

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**VAAP 24-0345**

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**THE COTTAGE APARTMENTS**

**FIFTH ELECTION DISTRICT**

**DATE HEARD: June 12, 2025**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: July 24, 2025**

### **Pleadings**

Midbrien LLC (“Applicant”) seeks a variance (VAAP # 24-0345) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 63.3 to provide, in lieu of the required 65’ Type “B” bufferyard, a 30’ Type “C” bufferyard on the west side of the property adjacent to Parcel 178, Lot 1.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on May 23, 2025 and May 30, 2025. Required mailings to neighbors and physical posting of the property were completed by May 28, 2025. The agenda was also posted on the County’s on Wednesday, June 4, 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 12, 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 situate 28055 Three Notch Road, Mechanicsville, Maryland (“the Property”). The Property consists of 1.5 acres, more or less, is within the Town Center Mixed Use (“TMX”) zoning district, and can be found among the Tax Maps of St. Mary’s County at Tax Map 9, Grid 14, Parcel 7.

### **The Variance Requested**

Applicant seeks a variance from CZO § 63.3 to provide, in lieu of the required 65’ Type

“B” bufferyard, a 30’ Type “C” bufferyard on the west side of the property adjacent to Parcel 178, Lot 1.

### **The St. Mary’s County Comprehensive Zoning Ordinance**

Section 63.3 contains requirements and standards for bufferyards between proposed and existing uses. Schedule 63.3.b provides what level of bufferyard is required in a given instance between proposed and adjoining uses. Schedule 63.3.a and its accompanying illustration provide the standards and technical requirements of each required bufferyard. In the instant case, a high-intensity residential use, as proposed by the project, must provide a Type-B bufferyard against an adjoining low-intensity residential use, as already exists on Parcel 178, Lot 1. Type-B bufferyards must be 65’ deep and provide 4 canopy trees, 5 understory trees, 22 shrubs, and 11 evergreens/conifers per each 100’ of width, although no fence or other structure is required to be installed.

### **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 subject property (hereinafter the “Property”) according to Real Property Data, Maryland Department of Assessments and Taxation is 1.50 acres in size with two existing buildings. The site plan denotes the parcel to be 1.63 acres.
- The Applicant is proposing Use Type 16, Dwelling Unit, Multi-Family Residence, which is defined by Schedule 50.4 as “A single structure that contains three or more dwelling units that share common entrances and exits. Classification includes structures commonly called apartments or condominiums.” During the review process it was determined that the application needed a variance from the buffer yard standards of CZO Section 63.3.

- The Concept Site Plan has been either approved or has no comment by St. Mary's County Public Schools\*, Dept. of Economic Development, Dept. of Environmental Health, Soil Conservation District, MD State Highway Administration (SHA), St. Mary's County Metropolitan Commission, Dept. of Land Use and Growth Management, Washington Gas, SMECO, Sheriff's Office\*, Dept. of Recreation and Parks, Maryland Dept. of Natural Resources (DNR), Maryland Dept. of the Environment (MDE), Fire Board, Patuxent River Naval Air Station\*. (Attachment 2)
- The following Attachments to the Staff Report were introduced:
  - Attachment 1: Standards Letter
  - Attachment 2: Planning Commission Approval Letter
  - Attachment 3: Location Map
  - Attachment 4: Land Use Map
  - Attachment 5: Zoning Map
  - Attachment 6: Concept Site Plans
  - Attachment 7: Color Renderings
  - Attachment 8: Schedule 63.3.a Buffer Yard Standards
  - Attachment 9: 63.3.b Buffer Yard Requirements

#### **Applicant Testimony and Exhibits**

Applicant was represented before the Board by Wayne Hunt, of Little Silence's Rest, Inc. Mr. Hunt is a licensed surveyor. Mr. Hunt presented a slideshow to the Board that, among other things, included the site plan for the project, showed renderings of the proposed building, and showed pictures of the existing site. He also answered questions posed by the Board. Included among his was the following:

- Existing dwellings on the Property are deteriorating.
- Surrounding uses are a radio station to the east and south and residences to the west and northwest. The residences require a bufferyard.
- The proposed building has been designed to resemble a house. All units will have some outdoor areas for passive recreation.
- The building will only contain six dwelling units.

### **Public Testimony**

No members of the public appeared to offer in-person testimony for or against the project.

### **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. § 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 detailed in depth in Applicant’s standards letter, providing a full 65’ deep buffer would leave only 0.48 acres of the Property for development – less than a third of its size. Substitute a Type-C bufferyard for the required Type-B bufferyard will give 0.22 acres back in developable land to the project.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. Applicant explained the Property is impacted by an ingress/egress easement that occupies much of the northern part of the Property, and a required sewage disposal area will occupy an additional 0.23 acres.

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 meeting the front yard setback in this particular circumstance. 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.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, Applicant’s need for a variance stem from the particular physical characteristics of the Property, the existing ingress/egress easement, and the required sewage disposal area.

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. None voiced an objection. The site plan, and pictures of the site, were reviewed by the Board of Appeals and do not appear objectionable on their own.

Sixth, the proposed development will not increase the residential use of the property. The Property will contain less dwelling units than the maximum density authorized by the CZO.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. A Type-C bufferyard is, in many if not all ways, a more burdensome privacy measure to install than a Type-B bufferyard. Though shallower in depth, it requires more plantings per every 100' of width and requires installation of a fence. These measures appear more than adequate to provide sufficient buffering between the existing residential homes and proposed multifamily building.

### **ORDER**

**PURSUANT** to Applicant's request for a variance from Comprehensive Zoning Ordinance 63.3 to provide, in lieu of the required 65' Type "B" bufferyard, a 30' Type "C" bufferyard on the west side of the property adjacent to Parcel 178, Lot 1; 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 Comprehensive Zoning Ordinance § 24.3, that the Applicant is granted the requested variance.

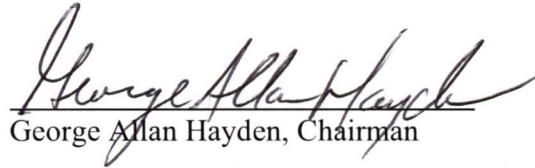
The foregoing variance is subject to the condition that the Applicant shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

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: July 24, 2025

  
George Allan Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency

  
Steve Scott, Board of Appeals 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.