

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP NUMBER # 24-0374

ROYAL FARMS CHARLOTTE HALL

FIFTH ELECTION DISTRICT

DATE HEARD: SEPTEMBER 12, 2024

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: October 10, 2024

Pleadings

Two Farms, Inc DBA Royal Farms (the “Applicant”) seeks conditional use approval pursuant to CZO § 65.4.01.b.i(2) of a proposed 30’ sign and a variance from CZO § 65.4.1.c.i(2)(a) to allow less than 200’ between the proposed sign and an existing billboard.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on August 23, 2024 and August 30, 2024. The hearing notice was physically posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the addresses furnished by the Department of Land Use and Growth Management. The agenda was also posted on the County’s website on September 6, 2024. Therefore, the Board finds compliance with all notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on September 12, 2024 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 conditional use requested by the Applicant.

The Property

Applicant is the developer of property situate 30315 Three Notch Road and 37590 Oaks Road, Charlotte Hall, MD 20622 (collectively, “the Property”). The Property consists of 7.87 acres, more or less, is zoned entirely as Town Center Mixed Use (“TMX”), carries a Mixed-Use

Moderate-Intensity land use designation, and is identified on Tax Map 1, Grid 16, Parcels 29 and 10.

The Conditional Use & Variance Requested

The Applicant seeks a conditional use pursuant to Chapter 25 of the St. Mary's Comprehensive Zoning Ordinance ("CZO") and CZO § 65.4.01.b.i(2) to exceed the allowable height of 20 feet for a permanent, freestanding, on-premises sign on nonresidential property by 10 feet for a total height of 30 feet. Additionally, Applicant seeks a dimensional variance pursuant to Chapter 28 from CZO § 65.4.01.c.i(2)(a) to allow a sign less than 200 feet between a permanent, freestanding, on-premises sign and a billboard on nonresidential property.

The St. Mary's County Comprehensive Zoning Ordinance

CZO § 65.4.01.b states that the maximum height of any permanent, freestanding sign, except for ground signs, on nonresidential property is 20 feet. That height can be increased through a conditional use approval. CZO 65.4.01.c(2)(a) mandates a minimum separation of 200 feet between two freestanding signs, unless the two signs are at driveway connections that are closer than 200 feet apart.

The Evidence Submitted at the Hearing by LUGM

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

- Per Plat Book 81, Page 71, the Property comprises 7.87 acres. The Property is currently cleared in preparation for development;
- A Major Site Plan has been prepared to develop and establish Use Type 48 – Convenience Store, Use Type 60 – Fuel Sales, and Use Type 62 – Motor Vehicle Maintenance Services, Minor on the Property. During the review process it was determined the application needed

a sign permit for the project;

- The proposed sign site plan (Attachment 3) requires conditional use approval for the request to increase the allowable sign height (Attachment 4) according to the sign standards of CZO Section 65.4. (Attachment 5). The proposed site plan also requires a variance from the sign standards as it proposes less than 200 feet between a permanent, freestanding, on-premises sign and a billboard.
- The attached site and signage plans propose an 11' x 30' permanent, free-standing, on-premises sign; therefore, conditional use approval is required;
- The site plan shows less than 70 feet between the proposed permanent, freestanding on-premises sign and the existing billboard. The proposal intends to keep the existing billboard on-site; therefore, a variance is required.

The following attachments were included with the Staff Report:

Attachment 1: Standards Letter

Attachment 2: Plat 81 at 71

Attachment 3: Site Plan with Sign Detail

Attachment 4: LUGM Zoning Review

Attachment 5: Ordinance No. 2019-41 (Sign Ordinance)

Attachment 6: Location Map

Attachment 7: Land Use Map

Attachment 8: Zoning Map

Applicant's Testimony and Exhibits

The Applicant was represented by Christopher Longmore, Esq., of Dugan, McKissick & Longmore LLC, who was joined by Thomas Ruszin, a Fuel and Environmental Leader for Royal

Farms. Mr. Longmore and Mr. Ruszin presented a PowerPoint containing plans, maps, and pictures, prepared a written letter addressing the standards applicable to the property, and answered many questions posed by the Board. We highlight the following evidence that was included among that presentation:

- The Applicant proposes a free-standing sign that includes both the name of the Royal Farms store and the pricing for each of the fuel products that will be sold at the location. This sign has been designed to be consistent with the “look” of other Royal Farms stores;
- In addition to giving adequate space to display each of the fuel types offered at the location, the proposed sign will be more visible for passing motor vehicles and customers of Royal Farms;
- The existing billboard has been on the site for many years, and is grandfathered and allowed to remain on the site. Given the shape of the Royal Farms sign and other constraints, requiring the placement of the sign more than 200 feet from the existing billboard would render the construction of the sign unfeasible and less safe than the location proposed by Applicant;
- There is at least one sign for another convenience store adjacent to the site that has a similar design as the sign proposed by the Applicant and appears to be more than 20 feet in height;
- The sign will have two posts on the lower portion of the sign which will allow drivers to see through, improving visibility of other vehicles and pedestrians;
- Questioned by the Board about how safe the proposed sign would be in its proposed location, Mr. Longmore and Mr. Ruszin stated they believed that the sign, in its

proposed location, would give greater reaction time to drivers who see the sign “late” to move over and make the turn than if the sign had to be pushed back farther;

- Mr. Longmore testified that he believed the area had a speed limit of 55 miles per hour, and that the sign’s total surface area is permitted when located along a state highway with that speed limit.

Public Testimony

No members of the public provided testimony at the public hearing. Written comments were received from Meredith Johnson, Jill Rison, and Lois Beverage, and are incorporated as part of the record. Ms. Johnson and Ms. Beverage made general objections to the development of the proposed Royal Farms sites in St. Mary’s County. In contrast, Ms. Rison’s comments were specific to the proposed sign and she included her opinion that Royal Farms possessed a “prime location with high visibility” and that a larger and higher sign than what would be permitted by right is unnecessary. She characterized the proposed sign as an “eyesore.”

Decision

County Requirements for Granting Conditional Uses

The St. Mary’s County Comprehensive Zoning Ordinance § 25.6 sets forth eight separate requirements that must be met for a conditional use to be granted:

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 St. Mary's County, Maryland Comprehensive Plan ("Comprehensive Plan"); and
8. The conditional use, in all other respects, conforms to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in the Ordinance.

Id.

Conclusions as to Request for Conditional Use

Upon review of the facts and circumstances, the Board concludes that the Applicant has met the standards for granting conditional use approval of the heightened sign.

First, the proposed sign complies with the general standards of the relevant zoning district. Chapter 65, which governs sign development, does not contain restrictions by each zoning district but does include broad designations of properties as residential or nonresidential. The staff report's report was that this particular facet of the project appears to meet all applicable general standards associated with a commercial sign proposed on nonresidential property, save for the sign's height

and its proximity. In short, the proposed appears to the Board to meet all specific standards prescribed by the CZO, leaving only the following discretionary reviews to be conducted by the Board itself.

Second, the requested *conditional use approval* will not jeopardize or endanger public health and welfare. It is well-established in Maryland that conditional uses, provided they satisfy all specific and general standards prescribed by a zoning ordinance, are presumed to further the general welfare. *People's Counsel for Baltimore County v. Loyola College*, 406 Md. 54, 88 (2008). Absent express language in the controlling ordinance that presumption can only be rebutted if unique circumstances or location of a particular property would lend a particular proposed conditional a heightened impact upon neighboring properties. St. Mary's County's Sign Ordinance is a lengthy, detailed, highly specific compendium of regulations that was patently the product of much thought and deliberation. It clearly authorizes conditional use approval – versus a variance or outright prohibition – may be used to raise a sign above twenty feet. Accordingly, we find the presumption of validity attaches in full and we find no suggestion that any neighboring properties would be unduly affected by what is, at its heart, simply one more gas station.

Third, the Board does not find this project will not be injurious to the property values of adjoining properties or curtail the use and enjoyment of these neighboring parcels. As mentioned above, a strong presumption of validity attaches to a conditional use approval. Of the neighbors who spoke against the proposal, two stated general objections to each Royal Farms in the County – developments that are permitted by right and have already been approved. The sole relevant testimony was that the sign would be an eyesore and unnecessary. Respectfully, we disagree that these are grounds to deny a conditional request approval; there is nothing unique about the sign's shape or configuration, and although higher it, nevertheless, does not appear to pose any impacts

to the adjacent properties or road than the signs at nearby gas stations.

Fourth – as discussed previously - the Project does not appear to have adverse impacts above and beyond those typically associated with a sign. As discussed previously, the only difference between this sign and a sign that would be permitted-by-right is ten feet of height. That difference is meaningful, but we believe the Applicant has demonstrated the heightened sign will not be materially more impactful than a sign ten feet shorter.

Fifth, there are few, if any, strains on existing utilities that the proposed sign will engender. The only public facilities this sign may palpably impact will be operations on the adjacent highway, which the Board finds will not be so disruptive as to disturb the presumption of conformity.

Sixth, concerning ingress and egress, all applicable agencies have reviewed existing access and found them to be adequate for Applicants' intended use. Insofar as this standard may contemplate the sign's effect on the safety of these access points, we find that the proposed sign – without the requested variance – will not prejudice drivers' ability to safely navigate.

Seventh, we find that the sign is consistent with the County's Comprehensive Plan, which calls for the development of transportation corridors and encourages, in particular, the redevelopment of existing properties to reduce sprawl. And more definite than these broad concepts and principles is the proposed sign's overall conformity with the Comprehensive Zoning Ordinance which is, at its heart, a tool the local governing body of this County adopted to implement the Comprehensive Plan. Conformity with the standards of the CZO establishes a strong presumption of conformity with the Comprehensive Plan itself.

Finally, the proposed conditional use is consistent with all apparent development standards associated with a sign on nonresidential property. As noted above, Chapter 65 of the CZO is thick with regulations for signs. Staff carefully reviewed this proposal – as it does all proposals before they reach the Board - and concluded conditional use approval was all that was required to bring the sign in

conformity with the CZO; the Board finds no evidence to suggest staff were mistaken in that conclusion.

Accordingly, we find the Applicants entitled to conditional use approval of the heightened sign.

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 – in contrast to the request for conditional use approval – that the Applicant has not met its burden requesting a variance to allow the placement of a sign within two-hundred feet of an existing sign.

In contrast to a request for conditional use approval, a requested variance does not enjoy a presumption of conformity if an Applicant “checks the boxes” and satisfies any and all applicable objective standards provided by a zoning ordinance. The Board wields far more discretionary review power over a variance than a conditional use approval.

The first standard an Applicant must meet for a dimensional variance under the County’s CZO is whether 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.

A majority of the Board does not believe the evidence in the record before it can sustain a finding that conformity with this requirement would be restrain the Applicant from developing a 30' sign elsewhere on its property, would unnecessarily burden the Applicant, or would be keeping with the general spirit of the Comprehensive Zoning Ordinance. The Applicant's request for a variance is driven by the location of priorly existing, "decades old" billboard. The location of that billboard was known to the Applicant well before it showed interest in this property, and certainly well prior to the Applicant's submission of concept site plans and their approval. The Board is not persuaded that, based on the facts before it and the concerns voiced by its members during the hearing, that granting the requested variance is prudent.

Accordingly, the Board shall deny the requested variance. We summarize the outcome of this case for the benefit of those members of the public who may read this order: the Applicant's sign may be built at a height of 30', but not within two hundred feet of the existing billboard.

ORDER

PURSUANT to the application of Two Farms, Inc DBA Royal Farms for conditional use approval pursuant to CZO § 65.4.01.b.i(2) of a proposed 30' sign and a variance from CZO § 65.4.1.c.i(2)(a) to allow less than 200' between the proposed sign and an existing billboard; 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, that the Applicant is granted conditional use approval to build the proposed sign at a height of 30' upon its property provided it

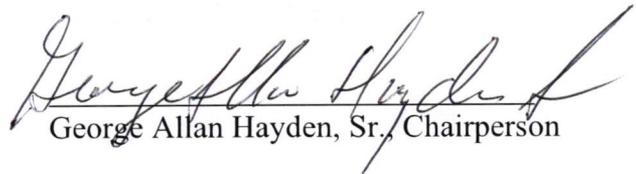
conforms to all applicable standards; and it is further,

ORDERED, that the Applicant's request for a variance to construct the proposed sign within 200' of the existing billboard is denied.

Additionally, the foregoing conditional use is also subject to the following condition that the Applicant shall comply with any instructions and necessary approvals from the Department of Land Use and Growth Management.

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: October 10, 2024


George Allan Hayden, Sr., Chairperson

Those voting to grant the conditional use:

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

Those voting to deny the conditional use:

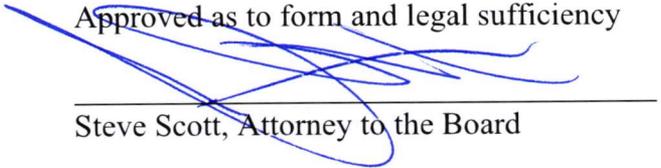
Those voting to grant the variance:

Mr. Richardson

Those voting to deny the variance:

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

~~Approved as to form and legal sufficiency~~


Steve Scott, Attorney to the Board

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 St. Mary's County Circuit Court.

Further, St. Mary's County Comprehensive Zoning Ordinance § 25.9 provides, "Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period."

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