

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 21-1598

BRACKETT PROPERTY

FIFTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: JUNE 9, 2022

ORDERED BY:

Mr. Bradley, Ms. Delahay, Mir. Miedzinski, Mr. Payne, and Mr. Richardson

ZONING ADMINISTRATOR: AMANDA YOWELL

DATE SIGNED: July 14, 2022

Pleadings

Joshua and Marie Brackett (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Sections 71.4.2.a(2) to disturb the 100’ perennial stream buffer to construct a walkway bridge, path, and road culvert repair.

Public Notification

The hearing notice was advertised in The Southern Maryland News, a newspaper of general circulation in St. Mary’s County, on May 20, 2022 and May 27, 2022. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before May 25, 2022. The agenda was also posted on the County’s website on June 1, 2022. Therefore, the Board of Appeals (“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 June 9, 2022 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically.

The Property

The subject property is located off Harvest Lane, Mechanicsville, Maryland and can be found at Tax Map 9, Grid 3, Parcel 52 (“the Property”). The Property is 31.99 acres, more or less and is zoned Rural Preservation District (RPD).

The Variance Requested

Applicant seeks a variance from CZO § 71.4.2.a(2) to disturb the 100’ perennial stream buffer to construct a walkway bridge, path, and road culvert repair.

St. Mary’s County Comprehensive Zoning Ordinance

CZO § 71.4.2.a(2) establishes a 100' buffer from each bank of all perennial streams, expanded, if necessary, in accordance with the provisions of 71.8.3.a(1)..

Departmental Testimony and Exhibits

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

- The Property contains a working farm with several outbuildings. As shown in Applicants' site plan, the 100' stream buffer has been disturbed to construct a walkway, path, and repair a road culvert.
- An MDE Compliance Report written by Greg Kolarik on August 16, 2021, confirms the Applicant's permit request to disturb state waters. MDE Permit 21-NT-0388 is for the repair of the road culvert, a walkway, and foot bridge.
- A perennial stream as defined by the CZO, Locks Swamp Creek, impacts the Property.
- LUGM approved the site plan for stormwater management and forest conservation. Zoning approval requires a variance for disturbance to the stream buffer.
- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Site Plan
 - #3: MDE Compliance Evaluation Report
 - #4: MDE Permit 21-NT-0388
 - #5: USGS Stream Map
 - #6: Location Map

- #7: Zoning Map

Applicant's Testimony and Exhibits

Applicant Joshua Brackett appeared before the Board. Applicants presented a slideshow which contained site plans, photographs of the site, and offered oral testimony. The following evidence and testimony was included in Applicant's presentation:

- The variance is requested for three items: (1) a replacement walkway bridge and path for access to a pond on Applicants' property, (2) repair of an existing, but eroding, vehicle bridge, and (3) maintenance of the farm field alongside the creek by cutting grass and small shrubbery
- Applicant shared pictures of the pre-existing conditions showing degradation and erosion on Applicants' roadway. Cones and pallets were placed over eroded areas to prevent vehicles from driving off the roadway. This erosion was exacerbated by flooding that periodically occurs on the Property.
- The repaired vehicle bridge restores eroded areas and features expanded wing walls by the bridge, to prevent future erosion. The existing culvert pipe itself was not changed.

Public Testimony

The following members of the public appeared to offer testimony:

- Michael Gray – Mechanicsville
 - Mr. Gray is the Applicants' next door neighbor, who also depends on the restored vehicle bridge for access to his home
 - The homeowners who depend on the road have struggled with it "for years," and that it has frequently suffered crippling erosion
 - Mr. Gray thanked Mr. Brackett for the attention and energy he has given to fixing

the bridge

- As evidence of the struggle property owners encounter, the night prior to the hearing a rainstorm caused widespread flooding on the property

Decision

County Requirements for Granting 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 – Standard Variance Requirements

Upon review of the facts and circumstances, the Board finds and concludes that the Applicant is entitled to relief from the St. Mary’s County Comprehensive Zoning Ordinance. Several factors support this decision.

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical surroundings of the Property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Court of Appeals 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 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, Applicant relies upon the restored vehicular bridge and footbridge for access to his

property. Denial of a practical means of access to a Property is unquestionably the imposition of a grave hardship, and the Board finds that denial of the requested variance is tantamount to denial of such practical means of access. Accordingly, the Board finds that denial of the variance would constitute practical difficulty.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted in the paragraph above, the Property is served by one vehicular bridge that, as Applicants and Mr. Gray testified, has a propensity to wash out. This is not a feature generally encountered on other similarly situated properties.

Third, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicant is seeking to ensure he has access to his Property, a basic right of ownership of Property. Taking measures such as those taken by Applicants are not rooted in mere convenience or caprice; such measures seem necessary if Applicants are to avail themselves of even basic enjoyment of the Property.

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 this Property’s physical characteristics, and the Property’s propensity to suffer from greater-than-usual erosion.

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. Only one spoke, and he was adamantly in favor of the requested variance – and seems to depend on the requested variance for access to his own property as well.

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, 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 Joshua and Marie Brackett (“Applicants”) for a variance from Section 71.4.2.a(2) to disturb the 100’ perennial stream buffer to construct a walkway bridge, path, and road culvert repair; 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 § 24.8, that the Applicant is granted a variance from Section 71.4.2.a(2) to disturb the 100’ perennial stream buffer to construct a walkway bridge, path, and road culvert repair; and;

UPON CONDITION THAT, Applicants 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 Applicants 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: July 17, 2022

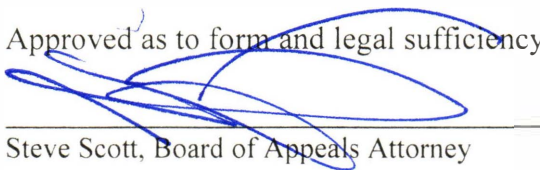
David Wayne Miedzinski
David Wayne Miedzinski, Chairperson

Those voting to grant the amendment:

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

Those voting to deny the amendment:

Approved as to form and legal sufficiency



Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANTS

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 Circuit Court for St. Mary's County. 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.