

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

In the Matter of Kody Holdings, LLC  
22667 Three Notch Road  
California, Maryland

Case No. VAAP # 13-132-010

**DECISION AND ORDER****Introduction**

Kody Holdings, LLC (hereinafter "Applicant") filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 22667 Three Notch Road, California, Maryland (hereinafter the "Property"). The application seeks to (1) reduce the required buffer yard from an arterial road; and (2) reduce the required buffer yard in the southeast corner of the property fronting planned FDR Boulevard.

After due notice, a public hearing was conducted at 6:30 p.m. on June 11, 2015, at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. 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 consists of two parcels, which are essentially fully wooded and divided by a 66 foot right-of-way owned by the Commissioners of St. Mary's County and FDR Boulevard. The Applicant plans to initially develop the Property with a two-story building with a maximum height of 35 feet for a total of 45,648 square feet. The building will be used for a car dealership to which the existing Lexington Park Ford on Great Mills Road plans to relocate. The Property has several unique characteristics. It is impacted by a large depression, which was characterized as a hazard to traffic on Maryland Route 235. Any development of the property requires the filling of the depression to bring the area to grade. This involves an unusual amount of fill. The Property is also impacted by the encroachment of a residential driveway providing ingress and egress between an adjacent residence and Maryland Route 235. Nearby commercial properties have been developed without buffers currently required.

The Applicant requests two variances: (1) a variance to reduce the required 65 foot Type B buffer from Maryland Route 235 to a 30 foot Type C buffer without a fence or berm; and (2) a variance to reduce the required Type B buffer from FDR Boulevard from 65 feet to 50 feet.

A car dealership is classified as a commercial use, Use Type 75 - Auto Sales or Service, Vehicles, in accordance with Schedule 50.4 of the Ordinance. Use Type 75 is described in Schedule 50.4 as "Establishments engaged in the retail sale of new or used vehicles of all types – cars, trucks, recreational vehicles, motorcycles, ATV, bicycles, boats, watercraft, and outboard motors. It may have showrooms or open lots for selling vehicles, may provide repair and maintenance services and may sell related parts, accessories, and equipment." This use is considered a high intensity use for determining buffer requirements.

The three types of buffers, A, B, and C, differ in depth and in the number of trees and shrubs that must be planted within those buffers. Pursuant to Schedule 63.3.b of the Ordinance a high intensity commercial use proposed adjacent to a public right-of-way with a road classification of major collector or higher requires a Type B buffer. A Type B buffer is 65 feet in depth and contains 4 canopy trees, 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 contains 5 canopy trees, 7 understory trees, and 27 shrubs, and 14 evergreens/conifers planted every 100 feet along the property line. A Type C Buffer requires a fence or berm.

The portion of proposed FDR Boulevard adjacent to the Property has not been acquired or mapped by St. Mary's County.

The proposed project was reviewed by the Technical Evaluation Committee (TEC) in September 2013. The Planning Commission approved the Concept Site Plan by a 5-0 vote at its April 13, 2015 public hearing, subject to the condition that the Applicant obtains the required variances.

### **Conclusions of Law**

The unusual topography of the Property and encroaching driveway are such that strict enforcement of this Ordinance will result in practical difficulty. These conditions do not apply to other properties generally and are not attributable to the Applicant or its predecessors-in-title. The requested variances will render the Property more consistent with the character of the neighborhood. Development as proposed will have no adverse impact, and may enhance, public safety, and can only improve property values in the neighborhood.

The Comprehensive Plan encourages growth and development in the development districts and the Property is located in the Lexington Park Development District. Another policy stipulates that development should allow for and provide adequate buffers to avoid conflicts between different land use types and to provide visual screening. The proposed Type C Buffer is sufficient to meet that objective.

In consideration of the amount of fill required to create an even grade, a fence or berm would provide no additional benefit.

Since the final location of FDR Boulevard has not been determined, a reduction of the adjacent buffer is appropriate.

### **ORDER**

**NOW, THEREFORE, BE IT ORDERED**, that, having made a finding that the standards for a variance and the objectives of Section 24.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, (1) a variance to reduce the required 65 foot Type B buffer adjacent Maryland Route 235 to a 30 foot Type C buffer without a fence or berm; and (2) a variance to reduce the required Type B buffer from FDR Boulevard from 65 feet to 50 feet are *granted*.

Date: July 9, 2015



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George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency:

  
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George R. Sparling, County Attorney

*[Faint handwritten text]*