

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 24-0974

WOOD RENTAL PROPERTIES, LLC

SIXTH ELECTION DISTRICT

DATE HEARD: July 11, 2024 and July 25, 2024

ORDERED BY:

**Mr. Hayden, Mr. Bradley, Mr. Loughran,
Mr. Payne, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: September 19, 2024

Pleadings

Wood Rental Properties, LLC (“Applicant”) seeks a variance (VAAP # 24-0974) to reduce the rear yard setback from 20’ to 10’ for a replacement house.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 21, 2024, and June 28, 2024. The hearing notice was also posted on the property by June 26, 2024. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County’s website on July 5, 2024. This satisfies the notice requirements for this matter’s first hearing on July 11, 2024, and the continuation to July 25, 2024, was announced on the record at that hearing. Therefore, the Board finds and concludes that there has been compliance with all applicable notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on July 11, 2024 and at 6:30 p.m. on July 25, 2024, at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the Applicants.

The Property

Applicant owns the real property situate 25826 South Sandgates Road, Mechanicsville, Maryland (“the Property”). Among the St. Mary’s County tax maps, the Property may be located

at Tax Map 20, Grid 8, Parcel 24. The Property is zoned Rural Preservation District (“RPD”) and has a land use designation of Rural Preservation.

The Variance Requested

Applicants seek a variance from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 to reduce the required 20’ rear yard setback to 10’ for a replacement house.

The St. Mary’s County Comprehensive Zoning Ordinance

CZO Schedule 32.1 establishes a 20’ setback from the rear property line.

Staff Testimony

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

- The Subject Property contains a single-family dwelling (principal structure) and driveway.
- The Applicant requests a variance to reduce the rear setback line of 20’ to 10’.
- A 20’ rear setback is required for all structures in the RPD. Applicant’s request would reduce this setback by 10’.
- The site plan has been approved by the Health Department. It is exempt from Stormwater Management and Soil Conservation standards because less than 5,000 square-feet of soil disturbance is proposed.
- Land Use and Growth Management requires the setback variance to approve the permit.
- The lot is very narrow and moving the house forward would place it closer to the electric lines and South Sandgates Road which would result in practical difficulty.
- The conditions are inapplicable to other properties with the same zoning classification.
- The variance is not based on convenience, profit, or caprice.
- This difficulty was not created by the property owner or the owner’s predecessors in title.

- 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.
- Granting of the 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 with the neighborhood.
- The variance would comply, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.
- The following Attachments to the Staff Report were introduced:
 - #1: General Standards Letter;
 - #2: Site Plan;
 - #3: Location Map;
 - #4: Zoning Map

Applicant Testimony and Exhibits

The Applicant was represented before the Board by Hamilton Wood. He shared a power point that showed the subject property location, his site plan, and pictures depicting the condition of the property. The following was included among his testimony:

- A replacement home is being proposed in the same location and on the same footprint as a previous house that was destroyed by fire in 2010.
- Using the same basement footprint will allow for reduced cost and less ground disturbance.
- Construction will be performed using light equipment to minimize minimal disturbance of the lot.

Public Testimony

The following members of the public provided to offer testimony:

Rob Dennee, Mechanicsville

- Rob Dennee (“Mr. Dennee”) is the adjacent property owner. At the July 11th hearing, Mr. Dennee is concerned about the depth of the Applicant’s well that’s been approved by the Health Department, including the potential for contamination, as well as the negative impact to his property should the variance be granted.
- At the July 25th hearing, Mr. Dennee subsequently informed the Board that he had spoken with the Applicant in the last week and that he was withdrawing any objection to the requested variance.

Mr. Dennee and his, Michelle, also submitted a written letter to the Board prior to the hearing on July 11th. It is included in the record.

Decision

County Requirements for Granting Standard 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

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical characteristics of the Subject Property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Supreme Court of Maryland¹ 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.

¹ The Supreme Court of Maryland was then known as the Court of Appeals. An amendment to the Maryland Constitution renaming the Court of Appeals to the Supreme Court of Maryland was ratified in the 2022 election. Simultaneously, the Court of Special Appeals was renamed the Appellate Court of Maryland.

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 request for the variance is driven by an existing building footprint. Applicant identified certain advantages – for his own property and others – to using that existing footprint. The Board accepts those claims and believes that forcing him to abandon the existing footprint would be an unnecessary burden, given the facts of the case. Accordingly, we find he has demonstrated a practical difficulty with accomplishing strict compliance with the setback.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted above, variance request is being driven by a prior existing building footprint. A feature like this is not common on a typical property.

Third, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” The Applicant seeks to build a replacement home, a foundational use of real property. There is nothing outrageous or out-of-the-ordinary about such a request. While granting the variance will undoubtedly benefit the Applicant and render development of the home less costly, we believe the request is reasonable, modest, made in good faith and does not come at the unreasonable expense of any other social good.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, the variance is required by virtue of an existing improvement – or the remains thereof.

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. One responded, and he addressed his concerns with the Board and the Applicant. Their differences were, apparently, able to be resolved between the two hearing dates.

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. A single-family dwelling existed on the Property in the past and may by right exist there again; granting the variance does not change or alter that fact.

Finally, by satisfying each of the above criteria, 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 Wood Rental Properties LLC seeking a variance from CZO Schedule 32.1 to reduce the rear yard setback from 20' to 10' for a replacement house; and

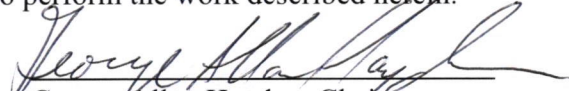
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.3, that the Applicant is granted a variance from CZO Schedule 32.1 to reduce the rear yard setback from 20' to 10' for a replacement house.

The foregoing variance is subject to the condition that the Applicant shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, the Critical Area Commission, or any other applicable reviewing agency.

This Order does not constitute a building permit. In order for the Applicant 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.

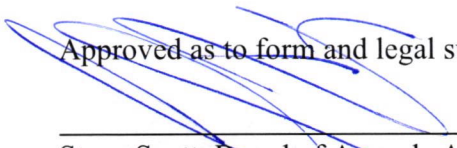
Date: September 19, 2024


George Allan Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Loughran,
Mr. Richardson, and Mr. Payne

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 petition for judicial review 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.