

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

ZAAP NUMBER 18-110-031

CHAPMAN'S REST APPEAL

SIXTH ELECTION DISTRICT

DATE HEARD: JULY 23, OCTOBER 22, & OCTOBER 29, 2020

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: December 17, 2020

Pleadings

John & Elise Thompson, Glenn & Jennifer Thompson, George & Frances Thompson, and Benjamin & Carolyn Clarke (collectively, “the Appellants”) appealed the decision of the Director of Land Use and Growth Management (“Planning Director”) to approve the final plat of the Chapman’s Rest Minor Subdivision (“the Subdivision”) for recording.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on July 10, 2020 and July 17, 2020. 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 St. Mary’s County website on July 15, 2020. Therefore, the 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 July 23, October 22, and October 29, 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.

The Property and Procedural History

Bennett Homes LLC (“The Applicant”) owns the Subject Property, a 137.71-acre property located at Tax Map 69, Grid 8, Parcel 922 at the end of Upton Lane in Hollywood, Maryland. The Subject Property is located in the Rural Preservation District (“RPD”).

In 1998, Judge Femia held in *Adams v. Thompson*, 18-C-97-000798 (Cir. Ct. St. Mary's, MD 1998), that J. Franklin Adams, the prior owner of the Subject Property, held a prescriptive easement "over the land of John and Elise Thompson." Specifically, the "easement is across the roadway, travel way . . . up to and including that point where there is the 90-degree left hand turn across the plowed field . . . the last direct route back to the Adams property." The use of the prescriptive easement was described as "[f]or the reasonable . . . use of motor vehicles as styled in the Maryland Motor Vehicle Code, and that of course, makes it very broad. That easement includes the right to reasonably maintain the right of way for such vehicles. The Defendants are enjoyed from interfering with that reasonable use."

In 2006, George and Frances Thompson and Glenn and Jennifer Thompson signed a Confirmatory Plat of Boundary Line Adjustment "grant[ing] twenty (20) foot private right-of-way through our properties, for the purpose of ingress and egress to the lots as shown hereon." Moreover, they wrote, "We further establish the minimum building restriction lines as required by the zoning ordinance of St. Mary's County and dedicate the streets, walkways, easements, rights-of-way, and other improvements, where applicable to public use."

Three months later, Mr. Adams sold the Subject Property to the Applicant.

In 2007, Judge Femia again ruled on the prescriptive easement. In *Thompson v. Bennett Homes, LLC*, 18-C-07-000446 (Cir. Ct. St. Mary's, MD 2007), Judge Femia held in the Order for Permanent Injunction "that the width of the prescriptive easement granted in Civil Action 97-798 is established to be twelve feet (12'), being six feet (6') on each side of the center line of the existing farm road over which a prescriptive easement was granted in Civil Action 97-798." In limiting the use, Judge Femia further ruled in the Order for Permanent Injunction, "That said prescriptive easement shall be used by the owner of the dominant estate solely for the ingress and