

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

**VAAP 23-0178**

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**COMPASS POINT MONTESSORI**

**THIRD ELECTION DISTRICT**

**VARIANCE REQUEST HEARD: FEBRUARY 8, 2024**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: March 14, 2024**

### **Pleadings**

22615 Point Lookout Rd Land Trust/ATW Management Partners LLC, Trustee (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 63.3.a to reduce to 0’ the 65’ Type B Buffer Yard required next to adjacent residential use properties.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 19, 2024 and January 26, 2024. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before January 24, 2024. The agenda was also posted on the County’s website on February 2, 2024. Therefore, the Board of Appeals (“Board”) finds and concludes that there has been compliance with the hearing’s notice requirements.

### **Public Hearing**

A public hearing was conducted at 6:30 p.m. on February 8, 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 amendment requested by the Applicant.

### **The Property**

The property (“the Subject Property”) is located at 22615 Point Lookout Road, Leonardtown, and consists of 1 acre, more or less. It may be found at Tax Map 49, Grid 17, Parcel 30. It is zoned Rural Preservation District.

### **The Variance Requested**

Applicant seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance

(“CZO”) Schedule 63.3.a to reduce to 0’ the 65’ Type B Buffer Yard required next to adjacent residential use properties.

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

CZO Schedule 63.3.a of the Zoning Ordinance prescribes the standards required of the A, B, and C-type buffers when such buffers are required for new development or development. For purposes of determining Buffer requirements, Use Type 28 – Day Care, Non-Medical, is considered a “low intensity” public/semi-public use and requires a 65’ Type B Buffer yard when adjoining a residential use.

### **Departmental Testimony and Exhibits**

Stacy Clements, an Environmental Planner for the St. Mary’s County Department of Land Use & Growth Management (“LUGM”), presented the following evidence:

- Per SDAT, the Property is 1.00 acres in size with an existing one and a half story, 1,740 s.f. building constructed in 1948.
- The Property’s intended use is classified as Use Type 28, Day Care, Non-Medical, which the CZO considers a low-intensity public/semi-public use.
- Based upon that use classification a 65’ Type B Buffer Yard will be required wherever the intended use borders residential low-intensity uses. The Property is bordered by two such uses, as depicted on Attachment 5.
- A Type B Buffer Yard shall be 65’ in depth and contain 4 canopy trees, 5 understory trees, 22 shrubs, and 11 evergreens / conifers planted for every 100 feet along the property line.
- A concept site plan for the Property and the intended use was approved by the Planning Commission at their November 13, 2023 public hearing.

- Attachments to the Staff Report:
  - #1: Standards Letter – Buffer Yards
  - #2: Location Map
  - #3: Land Use Map
  - #4: Zoning Map
  - #5: Existing Features Map
  - #6: Site Plans
  - #7: Schedule 63.3.a Buffer Yard Standards
  - #8: Schedule 63.3.b Buffer Yard Requirements

#### **Applicant's Testimony and Exhibits**

Applicant was represented by Gregory Hosendorf of Soltez, Inc. before the Board of Appeals. Applicant was also represented by its officers to answer questions about particulars concerning the physical configuration and operation of the facility. In addition to their oral testimony the Applicant also provided a PowerPoint presentation, a letter addressing the variance standards, and provided pictures, site plans, and other depictions of the property in its current and anticipated states, all of which are incorporated into the record.

#### **Public Testimony**

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

- *Emily Chapman*, Leonardtown, MD

Ms. Chapman's daughter is a student of the Applicant's Montessori program. She spoke to how efficiently drop-off and pick-up are conducted at the current location. She also commended the Montessori program and the educational value it provides. She thinks

the new location will be suitable and is excited about the plantings that will be done since they will afford “gardening” opportunities to the children.

### **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.*

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. Several factors support this decision.

First, 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. Without the variance, Applicant would be forced to reconfigure existing buildings and improvements that have

stood in their present locations for decades; the cost of such reconstruction would render conformity with the required buffer yards unduly burdensome, if not outright unviable. On balance, it does not appear to the Board there would be significant salutary effects accompanying strict enforcement of the buffer yard requirements. The intended use will be fairly modest in scope and size and the Board does not believe it will have significant impacts on the neighbors' use and enjoyment of their own properties.

Given that the need for this variance is driven by the location of existing buildings and improvements on this particular parcel the Board finds the need for this variance does not arise from conditions generally present on other similarly zoned parcels.

To the third standard, the purpose of seeking the variance is not "based exclusively upon reasons of convenience, profit or caprice." The Applicant has demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. It does not appear there is a way for Applicants to establish their intended use on the Property without seeking this variance.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, Applicant's need for a variance stems from the location of existing site improvements built long prior to the advent of the County's buffer yard standards or the Applicant's ownership of the Property.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. All appropriate agency approvals have been received and no reviewing agency has commented negatively. The neighboring property owners were notified of the variance request and given an opportunity to speak on the matter; none availed themselves of this opportunity.

Sixth, granting the requested variance 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, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The sole member of the public to attend this hearing spoke glowingly of the education her child receives at the Applicant's current location. The Board recognizes and finds that the Comprehensive Plan encourages the development of educational resources and programs, even down to the kindergarten level. St. Mary's County Comprehensive Plan, p. 77. The intended use is otherwise permitted on the parcel. Its only impediment to attaining a permit, at this stage, is the parcel's inability to accommodate the required buffer yards required. Considering the Applicant's careful attempts to consider their neighbors' use and enjoyment of their own properties and the benefits to the public this institution will bring, the Board finds granting the variance, in this instance, strikes an appropriate balance. Therefore, the Board finds it to be in harmony with the general spirit, intent, and purpose of the County's Comprehensive Plan.

### **ORDER**

**PURSUANT** to the application of 2615 Point Lookout Rd Land Trust/ATW Management Partners LLC, Trustee, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Schedule 63.3.a to reduce to 0' the 65' Type B Buffer Yard required for the adjacent residential properties; 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 CZO § 21.1.3.a and CZO § 24.8, that the Applicant is granted a variance from the St. Mary's County Comprehensive



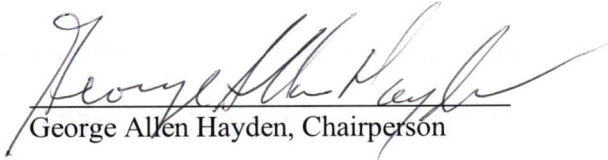
Zoning Ordinance (“CZO”) Schedule 63.3.a to reduce to 0’ the 65’ Type B Buffer Yard required for the adjacent residential properties;

UPON CONDITION THAT, Applicants shall not remove any healthy existing vegetation; and,

UPON FURTHER CONDITION THAT, 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 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: 3-14, 2024

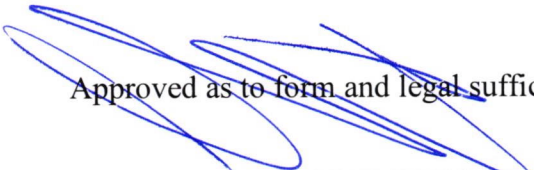
  
George Allen Hayden, Chairperson

Those voting to grant the amendment:

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

Those voting to deny the amendment:

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 Notice of Appeal with the St. Mary's County Circuit Court.

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.