

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 24-0338

CULLISON MINOR SUBDIVISION

SECOND ELECTION DISTRICT

VARIANCE REQUEST HEARD: MARCH 13, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: April 24, 2025

Pleadings

Clayton E. Cullison, Jr. & Jessica Cullison (hereinafter “Applicants”) seek 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

Hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation, in St. Mary’s County, Maryland, on February 21, 2025, and February 28, 2025. A physical posting was made on the property and all neighbors with access from, and within two hundred (200) feet of, Montana Way, were notified by certified mail on or before February 26, 2025. Additionally, the agenda for the hearing was posted on the County’s website by March 5, 2025. Therefore, the St. Mary’s County Board of Appeals (“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 March 13, 2025, at the St. Mary’s County Governmental Center, located at 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 an unaddressed parcel located on Montana Way in Leonardtown, Maryland (hereinafter “the Property”). The Property, which is 6.81 acres, more or less, is zoned Rural Preservation District and can be found at Tax Map 57, Grid 3, Parcel 384, and is Parcel A of the Clear View Farm subdivision. It bears Property Tax Identification Number 1902046504.

The Variance Requested

Applicant seeks a variance from 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:

- Montana Way is an existing 50-foot-wide private right-of-way (ROW) located off Chingville Road as shown on the recorded plats (Attachments 2, 3 & 4). Montana Way is approximately 2,480-feet long and serves seven (7) lots and (4) four farmsteads in total. (Attachment 5)
- The Property consists of 6.81 acres and is currently being used for agricultural purposes according to the Maryland Department of Assessments and Taxation. (Attachment 6)
- The proposed Minor Subdivision (Attachment 7) intends to convert the existing agricultural parcel into a residential parcel through the subdivision process.
- Per the Subdivision Ordinance, the stated 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.

Attachments to the Staff Report:

Attachment 1: Standards Letter

Attachment 2: Plat Book 61 at 44

Attachment 3: Plat Book 62 at 574

Attachment 4: Plat Book 65 at 125

Attachment 5: Montana Way Map

Attachment 6: Parcel 125 SDAT Record

Attachment 7: Proposed Minor Subdivision Plat

Attachment 8: LUGM Review Comments dated September 4, 2024

Attachment 9: Location Map

Attachment 10: Land Use Map

Attachment 11: Zoning Map

Applicant's Testimony and Exhibits

Applicants appeared before the Board alongside Chris Longmore, Esq., of Dugan, McKissick & Longmore, LLC. Mr. Longmore presented a slideshow that showed maps and pictures of the Property and of Montana way, and answered questions posed by the Board. Evidence raised by Applicants in their presentation included, but was not limited to:

- The Applicants propose adding one home, in total, to the parcel, and will keep the

Property at 6.81 acres.

- A nearby road, Deerfield Road, does not connect to Montana Way and is not a through-road, despite its appearance on the County's GIS maps.
- The proposed lot will be .46 miles down Montana Way from Chingville Road, and there will be only five driveways before it.
- Upgrading the private road to public road stands would be "cost prohibitive"
- There are more than eight properties with access from Montana Way, including two properties used for business purposes further in on Montana Way.
- Mr. Cullison testified there is adequate room to pass on Montana Way, although there are some drop-offs in the initial part of the road. Additionally, Mr. Cullison felt there was adequate width for emergency services vehicles to access Montana Way.
- The road, up until the Property's access point, is paved, after which it is composed of recycled asphalt millings.
- The intended use of the lot will be as a place the Applicants' parents/parents-in-law can store an RV they use, who will potentially be at the Property three months of the year.
- A road maintenance agreement will be executed by the Applicants obligating them to maintain their share of the driveway as part of the permit application.

Public Testimony

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

- *Heather and Mark Faron, 44460 Montana Way*
 - The Farons live on Montana Way and appeared together to offer testimony in opposition to the variance request. Heather Faron said that at least one house has been denied in the past. Additionally, she said that she believes

the proposed lot will be used as a rental, that two businesses are on the road already and generate traffic, that there is no maintenance agreement among the neighbors, and that the road is already degrading. Mrs. Faron offered a picture showing two cars side-by-side on Montana Way that she claimed showed how hard it is to pass. The picture was received into the record. The Farons also submitted a letter prior to the hearing that was received into the record.

- *Heather and Jonathan Wilt, 44440 Montana Way*
 - Mr. and Mrs. Wilt live in the first house on Montana Way. Mrs. Wilt testified that the neighborhood is a wonderful place to live but that the road is not built to accommodate another house, and that the existing road does not meet county standards for private roads. She said the road is already damaged and cannot handle additional traffic, and that significant traffic is already generated by the horse farm on the road. She also elaborated on problems the neighborhood had with renters who lived in the Applicants' rental properties before Applicants acquired them. In response to a question from the Board, Mr. and Mrs. Wilt testified that Montana Way was built out to its current length at the time they bought their lot.

- *Robin and Nancy Paul, 44470 Montana Way*
 - Mr. and Mrs. Paul live at the third house on Montana Way. Mr. Paul referenced 44450 Schumann Way, a property that is adjacent to Montana Way but has its access on Schumann Way. Mr. Paul believed

this is “precedent” that the variance request should be disapproved. Mr. Paul also testified that the road is degraded from regular use and referenced that there was a “traffic jam” two days ago when an Amazon delivery truck made its rounds on Montana Way. He also explained that there are “significant” drops on the side of the road.

- *Ryan Brown, 44480 Montana Way*
 - Mr. Brown owns the fourth house on Montana Way. He elaborated on the history of the Property and how it attained its current configuration. He said all property owners should have been aware the Property was an Agricultural Parcel, and that the original subdivision should rule over anything else. He also explained at length the difficulty he has passing vehicles on the road and provided specific examples of that occurring.
- *Garrett Lance Strzok, 44550 Montana Way*
 - Mr. Strzok bought 44550 Montana Way, which is directly adjacent the Property, in 2019. He elaborated upon the points raised in his letter. He also explained that he was not one of the businesses operating on the road.
- *Jacquelyn and Bobby Jenkins, 44580 Montana Way*
 - Mr. and Mrs. Jenkins bought their house, at the end of Montana Way, in 2007. Mrs. Jenkins contended that a subdivision variances require a hardship and that there can be no hardship because the “two original lots were purchased and only subdivided after” and that the problem was self-created. She also said the edges of the existing road are crumbling

because of people pulling off. She does not know if it is possible to bring a paving company in to repair the road. She also said there are other properties that have created their own “unofficial” access points to Montana Way.

In addition to the in-person testimony, written testimony was received from each speaker noted above, as well as T.J. Boothe. All letters were provided to the Board, reviewed, and included in the record.

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 granting the requested variance is not contrary to the public interest. The testimony before the Board is mixed: the Applicants do not think an additional lot will cause “major concerns” for the road, and the adjacent neighbors believe it will. Testimony from the neighbors was that Montana Way is degrading and too narrow for traffic to safely and conveniently pass each other. The photographs provided by the Applicant and one member of the public appear to show the road in fairly good repair, with room for vehicles to pass if one temporarily moves to the shoulder or side of the road. Per the staff report, Montana Way serves seven lots and four farmsteads; testimony from the neighbors suggests that much of the traffic concerns are driven by businesses at the end of Montana Way. One additional dwelling will not tip the balance.

The Board finds that the balance of evidence before it suggests granting the variance will not materially diminish the current state of Montana Way and will allow the Applicants to make reasonable use of their lot – which, as one Board member aptly pointed out, is taxed as a buildable lot. The Applicants indicated their willingness to participate in the maintenance of the road and will execute a road maintenance agreement obligating them to deliver their share of its maintenance costs. We find that granting the variance will further the overall public interest.

The second factor is that, 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 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 a single lot, satisfying the first of the above criteria. To the second and third, no lesser variance request was suggested to the Board or Applicants to consider, and none is obvious. For the same reasons which the Board finds granting this variance request furthers the overall public interest, the Board finds substantial justice is done to the Applicants and their neighbors by granting the variance and that the spirit of the ordinance is maintained. While one additional buildable lot will add additional traffic, the Board does not find the volume of additional traffic will make a material difference from current conditions.

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.”

The proposed subdivision retains the rural character of Montana Way, and we do not find that creating one additional buildable lot, sized 6.81 acres, will change or disrupt the character of the existing neighborhood, which has many lots sized smaller (see Plat 61, Folio 44). As stated above, the balance of the pictures and testimony before the Board show the road to be in good and

workable order, and the Applicants will be required to execute and record a road maintenance agreement that obligates them to maintain their share of the road.

Finally, the proposed variance complies with the Comprehensive Plan. The objectives of the Comprehensive Plan 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.” (Comprehensive Plan, Section 4.4). The subdivision proposed by Applicants is within the contemplated degree of growth. It will not place an undue strain upon existing infrastructure, will not materially upset the existing neighborhood patterns, will not require any expansion of public facilities, will not generate sprawl, and will maintain the overall look, feel, character, and nature of the neighborhood’s rural setting.

Accordingly, based on the above, this Board therefore finds it appropriate to grant the requested variance.

ORDER

PURSUANT to the application of Clayton E. Cullison, Jr. and Jessica Cullison, 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

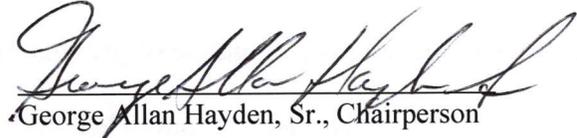
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary’s County Board of Appeals, pursuant to the St. Mary’s County Subdivision Ordinance § 20.3, the Applicants are granted a variance from Subdivision Ordinance §30.14.5(c);

UPON CONDITION THAT, 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: April 24, 2025


George Allan Hayden, Sr., Chairperson

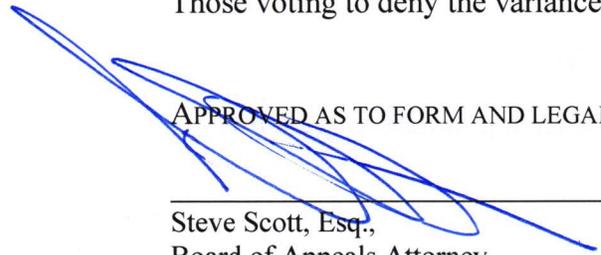
Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. LaRocco
and Mrs. Weaver

Those voting to deny the variance:

Mr. Payne

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Steve Scott, Esq.,
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 Petition for Judicial Review with the Circuit Court for St. Mary's County. St. Mary's County may not issue a permit for the requested activity until the thirty (30) day appeal period has elapsed.

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.