

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 18-132-019

**MARK AND JOANNE DILLOW
t/a HOLLYWOOD SELF STORAGE**

SIXTH ELECTION DISTRICT

DATE HEARD: September 12, 2019

ORDERED BY:

**Mr. Hayden, Mr. Brown, Ms. Delahay,
Mr. Miedzinski and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: October 10, 2019

PLEADINGS

Mark and Joanne Dillow, the applicants, seeks a variance (VAAP # 18-132-019) to waive the required 30-foot Type C buffer at the entrance and front of the subject property.

PUBLIC NOTIFICATION

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on August 28, 2019 and September 4, 2019. The hearing notice was also posted on the property. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within Two Hundred (200) feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County's website on Monday, September 9, 2019. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

FINDINGS

A public hearing was conducted at 6:30 p.m. on September 12, 2019, 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 with regard to the proposed variance requested by the applicants.

The Property

The subject property is located at 24432 Mervell Dean Road, Hollywood, MD 20626. It is zoned Town Center Mixed Use (TMX) and Airport Environs Overlay (AE). It is identified on Tax Map 26, Grid 18, Parcel 374. The land use for the lot is Mixed-Use Moderate-Intensity.

The Variance Requested

The applicants wish to develop the property with six (6) self-storage buildings and an office building. The applicants request a variance from Schedule 63.3.b of the St. Mary's County Comprehensive Zoning Ordinance to waive the required 30-foot Type C buffer at the entrance and front of the property.

The St. Mary's County Comprehensive Zoning Ordinance

Section 51.3.66 of the Use Regulations and Standards Chapter of the St. Mary's County Comprehensive Zoning Ordinance details "Personal Storage". The General Standards for a self-storage building require "a perimeter fence or berm and "C" buffer shall be required for screening of facility from a public road and from adjacent dissimilar uses". A "C" buffer is required to be a minimum width of 30 feet according to Schedule 63.3.a of the Buffer Yard.

The Evidence Submitted at the Hearing by LUGM

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

- The subject property (the "Property") has approximately 124-linear feet of road frontage, then widens to approximately to 580-feet at its widest point then narrows as it progresses to the rear of the property.
- The Property is in the Hollywood Town Center.
- The Applicant plans to develop the property with 6 storage building with an office building. Phase 1 would consist of 94,801sf storage buildings, 44 RV storage spaces and a 1,500-sf office building. Phase 2 would consist of a 19,098-sf storage building, 10 RV storage spaces and the removal of 34 RV storage spaces.
- The Planning Commission approved the Concept Site Plan for the project on July 22, 2019. Planning Commission Minutes of this meeting are attached.
- The Technical Evaluation Committee (TEC) had initially reviewed the project during its October 2018 review cycle. TEC comments from the State Highway Administration (SHA), the Department of Public Works & Transportation (DPW&T), St. Mary's County Health Department, St. Mary's Metropolitan Commission (MetCom), St. Mary's Soil Conservation District (SCD), and the Department of Land Use and Growth Management (LUGM) are attached.
- Pursuant to Schedule 50.4 of the Ordinance, Use type 66, Personal Storage, is defined as: Storage of goods and materials within an enclosed building with direct access to individual storage spaces and available to the general public for a fee. This classification does not include warehousing or wholesaling and distribution centers.

- A personal storage facility is considered a low intensity use for purposes of determining buffer requirements. Pursuant to Schedule 63.3.b of the Ordinance, a low-intensity commercial use proposed adjacent to a public road right-of-way having a Major Collector or higher road classification does not require a buffer, but per Section 51.3.66.a, the General Standards for a Personal Storage facility requires a perimeter fence or berm and "C" buffer shall be required for screening of facility from a public road and from adjacent dissimilar uses.
- Type C buffer is 30 feet in depth and contains 5 canopy trees, 7 understory trees, 27 shrubs, and 14 evergreens / conifers planted every 100 feet along the property line, along with either a 6 ft tall fence or berm. The Applicant requests a waiver of this requirement.
- Pursuant to Section 24.8 of the Ordinance pertaining to lapse of variance, variances shall lapse one year from the date of the grant of the variance by the Board of Appeals 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; or
 - 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'

- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter dated August 6, 2019 from Gene Burroughs;
 - #2: Planning Commission Minutes of July 22, 2019;
 - #3: Land Use Map;
 - #4: Location Map;
 - #5: Zoning Map;
 - #6: Concept Site Plan and Architectural Renderings (11 sheets);
 - #7: TEC comments.

Applicants Testimony and Exhibits

The Applicants were represented Gene Burroughs and Wayne Hunt from Little Silences Rest, Inc. The following evidence was presented:

- Several diagrams and photos were introduced which showed the existing buildings on the site;
- Several diagrams were introduced showing the proposed buildings to be built on the site;
- The owners propose to put 44 RV storage spaces on the property. If it turns out that many spaces are not profitable, they would replace several of the parking spaces with another storage building;
- The 30' buffer yard is a requirement for any storage facility;
- Strict compliance with the Buffer requirement would leave no room to develop the front of the property;

- The Daycare business, "Prep and Play", located next to the site, has not given any feedback to the applicants regarding the proposed fences or buffer yards;
- The Hollywood United Methodist church located on the other side of the site has requested a solid wood fence along the border.

DECISION

County Requirements for Critical Area Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.4 sets forth seven separate requirements that must be met for a variance to be issued from the Ordinance.

They are:

1. That because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape or topographical conditions of the property, strict enforcement of this Ordinance will result in practical difficulty;
2. That the conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification;
3. The request is not based exclusively upon reasons of convenience, profit, or caprice;
4. The alleged difficulty has not been created by the property owner or the owner's predecessors in title;
5. It 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. It 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. That it complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

In granting any variance, the Board may impose such conditions and restrictions upon the property as may be necessary to comply with the objectives of the St. Mary's County Comprehensive Zoning Ordinance.

Findings – Buffer Waiver Variance

Upon review of the facts and circumstances, the Board finds and concludes that the applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. There are a number of factors that support this decision. First, in determining whether practical difficulty exists, the zoning board must consider three factors:

1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. Whether the grant would do substantial injustice 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; 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.

The Board finds these three factors apply to the circumstances of the subject property. Because of the exceptional narrowness of the front of the lot, strict enforcement of the Ordinance would result in practical difficulty in that it would unreasonably prevent the use of the property for a permitted purpose.

Second, the conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification because they do not have a similar extreme narrowness.

Third, the request is not based exclusively upon reasons of convenience, profit, or caprice. The applicants had no control regarding the shape of the property.

Fourth, the alleged difficulty has not been created by the property owner or the owner's predecessors in title.

Fifth, it 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. The granting of the variance will not detrimentally affect the neighboring businesses.

Sixth, there was no testimony granting the variance would 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.

Lastly, it complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan. Self-storage facilities are approved uses in this zone.

The Board, however, finds certain conditions are necessary to be attached to the variance granting a waiver of the 30-foot buffer yard. Those conditions are as follows:

1. The boundary with the "Prep and Play" daycare shall have a fifteen (15) foot Type "A" Buffer; there will be a six (6) foot black vinyl chain link fence from the rear of the property to the front corner of the office at the front of the property; and from that point to Mervel Dean Road will be a six (6) foot black ornamental picket fence; and
2. The boundary with Hollywood United Methodist Church shall have a variable width Buffer as shown on Exhibit 4, Attachment 1. There shall be a wood and ornamental fence as represented on Exhibit 4, Attachment 1. The applicant shall obtain written approval from the Church for the fence.

ORDER

PURSUANT to the application of Mark and Joanne Dillow, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance to waive the required 30-foot Type C Buffer at the entrance and front of the subject property; 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, the applicants are granted a variance to waive the required 30-foot Type C Buffer at the entrance and front of the property. There are two (2) conditions attached to granting the variance which are listed in detail in the Findings section above.

The foregoing variance is subject to the condition that the applicants 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: October 10, 2019

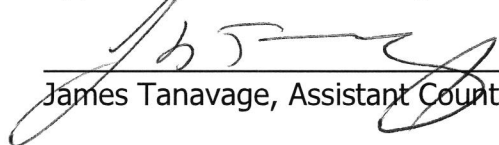

George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Ms. Delahay, Mr. Miedzinski and Mr. Richardson

Those voting to deny the variance:

Approved as to form and legal sufficiency


James Tanavage, Assistant County 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 County Board of Appeals.

Further, § 24.8 provides that a variance shall lapse one year from the date of the grant of the variance by the Board of Appeals 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; or 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.