

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Cindi J. Thomas & Steven S. Thomas
48845 Saint James Church Road
Lexington Park, Maryland

Case No. CUAP/VAAP 16-132-001

DECISION AND ORDER**Introduction**

Cindi J. Thomas & Steven S. Thomas (hereinafter "Applicants"), filed an application for a conditional use pursuant to the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 48845 Saint James Church Road, Lexington Park, Maryland (hereinafter the "Property"). The application seeks conditional use approval for use type 69, Recreational Facility, Minor Indoor and a variance from Schedule 32.1 of the Comprehensive Zoning Ordinance to increase the maximum allowed footprint of a commercial structure in the Rural Preservation District.

After due notice, a public hearing was conducted at 6:30 p.m. on February 9, 2017, at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. The proceedings were recorded electronically.

Legal Standard

- A. The Board shall not approve a conditional use unless it finds, based on the evidence, that:
1. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;
 2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, morals, order, or general welfare;
 3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood;
 4. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district;
 5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided;
 6. Adequate measures have been or will be taken to provide ingress and egress following

- a design that minimizes traffic congestion in the public streets;
7. The proposed conditional use is not contrary to the goals, objectives, and policies of the Comprehensive Plan;
 8. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in Chapter 51: and
 9. Pursuant to Schedule 50.4 of the Ordinance, Use Type 69, minor indoor recreational facility, is a conditional use in the Rural Preservation District (RPD). Section 51.3.69 of the Ordinance specifies the general and conditional standards that apply to Use Type 69:
 - a. The use shall be limited in the Rural Preservation District to shooting galleries.
 - b. The maximum occupant load of the building must not exceed 99 persons.
 - c. Evening and weekend operations may be permitted as long as such operations do not have an adverse impact on adjoining uses.
- B. The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:
1. Because of particular physical surroundings such as exceptional narrowness, shallowness size, shape or topographical conditions of the property involved, strict enforcement of the 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; provided, any development necessarily increases property value, and that alone shall not constitute a finding of an exclusive reason.
 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.

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

Findings of Fact

The Property is Lot 4 of the Dunbar Minor Subdivision and is located in the Rural Preservation District. The Applicants propose to construct a one-story, 11,000 square-foot building for use as an indoor shooting range. The Property contains four sheds and is used for horse pastures.

The properties surrounding the proposed project site and Flat Broke Farm, parcels 9 and 135 on tax map 59, are owned by the Maryland Department of Natural Resources and contain the Elms Wildlife Management Area and public hunting area.

The proposed use will be conducted entirely within an enclosed building in accordance with all federal and state regulations. Flat Broke Farm, a six-acre farm located west of the Property, is Lot 3 of the Dunbar Minor Subdivision and the residence of the Applicants.

The Property fronts on Saint James Church Road and the Applicants will be widening a portion of this road to 18 feet in width. Two new entrances will be constructed to provide “right in” and “right out” access in accordance with requirements stipulated by the Department of Public Works & Transportation. The Applicants will provide storm water management in accordance with the St. Mary’s County Stormwater Management, Grading, and Sediment and Erosion Control Ordinance. A deep drilled well and septic mound system approved by the St. Mary’s Health Department will serve the Property. The Applicants will make improvements to the existing underground electric distribution cables requested by the Southern Maryland Electric Cooperative Inc..

Conclusions of Law

The legislative body, by designating a conditional use, has deemed it to be generally compatible with other uses. Therefore, general compatibility is not normally a proper issue to be considered. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a conditional use will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered. In the present case, any adverse effects will not be greater, and may be less, than the adverse effects ordinarily associated with an indoor shooting range.

Section 4.4 of the Comprehensive Plan pertaining to rural preservation goals, objectives and policies includes a goal to direct growth in rural areas to existing population centers and protect resource areas. Growth in rural areas should be limited to preserve open space and to protect and promote agriculture and forestry.

Section 5.12.1 stipulates the following goal: Preserve the natural, recreational, historical and cultural heritage in conjunction with economic and social well-being to maintain and enhance the quality of life.

Pursuant to Schedule 32.1 of the Ordinance, 6,250 square feet is the maximum footprint of a commercial structure on a site in the Rural Preservation District. However, that limited footprint will not accommodate the proposed use. The Property is isolated and not visible from public highways. There are no other buildings in proximity that would be affected by the structure proposed by the Applicants. The appearance of the recreation facility will preserve the rural character.

The site plan review process will ensure that the Applicants satisfy the requirements of the St. Mary's Health Department, the St. Mary's Soil Conservation District, the Department of Public Works & Transportation, and the Department of Land Use and Growth Management.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a conditional use pursuant to the St. Mary's County Comprehensive Zoning Ordinance have been met, a conditional use for use type 69, Recreational Facility, Minor Indoor, to allow an indoor shooting range on the Property located at 48845 Saint James Church Road, Lexington Park, Maryland is *approved*; and

BE IT FURTHER ORDERED, that, having made a finding that the standards for a variance and the objectives of the St. Mary's County Comprehensive Zoning Ordinance have been met, a variance to increase the maximum allowed footprint of a commercial structure in the Rural Preservation District is *granted*.

Date: March 9, 2017


George A. Hayden, Chairman

Cindi J. Thomas & Steven S. Thomas
48845 Saint James Church Road
Lexington Park, Maryland

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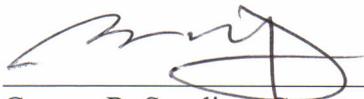
Those voting to approve the conditional use:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr.
Payne and Mr. Miedzinski

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr.
Payne and Mr. Miedzinski

Approved as to form and legal sufficiency:



George R. Sparling, County Attorney