

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-0225

VILLAGES AT CLARKS MILL PROPERTY

SECOND ELECTION DISTRICT

DATE HEARD: July 11, 2024

ORDERED BY:

**Mr. Hayden, Mr. Bradley, Mr. Loughran,
Mr. Payne and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: July 25, 2024

Pleadings

FDR Holdings, LLC (“Applicant”) seeks a variance (VAAP # 23-0225) from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 for a reduction of Open Space requirements from 50% to 20% and a variance from Section 63.3 and Schedule 50.4 for a reduction of the “B” Buffer Yard along the south property line from 65’ to 32.5’.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 21, 2024 and June 28, 2024. The hearing notice was posted on the property by June 26, 2024. The file contains the certification of mailing to all adjoining landowners, even 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 with the application. The agenda was also posted on the County’s website on July 5, 2024. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on July 11, 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 variance requested by the Applicants.

The Property

Applicants own five contiguous parcels situate 44405, 44410, 44415, 44420, 44425 K&R Way, Three Notch Road, Hollywood, Maryland (“the Subject Property”). The Subject Property is in the Residential Mixed-Use Zone (“RMX”) and is within the AE4 Airport Environ Zoning

Overlay, and is identified at Tax Map 34, Grid 8, Parcel 613.

The Variance Requested

Applicants seek a variance from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 for a reduction of Open Space requirements from 50% to 20% and a variance from Section 63.3 and Schedule 50.4 for a reduction of the “B” Buffer Yard along the south property line from 65’ to 32.5’.

The St. Mary’s County Comprehensive Zoning Ordinance

Schedule 32.1 requires a development provide 50% Undeveloped Open Space, as defined in Article 9 of the CZO. A side yard setback of 65’ is also required. The CZO requires Buffer Yards as provided by Schedule 63.3. The proposed use on the property is Use Type 14, Dwelling Unit, Attached a high-intensity residential use and, accordingly, a Type B Buffer Yard is required against the southern property line, which borders a low-intensity residential use.

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. During the review process it was determined that the application needed variances from the open space and design standards, as well as the site development standards for Buffer Yards.
- The Concept Site Plan was approved by the St. Mary’s County Planning Commission during their May 20, 2024 public hearing.
- The CZO allows the required open space to be reduced as low as 30% if the Applicant provides workforce housing. However, Applicant requests to reduce the Undeveloped Open Space to 20%, lower than can be authorized without a variance.

- The proposed use, Use Type 14, Dwelling Unit, Attached is considered a high intensity residential use. Per Schedule 63.3.b, a High Intensity Residential Use must provide a 65' Type B Buffer Yard when adjoining a residential low density use. The property to the south of the Subject Property has an established single-family residential use located upon it, which is considered a residential low density use. Accordingly, a 60' Type B Buffer Yard is required. Applicant proposes a 32.5' Type B Buffer Yard in its stead.
- If a variance is granted it shall lapse one year from the date of grant unless a building permit is issued.
- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter;
 - #2: Site Plan;
 - #3: Planning Commission Approval;
 - #4: Location Map;
 - #5: Land Use Map; and,
 - #5: Zoning Map.

Applicant Testimony and Exhibits

Applicant was represented before the Board by Jay Hopson, a professional engineer, of J. Hopson Consulting, LLC. Mr. Hopson was joined by Rick and Tom Benefield, authorized representatives of Applicant. Together they presented the site plan and answered questions posed by the Board. The Applicants' testimony included the following points:

- In all, the project will consist of 18 townhomes. Tom Benefield said the project would help "fill a void" in the housing supply in St. Mary's County, and stated the Department of Economic Development has pointed to the lack of adequate, affordable housing.

- Open space, while below that required, has been maximized to the greatest extent possible; some undeveloped open space had to be developed into additional parking, at the request of the Planning Commission.
- The road will be 25' wide and the additional required parking spaces will be parallel spaces just above the stormwater management facility. In total, there will be six additional parking spaces.
- A play field will be provided adjacent to the stormwater management facility.
- The shortest driveway is 22' behind the sidewalk.
- The five units to the south without garages will have off-street parking, two spaces each.
- The proposal, if developed, will have 2.7 acres of landscaped green space, in either trees or grass. None of the stormwater management facility will be counted towards open space, although much of it will have grass and Mr. Hopson included that it was designed to be semi-accessible to residents.
- The house on the south parcel is dilapidated and not currently lived in. The property owner does not object to the variance and agrees to a reduction of a 32.5' buffer yard, which is what would be required by the CZO if the property was considered vacant.
- If the variance to the Buffer Yard requirement is not granted one or two townhomes would have to be removed.

Public Testimony

The following members of the public appeared to offer testimony related to the project:

- *Richard Wood, Hollywood*
 - Mr. Wood lives on Clark's Mill Road, in close proximity to the Subject Property. Mr. Wood disputed some facts presented to the Planning

Commission during its consideration of the project, such as the width of the road shoulders. Mr. Wood said he did not believe a standard 19' Dodge Ram parking truck would fit in at least some of the parking spots provided. Mr. Wood said Planning Commissioners have complained they can't deny projects and said to the Board that "someone is feeding you all a lot of chicken, and you're swallowing the bones."

- *Joan Sullivan Cowan, Lexington Park*
 - Ms. Cowan supported the variance request, and stated among the factors she considered that the building lot is not farmland, that building multifamily housing will bring certain changes, that there is a demonstrated need for housing in the County, that the County needs an expanded tax base to afford the Blueprint for Education, and that if housing is not made available in the County we will lose residents to other counties.

In addition to the in-person testimony, letters were received from the following persons: Brad Renninger, Rob hay, David Morris, Moe Carroll, Christopher Mileto, Megan and Dan McNamara, Lona Harris, and one individual who identified himself only as "John." All letters were reviewed by the Board and are included in full as part of the record.

Decision

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.

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 in the form of the requested variances.

Findings – Standard Variance Requirements – Open Space Reduction

With respect to the requested reduction in open space requirements, 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.

Denial of this variance would impose a practical difficulty upon Applicant. The Applicants bring a proposal for a development that is permitted by-right and would be in conformity with the Comprehensive Zoning Ordinance with respect to open space requirements except for concessions asked for and approved by the Planning Commission. Based on the record and development plan before us, we find that requiring strict conformity with the open space requirements would be unnecessarily burdensome. Substantial justice is still done to the community at large because the relaxed open space will not, in and of itself, change the residential density of the proposed project; that the residential density is within the maximum density allowed by right in the zoning district; and that the need for the variance is driven by a proffer made at the Planning Commission for

additional parking, which could only be done at the expense of some “undeveloped open space,” as that term is defined by the CZO.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. As noted above, the need for the variance stems from a unique proffer asked for by the Planning Commission. The Subject Property, while not large enough to sustain both the required undeveloped open space and the additional parking, could have sustained the required undeveloped open space on its. Requiring a property of this size to provide the additional parking is not required in every circumstance and these conditions are, consequently, not generally applicable to other similarly situated properties.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicants have demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. The Applicant is a developer and, assumedly, stands to make some financial gain from the development, as can be said of any commercial development. However, the reasons for granting the variance, as laid out further in this opinion, are not exclusively to maintain the economic viability of the project.

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 and the need to accommodate a unique proffer asked for by the Planning Commission.

Fifth, the variance will neither detrimentally affect the public welfare, substantially injure other properties or improvements, nor change the character of the district. Townhomes are permitted by-right in the applicable zoning district. The reduction in open space – from the 30% that the Planning Commission could have authorized to 20% -- will not greatly change the character or nature of the proposed development. The neighboring property owners were notified

of the variance request and given an opportunity to speak on the matter. Many have done so, and all public input was considered. The Board finds that a reduction in required undeveloped open space will not detrimentally affect the public welfare, substantially injure or impair other properties, nor change the character of the district.

Sixth, the proposed development will not increase the residential use of the property, and for the same reason finds it will not increase congestion or the risk of fire or endanger public safety. Granting the variance will have little effect on the density of the project; the amount and size of the proposed townhomes are within the limits set by the Comprehensive Zoning Ordinance.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicant asks for a reduction in open space that is 10% below that which the Planning Commission could have authorized by right in this situation. The proposal still appears to offer a reasonable and adequate amount of green space and recreational opportunities for the future community; the Board notes, in particular, Mr. Hopson's testimony that some of the stormwater management facility (which cannot be counted towards the open space requirements) will appear to serve many of the same functions as undeveloped open space. Accordingly, the Board believes granting the variance to reduce the required open space will be in harmony with the spirit and intent of the Comprehensive Plan and the Comprehensive Zoning Ordinance.

Findings – Standard Variance Requirements – Buffer Yard Reduction

With respect to the requested reduction in the required south property line buffer yard, the Board finds denial of this variance would, similarly, impose a practical difficulty upon Applicant. Complying with the requirement to place a Type B Buffer Yard – the widest Buffer yard required by the CZO – would be unnecessarily burdensome, given the scope and configuration of the project

and the proposed development. Only two of the eighteen townhomes will be located within the space that would otherwise be occupied by the full Type B Buffer Yard, and the remainder will be taken up by a paved area and the substitute Buffer Yard. Given these considerations, it appears that substantial justice can be done to the affected adjacent property owner – who the Board notes does not oppose the variance, and in fact wrote a letter in support thereof – because a Buffer Yard will still be provided that should shield the adjacent property from the most immediate impacts of the proposed development, and that the vast majority of the development will occur away from the affected adjacent property.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. As noted above, the need for the variance stems from the size of the lot. Sandwiched between two roads, the lot appears to have relatively few options for the kind of total reconfiguration which would obviate the need for the Buffer Yard. Such constraints are not typical.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” The need for the Buffer Yard is driven by actual physical constraints of the property, and not merely by the Applicant’s desire to avoid the expense or difficulty of developing a Buffer Yard. Rather than ask for the reduction of the entire Buffer Yard the Applicant proposes a half-Buffer Yard, which appears to be the maximum that can be located on the lot.

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.

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

other properties or improvements, nor change the character of the district. This variance – reduction of a Buffer Yard – will only directly affect one property. Granting the variance does not change or affect the number of townhomes the Applicant would be permitted to develop on the property by-right, does not cause the density of the project to stray into numbers unpermitted by the CZO, and does not make any aspect of the project more or less impactful to the surrounding neighborhood – except with respect to this one adjacent property. That property is occupied by only one single family dwelling and is owned by a property owner who does not object to the variance.

Sixth, the proposed development will not increase the residential use of the property, and for the same reason finds it will not increase congestion or the risk of fire or endanger public safety. Granting the variance will have no effect on the allowable density of the project; the amount and size of the proposed townhomes shall remain within the limits set by the Comprehensive Zoning Ordinance.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicant asks for a Buffer Yard reduction against one property line, and is providing the maximum Buffer Yard it is able, given the circumstances. The affect property owner does not object to the variance, and it appears that the half-Buffer Yard the Applicants propose will adequately shield the adjacent property from negative impacts potentially posed by this development.

ORDER

PURSUANT to Applicant’s requests for a variance from Schedule 32.1 for a reduction of Open Space requirements from 50% to 20% and a variance from Section 63.3 and Schedule 50.4 for a reduction of the “B” Buffer Yard along the south property line from 65’ to 32.5’; and,

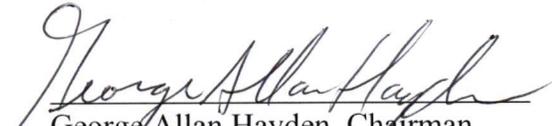
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicant is granted a variance from Schedule 32.1 for a reduction of Open Space requirements from 50% to 20% and a variance from Section 63.3 and Schedule 50.4 for a reduction of the "B" Buffer Yard along the south property line from 65' to 32.5'.

The foregoing variances are 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, it must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: July 25, 2024

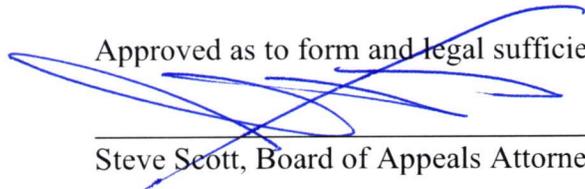

George Allan Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Loughran, Mr. Payne and Mr. Richardson

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. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

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.