

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 24-0191

VANDEVANDER MINOR SUBDIVISION

THIRD ELECTION DISTRICT

VARIANCE REQUEST HEARD: SEPTEMBER 12, 2024

ORDERED BY:

**George Allan Hayden, Sr., Chair
Guy Bradley, Vice Chair
Conor Loughran, Member
Rich Richardson, Member
Rita Weaver, Member**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: October 10, 2024

Pleadings

Steven M. Vandevander, Jr. (hereinafter “Applicant”) seeks 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

The Hearing Notice was advertised in *The Southern Maryland News*, a newspaper of general circulation, in St. Mary’s County, Maryland, on August 23, 2024, and August 30, 2024. A physical posting was made on the property and all neighbors with access from, and within two hundred (200) feet of, Josie Way, Cartwright Road, and Beem Lane, were notified by certified mail on or before August 28, 2024. Additionally, the agenda for the hearing was posted on the County’s website by September 6, 2024. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes that there has been compliance with all applicable notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on September 12, 2024, at the St. Mary’s County Governmental Center, located 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 located at 46465 Josie Way, Leonardtown, Maryland 20650 (hereinafter the “Property”). The Property, which is 140.94 acres, more or less, is zoned Rural Preservation District and can be found at Tax Map 41, Grid 24, Parcel 125, with Tax Identification Number 1902036843.

The Variance Requested

Applicant seeks a variance 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." §30.14.5(f) moreover states that "in the event that the maximum allowable number of lots having access is exceeded, or is otherwise approved by a variance, all further divisions of land must front on a public road and are subject to the regulations and standards for public roads."

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:

- Beem Lane is an existing private right-of-way located off of Fairgrounds Road, a public road. It is approximately 3,695 feet in length and serves fourteen (14) residential lots/parcels.
- Cartwright Road is an existing partial public road, partial private right-of-way located off Fairgrounds Road. The private portion of it is approximately 1,325 feet in length and serves thirteen (13) residential lots/parcels. The private portion of Cartwright Road

terminates at an intersection with Beem Lane.

- Josie Way is an existing private right-of-way located off of Beem Lane. It is a 70' wide right-of-way which leads to a proposed 40' wide access easement, as shown on the Applicant's proposed subdivision. Josie Way currently serves three (3) residential lots/parcels.
- In total, Beem Lane currently serves thirty (30) residential lots/parcels when accounting the lots that have access to Beem Lane through Cartwright and Josie.
- The Property is 140.94 acres and is currently being used for residential and agricultural purposes, according to the Maryland Department of Assessments and Taxation.
- The Applicant proposes a minor subdivision that will subdivide the Property into two (2) 70-acre farmstead lots.
- Attachments to the Staff Report:
 - #1: Standards Letter;
 - #2: Plat 10 at 55;
 - #3: Plat 14 at 15;
 - #4: Beem Lane, Cartwright Road, and Josie Way Map;
 - #5: Plat 48 at 88;
 - #6: Plat 76 at 85;
 - #7: Proposed Minor Subdivision Plat;
 - #8: Parcel 125 SDAT Record;
 - #9: LUGM Review Comments dated June 20, 2024;
 - #10: Location Map;
 - #11: Land Use Map; and,

#12: Zoning Map.

Applicant's Testimony and Exhibits

Applicant was represented before the Board by Steven M. Vaughan (hereinafter "Mr. Vaughan"), Professional Land Surveyor with Little Silences Rest, Inc. Mr. Vaughn presented a slideshow presentation that showed maps and pictures of the affected private roads, and answered questions posed by the Board. The following evidence and testimony were included in Applicant's presentation:

- Beem Lane is a paved road that varies in width throughout its length;
- There are some gravel pull-off areas on Beem Lane along the length of the road;
- There are no ditches on Beem Lane;
- That, taken together, the above facts give sufficient room for cars headed in opposite directions to pass one another on Beem Lane;
- Cartwright Road and Josie Way are both gravel roads;
- Josie Way is initially 12' wide that tapers down to 10' wide towards the Property.

Public Testimony

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

Joyce Sapp, 43160 Josie Way, Leonardtown, Maryland

- Ms. Sapp resides off Josie Way. She stated that she wanted to mention road maintenance of Josie Way. She said there is no road maintenance agreement for Beem Lane and that, when it was paved approximately two decades ago, she was among the property owners who willingly contributed towards that upgrade. She also wanted clarity that this would be an approval for only one additional lot and was informed the proposal was for only one additional

farmstead, and that any additional development in the future would have to come back before the Board for an additional variance.

Joseph Nantista, 21770 Beem Lane, Leonardtown, MD 20650

- Mr. Nantista is the current resident at the Property. He has been there for eight years and will be the future owner of the newly created lot at the Property. He wanted to say that he is open to discussing any concerns with the neighbors. He indicated he has no plans to subdivide in the future and is willing to cooperate with maintaining Josie Way in the future.

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 that granting of this requested variance is not contrary to public interest. Based on the evidence before the Board it appears the greatest amount of strain from the network of private roads in question tonight falls on Beem Lane which currently serves, in total, thirty residential properties. There was no testimony received by the Board that Beem Lane is unable to meet this burden. Beem Lane has been upgraded to a paved road and, from the pictures provided by the Applicant, appears to be in a state of good maintenance and possesses sufficient space for vehicles to safely pass each other when ingressing and egressing. The private portions of Cartwright Road – though unpaved – appeared in a similar good state of repair. Josie Way, also in apparent good repair, serves less than seven lots at present and an analysis of conditions on that right of way is not necessary in a discussion of the Applicant’s variance request. In short, the evidence before the Board is that Beem Lane and Cartwright Road appear to be adequately meeting the current demands placed upon them,

To these demands Applicant intends to add only one additional residential lot. The Board finds no competent evidence before it that this will place the private roads beyond a tipping point. No neighbors voiced any objections or beliefs that it would do so, either. This project’s only public comment was targeted towards maintenance on Josie Way. The Applicant indicated his willingness to participate in maintenance of that road, and averred that there is no intention to further subdivide the lot than what is being proposed. Accordingly, we find that granting the variance would appear to do no harm to the 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 Supreme Court (formerly 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, despite there being an already existing adequate road network. Beem Lane and Cartwright Road are both decades-old, long private roads. Upgrading them would be prohibitively expensive for the Applicant, whose single additional lot will place no more strain on them than the thirty other parcels they presently serve.

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.”

Here, as stated above, many lots/parcels currently rely upon these existing private rights of way. The proposed subdivision – which, it is worth repeating, splits a 140-acre parcel into two 70 acre ones - is consistent with the St. Mary’s County Comprehensive Plan. It is far above the

density requirements of the Rural Preservation District and lies plainly within the use and development patterns called for by the RPD.

Finally, the proposed variance complies with the Comprehensive Plan. Section 4.4 of the Comprehensive Plan lists its objectives, which 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.” Here, the subdivision proposed by Applicant is within the degree of growth contemplated by the Comprehensive Plan.

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

ORDER

PURSUANT to the application Steven M. Vandevander, Jr., 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

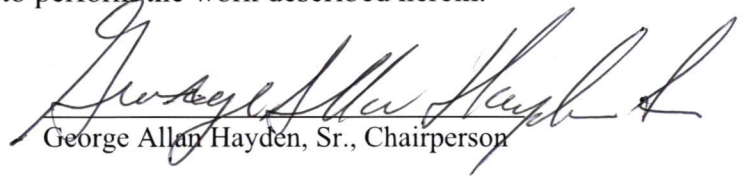
ORDERED, by the St. Mary’s County Board of Appeals, pursuant to the St. Mary’s County Subdivision Ordinance § 20.3, the Applicant is granted a variance from Subdivision Ordinance §30.14.5(c) and (f);

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 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, 2024



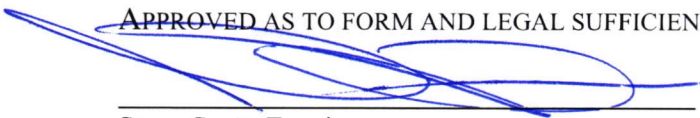
George Allan Hayden, Sr., Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Loughran, Mr. Richardson, and Mrs. Weaver

Those voting to deny the variance:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Steve Scott, Esquire,
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 Notice of Appeal 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.