

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-0240

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DROVE COLLISION GARAGE

FIFTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: December 14, 2023

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ORDERED BY:

Mr. Ichniowski, Mr. Bradley, Mr. Miedzinski,  
Mr. Payne, and Mr. Richardson

ENVIRONMENTAL PLANNER: STACY CLEMENTS

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DATE SIGNED: January 11, 2024

### **Pleadings**

Christopher Hare (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 63.3a to remove the 65’ Type B Buffer Yard along MD Route 5 and Three Notch Trail and to remove the 30’ Type C Buffer Yards adjacent to the neighboring residential properties, as well as a variance from Schedule 64.3.1 to reduce the required parking of 51 spaces (3 ADA spaces included) to 20 spaces (1 ADA space included).

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on November 24, 2023 and December 1, 2023. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before November 29, 2023. The agenda was also posted on the County’s website by December 8, 2023. Therefore, the Board of Appeals (“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 December 14, 2023 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 subject property is located at 28895 Three Notch Road, Mechanicsville (“the Property”). The Property is 1.93 acres, more or less, is zoned Town Center Mixed Use (TMX), and is found at Tax Map 4, Grid 23, Parcel 39.

### **The Variance Requested**

Applicant seeks variances from the St. Mary's County Comprehensive Zoning Ordinance ("CZO") Schedule 63.3a to remove the 65' Type B Buffer Yard along MD Route 5 and Three Notch Trail and to remove the 30 Type C Buffer Yards adjacent to the neighboring residential properties, as well as a variance from Schedule 64.3.1 to reduce the required parking of 51 spaces (3 ADA spaces included) to 20 spaces (1 ADA space included).

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

CZO § Schedule 63.3.a specifies the minimum width and plantings required for Type B and Type C Buffer Yards. Schedule 63.3.b states that any high-impact commercial use requires Type C Buffer Yards between the use and any adjacent residential uses and Type B buffers between the use and any public road right of way having a major collector or higher road classification. Schedule 64.3.1 states that Use Type 61, Motor Vehicle Maintenance Service, Major shall have 4 parking spots per 1,000 square feet.

### **Departmental Testimony and Exhibits**

Amanda Yowell from the Department of Land Use & Growth Management ("LUGM") provided the following staff testimony:

- The Property is 1.93 acre in size with an existing one-story, 11,961 square foot building constructed in 2000, according to SDAT. There is also an existing 24' x 64' office trailer which was placed in 2006 under permit number 06-1229.
- Applicant will use the existing building and replace the office trailer with a 35' x 60' office trailer.
- Applicant's intended use will fall in the category of Use Type 61, Motor Vehicle Maintenance Service, Major.

- The site plan currently has been approved or has no comment by the Maryland State Highway Administration, the Soil Conservation District, and SMECO. The Metropolitan Commission required a water sewer waiver, which was approved on August 2, 2023.
- Use Type 61 is considered a high intensity commercial use for the purposes. This use requires a 65' Type B Buffer Yard when adjoining a Transportation, Communication and Utility use, such as Maryland Route 5. A 65' Type B Buffer Yard is also required when the use adjoins a high-intensity public/semipublic use, such as the Three Notch Trail. A 30' Type C Buffer Yard is required for the adjoining residential properties.
- Applicant seeks a variance to remove all required buffer yards and to reduce the required parking spaces to 20 spaces, which includes 1 ADA-compliant space.
- Attachments to the Staff Report:
  - #1: Standards Letter – Buffer Yards
  - #2: Standards Letter – Parking
  - #3: Location Map
  - #4: Land Use Map
  - #5: Zoning 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**

Applicants appeared before the Board and was joined by attorney Chris Longmore, Esq. of

Dugan McKissick & Longmore LLC. Applicants presented a slideshow which contained maps and aerial photographs of the property, a site plan, and before and after photographs of the site.

The following evidence and testimony was included in Applicant's presentation:

- Christopher and Amber Hare are contract purchasers of the Property.
- The primary structure on the building, a commercial building, was built in 2000 according to SDAT, something confirmed by aerial photographs.
- Applicants are submitting their variances so they can operate their business within the same structures and with the same layout as previous businesses that occupied the site.
- The primary reason the variances are needed are the existing conditions on the property that have existed for over twenty years, namely footprints and locations of existing paved areas.
- Applicants also highlighted the adjacent properties that will be under the ownership or control of the Applicants.
- The existing structures and improvements on the property, and its location between Route 235 and the Three Notch Trail, constitute a practical difficulty prevent the installation of new bufferyards and additional parking.

#### **Public Testimony**

No members of the public appeared to offer testimony related to this matter. Two emails were received containing comments related to the request:

- Doris Buckler
  - Ms. Buckler is an adjacent property owner. She encouraged the Board to grant the requested variances, stating she does not foresee any noise issues or other problems. She asked the Board not require the Applicant to plant any trees at all

because it would impede her ability to get her tractor to the field they farm.

- Melanie Buckler
  - Ms. Buckler is a neighbor. She wrote to say the proposed business will be no disturbance to their area and that she is glad to see the property being so well taken care of.

### **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.

Here, the Applicant has demonstrated that, were the Board of Appeals to strictly interpret the CZO, the particular physical surroundings of the property would result in practical difficulty for the Applicants. As staff and Applicant both noted, and as aerial photographs confirmed, existing commercial structures have been on the parcel for twenty years. Their removal would constitute a great financial burden. The Board also notes that the parcel is bordered by both Maryland Route 235 and Three Notch Trail, and strict adherence to the required buffer yards would greatly hem the developable space of the property. The Board received no testimony and notes no apparent reason why this use would have adverse impacts above and beyond those of other uses in its same use type, which is a use permitted by right in the TMX zoning district. The removal of the buffer yards and parking do not appear to do any injustice to neighboring property owners.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted in the paragraph above, the Property hemmed in by two public rights of way, both of which require the greatest width buffer yards.

Third, the purpose of seeking the variances is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicant desires to redevelop an existing parcel. While there is necessarily some element of costs-saving to Applicant’s request, the Applicant is genuinely constrained by existing site features and uses already established on neighboring properties, and that the difficulty he would face in fully complying with the County’s buffer yard requirements are apparent.

Fourth, the need for the variances does not arise from actions of the Applicants. As noted above the need for the variances stem from the existing site features and uses established on neighboring properties.



Fifth, the variances will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. The neighboring property owners have been notified of the variance request to provide them with an opportunity to speak on the matter. The two who responded were favorable and encouraged the Board to grant the requested variances.

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, the Board finds that granting the variances will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. Redevelopment is something to be encouraged and fostered, and Applicant proposes to make good use of a property that would otherwise be vacant. This is borne out by the letters received from the Applicant's neighbors, both of which encouraged the Board to grant this requested variance and commended the Applicant for being a good steward of the property. Acknowledging that buffer yards often serve a vital purpose ensure tranquility between neighbors, the Board finds strong reasons, as noted above, to depart from their requirement in this matter. Therefore, the Board finds that removing the buffer yards and minimum parking requirements is within the general spirit, intent, and purpose of the Comprehensive Plan.

### **ORDER**

**PURSUANT** to the application of Christopher Hare, petitioning for variances from Schedule 63.3a to remove the 65' Type B Buffer Yard along MD Route 5 and Three Notch Trail and to remove the 30' Type C Buffer Yards adjacent to the neighboring residential properties, as well as a variance from Schedule 64.3.1 to reduce the required parking of 51 spaces (3 ADA spaces

included) to 20 spaces (1 ADA space included); 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 § 24.8, that the Applicant is granted a variance from Schedule 63.3a to remove the 65' Type B Buffer Yard along MD Route 5 and Three Notch Trail and to remove the 30' Type C Buffer Yards adjacent to the neighboring residential properties, as well as a variance from Schedule 64.3.1 to reduce the required parking of 51 spaces (3 ADA spaces included) to 20 spaces (1 ADA space included);

**UPON 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 the Applicants 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: 01-11, 2024

  
Chairperson

Those voting to grant the amendment:

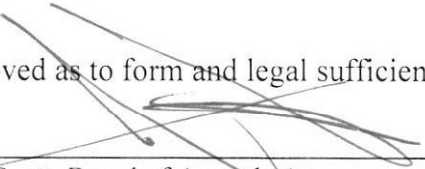
Mr. Ichniowski<sup>1</sup>, Mr. Bradley, Mr. Miedzinski, Mr. Payne, and Mr. Richardson

Those voting to deny the amendment:

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<sup>1</sup> All members voted to approve the conditional use application on December 14, 2023. Mr. Ichniowski and Mr. Miedzinski's terms subsequently expired at the end of December, prior to the adoption of this written opinion and order. A quorum of the members present at the December 14, 2023 were present for the adoption of this written opinion and order on January 11, 2024.

Approved as to form and legal sufficiency

  
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Steve Scott, Board of Appeals Attorney

## 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. 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.