

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 21-1516

LONG PROPERTY

NINTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: APRIL 14, 2022

ORDERED BY:

Mr. Ichniowski, Mr. Bradley, Mr. Miedzinski, Mr. Payne, and Mr. Richardson

ENVIRONMENTAL PLANNER: LEAH LANGFORD

DATE SIGNED: APRIL 21, 2022

Pleadings

Maurice Long (“Applicant”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 71.5.2 to disturb the non-tidal wetland buffer for demolition of the existing single-family dwelling, and construction of a replacement home with a porch, deck, steps, and additional driveway.

Public Notification

The hearing notice was advertised in The Southern Maryland News, a newspaper of general circulation in St. Mary’s County, on March 18, 2022 and March 25, 2022. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before March 30, 2022. The agenda was also posted on the County’s website on April 6, 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 April 14, 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, and the following was presented about the proposed amendment requested by the Applicant.

The Property

The subject property located at 16712 Piney Point Road, Piney Point, MD 20674 (“the Property”). The Property is 64,469 square feet, more or less, is zoned Rural Preservation District (RPD), has a Limited Development Area (LDA) Critical Area overlay, and is found at Tax Map 69, Grid 1, Parcel 179.

The Variance Requested

Applicant seeks a variance from CZO Section 71.5.2 to disturb the non-tidal wetland buffer for development activity including demolition of an existing single-family dwelling and construction of a replacement home with a porch, deck, steps, and additional driveway.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.5.2 requires there be a minimum 25-foot buffer preserved from the edge of non-tidal wetlands and shall be expanded up to 100 feet to include areas of adjoining hydric soils.

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 an existing single-family dwelling. This structure was built in approximately 1865, well prior to the adoption of current zoning regulations of St. Mary's County.
- Applicant proposes the demolition of the existing home, and its replacement with a new home. Development will include a porch, deck, steps and additional driveway.
- An MDE field delineation has determined that all wetlands present are non-tidal wetlands that approach within 10 feet of the proposed limit of disturbance for the site plan. MDE assents to disturbance of the 25-foot non-tidal wetland buffer in this case.
- Per CZO Section 71.5.2.b, the non-tidal wetland buffer is expanded 100' for hydric soil inclusion.
- LUGM reviewed the site plan for stormwater management and zoning, both of

which were approved by October, 2021. The Maryland Critical Area Commission (“CAC”) approved this site plan in January, 2022. Reviews by the St. Mary’s County Soil Conservation District and Metropolitan Commission are pending.

- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Site Plan
 - #3: MDE Approval Letter
 - #4: Non-tidal Wetlands Map
 - #5: Critical Area Commission Email
 - #6: Zoning Map

Applicant’s Testimony and Exhibits

Applicant was represented before the Board by Stephen Vaughn of Little Silence’s Rest, Applicant’s wetland consultant. Applicant presented a slideshow which contained site plans, building plans, photographs of the site, and offered oral testimony. The following evidence and testimony was included in Applicant’s presentation:

- Applicant’s property fronts on St. George’s Creek. The parcel, at present, consists of an existing shed, existing home, and a driveway which loops around the home. All existing constructions will be removed to make way for the new construction.
- The new home will meet the CZO’s floodplain requirements, while the present construction does not. The existing elevation on the property is roughly 3’; under the new construction, that elevation will be increased to elevation 9’.
- The new house will be built over the block garage, and will remove nearly all of the

- existing looped driveway. Parking will directly into the garage underneath the house.
- Existing lot coverage is 8,181 s.f. 510 s.f. will be removed, and 4,918 s.f. of new lot coverage will be removed. Overall, lot coverage will significantly decrease under Applicant's plan.
 - MDE has approved the proposed wetland buffer impacts on this plan.

Public Testimony

No members of the public appeared to offer testimony related to this matter.

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, the Applicant has demonstrated that, were the Board of Appeals to strictly interpret the CZO, the particular physical surroundings of the property would result in practical difficulty for the Applicant. The expanded non-tidal wetlands buffer constrains the Property, limiting avenues for development on the Property were the CZO's provisions strictly and rigidly enforced. Based upon the conditions shown on Applicant's site plan and what can be observed from images of the Property provided during Applicant's presentation, it is impracticable for Applicant to build elsewhere. The Board of Appeals was not offered, and does not see, any means by which a lesser variance than that requested would allow for the Applicant to achieve the same significant and reasonable use of the Property.

Second, the circumstances present in this matter are not generally applicable to other similiary-situated properties. As noted in the paragraph above, the Property is entirely constrained by the non-tidal wetlands buffer. Such a condition is not generally present.

Third, the purpose of seeking the variance is not "based exclusively upon reasons of convenience, profit or caprice." Rather, Applicant desires to build a home, a reasonable request, and Applicant's site plan does not ask for anything extraordinary, excessive, or uncharacteristic of what may be found on similiary-situated properties. Applicant's request is not motivated by a desire to build in a more convenient or cost-effective location of his property; Applicant's request is necessitated by the fact that all of the Property is encumbered by the non-tidal wetlands buffer.

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.

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.

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. As Applicant's wetlands consultant testified, the proposed building will be similar to already existing homes in the general neighborhood, and Applicant's new dwelling, once constructed, will be in harmony with its neighbors. Mitigation plantings required will be of benefit to the local wildlife habitats. Finally, Applicant's construction will not increase lot coverage beyond what is already present – in fact, Applicant's site plan indicates total lot coverage will decrease, if only so slightly. For these reasons, the Board of Appeals finds that the variance, and the development it will facilitate, will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to the application of Maurice Long, petitioning for a variance from CZO Section 71.5.2 to disturb the non-tidal wetland buffer for demolition of the existing single-family dwelling, and construction of a replacement home with a porch, deck, steps, and additional driveway; 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 CZO Section 71.5.2 to disturb the non-tidal wetland buffer for demolition of the existing single-family dwelling, and construction of a replacement home with a porch, deck, steps, and additional driveway;

UPON CONDITION THAT, 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 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: APRIL 21, 2022

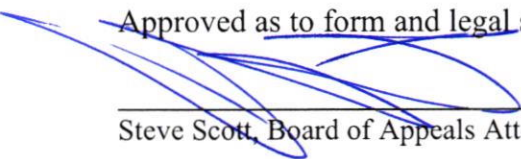

Daniel F. Ichniowski, Chairperson

Those voting to grant the amendment:

Mr. Ichniowski, Mr. Bradley, Mr. Miedzinski, 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 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.