

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**VAAP NUMBER 23-1158**

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**WILLIAMS PROPERTY**

**SIXTH ELECTION DISTRICT**

**VARIANCE REQUEST HEARD: NOVEMBER 9, 2023**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: Dec 14, 2023**

### **Pleadings**

Danny A. Williams, Jr. (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.9.6.h to encroach on the southern extended property lateral line setback to add a boat lift to replacement-in-kind pier.

### **Public Notification**

The hearing notice was advertised in the *Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on October 20, 2023 and October 27, 2023. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before October 25, 2023. The agenda was also posted on the County’s website by November 3, 2023. 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 November 9, 2023 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 (hereinafter “the Property”) is located at 24380 Half Pone Point Road, Hollywood, Maryland and can be found at Tax Map 27, Grid 12, Parcel 234. It is zoned Rural Preservation District (“RPD”) with a Limited Development Area (“LDA”) Critical Area overlay.

### **The Variance Requested**

Applicant seeks a variance from Comprehensive Zoning Ordinance (“CZO”) § 71.9.6.h to encroach on the southern extended property lateral line setback to add a boat lift to replacement-

in-kind pier.

### **St. Mary's County Comprehensive Zoning Ordinance**

CZO § 71.9.6 creates a minimum setback of 25' from any extended property lines established by that section for any pier, mooring, pile, slip, boathouse, or similar improvement proposed for construction. CZO § 71.9.7 allows for adjacent property owners to waive this requirement through a written agreement; if an agreement cannot be attained, a property owner may seek to pursue a variance from the Board of Appeals.

### **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 is located on Cuckold Creek and contains approximately 82.7 linear feet of shoreline. The Applicant has an existing 6' x 70' pier and proposes to replace the pier in kind while adding a boat lift with two pilings. The new boat lift will impact the southern extended lateral property line and its setback, as depicted in Attachment #2 of the Staff Report.
- Applicant has been unable to obtain permission from the adjoining property owner and therefore seeks a variance.
- The St. Mary's County Soil Conservation District exempted the site plan from review because it proposes less than 5,000 s.f. of soil disturbance. The Applicant has already obtained authorization from the Maryland Department of the Environment to construct the pier and boat lift and issued a permit on May 5, 2023.
- If the variance is granted, the variance shall lapse one year from the date of the

grant of the variance if the Applicant has not complied with Section 24.8 of the Comprehensive Zoning Ordinance.

- Attachments to the Staff Report:
  - #1: Standards Letter
  - #2: Site Plan
  - #3: Recorded Lateral Line Agreement
  - #4: MDE General Title Wetlands License No. 23-PR-0081
  - #5: Location Map
  - #6: Zoning Map
  - #7: Existing Features Map

#### **Applicant's Testimony and Exhibits**

Applicant appeared before the Board and offered testimony, presented a slide show presentation, and asked questions posed by the Board. The following testimony was among that presented:

- Applicant has been unable to obtain permission from his southernly neighbor because his neighbor does not agree with an underlying survey. Applicant provided a copy of the survey.
- After recognizing his neighbor would not agree, Applicant proceeded to apply through MDE to receive state authorization in preparation for a variance request.
- Applicant is rebuilding the pier in-kind but will be adding a boat lift to the pier. Applicant's estimate was that roughly 80% of his neighbors have a boatlift, as shown in an aerial photograph shared by Applicant.
- Pictures showing the existing pier overwhelmed by tidal waters were shared with the

Board.

### **Public Testimony**

No members of the public appeared to offer testimony related to this matter. One email from the Applicant's northernly neighbors, Adam and Jennifer Kolstrom, was received. They support Mr. Williams' requested variance for the reasons stated therein.

### **Decision**

#### **County Requirements for Granting Variances**

The St. Mary's County Comprehensive Zoning Ordinance § 24.3<sup>1</sup> 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

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<sup>1</sup> The staff report and Applicant's standards letter were written with references to COMAR's Critical Area variance standards. As the lateral line setback is not a part of the County's Critical Area program, the normal variance standards should apply.

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.

Denial of this variance would impose a practical difficulty upon Applicant. Applicant has a narrow shoreline less than 100' linear feet wide on which to build a pier. No alternative was suggested to the Board. Forced relocation of the pier to elsewhere on his property would, moreover, deny Applicant any ability to make use of the existing pilings. Piers are common improvements for such properties and the inability to construct one would deny Applicants an amenity many similarly situated neighbors enjoy – including, per Applicant, both of his immediately adjacent neighbors. The Board concludes strict compliance with the lateral line setback would be unduly burdensome in light of these factors and that relaxation of the requirement would afford the Applicant substantial relief. Doing so will be in the spirit of the ordinance and will not be detrimental to public safety and welfare.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. Few waterfronts are as limited in buildable area as the Property.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicant has demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. Given the constrained buildable area of the lot, the siting of the proposed pier appears to be one of reasonable necessity rather than mere whim or convenience for the Applicants.

Fourth, the need for the variance does not arise from actions of the Applicants. As noted previously, Applicant’s need for a variance stem from the particular physical characteristics of the

Property.

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 were notified of the variance request and given an opportunity to speak on the matter; none availed themselves of this opportunity, and the Applicants' northernly neighbor assented to the proposed development. The navigational hazards posed by the proposed pier appear negligible and there appear to be no apparent impacts to either neighbor's ability to recreate. The proposed boat life will be placed on the side adjacent the assenting landowner and will not impact his southernly neighbor any more than the already existing pier..

Sixth, the proposed development will not increase the residential use of the property and the Board, as discussed above, 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 noted above, there is little apparent danger that this pier will create a navigational hazard for adjacent property owners. The salutary effects of requiring this setback – vital in other projects – are not immediately present in Applicant's project. Consequently, the Board finds granting the variance, in this instance, strikes an appropriate balance between providing for the public welfare and maintaining consistent zoning standards on the one hand, while allowing property owners sufficient flexibility to vary from these standards as long as the overall spirit, principles, and mandates of the Comprehensive Plan may be maintained on the other.

### **ORDER**

**PURSUANT** to the application of Danny A. Williams, Jr. petitioning for a variance from



Comprehensive Zoning Ordinance § 71.9.6.h to encroach on the southern extended property lateral line setback to add a boat lift to a replacement in kind pier as depicted on Applicant's site plan; 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 § 21.1.3.a and CZO § 24.8, that the Applicants are granted a variance from CZO § 71.9.6.h to encroach on the southern extended property lateral line setback to add a boat lift to a replacement in kind pier as depicted on Applicant's site plan;

**UPON FURTHER 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 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: DEC 14, 2023

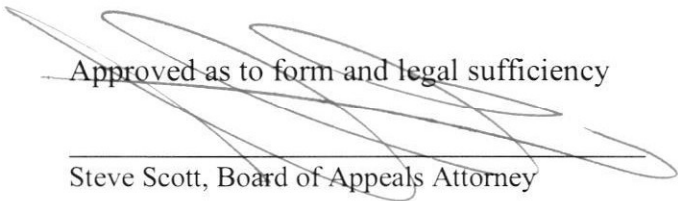
  
Daniel F. Ichniowski, Chairperson

Those voting to grant the variance:

Mr. Ichniowski, Ms. Delahay, Mr. Payne,  
Mr. Miedzinski, 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 St. Mary's County Circuit Court.

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.