

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

**VAAP NUMBER 24-2147**

---

**HESS PROPERTY**

**THIRD ELECTION DISTRICT**

**DATE HEARD: November 14, 2024**

---

**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

---

**DATE SIGNED: December 12, 2024**

**Pleadings**

Henry & Mary Hess (“Applicants”) seek a variance (VAAP # 24-2147) from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.9.6.h of the St. Mary’s Comprehensive Zoning Ordinance to reduce the southern extended property lateral line setback from 25 feet to 10 feet to construct a pier.

**Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on October 25, 2024 and November 1, 2024. The hearing notice was posted on the property by October 30, 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 November 8, 2024. 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 November 14, 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**

Applicants own real property situate 20768 Waterside Drive, Leonardtown, Maryland (“the Subject Property”). The Subject Property is in the Rural Preservation District (“RPD”) zoning

district, has Limited Development Area (“LDA”) and Buffer Management Overlay (“BMO”) Critical Area overlays, and is identified at Tax Map 48, Grid 13, Parcels 95. The Subject Property is Lot 5 of the Breton Beach subdivision.

### **The Variance Requested**

Applicants seek a variance from CZO § 71.9.6.h of the St. Mary’s Comprehensive Zoning Ordinance to reduce the southern extended property lateral line setback from 25 feet to 10 feet to construct a pier.

### **The St. Mary’s County Comprehensive Zoning Ordinance**

CZO § 71.9.6.h states that a setback for construction within the useable waterway as determined by an extended property line shall be 25 feet from the extended property line. The setback may be reduced if a signed affidavit is obtained by the Applicant from the affected adjacent property owner.

### **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 (the “Property”) is located at the mouth of Breton Bay adjacent to the Potomac River and contains 40 linear feet of shoreline. The Applicants proposes to install a replacement in kind 6’ wide 81’ long pier with a new 10’ x 20’ “L” head, a new boat lift, and two new personal watercraft lifts. The “L” head pier will impact the southern extended lateral property line and its setback along with the pier, boat lift and one of the personal watercraft lifts (Attachment 2).
- 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.” (Attachment 3)

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 an adjoining property owner and, therefore, seek variance relief to reduce the 25-foot lateral line setback to ten (10) feet on the south side of the pier. Section 71.9.7 allows an applicant to request variance approval from the Board of Appeals when written, notarized permission cannot be obtained.
- The Applicant obtained authorization from Maryland Department of the Environment to construct the pier, platform and boat lift and was issued a permit on August 7, 2024 (Attachment 54).
- The Critical Area requirements are met as there is to be no clearing, grading, or stockpiling of material onsite and all work will be completed by barge.
- The following Attachments to the Staff Report were introduced:
  - Attachment 1: Standards letter
  - Attachment 2: Site Plan
  - Attachment 3: Recorded Lateral Line Agreement DJB 6585@29
  - Attachment 4: MDE General Title Wetlands License No. 24-PR-0799
  - Attachment 5: Location map
  - Attachment 6: Land Use map
  - Attachment 7: Zoning map
  - Attachment 8: Environmental map

### **Applicant Testimony and Exhibits**

Applicant Henry Hess presented before the Board of Appeals. Mr. Hess presented a slideshow, offered testimony, and responded to the Board's questions. The Applicant's presentation included the following:

- Mr. Hess said the platform would have jet ski lifts and a boat lift located off the sides.
- A revetment will also be worked on at the same time.
- The existing boat lift will be moved from the very end of the pier to the side for safety reasons.
- A lateral line agreement has been entered into with the neighbors to the north.
- The southernly neighbors were contacted by Mr. Hess. He said they will not enter an affidavit agreement and read their email explaining their reasons into the record.
- Mr. Hess mentioned that he has about 40' of waterfront on which to develop his pier.
- The boat lift currently hangs over the offset about 10', and Mr. Hess said that has caused no problems.

### **Public Testimony**

No members of the public appeared to offer testimony related to this request.

### **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 variance.

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 the variance would impose a practical difficulty upon the Applicants. The Applicants wish to place a boat lift on their pier, a common amenity that greatly enhances a property owner’s ability to enjoy his or her property and use it recreationally. Such amenities are common in St. Mary’s County. Applicants are constrained from implementing this due to the narrowness of their lot – which Mr. Hess gave as approximately 40’ – and his neighbors’ extended property lines. We believe that Applicants have demonstrated that the encroachment into the extended property line will not impair or interfere with his neighbors’ own riparian access and, accordingly, that granting the request can do substantial justice to both Applicants and their neighbors.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. The principal reason for the Applicants’ request is the

exceptional narrowness of their lot. This is not a generally common feature.

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. Their requested amenity is reasonable and is not of an atypical scale or nature.

Fourth, the need for the variance does not arise from actions of the Applicants or Applicants’ predecessors in title. Both variance requests are driven by narrowness of their lot.

Fifth, granting the partial variance will neither detrimentally affect the public welfare, substantially injure other properties or improvements, nor change the character of the district. Applicants did well to point out that the existing boat lift – which they stated is dangerous to access – already encroaches into the lateral line setback and that no ill has come of it. Moving the boat lift to the side is safer for the Applicants and places no greater burden or risk to their neighbors. Mr. Hess voluntarily provided his neighbor’s objections and read them into the record; we do not find these objections or concerns that it will impact the neighboring property in some way to be particularized or actionable.

Sixth, the proposed variances 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 comply with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicants have demonstrated to the Board’s satisfaction that no harm is likely to come as a result of granting this variance. The ability to request a variance and for the Board to consider granting one according to the standards above is as much a feature of the Comprehensive Zoning Ordinance as any other.

We find the Applicants have met their burden today. Accordingly, we order the variance be granted.



**ORDER**

**PURSUANT** to Applicant's request for a variance from CZO § 71.9.6.h of the St. Mary's Comprehensive Zoning Ordinance to reduce the southern extended property lateral line setback from 25 feet to 10 feet to construct a pier; and,

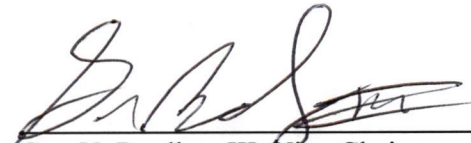
**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

**ORDERED**, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicant is **GRANTED** a variance § 71.9.6.h of the St. Mary's Comprehensive Zoning Ordinance to reduce the southern extended property lateral line setback from 25 feet to 10 feet to construct a pier.

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, and the Health Department.

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: December 12, 2024

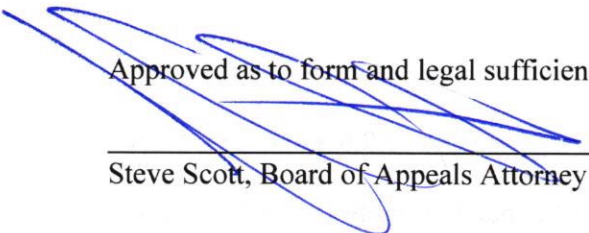
  
Guy V. Bradley, III, Vice-Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, 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.