

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

**VAAP NUMBER 23-0265**

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**HONDA & KIA DEALERSHIP**

**EIGHTH ELECTION DISTRICT**

**DATE HEARD: November 14, 2024**

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**ORDERED BY:**

**Mr. Hayden, Mr. Bradley,  
Mr. Payne, Mr. Richardson and Ms. Weaver**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: December 17, 2024**

### **Pleadings**

CMA Properties, Inc. (“Applicant”) seeks a variance (VAAP # 23-0265) from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 63.3.a to remove the 30’ “C” type buffer yard required along the northwestern and southeastern boundaries.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on October 25, 2024 and November 1, 2024. The hearing notice was posted on the property by October 30, 2024. 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 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 November 8, 2024. Therefore, the 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 November 14, 2024 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 Applicants.

### **The Property**

Applicant owns contiguous real properties situate 23112, 23116, 23134 and 23140 Three Notch Road, California, Maryland (“the Subject Property”). The Subject Property is in the Medium Intensity Mixed-Use District (“MXM”), has a designated Mixed-Use Medium Intensity

land use, and is identified at Tax Map 34, Grid 17, Parcels 68, 69, 71, and 287. The Subject Property consists of 8.04 acres.

### **The Variance Requested**

Applicants seek a variance from CZO Schedule 63.3.a to remove the 30' "C" type buffer yard required along the northwestern and southeastern boundaries.

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

Schedule 63.3 prescribes the buffer yard required between a proposed use and adjacent properties. The type of buffer yard required will depend on the category and intensity of the adjacent uses. Relevant to this request, a high intensity commercial use must provide a 30' Type C buffer yard when proposed adjacent to low intensity residential uses.

### **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 (hereinafter the "Property") combined is 8.04 acres in size with four existing single-family homes.
- The Applicant is proposing Use Type 75, Retail Sales or Service, Vehicles. Which is defined by CZO 51.75 as Establishments engaged in the retail sale of new or used vehicles of all types - cars, trucks, recreational vehicles, motorcycles, ATV, bicycles, boats, watercraft, outboard motors. They may have show-rooms or open lots for selling vehicles, may provide repair and maintenance services and may sell related parts, accessories and equipment. During the review process it was determined that the application needed a variance from the buffer yard standards of CZO Section 63.3.
- The Concept Site Plan has been either approved or has no comment by Maryland State

Highway Administration, the Soil Conservation District, and Southern Maryland Electric Cooperative. The Planning Commission has approved the Concept Site Plan with Conditions during their July 22, 2024 hearing. (Attachment 2)

- The proposed Use Type 75, Retail Sales or Service, Vehicles is considered a High Intensity Commercial Use Classifications. Per Schedule 63.3.b, Buffer Yard Requirements, this use requires a 30' Type C buffer yard when adjacent to a Residential Low Use Classification such as the adjoining residential property surrounding the property. (Attachment 6) The Applicant has made an application to the Board of Appeals for a variance to remove 399 feet of the Buffer Yard requirement for Parcels 70 and 596, and 371 feet of the Buffer Yard requirement for Parcel 286 for this proposed project. (Attachment 7) The properties highlighted below are the impacted properties.
- The Applicant requests variances from the Type C Buffer Yards required against adjacent properties bearing the Tax IDs: 08-043558, 08-095035, and 08-008396.
- A 30-foot Type C Buffer Yard requires 5 canopy trees, 7 understory trees, 27 shrubs, and 14 evergreens / conifers planted for every 100 feet along the property line with either a six-foot berm or fence (see attachment 8).
- The following Attachments to the Staff Report were introduced:
  - Attachment 1: Standards Letter – Buffer Yards
  - Attachment 2: Planning Commission Approval Letter
  - Attachment 3: Location Map
  - Attachment 4: Land Use Map
  - Attachment 5: Zoning Map
  - Attachment 6: Site Plans

- Attachment 7: Schedule 63.3.a. Buffer Yard Standards
- Attachment 8: Schedule 63.3.b. Buffer Yard Requirements

### **Applicant Testimony and Exhibits**

Presenting before the Board of Appeals on the Applicant's behalf was Christopher Longmore, Esq, Gregory Lyons from CMA Properties, and Pat Mudd, Mudd Engineering, LLC. Together the presenting team presented a slideshow, offered testimony, and responded to the Board's questions. The Applicant's presentation included the following:

- The Planning Commission considered the Concept Site Plan at its July 8, 2024 hearing and approved it, including the requested variances, with a 7-0 vote.
- There were several conditions the Applicant agreed to as part of that proceeding, including seeking the requested variance on the southeastern property side. Following the Planning Commission proceeding staff identified the need for a variance along the northwestern boundary as well.
- The project is a permitted use in the MXM Zoning District, the regulations for which were established recently in 2019 as part of the Lexington Park Development District Plan.
- The project is located in the Lexington Park Development District.
- The project met all criteria for a concept site plan approval and was approved by the Planning Commission with a 7-0 vote.
- The request meets all requirements for the requested variance.
- While SDAT records seem to indicate potential residential use availability for neighboring properties, primary uses in this part of Three Notch Road are now commercial.

### **Public Testimony**

The following members of the public appeared to present testimony related to this request:

- Rory Feicht, 24231 North Patuxent Beach Road
  - Mr. Feicht owns the adjacent properties on the northwestern side. He said he objected to reducing the required buffer yards unless the Applicant agreed to give him access to Route 235 through their property. He also stated that the current uses on the northwestern property are residential.

In addition to in-person testimony, one written comment was received from Cynthia Peil. Ms. Peil stated that the variance should be denied because “the green area is needed” and that green space reduces flooding, helps maintain rural character, provides less stress for drivers, and lowers air temperature.

### **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 **partial** relief from the St. Mary's County Comprehensive Zoning Ordinance in the form of the requested variances.

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.

Denial of the variance *in toto* would impose a practical difficulty upon the Applicants. The Applicant stated that it would be coming into ownership of the adjacent property on the southeastern boundary and that this was property was current, and had been for decades, used as a commercial accounting firm’s office. This statement was uncontested, and even supported by the testimony of staff personally familiar with the property. Accordingly, we believe substantial justice to the neighborhood can be achieved by granting the requested variance with respect to the southeastern property and that the positive objectives of the zoning ordinance shall not be vitiated by grant of this aspect of the variance. With respect to the northwestern properties, however, the affected property owner testified that the uses were residential. We are not persuaded by the evidence produced by the Applicant that granting this part of the variance would do substantial justice to the neighborhood or to the current or future residential uses that would be allowed on this property.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. It is uncontested that the adjacent property on the southeast is occupied – in fact – by a commercial use. The record before us does not indicate that the commercial use was ever legally changed from the prior residential use, but it was the uncontested



that the commercial use has operated for decades. This is not a common development. The same cannot be said of the properties on the northwest boundary, whose owner stated they are current residential uses.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicants have demonstrated a practical difficulty and demonstrated that the buffer yards’ requirements would be a difficulty to fully implement.

Fourth, the need for the variance does not arise from actions of the Applicant or Applicant’s predecessors in title. Both variance requests are driven by the nature of development pursued on adjacent parcels.

Fifth, granting the partial variance will neither detrimentally affect the public welfare, substantially injure other properties or improvements, nor change the character of the district. Applicant points out that the development is of the nature and intensity called for by the MXM zoning district’s objectives. Granting the variance against the southeastern boundary recognizes the reality of the situation between those parcels: that a commercial use is being developed alongside an existing commercial use that has no plans to redevelop as a residential use. Contrarily, on the northwestern property the commercial use is developing against existing residential uses that are intended to remain as residential uses.

Sixth, the proposed variances will not increase the residential use of the property, and for the same reason finds it will not increase congestion or the risk of fire or endanger public safety.

Finally, the Board finds that partially granting the variance – by granting it with respect to the southeastern buffer yards but denying it with respect to the northwestern – will comply with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicant has demonstrated to the Board’s satisfaction that the use on the adjacent property in the southeast is, in fact,

commercial, that it has been commercial for a continuous span of many years, that it will not be redeveloped into a residential use in the future. Granting the variance and eliminating the need for a Type C buffer yard against its border places the Applicant in the same position it would be had that adjacent commercial use been legally established. Contrarily, the testimony received before the Board was that the uses on the northwestern neighbors are residential, and we do not find that the Applicant has met its burden to demonstrate that substantial justice will be done to the current and future occupants of these parcels if the required buffer yard is eliminated.

Accordingly, we order that the variance request with respect to the southeastern Type C buffer yard shall be granted and that the request with respect to the northwestern Type C buffer yards shall be denied.

### **ORDER**

**PURSUANT** to Applicant's request for a variance from CZO Schedule 63.3.a to remove the 30' "C" type buffer yard required along the northwestern and southeastern boundaries; 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** a variance from Schedule 63.3.a to remove the 30' "C" type buffer yard required along **THE SOUTHEASTERN BOUNDARY**; and it is further,

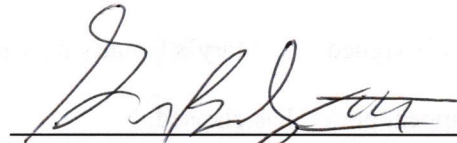
**ORDERED**, that the Applicant is **DENIED** a variance from Schedule 63.3.a to remove the 30' "C" type buffer yard required along **THE NORTHWESTERN BOUNDARIES**.

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,

and the Health Department.

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: December 12 2024

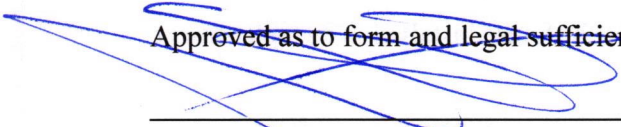
  
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Guy V. Bradley, III, Vice-Chairperson

Those voting to grant the variance:

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

Those voting to deny the variance:

~~Approved as to form and legal sufficiency:~~

  
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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. 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.