

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-0240

PAX RIVER VILLAGE CENTER

EIGHTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: December 14, 2023

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: January 11, 2024

Pleadings

Lexington Park Shopping Center LLC / Three North Ortho LLC / Three Notch Road Office LLC (“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 235, Shangri-La Drive, Great Mills Road, and FDR Boulevard and a variance from Schedule 32.1 to reduce the required 20% landscaping to 15%.

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, formerly known as Millison Plaza, comprises the following parcels:

- Tax Map 43A, Parcel 105, Tax ID 036195, 8th Election District, 21703 Great Mills Road, Lexington Park, MD
- Tax Map 43A, Parcel 338, Tax ID 055297, 8th Election District, 21899 FDR Blvd,

Lexington Park, MD

- Tax Map 43A, Parcel 339, Tax ID 088446, 8th Election District, 21882 FDR Blvd, Lexington Park, MD
- Tax Map 43, Parcel 100, Tax ID 006903, 8th Election District, 21847 Three Notch Road, Lexington Park, MD
- Tax Map 43, Parcel 101, Tax ID 055270, 8th Election District, 21855 Three Notch Road, Lexington Park, MD
- Tax Map 43A, Parcel 337, Tax ID 111782, 8th Election District, 21729 Great Mills Road, Lexington Park, MD
- Tax Map 43, Parcel 11, Tax ID 174571, 8th Election District, Great Mills Road, Lexington Park, MD
- Tax Map 43A, Parcel 56, Tax ID 040028, 8th Election District, 21715 Great Mills Road, Lexington Park, MD

The parcels (collectively, “the Property”) are variously zoned High Intensity Mixed Use (MXH), Medium Intensity Mixed Use (MXM), and Limited Commercial Industrial (LCI) zoning districts.

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 235, Shangri-La Drive, Great Mills Road, and FDR Boulevard and a variance from Schedule 32.1 to reduce the required 20% landscaping to 15%.

St. Mary’s County Comprehensive Zoning Ordinance

CZO § Schedule 63.3.a specifies the minimum width and plantings required for Type B

Buffer Yards. Schedule 63.3.b states that any high-impact commercial use shall require a Type B Buffer Yard when located adjacent to a road classified as a major collector or higher road classification. Schedule 32.1 requires a minimum 20% landscaping requirement for development in the MXH, MXM, and LCI zoning districts.

Departmental Testimony and Exhibits

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

- The Property is 1,078,545 square feet / 24.76 acres in size, more or less, with several existing commercial retail buildings that were constructed in the 1970s, per the State Department of Assessments and Taxation.
- The project was sent to all the TEC approving agencies on May 1, 2023. The Concept Site Plan currently has been reviewed approved by the Planning Commission, pending the current variance request.
- The existing and proposed use types are:
 - 38 - Religious Assembly - a Low Intensity Public & Semi-Public Use Classification
 - 43 - Animal Sales and Service - a Low Intensity Commercial Use Classification
 - 61 - Motor Vehicle Maintenance Service, Major - a High Intensity Commercial Use Classification
 - 63 – Office - a Low Intensity Commercial Use Classification
 - 64 – Personal Improvement Service - a Low Intensity Commercial Use Classification
 - 65 – Personal or Business Service – a Low Intensity Commercial Use Classification

- 69 – Recreational Facility, Minor Indoor – a Low Intensity Commercial Use Classification
- 71 – Rental and Leasing – a High Intensity Commercial Use Classification
- 74 – Research and Development Service – a Low Intensity Commercial Use Classification
- 76 – Retail Sales, General – a Low Intensity Commercial Use Classification
- 77 – Retail Sales, Limited - a Low Intensity Commercial Use Classification
- 78 – Take-out Food and Beverage Sales – a Low Intensity Commercial Use Classification
- 115 – Drive Through Services – a High Intensity Accessory Use Classification
- A Type B Buffer Yard is when any high-intensity commercial use or any low-intensity commercial use exceeding 20,000 s.f. adjoins a public road designated a major collector or higher
- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Location Map
 - #3: Land Use Map
 - #4: Zoning Map
 - #5: Site Plans
 - #6: Schedule 63.3.a Buffer Yard Standards
 - #7: Schedule 63.3.b Buffer Yard Requirements
 - #8: Schedule 32.1 Development Standards
 - #9: Planning Commission Approval

Applicant's Testimony and Exhibits

Applicant was represented before the Board by attorney Chris Longmore, Esq. of Dugan, McKissick & Longmore, LLC and engineer Joe Kadjeski, of COA Barrett. 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:

- The overall project involves three parcels including the existing shopping center, existing hotel/motel site, along with the small office building on Three Notch Road with the goal of revitalizing the southwest corner of the intersection just prior to Gate 2 of the Patuxent River Naval Air Station.
- The project includes removal of the existing hotel, the small office building, and the existing bank, along with a portion of the existing office building. In total over 92,000 gsf will be demolished.
- The proposed project includes a 19,432 s.f. ALDI and a small 1,300 gsf appendage designed screen the service entrance and operations of Southern Tire. A proposed coffee shop with drive through and potentially two additional 1,800 gsf casual restaurant tenets and 3,500 gsf retail space will be included.
- The variance is required to allow the existing structures and parking to remain.
- A traffic impact analysis was prepared for the redevelopment by Lenhart Traffic Consulting which indicates the Lexington Park Development District standard of LOS 'D' or better will be met.

Public Testimony

No members of the public appeared to offer testimony related to this matter.

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. The shopping center in question has existed in St. Mary’s County for five decades; it has become a fixture of Lexington Park, albeit one the Board agrees would benefit from

redevelopment. The location, layout, and placement of the shopping center was decided long before modern buffer yard and landscaping requirements came into being. Requiring redevelopment to bring Pax River Village Center into complete conformity with the modern code would be, the Board finds, a herculean task unreasonable and improvident to require Applicant to undertake. The redevelopment of the shopping center alone will bring many aesthetic benefits on its own, eliminating some of the immediate relevance of the landscaping requirements to this project. Additionally, the Board does not believe the new development will create any impacts with a different nature and character than those posed by the existing development, which the neighboring community has adapted to for decades.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted in the paragraph above, the Property is a shopping center built in a day and age before the advent of modern buffer yard and landscaping requirements. Applicant is a recent purchaser and had no hand in the site selection and placement of the original shopping center so many decades ago.

Third, the purpose of seeking the variances is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicant desires to redevelop existing parcels. While there is necessarily some element of costs-saving to Applicant’s request, the Applicant is genuinely constrained by existing site features. There is no way apparent to the Board, nor one suggested to it, that complete conformity with the CZO can be had without rendering the project economically infeasible to the Applicant.

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 past development.

Fifth, the variances will neither detrimentally affect the public welfare, injure other

properties or improvements, nor change the character of the district. The variances sought are to landscaping requirements and buffer yards. Relaxing these provisions will not, themselves, affect traffic. Detrimental impacts to neighboring properties will likely be lessened by granting the variances, as the property will benefit from improvements and reinvestments that will greatly improve the façade and layout of the shopping center. Faced with the prospect of an un-redeveloped property that would continue to exist without modern buffer yards or a redeveloped, revitalized parcel that would exist without modern buffer yards, the Board opts for the latter.

Sixth, granting the requested variances 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. As noted above, the variances sought relate to landscaping requirements only, and shall not, in and of themselves, affect traffic.

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 reinvestment in a property long in need of a new vision. Acknowledging that buffer yards serve a vital purpose in the County's zoning regulations – helping to ensure tranquility between neighbors and reduce the impacts that disparate uses so near to one another may bring - the Board believes there are strong and compelling reasons to favor granting the variances requested. As noted above, and as shown in Applicant's concept renderings of the redeveloped shopping center, this redevelopment will enhance, rather than diminish, the appeal of the neighborhood, even without the required buffer yards and landscaping. Therefore, the Board finds that removing the buffer yards and reducing the minimum landscaping requirement are both within the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to the application of Lexington Park Shopping Center LLC / Three North Ortho LLC / Three Notch Road Office LLC, petitioning for variances from CZO Schedule 63.3a to remove the 65' Type B Buffer Yard along MD Route 235, Shangri-La Drive, Great Mills Road, and FDR Boulevard and from Schedule 32.1 to reduce the required 20% landscaping to 15%; 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 variances from CZO Schedule 63.3a to remove the 65' Type B Buffer Yard along MD Route 235, Shangri-La Drive, Great Mills Road, and FDR Boulevard and from Schedule 32.1 to reduce the required 20% landscaping to 15%;

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 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: 01-11, 2024

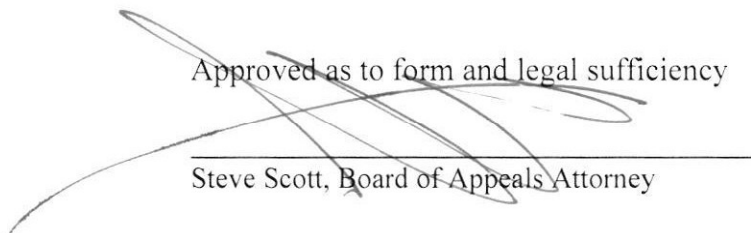

Chairperson

Those voting to grant the amendment:

Mr. Ichniowski¹, Mr. Bradley, Mr. Miedzinski, Mr. Payne, and Mr. Richardson

Those voting to deny the amendment:

Approved as to form and legal sufficiency



Steve Scott, Board of Appeals Attorney

¹ 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.

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. 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.