

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

**VAAP NUMBER 15-132-015**

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**JASON & KRISTIN PENROD**

**SECOND ELECTION DISTRICT**

**DATES HEARD: December 19, 2019 and February 13, 2020**

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**ORDERED BY:**

**Mr. Hayden, Mr. Brown, Ms. Delahay,  
Mr. Miedzinski, and Mr. Richardson**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: May 7, 2020**

### **Pleadings**

Jason and Kristin Penrod (“the Applicants”) seek a variance (VAAP # 15-132-015) to waive the required 65-foot Type B front and rear buffer yards and to reduce the planting requirements for the 30-foot Type C side buffer yards.

### **Public Notification**

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on December 4, 2019 and December 11, 2019. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including 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 December 11, 2019. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

### **Public Hearing**

Public hearings were conducted at 6:30 p.m. on December 19, 2019 and February 13, 2020 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**

The Applicants own the subject property located at 45190 Happyland Road, Valley Lee, Maryland (the “Property”). The Property is split between the Rural Preservation District (“RPD”) and Rural Commercial Limited (“RCL”) zoning districts and is identified on Tax Map 57, Grid

17, Parcel 320.

### **The Variance Requested**

The Applicants request a variance from Schedule 63.3.b of the St. Mary's Comprehensive Zoning Ordinance ("CZO") to waive the required 65-foot Type B front and rear buffer yards and to reduce the planting requirements for the 30-foot Type C side buffer as shown on the Site Plan of the Property, which was admitted into evidence at the hearing as Attachment 6 of Exhibit 2.

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

Pursuant to Schedule 50.4 of the CZO, Use Type 61, "Motor Vehicle Maintenance Service, Major," is defined as:

Repair of automobiles, trucks, motorcycles, tractors, motor homes, and recreational vehicles, including the sale, installation, and servicing of related equipment and parts. This classification includes towing, engine repair, body and fender shops, vehicle painting, wheel repairs, tire sales and installation and/or repair of heavy trucks or construction vehicles, but excludes vehicle dismantling or salvage, tire re-treading and recapping.

Includes facilities providing services for major repair and maintenance of recreational or commercial watercraft and marine engines. (Use may be accessory to a marina or boatyard use).

*Id.*

A "Motor Vehicle Maintenance Service, Major" is considered a high intensity use for purposes of determining buffer requirements. *Id.* Under CZO Schedule 63.3.b, a proposed high-intensity commercial use adjacent to a "Public Road right-of-way having a Major Collector or higher road classification" requires a minimum 65-foot Type B buffer yard. Where a proposed high-intensity commercial use is adjacent to residential low-intensity, it requires a minimum 30-foot Type C buffer yard. *Id.*

Under Schedule 63.3.a, a Type B buffer is a minimum of 65 feet in depth and requires 4

canopy trees, 5 understory trees, 22 shrubs, and 11 evergreens and shrubs, all planted every 100 feet along the property line. In contrast, a Type C buffer is a minimum of 30 feet in depth and requires 5 canopy trees, 7 understory trees, 27 shrubs, and 14 evergreens and shrubs, all planted every 100 feet along the property line and along either a 6-foot tall fence or berm.

### **The Evidence Submitted at the Hearing by LUGM**

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The Property is a corner lot at the intersection of MD Route 249 and Happyland Road in Valley Lee. It has approximately 125-linear feet of road frontage on MD Rte. 249 and 157-linear feet of road frontage on Happyland Road.
- The Applicants plan to develop the property with 3,600 square foot motor vehicle maintenance shop with the required parking. The Planning Commission approved the Concept Site Plan for the project on 06/13/16. The Director of LUGM approved the Major Site Plan on 05/12/17.
- The Applicants request a waiver from the Type B buffer requirements.
- The Applicants also request a reduction of the plantings for the Type C buffer requirements, as shown on Sheets 3 and 4 of the Approved Major Site Plan and the As-built Construction Site Plan set.
- Pursuant to CZO § 24.8 pertaining to lapse of variance, variances shall lapse one year from the date of the grant of the variance by the Board of Appeals 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