

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Mike & Lori Fitzgerald
45918 Patuxent Lane, California, MD 20619

Case No. VAAP #16-0225

DECISION AND ORDER**Introduction**

Mike & Lori Fitzgerald (hereinafter "Applicants"), filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 45918 Patuxent Lane, California, Maryland (hereinafter the "Property"). The application seeks a variance from Section 71.9.6.h (1) of the Comprehensive Zoning Ordinance to construct a boat lift within 25 feet of the extended property line on the west side of the property.

After due notice, a public hearing was conducted at 6:30 p.m. on December 13, 2018, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

Legal Standard

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

1. Because of particular physical surroundings such as exceptional narrowness, shallowness size, shape or topographical conditions of the property involved, strict enforcement of the 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; provided, any development necessarily increases property value, and that alone shall not constitute a finding of an exclusive reason.
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.

45918 Patuxent Lane, California, MD 20619

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.
7. The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

Findings of Fact

The subject property (the "Property") is located on the Patuxent River and contains approximately 56 linear feet of shoreline. The Applicants plan to install a boat lift on the west side of their existing pier. The boat lift is proposed to extend 13 feet off the pier. The pier is 25 feet from the west property line.

Pursuant to Section 71.9.6.h of the Ordinance, "No piers, "T" heads, "L" heads, mooring piles, slips or boathouses shall be constructed within 25 feet of the extended property line as defined in this Section. The extended property line setback may be reduced if a signed affidavit is obtained by the applicant from the adjacent property owner."

The reasons for extending property lines or lateral lines into open water are to ensure access, maintain maneuvering room between structures, and reduce conflicts between adjoining properties.

The Applicants were unable to obtain permission from the adjoining property owners and, therefore, seek variance relief to reduce the 25-foot lateral line setback to twelve (12) feet on the west side of the pier. Section 71.9.7 stipulates that an applicant may apply to the Board of Appeals for a variance when written notarized permission cannot be obtained.

The Applicants lot is only 56 feet wide and has an eighty foot long pier that is six foot in width. Because of the property's exceptional narrowness, strict enforcement of the Ordinance would result in practical difficulty.

The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification, as many of the homes in the neighbor have larger lots or multiple lots.

The purpose of this variance is not based exclusively upon reasons of convenience, profit or caprice. This variance will simply allow the applicants the ability to construct and use a boatlift.

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.

The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

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, in fact, almost all other adjacent property owners have piers with lifts.

The Applicant obtained authorization from Maryland Department of the Environment to construct the pier and boat lift.

Conclusions of Law

The Applicant requests a variance from Section 71.9.6.h (1) of the Comprehensive Zoning Ordinance to construct a boat lift within 25 feet of the extended property line on the west side of the property.


If the applicants are allowed to install a boat lift and encroach into the lateral line setback, their western neighbors will still be allowed use of their pier.

After hearing the testimony of the applicant, testimony from the western neighbor, Thomas Weaver, reviewing the applicant's exhibits, and reviewing the legal standards for granting a variance, the Board makes the following conclusion: that the request to construct a boat lift within 25 feet of the extended property line on the west side of the property satisfies the standards for granting a variance.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for granting a variance and the objectives of a variance from Section 71.9.6.h (1) of the Comprehensive Zoning Ordinance have been met, therefore the variance to construct a boat lift within 25 feet of the extended property line on the west side of the property is **granted**.

Date: January 10, 2019



John Brown, Vice-Chairman


Those voting to grant the variance:

Mr. Greene, Rich Richardson, Mr. Brown
and Ms. Delahay

Those voting to deny the variance:

Mr. Miedzinski

Approved as to form and legal sufficiency



David A. Weiskopf, County Attorney