

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

**VAAP NUMBER 24-1004**

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**MAGRUDER & BEAUCHAMP PROPERTY**

**SECOND ELECTION DISTRICT**

**DATE HEARD: July 11, 2024**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: July 25, 2024**

### **Pleadings**

Katherine Magruder and James Beauchamp (“Applicants”) seek a variance (VAAP # 24-1004) 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 0’ and the side yard setback from 5’ to 0’ and a variance from Section 51.2.4.c to reduce the minimum setback for detached accessory structures from a principal structure from 10’ to 6’ to replace an existing 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 21, 2024 and June 28, 2024. The hearing notice was 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. 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 11, 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 43844 Avon Way, Leonardtown, MD (“the Subject Property”). The Subject Property is in the Rural Preservation Zoning District (“RPD”), has a

Limited Development Area (“LDA”) and Buffer Management (“BMO”) Critical Area overlay, and is identified at Tax Map 61, Grid 1, Parcel 249, Lot 19 of the Lanedon 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 0’ and the side yard setback from 5’ to 0’ and a variance from Section 51.2.4.c to reduce the minimum setback for detached accessory structures from a principal structure from 10’ to 6’ to replace an existing shed.

### **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. A side yard setback of 5’ is also required. CZO § 51.2.4.c requires a setback of 10’ between a detached accessory structure, such as a shed, and a principal structure.

### **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 the shed. According to the State Departments of Assessment and Taxation, the house was constructed in 2023, in accordance with the zoning and subdivision regulations of St. Mary’s County. The existing house has non-conforming setbacks, due to the approval of a setback variance in 2020. They are as follows: 20’ front, 7’ on the left side. The existing shed was allowed to remain.
- The Applicant is proposing to replace the existing 8’ x 20’ shed in-kind.
- Pursuant to Schedule 32.1 of the Ordinance, 25’ front setback and per Footnote 11, a 5’

side setback is required for accessory structures. The Applicant is requesting a reduction of the 25' front yard setback to 0' and a 5' reduction of the left side yard setback to 0'. Additionally, CZO 51.2.4.c requires a minimum required distance between a principal structure and an accessory structure of 10', the Applicant is requesting a reduction of 4'.

- The site plan is currently under review by the Health Department. It is exempt from Stormwater Management and Soil Conservation standards due to less than 5,000 s.f. of soil disturbance. Land Use and Growth Management requires the setback variance to approve the permit.
- If the variance is granted, it shall lapse one year from the date of the variance, if the Applicant has not obtained the building 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; and
  - #5: Zoning Map.

#### **Applicant Testimony and Exhibits**

Applicants appeared before the Board in-person. Mr. Beauchamp 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:

- Mr. Beauchamp noted the Subject Property is extremely narrow, and is only 50' wide. The lots are "tiny" and were platted in the 1920s, prior to the development of modern subdivision regulations.

- He approximated the existing shed is approximately 50 fifty years old, and that it was a “toss-up” whether to rehabilitate the existing shed or replace it with a new structure.
- Mr. Beauchamp showed a map showing other sheds in the neighborhood, and noted how close some of them are to their respective property lines.
- In response to the letter submitted, Mr. Beauchamp said the new shed will not have any eaves or overhangs that will cross over the property line.
- The shed will be an aesthetic match to the house on the Subject Property, as it will be built using surplus materials left over from construction of the house.
- Mr. Beauchamp confirmed the in-kind replacement will be built over the existing foundation.
- Mrs. Magruder appeared during public comment and noted that other properties nearby appear to have sheds roughly as close, or closer, to the road as their shed. She reiterated that they do not believe they are asking for anything that other property owners do not already enjoy.

### **Public Testimony**

No members of the public appeared to offer in-person testimony for or against the project. One letter in opposition was received from Kenneth and Delores Ferber, was reviewed by the Board, and is included in full as part of the record.

### **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 Applicant. Applicant pointed to the shallowness of the Subject Property. The lot is narrow and not particularly deep, especially when considering how its location within the Critical Area and its adjacency to the Potomac River severely curtail development of the rear yard. A shed is an extremely typical and commonplace amenity, and the ability to use it for outdoor storage is something that greatly enhances the Applicants’ use and enjoyment of their property. We note that Applicants addressed the concern from the neighboring property owner that the shed may overhang or intrude into their property, and Applicants gave their reassurances it would not and explained it would be designed such that it would not overhang the property line. Taking into account these considerations, and

noting the amount of similar sheds in the neighborhood, it appears granting the variance will do substantial justice to the neighborhood and be within the spirit of the Comprehensive Plan.

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 extreme narrowness and shallowness of the Subject Property. These constraints are not typical and stem, as Applicants stated, from the original subdivision in a time before the advent of modern zoning regulations.

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 meeting this requirement of the Comprehensive Zoning Ordinance. They seek only to replace, in-kind, an existing shed. The shed 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. 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. One neighbor did, and it appears to the Board that, based on Applicants’ presentation, the concerns raised will be addressed. The Board also notes, once more, the relatively modest scale of the proposed development: in-kind replacement of an existing 8’ x 20’ shed. Whatever impacts the shed will have – if any – will be only a continuation – neither an expansion nor intensification – of the status quo. The character of the neighborhood will be preserved, and the dated, obsolete



shed shown in the pictures will be replaced with a modern alternative that Applicants stated would be designed to match the neighborhood's current aesthete.

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. The development is a shed and only a shed. It will not have living quarters or residential facilities. It will generate no additional traffic. It will serve only the existing owners of the Subject Property. There are no apparent safety concerns obvious to the Board about increasing the risk of fire or other calamity by locating the yard closer to the principal residence than would otherwise be allowed.

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 east and north. Allowing this encroachment into the front-yard, side-yard, and principal structure-accessory structure setbacks 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 0' and the side yard setback from 5' to 0' and a variance from Section 51.2.4.c to reduce the minimum setback for detached accessory structures from a principal structure from 10' to 6' to replace an existing 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 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 0' and the side yard setback from 5' to 0' and a variance from Section 51.2.4.c to reduce the minimum setback for detached accessory structures from a principal structure from 10' to 6' to replace an existing shed.

The foregoing variances are 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: July 25, 2024

  
George Allan Hayden, Chairman

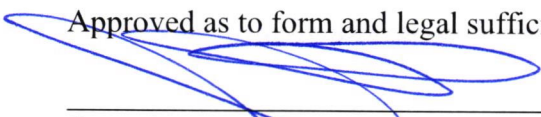
Those voting to grant the variance:

Mr. Bradley, Mr. Loughran, and Mr. Richardson

Those voting to deny the variance:

Mr. Hayden, Mr. Payne

Approved as to form and legal sufficiency

  
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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.