

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Investors Acquisition
Group, LLC (St. Mary's Marketplace)

Case No. VAAP #05-132-019, 17-132-001

ORDER

Investors Acquisition Group, LLC filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding St. Mary's Marketplace, California Maryland (hereinafter the "Property"). The Application requests variances from Section 63.3 of the St. Mary's County Comprehensive Zoning Ordinance, as amended, (the "Ordinance"), to reduce the required buffer yards along Maryland Route 4 (St. Andrews Church Road) and FDR Boulevard, and to eliminate requirement of a fence yards along Maryland Route 4 (St. Andrews Church Road) and FDR Boulevard.

After due notice, a public hearing was conducted at 6:30 p.m. on August 10, 2017, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

Legal Standard

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

1. Because of particular physical surroundings such as exceptional narrowness, shallowness size, shape or topographical conditions of the property involved, strict enforcement of the 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; provided, any development necessarily increases property value, and that alone shall not constitute a finding of an exclusive reason.
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.
7. The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

FINDINGS OF FACT

The Property is the site of St. Mary's Marketplace, a commercial, mixed use development which first received Concept Site Plan approval from the Planning Commission on November 24, 2008.

On May 14, 2009 the Board of Appeals approved several variances to reduce the required buffer yards and to allow parking in the required buffer on the east side of the Property along its frontage with the utility corridor. Shortly thereafter, progress on the project ceased due to market conditions. On July 22, 2010 the Board of Appeals granted a request to extend the variance approvals until December 31, 2010, the date Concept Site Plan approval would expire. Construction of the approved project had not yet begun and the variances expired. The Applicant sought variances again in 2013, and the Board of Appeals granted the variance requests on April 25, 2013. The Planning Director granted additional extensions of time of Concept Site Plan approval. The variance approvals were also extended.

In February 2017 the Applicant submitted a Concept Site Plan to revise a portion of Site Plan 05-132-014. Construction of St. Mary's Marketplace was underway on the south side of the Property. This area of the Property would not be affected by the proposed revision. The improvement of north side of the Property along its frontage with Maryland Route 235 would change pursuant to the new Concept Site Plan. Consequently, construction would occur in two phases. The Planning Commission approved Concept Site Plan 17-132-001 on June 12, 2017.

A high intensity commercial use proposed next to a public road right-of-way having a major collector or higher road classification requires a 65-foot Type B buffer.

A Type B buffer is 65 feet in depth, measured from the property line inward, and consists of four (4) canopy trees, five (5) understory trees, 22 shrubs, and 11 evergreens/conifers planted every 100 feet along the property line. A Type C buffer is 30 feet in depth and consists of five (5) canopy trees, seven (7) understory trees, 27 shrubs, and 14 evergreens/conifers planted every 100 feet along the property line. Although a Type C buffer is narrower than the Type B buffer, the number of required trees and shrubs is greater and will result in a more intensely planted buffer. A six-foot (6') tall berm or fence is required with a Type C buffer. The Applicant had been approved under prior variances to erect a decorative, wrought iron style fence to comply with this section of the Ordinance.

CONCLUSIONS OF LAW

The Property fronts two State Roads and will front a third road once it is constructed. The Applicant will be constructing a segment of the third road, FDR Boulevard, and constructing an acceleration and deceleration lane along the Property's frontage on Maryland Route 4. The

Applicant will also be dedicating a portion of the Property for the widening of Maryland Routes 235 and 4. The modified buffers will be sufficient to provide screening for nearby properties.

The Comprehensive Plan encourages growth and development in the development districts and the Property is located in the Lexington Park Development District.

DECISION

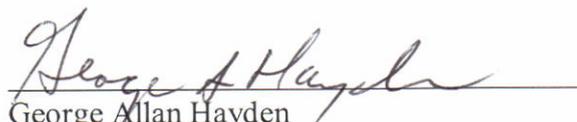
NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for variance and the objectives of Section 63.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the following variances are **granted**:

- (1) Variance to reduce the required 65-foot Type B buffer to a 30-foot Type C buffer along the Property's frontage with Maryland Route 4; and to further reduce the Type C buffer from 30 feet to 25 feet along Maryland Route 4 from the east corner of the shopping center along the proposed fast-food restaurant's frontage to the point of ingress and egress;
- (2) Variance to reduce the required 65-foot Type B buffer to a 30-foot Type C buffer along the Property's frontage with FDR Boulevard; and to further reduce the Type C buffer from the required 30 feet to 20 feet along the Property's frontage with FDR Boulevard;
- (3) Variance to eliminate the requirement for a six-foot tall berm or fence along the Property's frontage with Maryland Route 4 and FDR Boulevard; and
- (4) The variance previously granted reducing the required buffer to 20 feet along the Property's western border is hereby reaffirmed and is not modified by this Order.

The variances are subject to the following conditions:

1. The Applicant shall erect a six-foot tall solid fence in the buffer along the western boundary of the Property.

This Date: September 14, 2017


George Allan Hayden
Chairman

Those voting in favor of the request:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Miedzinski and Mr. Payne

Those voting against the requested variance:

Approved as to form and legal sufficiency:


George R. Sparling, Attorney