

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-2566

DENT PROPERTY

NINTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: APRIL 11, 2024

ORDERED BY:

**George Allan Hayden, Chair
Guy Bradley, Vice Chair
Ronald Payne, Sr., Member
Rich Richardson, Member
Rita Weaver, Member**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: May 9, 2024

Pleadings

Anita C. Dent and Michael A. Dent Sr., Trustees (hereinafter “Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (hereinafter “CZO”), specifically §71.5.1.b(1), to disturb the expanded non-tidal wetland buffer to replace an existing detached structure with a carport.

Public Notification

The hearing notice was advertised in the *Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on March 22, 2024, and March 29, 2024. A physical posting was made on the property, and all property owners within 200-feet were notified by certified mail, on or before March 27, 2024. The Agenda was also posted on the County’s website by April 5, 2024. Therefore, the Board of Appeals (hereinafter “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 April 11, 2024, at the St. Mary’s County Governmental Center, located at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were electronically recorded, and the following was presented about the proposed amendment requested by the Applicants.

The Property

The subject property is located at 45967 Shanty Point Lane, Piney Point, Maryland (hereinafter “Property”). Per SDAT, it is 23,484 square-feet. It is zoned ‘Rural Preservation District’ with a Limited Development Area Critical Area overlay. The Property can be found at Tax Map 69, Grid 2, Parcel 211, in the Ninth Election District.

The Variance Requested

Applicants seek a variance from CZO §71.5.1.b(1) to disturb the expanded nontidal wetland buffer to replace an existing detached structure with a 60' x 40' carport.

St. Mary's County Comprehensive Zoning Ordinance

CZO §71.5.1.b(1) requires that “[a] 25-foot buffer shall be preserved from the edge of nontidal wetlands and shall be expanded up to 100 feet to include areas of adjoining hydric soils.”

Departmental Testimony and Exhibits

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

- The Property was created by deed on August 1, 1969, prior to the adoption of the CZO;
- The Property, a 23,484 square-foot parcel located on Shanty Point Lane in Piney Point, St. Mary's County, Maryland, is developed with a detached garage;
- The site plan proposes replacing the existing detached garage with a 60-foot by 40-foot carport and expanding the driveway located in the nontidal wetland buffer, which is expanded to 100-feet for the presence of hydric soils;
- In accordance with CZO §71.5.1(b)(1), a 25-foot buffer shall be preserved from the edge of nontidal wetlands and shall be expanded up to 100-feet to include areas of adjoining hydric soil;
- Critical Area mitigation requires a ratio of 1:1 for canopy removed and 2:1 for the net increase in lot coverage in the expanded buffer. If approved, the total mitigation required is 3,934 square-feet to meet mitigation requirements. Prior to the issuance of the building permit, a planting agreement and plan are required;
- On or about December 6, 2023, LUGM approved the site plan for zoning requirements,

and, on or about February 11, 2023, the St. Mary's County Health Department approved the site plan. The site plan is pending approval with LUGM for floodplain requirements. Site Plan Approval from the St. Mary's County Soil Conservation District or Stormwater Management is not required, as the proposal calls for less than 5,000 square-feet of soil disturbance;

- Pursuant to CZO §24.8.1, if a variance is granted, but a building permit is not issued, the variance will lapse one (1) year from the date of its granting; and
- Attachments to the Staff Report, including:
 - #1: General Standards Letter;
 - #2: Deed: Book 164, Page 319;
 - #3: Location Map;
 - #4: Site Plan;
 - #5: Zoning Map;
 - #6: Land Use Map;
 - #7: Critical Area Map; and
 - #8: Wetland & Hydric Soils Map

Applicant's Testimony and Exhibits

Applicants were represented before the Board by Barrett C. Vukmer (hereinafter "Mr. Vukmer"), Managing Member of Chesapeake Trails Surveying, LLC, and a Maryland Professional Land Surveyor. Mr. Vukmer displayed a slideshow presentation and answered questions from the Board. The following evidence and testimony were included in the Applicant's presentation:

- Mr. Vukmer acknowledged that the property is almost entirely impacted by the expanded non-tidal wetland buffer. There is no provision that eliminates the need for a variance from

such a large expanded non-tidal wetland Buffer as there is for an expanded Critical Area Buffer. In total, approximately 97% of the Property is impacted by the expanded non-tidal wetland Buffer.

- The new structure will have open walls at the bottom to allow for free-flow of water if the Property ever floods.

Public Testimony

No members of the public appeared to offer testimony related to this matter. The Board received a letter, dated April 9, 2024, from James “Jim” Haskell, a neighboring property owner, indicating his approval for the Applicants’ request, which was made part of the record.

Decision

County Requirements for Granting Variances

In accordance with CZO §24.3, the Board shall not grant a variance unless it makes findings based upon evidence presented to it that:

- (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.

Findings – Standard Variance Requirements

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

Firstly, the Board finds that strict interpretation of the CZO would result in practical difficulty due to the physical surroundings of the Property. CZO §24.3.1. The Maryland Supreme Court (formerly “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, set backs, 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.

McLean v. Soley, 270 Md. 208, 214-215 (1973).

Here, the Applicants demonstrate that should there be strict interpretation of the CZO, the particular physical surroundings of the Property would result in a practical difficulty for the Applicants. The improvement of the existing carport is a reasonable and customary amenity, the value of which need not be elaborated upon. The expanded nontidal wetlands buffer constrains all but 82-square-feet of the Property, effectively rendering the lot undevelopable without the requested variance. Furthermore, Maryland's Department of the Environment's Nontidal Wetlands Division conducted a site visit and approved the development.

Based upon the conditions shown on the site plan and maps incorporated in the Staff Report, the Board was not offered, and does not see, any means by which a lesser variance, other than the variance requested, would allow for the Applicants to improve the existing carport. Strict enforcement results in unwarranted hardship to the Applicants and render this recorded lot undevelopable.

Secondly, the circumstances present in this matter are generally inapplicable to other similarly situated properties. In adopting this portion of the Ordinance, the primary focus was environmental protection, not rendering a property undevelopable. As noted in the foregoing paragraph, the Property is almost entirely constrained by the expanded nontidal wetlands buffer. Generally, such conditions are not present. Other properties in the same zoning classification have enough land not to be impacted in the way this parcel is impacted by the expanded buffer. Strict interpretation of the expanded buffer deprives the Applicants of the right to replace the existing

40-year-old structure on the Property, thus depriving them of rights commonly enjoyed by the adjoining property owners within the same zoning classification.

Thirdly, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit, or caprice;” Rather, the Applicants’ desire the variance to improve the Property and replace an existing 40-year-old structure. The proposal does not seek extraordinary, excessive, or uncharacteristic relief of what may be found on similarly situated properties.

Fourthly, the need for the variance does not arise from actions of the Applicants. Rather, the expanded buffer was established 18 years *after* the existing structure was erected.

Fifthly, the granting of the requested variance neither detrimentally affects the public welfare, injures other properties or improvements, nor changes the character of the district. The neighboring property owners were notified of the variance request, affording them the opportunity to speak on the matter. No members of the public appeared to offer testimony related to this matter, no one spoke against the project, and the Board received one (1) letter of support from a neighboring property owner. The Board finds this variance request will not be detrimental to the public welfare or injurious to other neighboring properties or improvements. The Board further finds that the character of the district will not be changed by the variance, as this is a redevelopment of the same use on the Property.

Sixthly, the Board does not find that the proposed variance will substantially increase congestion of the public streets, increase the danger of fire, endanger public safety, or substantially diminish or impair property values within the neighborhood.

Lastly, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purport of the CZO. The variance seeks minimum limits of disturbance in the expanded wetland buffer and moves development further away from the wetlands buffer to redevelop the

Property. This allows the Applicants to achieve reasonable use of their land, similar to others in the neighborhood and in harmony with the CZO.

ORDER

PURSUANT to the application of Anita C. Dent and Michael A. Dent, Sr., Trustees, petitioning for a variance from CZO Section 71.5.1.b(1) to disturb the expanded nontidal wetland buffer to replace an existing structure with a 60' x 40' carport; and

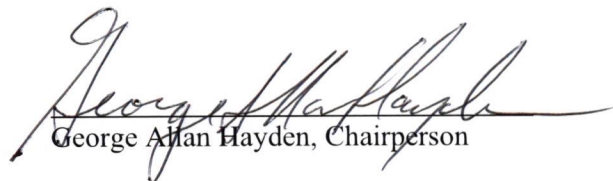
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is, hereby,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO §24.8, that the Applicants are granted a variance from CZO Section 71.5.1.b(1) to disturb the expanded non-tidal wetland buffer replace an existing structure with a 60' x 40' carport;

UPON CONDITION THAT, Applicants shall comply with any instructions and necessary approvals from the St. Mary's County Government's Department of Land Use and Growth Management, the St. Mary's County Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. 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: May 9, 2024

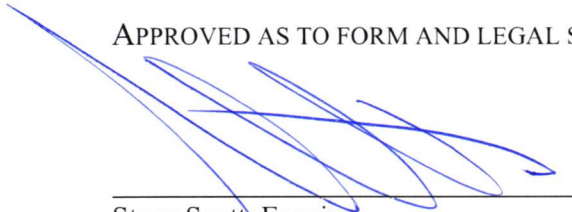

George Alan Hayden, Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Payne, Mr. Richardson, and Mrs. Weaver

Those voting to deny the variance:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Steve Scott, Esquire,
Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) 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 (1) 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 sixty (60) days of the date of this Order; otherwise, they will be discarded.