

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP NUMBER # 24-0375

ROYAL FARMS LEXINGTON PARK

EIGHTH 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 27’ sign and a variance from CZO § 65.4.01.e.i(1) to increase the allowable face area of a proposed sign from 32 square feet to 50 square feet.

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 address furnished by the Department of Land Use and Growth Management. The agenda was also posted on the County’s website on September 6, 2024.

Accordingly, 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 duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed conditional use and variance requested by the Applicant.

The Property

Applicant is the developer of property situate 21725 and 21779 Tulagi Place, 21764 and 21678 South Coral Drive, and 21780 Great Mills Road, Lexington Park, MD 20653 (collectively, “the Property”). The Property consists of 1.75 acres, more or less, is zoned entirely as Limited

Commercial/Industrial (“LCI”), carries a Limited Commercial/Industrial land use designation, and is identified on Tax Map 43A, Grid 00, Parcels 17, 18, 19, 20, and 21.

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 7 feet for a total height of 27 feet. Additionally, Applicant seeks a dimensional variance pursuant to Chapter 28 from CZO § 65.4.01.i.1 to increase the maximum sign face area of a sign to 50 feet.

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. The maximum sign face area of a permanent, on-premises, freestanding sign on nonresidential property is set in 65.4.01.i.1 and is determined “by the public road or roads from which driveway access is provided to the property.” (Emphasis added).

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:

- According to the Maryland Department of Assessments and Taxation, the property is 1.75 acres in size and is currently cleared in preparation for development;
- The Applicant has undergone the Concept Site Plan and Major Site Plan process to establish Use Type 48 – Convenience Store, Use Type 60 – Fuel Sales, and Use Type 62 – Motor Vehicle Maintenance Service, Minor on the Property. During the review process it was determined the application required a sign permit.

- The proposed sign site plan (Attachment 2) requires conditional use approval (Attachment 3) for the request to increase the allowable sign height according to the sign standards of CZO Section 65.4. (Attachment 4). Additionally, the permit was determined to need a variance from the area standards for a sign. (Attachment 3).
- The attached site and signage plans propose an 11' x 27' permanent, free-standing, on-premises sign with 50 square feet being dedicated to the logo. (Attachment 2).
- LUGM review memo, dated August 12, 2024 (Attachment 3), includes the following comment: "Please note per Section 65.4.b.i, the maximum height allowed of any permanent, freestanding sign is 20 feet, however this sign has a proposed height of 27 feet... Per Section 65.4.a.i, the sign face area is determined by the public road or roads from which driveway access is provided. Tulagi Place and South Coral Drive are three lanes or less, and the maximum speed limit is less than 30 mph, so the maximum sign face area allowed is 32 square feet. This sign currently has a proposed sign face area of 50 square feet. Please either make the requested revisions or apply for a variance and/or a conditional use."
- The project accesses both South Coral Drive and Tulagi Place, which have a posted speed limit of less than 30 miles per hour and less than three lanes of traffic, so the maximum square footage for the sign logo would be 32 square feet. The Applicant is requesting 50 square feet; therefore, a variance is required;

The following attachments were included with the Staff Report:

Attachment 1: Conditional Use Standards Letter

Attachment 2: Site Plan with Sign Detail

Attachment 3: LUGM Zoning Review

Attachment 4: Ordinance No. 2019-41 (Sign Ordinance)

Attachment 5: Location Map

Attachment 6: Land Use Map

Attachment 7: Zoning Map Attachment 8: AICUZ Map

Attachment 9: General Standards Letter

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 questions posed by the Board and citizens. We highlight the following evidence that was included among that presentation:

- Mr. Longmore stated that signs for fuels are sales are required under state law to list the prices of fuel products, thereby increasing information that needs to be on the sign.
- The increased height allows potential customers to see the sign clearly from a reasonable distance and to see the pricing of the fuel products.
- The design of the sign is to have two posts on the lower portion of the sign which will allow customers and drivers to see through the lower portion creating better visibility of other vehicles and pedestrians.
- The project is directly adjacent Great Mills Road and Three Notch Road, and these are the roads that the signs will be adjacent and facing. Direct access, however, will come from drivers and customers leaving Great Mills Road and Three Notch Road and coming on to South Coral Drive and Tulagi Place, two local roads that have much lower

speed limits than Great Mills Road and Three Notch Road.

- The height of the sound will allow for larger and clearer messaging and prices for fuel products.
- The need for the conditional use approval is partially driven by grading of the site in relation to the adjacent roads and neighboring properties.
- Mr. Longmore stated he could not think of many similar sites in the County where a site is located off of major roads but access is provided solely through smaller, local roads.
- Mr. Longmore acknowledged that earlier on the night of the public hearing a similar request – CUAP 24-0374 – was heard by the Board, which shared many similarities and arguments as Mr. Longmore said he would make in favor of this request. He requested those same arguments be considered in this hearing, and accordingly we consider them incorporated into the record of this proceeding as if fully stated by Mr. Longmore.

Public Testimony

Public testimony was received from the following individuals at the public hearing:

Troy Cowan, 21441 South Essex Drive, Lexington Park, Maryland

- Mr. Cowan acknowledged there was “a lot of controversy about this particular project.” He said that the signs would be an issue to him because of the high density of foot traffic and vehicular traffic. He believes that the proposed signs, at the eye level they will be at, are a distraction that would take a motorist’s eyes off the road. He suggested dropping the signs to a height of no more than 15’ and that the signs could be widened instead of heightened.

He also highlighted that there is a high amount of visual clutter and that, consequently, the increased height would “gain you nothing.” He said there was no other sign in the area that had a height of 27’ and that the heightened sign would degrade the quality of the neighborhood.

Joan Sullivan Cowan, 21441 South Essex Drive, Lexington Park, Maryland

- Mrs. Cowan is Mr. Cowan’s wife. She provided oral testimony and a picture showing her standing next to a gas station sign in Lexington Park that shows its approximate height. She does not believe Royal Farms needs a taller sign to attract customers. She said that all of the signage in the Lexington Park area needs to be consistent moving forward.

In addition, written comments were received from Meredith Johnson 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.

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 individual zoning district but does include broader regulations that turn on whether a property is "residential" or "nonresidential." The staff report was that the sign application appears to meet all applicable general standards associated with a commercial sign proposed on nonresidential property, save for

the sign's height and its sign face area. In short, the proposed sign appears to the Board to meet all specific standards prescribed by the CZO.

Second, the requested *conditional use approval* will not jeopardize or endanger the public health or general welfare. It is long established law 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) (quoting, *inter alia*, *Scultz v. Pritts*, 291 Md. 1). Absent express language in the controlling ordinance the presumption can only be rebutted if the unique circumstances of a particular property would cause a conditional use proposed there to have a heightened impact upon neighboring properties above and beyond the impacts ordinarily associated with that use. St. Mary's County's Sign Ordinance is a lengthy, detailed, and highly specific compendium of regulations that was patently the product of much thought and deliberation by its drafters. It clearly authorizes conditional use approval – versus a variance or outright prohibition – to raise a sign above twenty feet. Accordingly, we find that the presumption of validity the law normally lends to conditional use approvals attaches to the Applicant's proposed sign in full and we find no competent suggestion that the evidence before the Board overcomes or unsettles this presumption.

Third, the Board does not find this project will 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 wrote with general objections to each Royal Farms in the County – developments that are permitted by right and have already been approved. Mr. and Mrs. Cowan's testimony, by comparison, was germane to the action at hand. Respectfully, we disagree with their contentions that the sign should not be receive its conditional use approval. Royal Farms

would have by right the ability to construct a sign twenty feet in height. By operation of the conditional use regime the sign ordinance enacted, they have a presumptive right to construct this slightly heightened sign upon a showing they satisfy the general criteria of the comprehensive zoning ordinance. Augmenting the presumptive right is, in the Board's view, the Applicant's articulated concerns of public safety. By heightening the sign ever so slightly they allow for greater cross visibility through the sign between drivers and pedestrians. Particularly given the level of both vehicular and pedestrian traffic that will be present at the location this Board feels that the heightened sign, with its greater cross visibility, furthers the public interest more than a shortened one with an obstructed view.

Fourth – as discussed previously - the Project does not appear to have adverse impacts above and beyond those typically associated with a sign that would be permitted by right. The difference between this sign and one that would ordinarily be permitted by right is seven 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 seven feet shorter.

Fifth, there are few, if any, strains on existing utilities that the proposed sign will cause. The only public facilities this sign may palpably impact will be operations on the adjacent roadways, 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 will not prejudice drivers' ability to safely navigate and will, if anything, enhance public safety by providing greater cross visibility than a shortened sign.

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, facilitating the

redevelopment of existing properties to reduce sprawl. And more definite than these broad concepts and principles is the proposed sign's conformity with the many standards and requirements of the Comprehensive Zoning Ordinance and its included Sign Ordinance. Those laws, at their heart, are tools the local governing body of this County adopted to implement the Comprehensive Plan. Conformity with the standards of the zoning ordinances 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 Comprehensive Zoning Ordinance 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 and the variance discussed below were the last elements required to bring the sign in conformity with the Comprehensive Zoning Ordinance; 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 of this case, the Board finds the Applicant has met its burden requesting a variance to exceed the sign face area permitted by right.

Before we proceed with our typical analysis of each individual factor, we will reflect generally on why a variance is required of this sign at all. The County's sign ordinance fixes the maximum sign face area for a permanent, freestanding sign on nonresidential property to certain characteristics of the roads from which the use that sign serves is *accessed*. Were the standards pegged to the highways to which a use is *adjacent* – the difference between making Tulagi and South Coral our frame of reference for literal conformity with the sign ordinance, versus Great Mills and Three Notch – it does not appear to the Board a variance would be required at all. Were access slightly different at the proposed use the sign could be proposed exactly as-is without any

variance – or, at the least, with a much lesser one. With these facts as backdrop, we move on to an analysis of the variable factors.

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.

The Board believes the Applicant demonstrates a practical difficulty. Direct access to the site is provided via Tulagi and South Coral Drive - two small, local roads. These local roads are accessed from Great Mills Road and Three Notch Road – two large, state-maintained highways. The use itself is immediately adjacent to Great Mills Road and Three Notch Road. The Property appears to the Board to have all the same pertinent characteristics and challenges as a site that is

similarly-situated in the same zoning district would have if it had direct access from the state roads; we do not discern any material impacts a sign located on this Property would have that would not be felt just as keenly on such a similarly-situated property. Accordingly, we believe literal application of the sign ordinance's sign face area requirements to a site that has direct access from Tulagi and South Coral Drives versus Three Notch and Great Mills Roads presents a practical difficulty to the Applicants.

Second, the circumstances present in this matter are not generally applicable to other similarly-situated properties. As discussed at length directly above, the need for a variance stem from quirks related to which roads this site derives access from. Access to the Property is atypical given its close proximity to larger roads.

Third, the purpose of seeking the variance is not "based exclusively upon reasons of convenience, profit or caprice." Rather, the Applicants seek to build a sign that is of the same general sign face area as seems to the Board typical for similar gas stations. Granting the variance is not meant to allow the Applicant to evade certain minimal costs or avoid minor inconveniences. Rather, it will allow them to have a basic element of their site plan that would appear to be permitted-by-right on most other similar properties.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted, the variance is required because of the layout of the Property and the local road network.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. The variance will simply allow a sign with a face area allowed by right in most other similar circumstances.

Sixth, the proposed development will not increase the residential use of the property and the Board does not find that it will increase congestion or the risk of fire, endanger public safety,

or substantially diminish or impair property values in the neighborhood.

Finally, by satisfying each of the above criteria, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicant took clear care and thought in designing its site plan and it presented its plans to the Board compellingly. What the variance will allow – a modest increase in the size of a gas station sign to render it comparable to other similar gas station signs – is in keeping with the overall spirit of the Comprehensive Plan, which would permits-by-right the exact same sign on the exact same property with only slight adjustments in access.

ORDER

PURSUANT to the application of Two Farms, Inc. DBA Royal Farms for conditional use approval of proposed sign height of 27' and a variance from Comprehensive Zoning Ordinance § 65.4.01.e.i(1) to increase the allowable sign face area from 32 square feet to 50 square feet; and

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

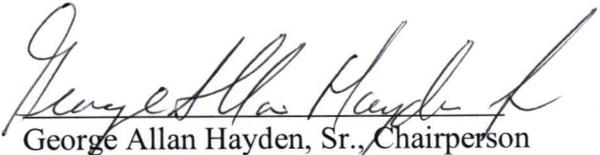
ORDERED, by the St. Mary's County Board of Appeals, that the Applicant is **GRANTED** conditional use approval to build the proposed sign at a height of 27' upon its property provided it conforms to all applicable standards and is **GRANTED** a variance to increase the allowable sign face area from 32 square feet to 50 square feet.

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

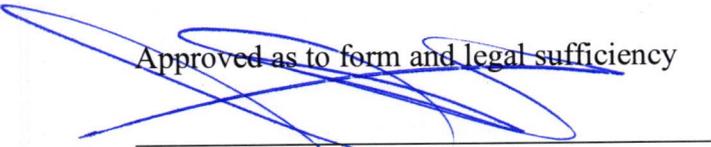
Those voting to deny the conditional use:

Those voting to grant the variance:

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

Those voting to deny the variance:

~~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.