a new water system for two additional lots they are proposing to subdivide from their property. The need for the waiver is because they are proposing to create a 25th and 26th lots in the Grandview Haven Subdivision, which has 24 lots already existing and both the St. Mary's County Comprehensive Water and Sewerage Plan and the St. Mary's County Comprehensive Zoning Ordinance state that all residential subdivisions of 25 lots or more in any zoning district must connect to a public water system.

The Evidence Submitted At The Hearing

The Applicants introduced the following evidence:

- Exhibit 1 Notice of Public Hearing Grandview and Greenwell
- Exhibit 2 Notice of Appeal
- Exhibit 3 Transmittal B Vukmer
- Exhibit 4 Email From C.Longmore
- Exhibit 5 Water Sewer Connection Waivers and Letter from B. Hunt
- Exhibit 6 Letter from B. Hunt, Director

- Exhibit 7 TEC Report
- Exhibit 8 Staff Report
- Exhibit 9 MetCom Updates 030619
- Exhibit 10 Applicant Presentation
- Exhibit 11 Deed Liber 3400 Folio 341
- Exhibit 12 Letter SMcCauley 090915
- Exhibit 13 TEC Report
- Exhibit 14 TEC Report
- Exhibit 15 Water Sewer Connection Waiver Request 021119
- Exhibit 16 Email BHunt 022719

St. Mary's County Land Use and Growth Management introduced the following evidence:

- Exhibit 17 SMC MD Comprehensive Water Sewerage Plan 1-6
- Exhibit 18 SMC Comprehensive Zoning Ordinance pages 70-9 and 70-10

Applicants Testimony

The Applicants were represented at the hearing by Christopher T. Longmore, their attorney, from Dugan, McKissick & Longmore, LLC.

- Barrett Vukmer, their surveyor, from Chesapeake Trails Surveying, LLC testified that it was not feasible for the Applicants to connect to a public water system because of the property's linear distance from existing facilities, topography, environmental constraints, hydraulics, and costs.
- The distance to the nearest public water system was Three Thousand Seven Hundred and fifty linear feet (3,750).
- The approximate connection costs to connect to public water would be One Hundred Twenty-four Thousand Three Hundred Eleven Dollars and Seventy-four cents (\$124,311.74).

- The cost to drill two wells into the second water strata (over 200' deep with 4 ½ well casing) would be Twenty-two Thousand Dollars (\$22,000.00).
- The Applicant, Candlist Greenwell, testified that they were told at the time they purchased the property that they would be able to subdivide and build another home on the property. She testified that an employee of Land Use and Growth Management also initially told her that she would be able to do so (see Exhibit 12).

TESTIMONY OF THE DIRECTOR OF LAND USE AND GROWTH MANGEMENT

- That the Applicants' property was not located in a Development District, Town Center or Village Center.
- That the Applicant's property was not designated for service under the St. Mary's County Comprehensive Plan.
- That Metropolitan Commission did not concur with the Applicants waiver request.

DECISION

County Requirements for Waiver

The St. Mary's County Comprehensive Zoning Ordinance § 70.9.b sets forth the standards that must be met for the Land Use and Growth Management Director to grant a waiver of the public water systems requirement that all residential subdivisions of 25 lots or more in any zoning district must connect to a public water system. They are: (1) the property must be in a Development District, Town Center or Village Center; (2) the property must be designated for service under the St. Mary's County

Comprehensive Plan; (3) the Metropolitan Commission and the Department of Environmental Health must concur with the waiver; 4) the applicants must demonstrate that connecting to or constructing a new water system would not be feasible in consideration of the property's linear distance from existing facilities, topography, environmental constraints, hydraulics, or denied off-site easements. The applicant has the burden of proof that waiver or deferral is justified based on the facts.

Findings

Upon review of the facts and circumstances, the Board finds and concludes that the Land Use and Growth Management Director's decision to deny the Public Water System Connection Waiver to the Applicants is upheld. The Board finds:

- That the Applicants property is not located in a Development District, Town Center, or Village Center.
- That the Applicants property is located in a No Planned Service Area pursuant to the St. Mary's County Comprehensive Water and Sewerage Plan.
- That the Metropolitan Commission did not concur with the Waiver request of the Applicants.
- That the Applicants do not meet the standards for granting a Waiver in this case.

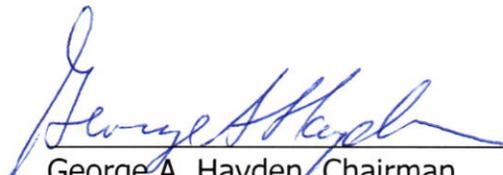
ORDER

PURSUANT to the appeal of Anthony and Candlist Greenwell, appealing the Land Use and Growth Management Director's decision of February 15, 2019, denying their request for a waiver of Section 1.2.6.A of the St. Mary's County Comprehensive Water and Sewerage Plan; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 8th day of August, 2019,

ORDERED, by the St. Mary's County Board of Appeals, that the Land Use and Growth Management Director's decision to deny the Public Water System Connection Waiver to the Applicants is upheld.

Date: August 8, 2019


George A. Hayden, Chairman

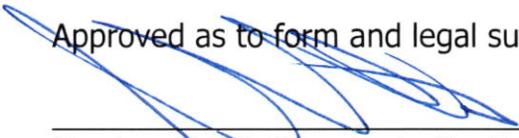
Those voting to deny the appeal:

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

Those voting to approve the appeal:

Mr. Richardson

Approved as to form and legal sufficiency


Stephen Scott, Attorney to the Board of Appeals

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.

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