

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 22-1643

BOOTHE PROPERTY

SIXTH ELECTION DISTRICT

DATE HEARD: February 9, 2023

ORDERED BY:

**Mr. Ichniowski, Mr. Bradley, Ms. Delahay,
Mr. Payne and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: _____, 2023

Pleadings

Jennifer and Wayne Boothe (“Applicants”) seek a variance (VAAP # 22-1642) to reduce the front setback from 25’ to 5’ for a replacement garage.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 20, 2023 and January 27, 2023. The hearing notice was also posted on the property. The file contains the certification of mailing to all adjoining landowners, even 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 February 3, 2023. 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 February 9, 2023 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

Applicants own the real property situate 25225 Blue Heron Lane, Hollywood, MD 20636 (“the Subject Property”). The Subject Property is in the Rural Preservation District (“RPD”) Zoning District and is identified at Tax Map 21, Grid 24, Parcel 32.

The Variance Requested

Applicants seek a variance from St. Mary’s County Comprehensive Zoning Ordinance

(“CZO”) Schedule 32.1 to reduce the required 25’ front yard setback to 5’ for a replacement garage.

The St. Mary’s County Comprehensive Zoning Ordinance

CZO Schedule 32.1 establishes a 25’ setback from a front property line.

Staff Testimony

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

- The Subject Property contains a single-family dwelling (principal structure) and accessory structures. Per the State Department of Assessments and Taxation, the principal structure was constructed in 1950.
- The Applicant requests a variance to reduce the front setback line of 25’ to 5’.
- A 25’ front setback is required for all structures in the RPD. Applicant’s request would reduce this setback by 20’.
- The site plan has been approved by the Health Department. It is exempt from Stormwater Management and Soil Conservation standards because less than 5,000 s.f. of soil disturbance is proposed.
- The following Attachments to the Staff Report were introduced:
 - #1: General Standards Letter;
 - #2: Site Plan;
 - #3: Location Map;
 - #4: Zoning Map

Applicant Testimony and Exhibits

The Applicants were represented before the Board by Chris Longmore, of Dugan,

McKissick & Longmore, LLC. The following items were among the evidence presented to the Board:

- Placing the garage in the proposed location moves it further away from the Critical Area Buffer and the water, which Applicants believe is the more environmentally-conscious decision.
- The Applicants feel that the location of the existing house makes the proposed location the most practical considering the layout of the Subject Property.
- The second story of the proposed garage will not be living quarters. It is intended for storage.

Public Testimony

The following members of the public provided to offer testimony:

Walter Gardiner

- Mr. Gardiner is the adjacent property owner. Mr. Gardiner has lived next to the Applicants for many years and does not object to the proposed variance.

Decision

County Requirements for Granting Standard Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a variance to be issued:

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

Id.

Findings

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical characteristics of the Subject Property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Supreme Court of Maryland¹ 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, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the

¹ The Supreme Court of Maryland was then known as the Court of Appeals. An amendment to the Maryland Constitution renaming the Court of Appeals to the Supreme Court of Maryland was ratified in the 2022 election. Simultaneously, the Court of Special Appeals was renamed the Appellate Court of Maryland.

- 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 to 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.
 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, the Subject Property is accessible via private driveway located off a private right-of-way, Blue Heron Lane. The “front” of the Subject Property does not abut a Minor Collector or lesser road, but abuts two parcels of private property sharing a common owner. Significant portions of the Subject Property are encumbered by the Critical Area buffer and uneven terrain consisting of 15% to 25% slopes. The Board finds that requiring the Applicants devise a development plan that would enter into these difficult areas would impose a practical difficulty upon their efforts to construct the replacement garage.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted above, the front setback requirement requested here is not “typical,” considering the parcel does not abut a public or private road.

Third, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, the Applicants seek to build a replacement garage, a common accessory structure. The difficulties the Applicants point to if forced to relocate the structure elsewhere are real and significant.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, the variance is required as a result of the Subject Property's topography and environmental features.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. The neighboring property owners have been notified of the variance request to provide them with an opportunity to speak on the matter. The property owner who will be impacted by the proposed setback reduction, Mr. Gardiner, spoke in favor of the proposal.

Sixth, the proposed development will not increase the residential use of the property and the Board does not find that it will increase congestion or the risk of fire, endanger public safety, or substantially diminish or impair property values in the neighborhood.

Finally, by satisfying each of the above criteria, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to the application of Jennifer and Wayne Boothe seeking a variance from CZO Schedule 32.1 to reduce the required 25' front yard setback to 5' for a replacement garage; 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 CZO § 24.3, that the Applicant is granted a variance from CZO Schedule 32.1 to reduce the required 25' front yard setback to 5' for a replacement garage.

The foregoing variance is subject to the condition that the 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: _____, 2023

Daniel F. Ichniowski, Chairman

Those voting to grant the variance:

Mr. Ichniowski, Mr. Bradley, Ms. Delahay,
Mr. Payne, and Mr. Richardson

Those voting to deny the variance:

Approved as to form and legal sufficiency

Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANT

Within thirty 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 30-day appeal period has elapsed.

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