

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

**VAAP NUMBER 22-0021**

---

**WOODS AT MRYTLE POINT**

**EIGHTH ELECTION DISTRICT**

**VARIANCE REQUEST HEARD: APRIL 11, 2024**

---

**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

---

**DATE SIGNED: May 9, 2024**

### **Pleadings**

Myrtle Point Holdings, LLC (hereinafter “Applicant”) appeals and seeks a variance from the St. Mary’s County Subdivision Ordinance (hereinafter “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, on March 22, 2024, and March 29, 2024. A physical posting was made on the property, and all neighbors with access from Deer Crossing Lane and those within two hundred (200) feet of the Property were notified by certified mail, on or before March 28, 2024. The agenda was also posted on the St. Mary’s County Government’s website by April 5, 2024. Therefore, the St. Mary’s County Board of Appeals (hereinafter “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 April 11, 2024, 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 recorded electronically, and the following was presented about the proposed amendment requested by the Applicant.

### **The Property**

The subject property located at 45493 Deer Crossing Lane, California, St. Mary’s County, Maryland (“the Property”). The Property, which is 10.18 acres, more or less, zoned Residential, Low Density, and currently undeveloped, can be found at Tax Map 34, Grid 6, Parcel 587, with a Tax Identification Number of 1908076553.

### **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 for the development of a single-family residence.

### **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:

- a. Deer Crossing Lane is an existing private right-of-way located off Myrtle Point Road. Deer Crossing Lane is approximately 1,671.2-feet or just over 3/10<sup>th</sup> of a mile long. The width of Deer Crossing Way varies from 13' to 15' along the length of the Subject Property and currently serves nine (9) residential lots and the Applicant's parcel;
- b. The Property consists of 10.18 acres and is currently set for residential use according to Maryland Department of Assessments and Taxation;
- c. The proposed Minor Subdivision intends to create a 10.18-acre buildable residential lot;
- d. The following comment was made in LUGM's review memo, dated November 22, 2023, "a variance will be required to add an additional lot to Deer Crossing Lane. Once the Planning Commission has approved the Major Subdivision, please make application for

- the variance”;
- e. On December 11, 2023, the St. Mary’s County Government’s Planning Commission approved the Major Site Plan, conditioned on a variance being obtained to add an additional lot to Deer Crossing Lane, a private right-of-way;
  - f. “Private Road” is defined by the Subdivision Ordinance as a “private access, drive, or lane to more than once residence which is contained within a lot or parcel, and which is not dedicated to the County”;
  - g. “Lot” is defined by the Subdivision Ordinance as “a portion of a subdivision or tract of land having frontage on a street or road which is intended for development, and which meets the requirements as a legal building site per this Ordinance”;
  - h. “Farmstead Lot” is defined by the Subdivision Ordinance as “an area of 15 acres or more in single ownership, which is a lot of record”;
  - i. “Lot of Record” is defined by the Subdivision Ordinance as “a parcel of land which has been legally subdivided and recorded in Land Records of St. Mary’s County, Maryland. A parcel is considered to be legally subdivided if it was created using the following criteria:
    - (i) it was created prior to March 15, 1978; (ii) it was created by subdivision plat approved by the Planning Commission or its administrative personnel; or (iii) it was an approved deeded division as authorized by the subdivision regulations and approved by the Department of Planning and Zoning”;
  - j. “Street” is defined by the Subdivision Ordinance as a “public or private right-of-way which affords a primary means of vehicular access to butting property, whether designated as a street, avenue, highway, road, boulevard, lane throughway, or however otherwise designated, but does not include driveways to buildings”;

- k. Section 30.14 of the Subdivision Ordinance reads, “the purpose of a 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 continue maintenance and access”;
- l. Section 30.14.5 of the Subdivision Ordinance, pertaining to General Provisions of the Private Road Standards, includes the following: (i) for private roads, the design vehicle shall be an emergency response/service/delivery-type vehicle (30-foot single unit truck); (ii) private roads shall be included in an overall development plan; and (iii) subdivision consisting of seven (7) residential lots or less, or farmstead subdivisions, may be served by a private road, and that all subdivision, except farmsteads and lots approved through the family conveyance provisions of this Ordinance, proposed with eight (8) lots, or more, shall be served by public roads in accordance with the provisions contained herein; and
- m. Attachments to the Staff Report:
- #1: General Standards Letter;
  - #2: Deed, Book 3639, page 335;
  - #3: Deer Crossing Lane Map;
  - #4: Existing conditions aerial photo;
  - #5: Proposed Major Subdivision Plat;
  - #6: LUGM review comments, dated November 22, 2023;

- #7: Planning Commission Approval Letter, December 19, 2023;
- #8: Location Map; and
- #9: Zoning Map

**Applicant’s Testimony and Exhibits**

Applicants were represented before the Board by Christopher T. Longmore, Esquire (hereinafter “Mr. Longmore”), of Dugan, McKissick & Longmore, LLC, who was joined by (i) Steve Vaughan (hereinafter “Mr. Vaughan”) of Little Silence’s Rest, Inc., (ii) Barrett C. Vukmer (hereinafter “Mr. Vukmer”), Managing Member of Chesapeake Trails Surveying, LLC, and a Maryland Professional Land Surveyor, (iii) Patrick Mudd, P.E., of Mudd Engineering, LLC, and George Rathlev (hereinafter “Mr. Rathlev”), of AVG, LLC. Mr. Longmore and Mr. Rathlev presented a slideshow presentation and answered questions posed by the Board. The following evidence and testimony were presented:

- a. The parcel at issue, although noted on the plat, was not delineated as a “building lot”, thus requiring application through the subdivision process;
- b. Applicant intends for Property to be subdivided into a single-family residence, which is not to be further subdivided, confirming the implementation of said deed restriction;
- c. They explained that the Applicant has been in communication with the neighboring property owners who access their respective property using Deer Crossing Lane, to discuss improvements Applicant would be willing to make to private right-of-way;
- d. Applicant offered a draft of a memorandum, dated April 1, 2024 (hereinafter “Memorandum”, which details the terms of the improvements Applicant is agreeable to making to Deer Crossing Lane. Such improvements include removal

and replacement of existing corrugated metal pipes, re-pavement of asphalt, and bonding requirements;

- e. To ensure completion of improvements, Applicant agrees to posting of bond in an amount not to exceed \$12,000.00;
- f. Applicant is agreeable to entering into a contract with neighboring property owners regarding the terms outlined in the Memorandum; and
- g. They provided aerials of the property, the proposed subdivision plat, survey, and site plan.

### **Public Testimony**

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

- *Sam Thompson, California, Maryland*
  - Sam Thompson (hereinafter “Mr. Thompson”), an adjacent property owner, supports the Applicant’s request for the variance, provided improvements were completed within a timely manner;
  - Mr. Thompson testified that a “number of issues” associated with this matter were brought to the attention of Mr. Rathlev, which they discussed. Mr. Rathlev responded to those issues and addressed all of Mr. Thompson’s concerns; and
  - Mr. Thompson noted that the agreed upon improvements by Applicant to Deer Crossing Lane is an “opportunity” and will increase the neighboring residents’ standards of living.
- *James Neugent, California, Maryland*
  - James Neugent (hereinafter “Mr. Neugent”), an adjacent property owner, expressed support for the variance, provided there could be some safeguards to

ensure the agreed upon improvements would be completed by Applicant;

- Mr. Neugent testified that Mr. Rathlev has been “working hard” with impacted neighbors to reach an agreement regarding improvements to Deer Crossing Lane.

### **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. Presently, nine (9) lots use Deer Crossing Lane for ingress and egress. The Applicant is seeking this variance to allow for a single additional residential lot to access the private right-of-way. The Applicant avers that there is no intention to further subdivide the lot, having previously agreed to the implementation of such deed restrictions on the Property.



Secondly, owing to special conditions, the enforcement of the provisions of this Ordinance will result in unwarranted hardship and 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 upgrade Deer Crossing Lane to meet public road standards. Furthermore, any attempt to alter Deer Crossing Lane into a public road would cause significant disruption to the neighboring landowners utilizing the existing private right-of-way.

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 similarly stated above, nine (9) lots presently use this private right-of-way. The Applicant, who has previously agreed not to further subdivide the existing lot, is seeking one (1) additional lot to access Deer Crossing Lane. The proposed subdivision is consistent with the St. Mary's County Comprehensive Plan, as other similarly situated subdivisions are permitted in the area and zoning district where the Property is located. Furthermore, since the outset, the Applicant's plan for this parcel has been a single-family residence.

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.

**ORDER**

**PURSUANT** to the application of The Myrtle Point Holdings, LLC, 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

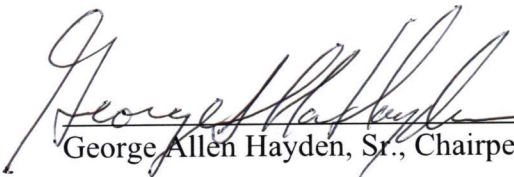
**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

**ORDERED**, by the St. Mary's County Board of Appeals, pursuant to the St. Mary's County Comprehensive Code §24.8, the Applicant is granted a variance from Subdivision Ordinance §30.14.5.c, so long as the Applicant enters into a written agreement with the neighboring landowners to include the elements of Memorandum, dated April 1, 2024, presented by Applicant, for road improvements to Deer Crossing Lane, which shall be completed no later than October 15, 2024;

**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: May 9, 2024

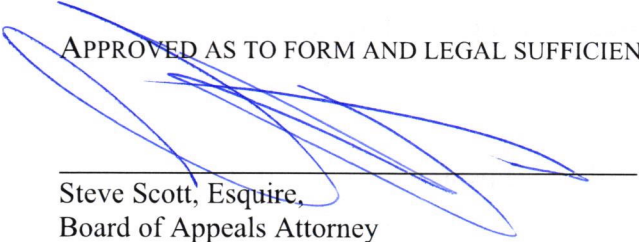
  
George Allen Hayden, Sr., Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Payne, 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 County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the thirty (30) day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance §24.8 provides that a variance shall lapse one (1) 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 sixty (60) days of the date of this Order; otherwise, they will be discarded.