

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

**VAAP NUMBER 23-0926**

---

**GODDARD PROPERTY**

**FIRST ELECTION DISTRICT**

**VARIANCE REQUEST 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**

Francis Goddard (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 for a reduction of the mandatory front yard setback from 25’ to 16’ for a shed.

### **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. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before June 28, 2023. The agenda was also posted on the County’s website on July 7, 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 July 13, 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 49524 Bay Forest Road, Lexington Park, MD 20653. It is zoned Rural Preservation District (“RPD”).

### **The Variance Requested**

Applicant seeks a variance from Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 for a reduction of the mandatory front yard setback from 25’ to 16’ for a shed.

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

CZO § 32.1 requires a minimum 25' front yard setback for an accessory structure such as the proposed shed.

**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 currently developed with an existing accessory storage structure.
- Applicant seeks approval to construct an additional 10' x 20' shed at a reduced setback of 16' feet from the road, rather than 25'.
- The site plan has been approved by the Health Department. It is exempt from stormwater management standards as it proposes less than 5,000 square feet of soil disturbance.
- The Critical Area Commission stated no review of the proposal by that agency is required.
- Attachments to the Staff Report:
  - #1: General Standards Letter
  - #2: Site Plan
  - #3: Critical Area Response
  - #4: Location Map
  - #5: Zoning Map
  - #6: Critical Area Map

**Applicant's Testimony and Exhibits**

Applicant appeared before the Board. The following testimony was among that presented:

- The area outside of the Critical Area Buffer is very narrow due to erosion of the lot that since the lot was originally subdivided. Locating the shed further from the road would necessitate encroachment into the Critical Area Buffer.
- A rip-rap has been installed at significant expense to prevent further erosion.
- Mr. Goddard showed pictures of the shed's outward exterior appearance.
- There will be electricity in the shed, but no bathroom facilities.

### **Public Testimony**

Four letters were received by neighbors. They were from: Charles W. Spurr, Ray and Maria Flemming, Calvin Stringer, and Dave Nettleton and Jori Ellis. All letters opposed the requested variance and are made a part of the record.

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

- *David Nettleton, 49543 Bay Forest Road*
  - Mr. Nettleton is a neighbor and concerned the proposed development will impair property values in the neighborhood. He believes the new shed will disrupt the neighbors' view.
  - Mr. Nettleton suggested expanding the existing shed would be a less burdensome means of achieving Mr. Goddard's intended use of the new shed.
- *Laura Mulligan, 45630 Hill View Farm Lane*
  - Ms. Mulligan is Mr. Goddard's partner.
  - Ms. Mulligan stated that the same neighbors who wrote letters in opposition own, collectively, an adjacent property that is swiftly eroding. She suggested they could enjoy the view from that property.

## 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. 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 demonstrated the Property is severely constrained by the Critical Area Buffer and that locating the shed further from the road would encroach upon the Buffer. The Board notes that if the Applicant did pursue such an alternative he would be forced to seek a variance from the Critical Area Buffer,

which would necessitate a finding that development in the Buffer is a “last-resort” and that intruding upon other setbacks would not be more beneficial. Between its demarcation of the front-yard setback and the Critical Area Buffer, the site plan makes clear there are no practicable means for Mr. Goddard to further develop his parcel other than by intruding into either the front-yard setback or the Critical Area Buffer. In either case, the Applicant would be forced to seek a variance.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. Few properties are as constrained as the Applicant’s in terms of the percentage of area encumbered by the Critical Area Buffer. As noted above, the Applicant had his choice of evils: to seek a variance from the front-yard setback, or to encroach into the Critical Area Buffer and seek a variance for disturbances within it.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicant has demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. He seeks to build a 10’ x 20’ shed, a relatively modest improvement. He is not seeking to build a dwelling or more impactful improvement than that. He testified its use would be to facilitate his family’s recreational pursuits on the lot. Given the constrained buildable area of the lot, the siting of the shed within the front-yard setback is one of necessity, and not a function of whim or caprice on the part of the Applicant.

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

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. The owners of four nearby parcels did so, and uniformly cited an anticipated impairment to their property values as grounds to deny the variance. It is important to note the relevant standard is that the proposed development shall not “*substantially* diminish or impair property values within the neighborhood” (*emphasis added*). Testimony that the proposed shed will impair neighboring property values was unquantified and unsupported by expert testimony. The Board also notes, once more, the relatively modest scale of the proposed development: a 10’ x 20’ shed. There are few proposals the Board can imagine being brought before it that are more modest. Based on the evidence before it, the Board does not find substantial evidence that impairment of neighboring property values, if any, will be “substantial.”

Sixth, the proposed development will not increase the residential use of the property. The Applicant testified the shed will not contain a bathroom or other living facilities. The Board further does not find that it will increase congestion or the risk of fire or endanger public safety; the proposal will not generate any appreciable additional traffic, and no resident brought any safety concerns before the Board.

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 his parcel if it had only a few additional feet between the end of the front-yard setback and the beginning of the Critical Area Buffer. Allowing this encroachment into the front-yard setback does not unduly alter or disrupt the general spirit, intent, and purpose of the Comprehensive Plan.



**ORDER**

**PURSUANT** to the application of Francis Goddard, petitioning for a variance from Comprehensive Zoning Ordinance Schedule 32.1 for a reduction of the mandatory front yard setback from 25' to 16' for a shed; 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 Applicant is granted a variance from Schedule 32.1 for a reduction of the mandatory front yard setback from 25' to 16' for a shed;

**UPON FURTHER CONDITION THAT**, Applicant 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 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: Aug 10, 2023

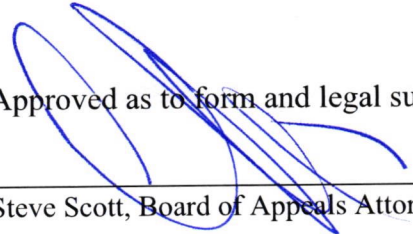
  
Daniel F. Ichniowski, Chairperson

Those voting to grant the amendment:

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

Those voting to deny the amendment:

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.