

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-0276

MARK S. KNOTT SUBDIVISION

SECOND ELECTION DISTRICT

VARIANCE REQUEST HEARD: APRIL 11, 2024

ORDERED BY:

**George Allan Hayden, Sr., Chair
Guy Bradley, Vice Chair
Ronald Payne, Sr., Member
Rich Richardson, Member
Rita Weaver, Member**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: May 9, 2024

Pleadings

Denise A. Foster, Personal Representative, for the Estate of Mark Stephen Knott (hereinafter “Applicant”) seeks a variance from the St. Mary’s County Subdivision Ordinance, specifically Section 30.14.5(c), to add an additional lot to a private right-of-way.

Public Notification

The Hearing Notice was advertised in the *Southern Maryland News*, a newspaper of general circulation, in St. Mary’s County, Maryland, on March 22, 2024, and March 29, 2024. A physical posting was made on the property, and all neighbors with access from, and within two hundred (200) feet of, Take It Easy Ranch Road, were notified by certified mail, on or before March 28, 2024. The agenda was also posted on the County’s website on Friday, April 5, 2024. Therefore, the St. Mary’s County 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 April 11, 2024, at the St. Mary’s County Governmental Center, located 41770 Baldrige Street, Leonardtown, Maryland 20650. All persons desiring to be heard were duly sworn, the proceedings were electronically recorded, and the following was presented about the proposed amendment requested by the Applicant.

The Property

The subject property is located at 45295 Take It Easy Ranch Road, Callaway, St. Mary’s County, Maryland 20620 (hereinafter the “Property”). The Property, which is 16.45 acres, more or less, is zoned Rural Preservation District and can be found at Tax Map 57, Grid 5, Parcel 383, Lot 500-2B, with Tax Identification Number 1902036843.

The Variance Requested

Applicant seeks a variance the St. Mary's County Subdivision Ordinance (hereinafter "Subdivision Ordinance"), specifically §30.14.5(c), to add an additional lot to a private right-of-way.

St. Mary's County Subdivision Ordinance

Under Subdivision Ordinance §30.14.5(c), "Subdivisions consisting of seven (7) or more residential lots or less, or farmstead subdivisions, may be served by a private road. All subdivisions, except farmsteads and lots approved through the family conveyance provisions of the Ordinance, proposed with eight (8) lots, or more, shall be served by public roads in accordance with the provisions contained herein."

Departmental Testimony and Exhibits

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

- Take It Easy Ranch Road is an existing private right-of-way located off Piney Point Road, as shown on the recorded plat. Take It Easy Ranch Road is approximately 4,575.3-feet, or just over 8/10th of a mile long. Take It Easy Ranch Road is a right-of-way (ROW) and is composed of 80-foot-wide and 50-foot-wide portions, leading to a proposed 30-foot-wide access easement. Take It Easy Ranch Road currently serves fifteen (15) residential lots/parcels, one (1) church, and one (1) campground for a total of 17 lots/parcels;
- The Property consists of 16.45 acres and is currently being used for residential and agricultural purposes according to Maryland Department of Assessments and Taxation. Lot 2 was originally created by Plats 47 and 65. The Property was subdivided again into lots 500-2A and 500-2B, as reflected on Plats 70 and 106;

- The proposed Minor Subdivision intends to subdivide Lot 500-2B, which consists of 16.45 acres, into a 10-acre lot and a new 5-acre residential building lot;
- The following comment was made in LUGM’s review memo, dated September 14, 2023:

“Please note that there appears to be more than seven (7) lots accessing between the two private roads known as Raceground Road and Take It Easy Ranch Road. As such, this subdivision is proposing to add two more lots (under 15 acres) to Take It Easy Ranch Road. Please either upgrade both roads to meet County (public) road standards or apply to the Planning Commission for a family conveyance provision per Section 30.14.4 of the Subdivision Ordinance;”
- “Private Road” is defined by the Subdivision Ordinance as a “private access, drive, or lane to more than once residence which is contained within a lot or parcel, and which is not dedicated to the County;”
- “Lot” is defined by the Subdivision Ordinance as “a portion of a subdivision or tract of land having frontage on a street or road which is intended for development, and which meets the requirements as a legal building site per this Ordinance;”
- “Farmstead Lot” is defined by the Subdivision Ordinance as “an area of 15 acres or more in single ownership, which is a lot of record;”
- “Lot of Record” is defined by the Subdivision Ordinance as “a parcel of land which has been legally subdivided and recorded in land Records of St. Mary’s County, Maryland. A parcel is considered to be legally subdivided if it was created using the following criteria:
 - i) it was created prior to March 15, 1978; ii) it was created by subdivision plat approved by the Planning Commission or its administrative personnel; or iii) it was an approved deeded division as authorized by the subdivision regulations and approved by the

Department of Planning and Zoning.”

- “Street” is defined by the Subdivision Ordinance as a “public or private right-of-way which affords a primary means of vehicular access to butting property, whether designated as a street, avenue, highway, road, boulevard, lane throughway, or however otherwise designated, but does not include driveways to buildings;”
- Section 30.14 of the Subdivision Ordinance reads, “the purpose of a shared driveway and private road standards is to provide options to retain rural character, reduce costs, and allow more control, security, and sense of identity when public roads are not needed for circulation. These standards are intended to provide for the safety of the property owners by requiring adequate access for fire, emergency, medical, and law enforcement vehicles. It provides for the continued uninterrupted use of the access for all of the owners by establishing a durable roadway and easement and assigns responsibility for continue maintenance and access;”
- Section 30.14.5 of the Subdivision Ordinance, pertaining to General Provisions of the Private Road Standards, includes the following: (i) for private roads, the design vehicle shall be an emergency response/service/delivery-type vehicle (30-foot single unit truck); (ii) private roads shall be included in an overall development plan; and (iii) subdivision consisting of seven (7) residential lots or less, or farmstead subdivisions, may be served by a private road, and that all subdivision, except farmsteads and lots approved through the family conveyance provisions of this Ordinance, proposed with eight (8) lots, or more, shall be served by public roads in accordance with the provisions contained herein; and,
- Attachments to the Staff Report:
 - #1: General Standards Letter;

- #2: Plat 79 at 125;
- #3: Take It Easy Ranch Road Map;
- #4: Existing conditions aerial photo;
- #5: Plat 47 at 65;
- #6: Plat 70 at 160;
- #7: Proposed Minor Subdivision Plat;
- #8: LUGM Review Comments dated September 14, 2023
- #9: Location Map; and,
- #10: Zoning Map

Applicant's Testimony and Exhibits

Applicant was represented before the Board by Christopher T. Longmore, Esquire (hereinafter "Mr. Longmore"), Managing Partner with Dugan, McKissick, & Longmore, LLC, and Steven M. Vaughan (hereinafter "Mr. Vaughan"), Professional Land Surveyor with Little Silences Rest, Inc. Mr. Longmore presented a slideshow presentation and answered questions posed by the Board. The following evidence and testimony were included in Applicant's presentation:

- Applicant is seeking to subdivide the Property at issue, which totals 16.45 acres, more or less, into two (2) separate parcels, one totaling approximately 10-acres, and the other totaling approximately 5-acres;
- Applicant shared photographs of various points along Take It Easy Ranch Road, including the entrance to the road, which depicted the width of the road, ranging from 50-80 feet at various points. Applicant's testimony was that this provides ample space for oncoming traffic to pass each other;
- Testimony was offered explaining that Take It Easy Ranch Road has been a private

roadway for decades;

- Applicant, although she could seek to further subdivide the current lot, is only seeking to subdivide the lot into two (2) lots and add one (1) additional lot to the private right-of-way;
- Applicant explained that should variance not be granted, it would cause financial economic hardship to the Applicant, as it would be cost prohibitive to build a county road to access this single lot, where there is an already existing adequate roadway;
- Applicant stated she does not intend to further subdivide the lot at issue beyond what is currently being sought and acknowledged that should she or a successor-in-title seek to further subdivide in the future a further variance from the Board would be required.

Public Testimony

The following members of the public appeared at the public hearing to offer testimony:

- *Ronald Leonard*, California, Maryland
 - Ronald Leonard (hereinafter “Mr. Leonard”), a neighboring property owner, appeared before the Board seeking verification that the proposed variance sought by Applicant does not create an entrance on to Megby’s Way, which intersects with Take It Easy Ranch Road. After this was clarified for Mr. Leonard he had no concerns to offer to the Board.

Decision

County Requirements for Granting Variances

In accordance with Section 20.3.b of the St. Mary’s County Subdivision Ordinance, the Board shall not grant a variance from the regulations of the Ordinance unless it makes findings based upon evidence presented to it that:

- a. It will not be contrary to the public interest;
- b. Owing to special conditions, the enforcement of the provisions of this Ordinance will result in practical difficulty or unwarranted hardship;
- c. It is in accordance with the purpose and intent of the St. Mary's County Subdivision Ordinance; and,
- d. It is consistent with the Comprehensive Plan.

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 Subdivision Ordinance. Several factors support this decision.

Firstly, the Board finds that that granting of this requested variance is not contrary to public interest. Presently, Take It Easy Ranch Road serves fifteen (15) residential lots/parcels, one (1) church, and one (1) campground, for a total of seventeen (17) lots/parcels, for ingress and egress. The Applicant, who is seeking to subdivide the Property into two (2) separate lots, is seeking this variance to allow for a single additional lot to access the private right-of-way. The Applicant avers she has no intention to further subdivide the lot, beyond what is currently being sought. The testimony produced to the Board indicated that the road in question already serves a number of lots substantially beyond the ordinary limit. The undisputed testimony the Board received was that the road is functionally adequate for the current number of uses. All users of the road were informed of the requested variance, and none appeared to voice concerns. The Board can conclude, then, that allowing this subdivision will not unduly burden the right-of-way such that it will negatively affect the public interest.

Secondly, owing to special conditions, the enforcement of the provisions of this Ordinance

will result in a practical difficulty for the Applicant. In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Supreme Court (formerly 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, set backs, 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 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; and
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, absent a variance, the Applicant would be required to undertake cost-prohibitive measures to build a county road to access this single lot, despite there being an already existing adequate roadway. That, balanced against the relatively modest toll the subdivision will place on the existing road and its apparent ability to meet this additional burden, as detailed above, convinces the Board that substantial justice can be done to all affected property owners by granting the variance.

Thirdly, the proposed variance adheres to the purpose and intent of the Subdivision Ordinance. Specifically, Section 30.14, which pertains to Private Roads, provides,

“The purpose of shared driveway and private road standards is to provide options to retain rural character, reduce costs, and allow more control, security, and sense of identity when public roads are not needed for circulation. These standards are intended to provide for the safety of the property owners by requiring adequate access for fire, emergency, medical and law enforcement vehicles. It provides for the continued uninterrupted use of the access for all of the owners by establishing a durable roadway and easement, and assigns responsibility for continued maintenance of the access.”

Here, as similarly stated above, 17 lots/parcel use this private right-of-way. Despite not being a county roadway, Take It Easy Ranch Road, already meets the existing width standards for a county public road. The proposed subdivision is consistent with the St. Mary's County Comprehensive Plan, as other similarly situated subdivisions are permitted in the area and zoning district where the Property is located.

Finally, the proposed variance complies with the Comprehensive Plan. Section 4.4 of the Comprehensive Plan lists its objectives, which include "limit[ing] non-farm residential development outside of growth areas to be in scale and consistent with the rural character of the surrounding area. Within this objective, the following policy is noted: [e]stablish standards for major and minor residential subdivision development outside of growth areas to ensure compatibility with surrounding rural and community character." Here, the subdivision proposed by Applicant is within the degree of growth contemplated by the Comprehensive Plan.

ORDER

PURSUANT to the application of Denise A. Foster, Personal Representative, for the Estate of Mark Stephen Knott, petitioning for a variance from Section 20.3.b of the St. Mary's County Subdivision Ordinance to add an additional lot to a private right-of-way; and

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

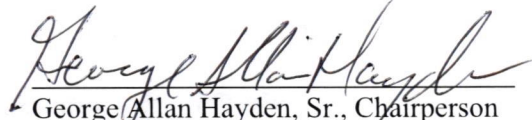
ORDERED, by the St. Mary's County Board of Appeals, pursuant to the St. Mary's County Comprehensive Code §24.8, the Applicant is granted a variance from Subdivision Ordinance §30.14.5(c) to add an additional lot to a private right-of-way;

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: May 9, 2024


George Allan Hayden, Sr., Chairperson

Those voting to grant the variance:

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

Those voting to deny the variance:


APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Steve Scott, Esquire,
Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) 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 County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the thirty (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 sixty (60) days of the date of this Order; otherwise, they will be discarded.