

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 24-0144

MOLL DYER MINOR SUBDIVISION

THIRD ELECTION DISTRICT

VARIANCE REQUEST HEARD: JANUARY 23, 2025

ORDERED BY:

**Mr. Hayden, Mr. Bradley, Mr. Brown,
Mr. Payne and Ms. Weaver**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: February 13, 2025

Pleadings

James Stephen Gass (hereinafter “Applicant”) seeks a variance from the St. Mary’s County Subdivision Ordinance, specifically Section 30.14.5(c), to add an additional lot to a private right-of-way.

Public Notification

The Hearing Notice was advertised in *The Southern Maryland News*, a newspaper of general circulation, in St. Mary’s County, Maryland, on January 3, 2025, and January 10, 2025. A physical posting was made on the property and all neighbors with access from, and within two hundred (200) feet of, Josie Way, Cartwright Road, and Beem Lane, were notified by certified mail on or before January 8, 2025. Additionally, the agenda for the hearing was posted on the County’s website by January 17, 2025. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes there has been compliance with all applicable notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on January 23, 2025, at the St. Mary’s County Governmental Center, located 41770 Baldrige Street, Leonardtown, Maryland 20650. All persons desiring to be heard were duly sworn, the proceedings were electronically recorded, and the following was presented about the proposed amendment requested by the Applicant.

The Property

The subject property is located at 21824 Beem Lane, Leonardtown, Maryland 20650 (hereinafter the “Property”). The Property, which is 38.32 acres, more or less, is zoned Rural Preservation District and can be found at Tax Map 41, Grid 22, Parcel 302, and bears Property Tax Identification Number 1903053253.

The Variance Requested

Applicant seeks a variance the St. Mary's County Subdivision Ordinance (hereinafter "Subdivision Ordinance"), specifically §30.14.5(c), to add an additional lot to a private right-of-way.

St. Mary's County Subdivision Ordinance

Under Subdivision Ordinance §30.14.5(c), "Subdivisions consisting of seven (7) or more residential lots or less, or farmstead subdivisions, may be served by a private road. All subdivisions, except farmsteads and lots approved through the family conveyance provisions of the Ordinance, proposed with eight (8) lots, or more, shall be served by public roads in accordance with the provisions contained herein." §30.14.5(f) moreover states that "in the event that the maximum allowable number of lots having access is exceeded, or is otherwise approved by a variance, all further divisions of land must front on a public road and are subject to the regulations and standards for public roads."

Departmental Testimony and Exhibits

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

- Beem Lane and Cartwright Road are existing private rights-of-way (ROW) located off Fairgrounds Road as shown on the recorded plats (Attachments 2 & 3). Beem Lane is approximately 3,695-feet long and the private ROW portion of Cartwright Road is approximately 1,325 feet (Attachment 4). Josie Way is an existing ROW and is comprised of 70-foot-wide ROW (Attachment 5). Beem Lane currently serves fourteen (14) residential lots/parcels, while Cartwright Road (private in relevant portion) currently serves thirteen (13) residential lots/parcels, and Josie Way serves three (3) for a total of 30

lots/parcels currently being served by the existing ROWs.

- The Property consists of 38.32 acres and is currently being used for residential purposes according to the Maryland Department of Assessments and Taxation (Attachment 6).
- The proposed Minor Subdivision (Attachment 6) intends to subdivide the parcel into two (2) farmsteads.

Attachments to the Staff Report:

Attachment 1: Standards Letter

Attachment 2: Plat 10 at 55

Attachment 3: Plat 14 at 15

Attachment 4: Beem Lane, Cartwright Road, and Josie Way Map

Attachment 5: Plat 48 at 88

Attachment 6: Parcel 302 SDAT Record

Attachment 7: Proposed Minor Subdivision Plat

Attachment 8: LUGM Review Comments dated October 9, 2024

Attachment 9: Location Map

Attachment 10: Land Use Map

Attachment 11: Zoning Map

Applicant's Testimony and Exhibits

Applicant appeared before the Board alongside Chris Longmore, Esq., of Dugan, McKissick & Longmore, LLC. Mr. Longmore presented a slideshow that showed maps and pictures of the affected private roads and answered questions posed by the Board. The following evidence and testimony were included in Applicant's presentation:

- Mr. Longmore brought to the Board's attention a prior variance granted in the fall of

2024 for one of Applicant's neighbors. Mr. Longmore asserted the present request is substantially like the prior request.

- There is no road maintenance agreement in place on Beem Lane. Applicant has lived on the road approximately 44 years and helped with the installation, upkeep, and maintenance of Beem Lane.
- The proposed subdivision will create two farmstead parcels, one of 23.324 acres and the other of 15 acres.
- The private roads impacted by this request have existed for decades.
- Beem Lane varies in width between 20 feet and 15 feet.

Public Testimony

The following members of the public appeared at the public hearing to offer testimony:

Anthony Malatesta, 21842 Beem Lane

- Dr. Malatesta has lived on Beem Lane for approximately ten years. His testimony was that a majority of Beem Lane is not depicted in the pictures shared tonight. He said there are many potholes in Beem Lane. He said Mr. Gass has helped maintain the road, but noted he is near retirement and may not be able to continue maintaining the road indefinitely. He did not think it was a “strong strategy” as a community to make a decision now.

Ancel Jones, 43132 Moll Dyer Road

- Mr. Jones lives on Moll Dyer Road, which is in close proximity to the neighborhood but not served by Beem Lane or Josie Way. He owns property that fronts on Josie Way. He said Mr. Gass has helped maintain the property and thinks “we’ll be fine” if the variance is approved.

Justin Beem, 21991 Point Lookout Road

- Mr. Beem is Mr. Jones' grandson. He believes one day he may live off Josie Way. He had no opposition to the requested variance but did want to know the process by which residents could petition for the County to take over Beem Lane in the future.

In addition to the in-person testimony, written testimony was received from Rachel Malatesta, Ginny Norris, Joanna Schwab, William Schwab, Anthony Malatesta, and Joseph Nantista. Except for Mr. Nantisa, all letters received opposed the requested variance. All letters were read by the Board and incorporated as part of the record.

Decision

County Requirements for Granting Variances

In accordance with Section 20.3.b of the St. Mary's County Subdivision Ordinance, the Board shall not grant a variance from the regulations of the Ordinance unless it makes findings based upon evidence presented to it that:

- a. It will not be contrary to the public interest;
- b. Owing to special conditions, the enforcement of the provisions of this Ordinance will result in practical difficulty or unwarranted hardship;
- c. It is in accordance with the purpose and intent of the St. Mary's County Subdivision Ordinance; and,
- d. It is consistent with the Comprehensive Plan.

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 Subdivision Ordinance. Several factors

support this decision.

Firstly, the Board finds that that granting of this requested variance is not contrary to the public interest. The testimony before the Board is mixed; some residents testify that the road is in good repair and that Mr. Gass contributes to its maintenance, and some do not. Most negative testimony centers on Beem Lane. The pictures received by the Board appear to show Beem Lane in a state of good repair and able to meet the demands placed upon it. The balance of the testimony establishes that Mr. Gass is, and has been, a good steward of the road and has contributed to its maintenance and upkeep during the four decades he has resided there. The requested variance is for one additional lot, and the undisputed testimony is that Beem Lane serves dozens of residences already. One additional dwelling will not tip the balance. Much negative testimony centered not on whether Beem Lane was incapable of handling one more parcel, but of the unequal contributions current residents make to its upkeep. To the extent any such grievance on those grounds is justified, it is a grievance best relieved by a court of competent jurisdiction presiding over a civil case, not this Board.

The Board finds no competent evidence before it that this requested variance will materially diminish the current state of Beem Lane, Josie Way, or Cartwright Road. The Applicant indicated his willingness to participate in the maintenance of the road and has demonstrated through past action his sincerity. Accordingly, we find that granting the variance appears to pose no harm to the public interest.

The second factor is that, owing to special conditions, the enforcement of the provisions of this Ordinance will result in a practical difficulty for the Applicant. In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Supreme Court (formerly 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 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; and
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, absent a variance, the Applicant would be required to undertake cost-prohibitive measures to build a county road to access a single lot, despite there being an existing adequate road network. Beem Lane and Cartwright Road are both decades-old, long private roads. Upgrading them would be prohibitively expensive for the Applicant, whose single additional lot will place no materially greater strain on them than the thirty other parcels they presently serve.

Thirdly, the proposed variance adheres to the purpose and intent of the Subdivision Ordinance. Specifically, Section 30.14, which pertains to Private Roads, provides,

“The purpose of shared driveway and private road standards is to provide options to retain rural character, reduce costs, and allow more control, security, and sense of identity when public roads are not needed for circulation. These standards are intended to provide for the safety of the property owners by requiring adequate access for fire, emergency, medical and law enforcement vehicles. It provides for the continued uninterrupted use of the access for all of the owners by establishing a durable roadway and easement, and assigns responsibility for continued maintenance of the access.”

As stated above, many lots/parcels already rely upon these existing private rights of way. The proposed subdivision is consistent with the St. Mary’s County Comprehensive Plan, and the creation of one additional farmstead lot fits plainly within the use and development patterns

intended for the Rural Preservation District by the Comprehensive Plan.

Finally, the proposed variance complies with the Comprehensive Plan. Section 4.4 of the Comprehensive Plan lists its objectives, which include “limit[ing] non-farm residential development outside of growth areas to be in scale and consistent with the rural character of the surrounding area. Within this objective, the following policy is noted: [e]stablish standards for major and minor residential subdivision development outside of growth areas to ensure compatibility with surrounding rural and community character.” Here, the subdivision proposed by Applicant is within the degree of growth contemplated by the Comprehensive Plan. It will not place a strain upon existing infrastructure, will not require any great expansion of public facilities, will not generate sprawl, and will retain the overall look, feel, character, and nature of the neighborhood’s rural setting.

Accordingly, based on the above, this Board therefore finds it appropriate to grant the requested variance.

ORDER

PURSUANT to the application of James Stephen Gass, petitioning for a variance from Section 20.3.b of the St. Mary’s County Subdivision Ordinance to add an additional lot to a private right-of-way; and

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

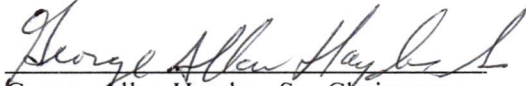
ORDERED, by the St. Mary’s County Board of Appeals, pursuant to the St. Mary’s County Subdivision Ordinance § 20.3, the Applicant is granted a variance from Subdivision Ordinance §30.14.5(c) and (f);

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 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 13, 2025

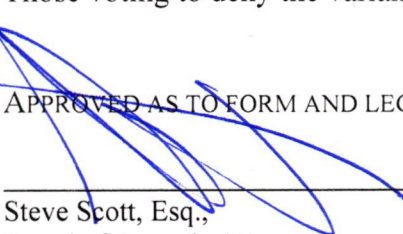

George Allan Hayden, Sr., Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Brown,
Mr. Payne, and Mrs. Weaver

Those voting to deny the variance:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Steve Scott, Esq.,
Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Petition for Judicial Review with the Circuit Court for St. Mary's County. St. Mary's County may not issue a permit for the requested activity until the thirty (30) day appeal period has elapsed.

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