

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

**VAAP NUMBER 21-1310002**

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**ONE EYED JACK'S**

**SIXTH ELECTION DISTRICT**

**DATE HEARD: MAY 22, 2025**

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**ORDERED BY:**

**Mr. Hayden, Mr. Brown  
Mr. LaRocco, Mr. Payne and Ms. Weaver**

**PLANNER: STACY CLEMENTS**

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**DATE SIGNED: June 12, 2025**

### **Pleadings**

The Green Building LLC (“Applicant”) seeks a variance (VAAP # 21-13100002) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 61.5.1 to locate a refuse storage area within a front yard setback.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on May 2, 2025 and May 9, 2025. Required mailings to neighbors and physical posting of the property were completed by May 7, 2025. The agenda was also posted on the County’s website by Friday, May 16, 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 May 22, 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 23905 Mervell Dean Road, Hollywood, Maryland (“the Property”). The Property consists of 26,136 square feet, 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 34, Grid 2, Parcel 333.

### **The Variance Requested**

Applicant seeks a variance from CZO § 61.5.1 to locate a refuse storage area within a front yard setback.

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

Schedule 32.1 mandates a 50' building restriction line from a property line that fronts along an arterial road. A front lot line is a boundary of a lot that is along a public street or public way. CZO § 61.5.1 prohibits a refuse storage area from being located in any front yard.

### **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 (the "Property") was recorded in the Land Records of St. Mary's County per deed 2011 page 472. (Attachment 2) According to Real Property Data, Maryland Department of Assessments and Taxation, the existing structure was improved in 2024.
- The property is a 26,136 square feet parcel located at the intersection of MD Route 235 (Three Notch Road), Clarkes Landing Road, and Mervell Dean Road in Hollywood.
- Pursuant to Schedule 32.1 of the CZO, Three Notch Road, an arterial road, a 50-foot setback is required from the front property line.
- An Arterial Highway (Street), as defined by the Maryland Manual on Uniform Traffic Control Devices for Streets and Highways, Maryland State Highway Administration, 2011 Edition, is a "general term denoting a highway primarily used by through traffic, usually on a continuous route or a highway designated as part of an arterial system".
- CZO Section 61.5.1 states Prior to occupancy refuse storage areas shall be screened from view on all sides by a six foot solid wood fence or masonry wall or located within a building. Refuse storage areas must be setback from street entrances and not obstruct the site view and may not be located in a front yard.

- The site plan (Attachment 3) depicts an approximately 10-foot by 10-foot concrete pad enclosed with fencing located in the front yard setback. Since the refuse enclosure is located within the front yard setback, the Applicant is requesting a variance from CZO Section 61.5.1.
- The Health Department has approved the site plan. Department of Land Use and Growth Management and Metcom's approvals are pending.
- The following Attachments to the Staff Report were introduced:
  - Attachment 1: Standards Letter
  - Attachment 2: Deed
  - Attachment 3: Site Plan
  - Attachment 4: Location Map
  - Attachment 5: Land Use Map
  - Attachment 6: Zoning Map

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

Applicant was represented before the Board by Don Cropp, of Colony Builders, Inc., the project's builder. Mr. Cropp answered questions before the Board and showed an enlarged demonstrative of the project site plan. Included among the testimony offered was the following:

- Because of the Property's location between Three Notch Road, Mervell Dean Road, and Clarkes Landing Road, the Property has three "front yards."
- The location of the refuse area will make access easier for dump trucks backing on to the property.

#### **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. The Property is in the unusual circumstance of having three “front” yards. The Applicant demonstrated the difficulty, if not outright impossibility, of locating the refuse storage area in the rear yard without significant redesign of the site. Accordingly, we find that being forced to work within the confines

of the existing front yard setbacks would pose a practical difficulty upon the Applicant.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. Atypical site constraints, as elaborated above, drive the variance request.

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 a refuse storage area can be located in without a variance, location of the dumpster in its proposed location is not only convenient, but necessary.

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 its location at the intersection of three different roads.

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.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. A refuse storage area is a necessary element for Applicant. The CZO’s requirement it be located out of front yards is meant to shelter neighbors and passers-by from the assumedly unaesthetic view of a dumpster. Its proposed location is still in a natural “rear” of the site area, even if it is within a “front yard” as that term is defined by the

CZO. The neighborhood is not in objection to the request, and the Board identifies no apparent reason they would be. Allowing this encroachment into the front-yard setback does not unduly alter or disrupt the general spirit, intent, and purpose of the Comprehensive Plan, and furthers its goals of encouraging the redevelopment of existing properties.

**ORDER**

**PURSUANT** to Applicant's request for a variance from Comprehensive Zoning Ordinance Schedule 32.1 to locate a refuse storage area within a front yard setback; and,

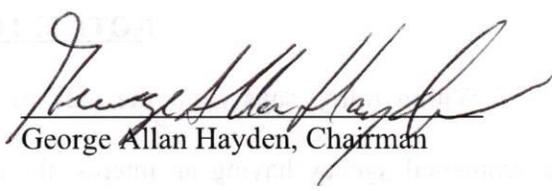
**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

**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 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, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

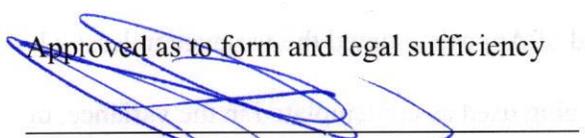
Date: June 12, 2025

  
George Allan Hayden, Chairman

Those voting to grant the variance: Mr. Hayden, Mr. Brown, Mr. LaRocco  
Mr. Payne, and Ms. Weaver

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.