

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 22-2494

BARRETT PROPERTY

FIFTH ELECTION DISTRICT

DATE HEARD: JULY 13, 2023

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: AUG 10, 2023

Pleadings

Tasha Barrett (“Applicant”) seeks a variance (VAAP # 22-2494) from Comprehensive Zoning Ordinance § 41.5.3.i to exceed the allowable lot coverage limits by 331 square feet for a driveway.

Public Notification

The hearing notice was advertised in the *Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 23, 2023 and June 30, 2023. The hearing notice was posted on the property by June 28, 2023. 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 7, 2023. Therefore, the 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 July 13, 2023 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 real property situate 29816 Adams Road, Mechanicsville, MD (“the Subject Property”). The Subject Property is in the Residential Neighborhood Conservation (“RNC”) Zoning District, has a Limited Development Area (“LDA”) Critical Area overlay, and is identified at Tax Map 5A, Grid 2, Parcel 56, Lot 475, and is in the Golden Beach Subdivision.

The Variance Requested

Applicant seeks a variance from St. Mary's County Comprehensive Zoning Ordinance ("CZO") § 41.5.3.i to exceed the allowable lot coverage limits by 331 square feet for a driveway.

The St. Mary's County Comprehensive Zoning Ordinance

CZO § 41.5.3.i establishes certain lot coverage limits for parcels located within the LDA overlay. In the instant matter, a 17,100 square foot lot is allotted 31.25% of lot coverage, or 5,344 square feet. No lot coverage is permitted above this amount without a variance.

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 2,244 square foot single-family dwelling and accessory storage structure. According to the State Department of Assessments and Taxation, the house was constructed in 1973.
- The site plan depicts a home, shed, and two existing driveways. The Applicant requests an after-the-fact variance to keep the excess lot coverage created by the U-shaped driveway and driveway extension.
- The existing developments, in total, exceed the lot coverage limits by 331 square feet.
- The site plan is exempt from stormwater management standards because it poses less than 5,000 square feet of soil disturbance.
- The Critical Area Commission opposes this variance for the reasons stated in its letter of June 30, 2023, which is attached to the staff report and made a part of the hearing record.
- The following Attachments to the Staff Report were introduced:

#1: General Standards Letter;

#2: Site Plan;

#3: Critical Area Response;

#4: Location Map;

#5: Zoning Map;

#6: Critical Area Map

Applicant Testimony and Exhibits

Applicant appeared before the Board by Zoom. She offered oral testimony and presented a slideshow, all of which are incorporated as a part of the record of the proceeding. Testimony included, but was not limited to, the following:

- The driveway was extended to create additional parking and prevent muddy areas, as the Applicant and her husband own multiple vehicles.
- Mitigation plantings have been performed.
- No firewood has been split at the business for commercial use since the first complaint of the unpermitted firewood business was received.

Public Testimony

Two letters were received from members of the public prior to the hearing. The first letter was from Alden and Gwendolyn Estep, and the second from Glenn John and Betty Warring; both letters opposed the requested variance, and alleged a commercial firewood business was still being conducted on the Subject Property.

The following members of the public appeared to offer in-person testimony:

- *Dale Antosh, 29754 Beach Court*
 - Mr. Antosh is the president of the Golden Beach Civic Association. He

testified, among other things, that numerous work vehicles are regularly parked at the property, including work trucks and a large conveyor belt for stacking firewood.

- *Victor Demattia, 40455 Beach Drive*
 - Mr. Demattia resides in the same neighborhood as the Applicant. He also alleged the firewood business is continuing and that the driveway, if allowed to be kept, will facilitate the continuation of an unpermitted business that poses a nuisance and potential driving hazards to the neighborhood.

Decision

County Requirements for Critical Area Variances

COMAR 27.01.12.04 requires an Applicant to meet each of the following standards before a Critical Area variance may be granted:

- (1) Due to special features of the site or special conditions or circumstances peculiar to the applicants land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;
- (2) A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;
- (3) The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program;
- (4) The variance request is not based upon conditions or circumstances that are the result

of actions by the applicant;

- (5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;
- (6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdictions local Critical Area; and
- (7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

Additionally, the Maryland Code Annotated, Natural Resources Article, § 8-1808(d)(2)(ii) also requires the Applicants to overcome the presumption that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances, the Board finds and concludes the Applicants are not entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

The Board finds that denying the Applicants' request would not constitute unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), the Court of Appeals established the statutory definition for "unwarranted hardship" as it pertains to prospective development in the Critical Area:

[I]n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

Id. at 139. Here, Applicants have not sufficiently demonstrated that, absent the variance, they would be denied a use of the Property both significant and reasonable. The crux of the Applicant's

request is that driveway would allow each of the multiple vehicles owned by Applicant and her husband to be parked on a solid surface, rather than bare grass. While the Board can accept this could not be accomplished elsewhere on the Property without a variance, the Board cannot accept, based on the testimony provided, that parking for commercial vehicles is a use “significant and reasonable” on a residential property. Parking for personal vehicles, a necessary use of a residential property, is one thing; parking for a fleet of commercial vehicles is another. The Board can find no entitlement in Maryland law or the local zoning ordinance supporting Applicant’s request. If anything, the Comprehensive Zoning Ordinance’s disallowance of the alleged firewood business for which the commercial vehicles seem intended gravitates towards rejection of the variance request.

Because the Applicant must satisfy each criterion, failure to demonstrate an unwarranted hardship means the variance request must be rejected. The Board need not consider the remaining six criteria.

ORDER

PURSUANT to Applicant’s request for a variance from § 41.5.3.i to exceed the allowable lot coverage limits by 331 square feet for a driveway,

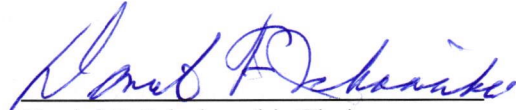
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary’s County Board of Appeals, pursuant to CZO § 24.3, that the Applicant is **DENIED** a variance from § 41.5.3.i to exceed the allowable lot coverage limits by 331 square feet for a driveway.

The Applicant must amend her site plan to reflect this decision. In other words, the site plan must be redrawn to keep only the allowable lot coverage and eliminate, at the least, the excess

331 square feet of lot coverage.

Date: AUG 10, 2023

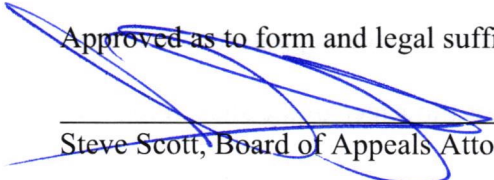

Daniel F. Ichniowski, Chairman

Those voting to grant the variance:

Those voting to deny the variance:

Mr. Ichniowski, Mr. Bradley, Ms. Delahay,
Mr. Payne, and Mr. Richardson

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.