

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 24-1444

FAIRGRIEVE PROPERTY

THIRD ELECTION DISTRICT

DATE HEARD: October 10, 2024

ORDERED BY:

**Mr. Hayden, Mr. Loughran,
Mr. Payne, Mr. Richardson and Ms. Weaver**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: November 14, 2024

subdivision.

The Variance Requested

Applicants seek a variance from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 for a reduction of the mandatory front yard setback from 25’ to 17’.

The St. Mary’s County Comprehensive Zoning Ordinance

Schedule 32.1 requires a 25’ front yard setback on any parcel bordering a Minor Collector or lessor public right of way.

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 (Property) contains a single-family dwelling (principal structure) and the shed. According to the Department of Assessments and Taxation, the house was constructed in 1999.
- The Applicant is proposing a 7’ X 33’ front porch addition onto an existing home.
- The site plan is approved by the Health Department. It is exempt from Stormwater Management and Soil Conservation standards as it proposes less than 5,000 sf of soil disturbance. Land Use and Growth Management requires the setback variance to approve the permit.
- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter;
 - #2: Site Plan;
 - #3: Ordinance 2019-32 SMC Comprehensive Zoning;
 - #4: Location Map;

#5: Land Use Map; and,

#6: Zoning Map.

Applicant Testimony and Exhibits

Applicants were represented before the Board by Ralph Suit. Mr. Suit presented a slideshow depicting the site plan, photos of their home and existing shed, overhead maps from the County's GIS service. The Applicants' testimony included the following points:

- The entire area of square footage to be added will be 15 square feet.
- The construction will be built over the building restriction line.
- The Applicants do not believe the variance will have any effect on other properties or diminish neighboring property values.
- The porch will accentuate the curb appeal of the existing home.
- The variance will not increase traffic or pose any danger to public safety.
- The alleged difficulty was not created by the property owners but is due to the exceptional narrowness of the property configuration.
- Neighbors have called the applicants to state that "they don't care what another homeowner wants to do to their home."

Public Testimony

No members of the public appeared to offer in-person testimony for or against the project.

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 in the form of the requested variances.

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 the Applicants. The Applicants stated their belief – unobjected to by staff or any member of the public – that the lot in question was narrow and that its physical properties placed constraints upon the current property owners. The applicable subdivision plat also shows it to be bounded on the north, west, and south by a parcel dedicated to open space, and therefore undevelopable. Many of the substantive benefits of general setback requirements – such as maintenance of a certain distance between improvements to minimize the risk of encroachment and accompanying neighborhood discord and preservation of a certain level of privacy in one’s curtilage – are, therefore, not directly applicable to this matter. Accordingly we believe substantial justice to the neighborhood can be achieved and that the

positive objectives of the zoning ordinance shall not be vitiated by grant of this variance.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. As noted above, the need for the variance stems from the particular configuration of the lot. These constraints are not typical and stem from design decisions made at the time of the original subdivision.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicants have demonstrated a practical difficulty. They seek only to add a front porch of modest size to an existing dwelling. The porch is not atypical or excessive and will greatly enhance the Applicants’ ability to use and enjoy their property.

Fourth, the need for the variance does not arise from actions of the Applicant or Applicant’s predecessors in title. As noted previously, Applicant’s need for a variance stems from the particular physical characteristics of the Property and the original subdivision’s configuration.

Fifth, the variance will neither detrimentally affect the public welfare, substantially 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 have done so – and, accepting the Applicants’ assertions, in fact indicated their indifference to the request to the Applicants privately. The Board also notes, once more, the relatively modest scale of the proposed development: a single front porch that will be bordering dedicated open space, and not another improved parcel. We discern no negative impacts this improvement could have on the neighborhood.

Sixth, the proposed development will not increase the residential use of the property, and for the same reason finds it will not increase congestion or the risk of fire or endanger public safety.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicant asks for a modest improvement that would be permitted as-of-right on most other parcels and would be permitted as-of-right on this parcel if it had only a few additional feet to the west and north. Allowing this encroachment into the front-yard setback does not alter or disrupt the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to Applicants' request for a variance from Schedule 32.1 for a reduction of the mandatory front yard setback from 25' to 17' for a front porch addition to an existing principal structure; 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 Comprehensive Zoning Ordinance § 24.3, that the Applicants are granted a variance from Schedule 32.1 for a reduction of the mandatory front yard setback from 25' to 17' for a front porch addition to an existing principal structure.

The foregoing variance is subject to the condition that the 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 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: November 14, 2024


George Allan Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Loughran, Mr. Payne, Mr. Richardson, and Ms. Weaver

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 within thirty (30) days of the date this order is signed. 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.