

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP 24-0304

PEMBROOKE TOWNHOMES PROJECT

EIGHTH ELECTION DISTRICT

DATE HEARD: June 26, 2025

ORDERED BY:

**Mr. Hayden, Mr. Brown,
Mr. Payne, Mr. LaRocco, Ms. Weaver**

PLANNER: STACY CLEMENTS

DATE SIGNED: August 14, 2025

Pleadings

Pembroke LLC (“Applicant”) seeks a variance (VAAP # 24-0304) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.7.4.c to disturb an expanded stream buffer.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 6, 2025 and June 13, 2025. Required mailings to neighbors and physical posting of the property were completed by June 11, 2025. The agenda was also posted on the County’s on Wednesday, June 17, 2025. Therefore, the 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 June 26, 2025 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 Applicant.

The Property

Applicant owns real property along Meadow Creek Drive on Willows Road, Lexington Park, Maryland (“the Property”). The Property consists of 27.83 acres, more or less, is within the Residential Medium-Density (“RM”) zoning district, and can be found among the Tax Maps of St. Mary’s County at Tax Map 51, Grid 17, Parcel 618.

The Variance Requested

Applicant seeks a variance from CZO § 71.7.4.c to disturb an expanded stream buffer.

The St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.4.2.a establishes 50' buffers from the top of each bank of an intermittent stream outside the Critical Area, and 100' buffers from the top of each bank of all perennial streams. These buffers are expanded, per CZO § 71.7.4.c, to include adjacent areas of highly erodible soils.

Staff Testimony

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

- The Applicant is proposing Use Type 14, Dwelling Unit, Attached. The CZO 51.4.14 defines Use #14 as A structure containing multiple dwelling units placed side by side sharing common walls, but each unit has a separate front and rear access. Includes townhouses and duplexes. During the review process it was determined that the application needed a variance from the site development standards for impacts to the stream buffer due to the presence of Highly Erodible Soils. (Attachment 2).
- The Concept site plan was approved by the St. Mary's County Planning Commission during their February 10, 2025 public hearing with the condition of a variance approval for disturbance to the stream buffer. (Attachment 3)
- Per the Comprehensive Zoning Ordinance (CZO) Section 71.4.2 requires intermittent streams located outside of the Critical Area to have a 50' buffer from each bank. Moreover, Section 71.7.4 stream buffer areas shall be expanded to include adjacent areas of highly erodible soils. The Department of Land Use and Growth Management requires a variance for the disturbance to the expanded stream buffer. (Attachment 4)
- MDE approval for impacts to nontidal wetlands on the site will be required by LUGM prior to project approval, but a local variance is not required to authorize those disturbances.

- The following Attachments to the Staff Report were introduced:
 - Attachment 1: Standards Letter
 - Attachment 2: Site Plans
 - Attachment 3: Planning Commission Approval Letter
 - Attachment 4: Land Use Map
 - Attachment 5: Zoning Map

Applicant Testimony and Exhibits

Applicant was represented before the Board by Christopher Longmore, Esq., of Dugan McKissick & Longmore, LLC and Michael Przybocki, PE of Soltesz, Inc. Mr. Longmore and Mr. Przybocki presented a slideshow to the Board that, among other things, included site plans for the project, showed pictures of the existing site, and highlighted the areas where the stream buffer would be encroached upon. They also answered questions posed by the Board. Salient testimony included, but was by no means limited to, the following:

- The Property is currently unimproved.
- The County is in “critical need” of additional housing, including the specific housing proposed in this Project.
- The Planning Commission approved the Concept Site Plan.
- The Property is within the Lexington Park Development District and is consistent and compatible with the surrounding residential uses.
- The configuration of the Property, with a “long narrow shape,” which makes engineering the site difficult to achieve. Specifically, Applicant stated “the natural layout of the Property prefers the proposed residential units and streets to be away from the catchment areas,” but that “the narrow shape of the Property and the required setback and buffer yards

push the proposed Project improvements slightly into the stream buffers.”

- Without some intrusion into the stream buffers, development of the site will be “practically limited.”
- Total permanent buffer impacts will consist of 6,600 square feet of temporary impacts and 7,950 square feet of permanent buffer impacts, which Applicant characterized as “minor” compared to the overall size of the Property.
- Applicant characterized the Property as “infill development,” being one of the final parcels within the Pembroke project to be developed.
- In response to concerns raised by Mr. Collier, Mr. Przybocki explained how the stormwater management to be implemented in this project differs from stormwater management designed during the original development of Pembroke. Mr. Przybocki stated that stormwater management on the Property would be designed to drain at separate times, minimizing the amount of outfall departing the site at any given time and mitigating the overall risk of flooding.

Public Testimony

The following members of the public offered public testimony in this matter:

- *Lewis Collier, 20568 Carmarthen Drive, Lexington Park*
 - Mr. Collier is the President of the Pembroke Homeowners Association, which represents Phases 1 through 5 of the Pembroke development. He said there are roughly 350 homes on a quarter-acre each, spanning over 100 acres of land. He said they have 9 stormwater management ponds servicing their development, 2 of which drain into the intermittent stream. He stated the intermittent stream always has water flowing into it. The remaining

streams drain into Pembroke Run. He said that in times of heavy rain, Pembroke Run swells to over 50' in width and that some neighbors have had to sandbag their houses to prevent flooding during these storms. He said "Pembroke Run, as it sits now, can barely handle the water coming into it."

- *Joan Sullivan Cowan, 21411 South Essex Drive, Lexington Park*
 - Mrs. Cowan described herself and her husband as community activists who, among other things, promote the development of housing. She asked the Board to approve the requested variances, and said the Board's prior approval of a wetlands variance for the Villas at Lexwoods project could serve as precedent.
- *Troy Cowan, 21411 South Essex Drive, Lexington Park*
 - Mr. Cowan stated the County "needs this project for the housing reasons that have been said before." He said that if we do not provide new housing in the County that "substantial hardship" would be imposed on individuals who work in St. Mary's County if they face longer commutes and other logistical concerns.

In addition to the public testimony, written comments were received from Kathy Raley Ellis, Rafael Flores, Sarah Fallin (on behalf of the Pembroke Homeowners Association Board of Directors), Roger Podob, David Chandler, and Brandon Russell. With the exception of Mr. Russell, all described themselves as neighbors of the Property. They expressed concerns that included the Project's contribution to traffic, concerns about stormwater management and potential flooding, and the loss of undeveloped "green space." All letters were reviewed by the Board and

included in full as part of the record.

Decision

County Requirements for Granting Standard 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's front yard setback provision.

First, the Board finds that strictly interpreting the CZO would result in a practical difficulty to the Applicant due to the particular physical surroundings of the Property. CZO § 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. As stated in Applicant's standards letter and demonstrated in depth during the public hearing, the Property

possesses an odd configuration that is substantially impacted by the streams that run across it. Applicant demonstrated the streams, and their buffers, make reasonable development of the Property practically impossible without some intrusion into the buffers. The amount of permanent disturbance is a small part of the overall Property, and Mr. Przybocki competently explained how the stormwater management facilities and practices proposed as part of the Project will manage runoff. Testimony also showed that proposed housing will be built no closer to existing streams than the prior development in Pembroke. On the whole, the evidence and testimony adduced by the Applicant convinces the Board that strict application of the CZO's strictures with respect to the stream buffers would deny the Applicant from making full, permitted use of its property, that the requested variance is not more than what is necessary to achieve that use, and that grant of the variance will not be to the detriment of the overall public welfare of the County.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. As explained in depth during the hearing and briefly discussed above, the Property's topography is uncommonly challenging. The configuration of the lot and the natural features lying thereon create a difficulties with development that are not generally encountered.

To the third standard, the purpose of seeking the variance is not "based exclusively upon reasons of convenience, profit or caprice." Applicant has demonstrated a practical difficulty. Given the constrained area of the lot that is developable without the requested variance, Applicant's request is reasonable, and not the product of caprice or whim.

Fourth, the need for the variance does not arise from actions of the Applicant. As Applicant succinctly stated, Applicant did not create the site's topography.

Fifth, the variance will neither detrimentally affect the public welfare, substantially injure

other properties or improvements, nor change the character of the district. The neighboring property owners were notified of the variance request and given an opportunity to speak on the matter. Several did so. In over an hour of testimony, Applicant explained the stormwater management engineering that will be developed on this site. Applicant explained that water collected from the proposed development would not be released all at once, and that storm runoff would be released in a controlled manner. Applicant also detailed how construction and engineering techniques have improved since the original design and construction of older sections of the Pembroke subdivision, and that the proposed stormwater management will be more effective than the facilities installed as part of earlier phases. As to the character of the district, the proposed development is of similar residential character and nature as existing subdivisions, and is a use permitted-by-right in the RM zoning district.

Sixth, the proposed development will not increase the residential use of the property. The requested variance is not to the allowable density of the project.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Board agrees that the project is “infill development” of a stripe that is encouraged by the Comprehensive Plan, specifically Vision 3 – Growth Areas and Vision 4- Community Design. Encouraging such infill development promotes “efficient use of land throughout the County,” to quote from Applicant’s standards letter. Applicant, and even some members of the public testifying in this matter, spoke of the County’s pressing need for additional housing, particularly housing suitable for younger families and first-time homebuyers. We find granting the variance furthers these visions, without undue injury to the County’s natural heritage or risk to neighboring properties. Accordingly, we find the variance should be granted.

ORDER

PURSUANT to Applicant's request for a variance from Comprehensive Zoning Ordinance § 71.7.4.c to disturb an expanded stream buffer,

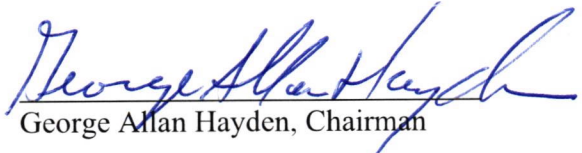
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicant is granted the requested variance.

The foregoing variance is subject to the condition that the 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 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: August 14, 2025

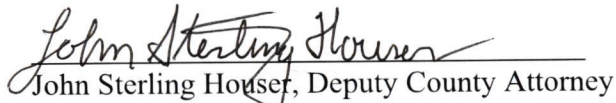

George Allan Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. LaRocco,
Mr. Payne, and Ms. Weaver

Those voting to deny the variance:

Approved as to form and legal sufficiency


John Sterling Houser, Deputy County 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 Petition for Judicial Review with the Circuit Court for St. Mary's County within thirty (30) days of the date this order is signed.

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.