

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 22-1932

ROSEHILL PROPERTIES, LLC PROPERTY

SECOND ELECTION DISTRICT

VARIANCE REQUEST HEARD: APRIL 13, 2023

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: MAY 11, 2023

Pleadings

Rosehill Properties, LLC (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 for a reduction of the left side yard setback from ten feet to zero feet to construct a boathouse and to reduce the side yard setbacks from ten feet to zero feet to construct a dwelling with a two-story deck.

Public Notification

The hearing notice was advertised in the *Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on March 24, 2023 and March 31, 2023. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before March 29, 2023. The agenda was also posted on the County’s website on April 7, 2023.

Public Hearing

A public hearing was conducted at 6:30 p.m. on April 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 variance requested by the Applicants.

The Property

The property is situate 17931 Saint Georges Park Road, Tall Timbers, MD 20690 Patuxent Lane, California, MD and consists of 8,152 square feet, more or less, is zoned Residential Low-Density District (“RL”) and is found at Tax Map 65, Grid 5, Parcel 22, Block 1, Lot 8 (“the Subject Property”). The portions of the Subject Property proposed for development lie within a Buffer Management Overlay (“BMO”) of the Critical Area.

The Variance Requested

Applicants seek a variance from CZO Schedule 32.1 for a reduction of the left side yard

setback from ten feet to zero feet to construct a boathouse and to reduce the side yard setbacks from ten feet to zero feet to construct a dwelling with a two-story deck.

St. Mary's County Comprehensive Zoning Ordinance

Schedule 32.1 requires a 10' side yard setback for all structures in the RM.

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 Subject Property is an unimproved lot 8,152 square feet in size.
- The Applicant proposes a boathouse which will intrude into minimum 10' required side yard setbacks from the assumed access strip and a single-family home that will intrude into the minimum 10' side yard setback from the property comprising Lots 10 & 11.
 - The County Attorney's Office explained that a review of the original plat indicated Lots 8 & 9, which were previously combined to form the Subject Property, were originally separated by what appeared to be an access strip leading to the beach. Without a clear chain of title showing this access strip was deeded in the past to Applicant or its successors-in-interest, the County Attorney's Office felt the County must treat the access strip, for the purposes of permitting and zoning, as though it remained real property separate and distinct from the Subject Property.
 - The County Attorney's Office also testified that the Commissioners of St. Mary's County, who own Lots 10 & 11, held no plans for the use or development of this lot and did not object to the setback variance being

requested with respect to that parcel's boundary.

- The proposed development is exempt from stormwater management review as it proposes less than 5,000 square feet of soil disturbance. The site plan remains under review by the Department of Land Use & Growth Management, Health Department, Metropolitan Commission, and Soil Conservation District.
- A variance from the Critical Area program's regulations is not required to approve the proposed site plan.
- Attachments to the Staff Report:
 - #1: Standards Letter
 - #3: Site Plan
 - #3: Location Map
 - #4: Zoning Map

Applicants' Testimony and Exhibits

Applicants were represented before the Board by Christopher T. Longmore, Esq. of Dugan, McKissick & Longmore, LLC. The following evidence testimony was among that provided to the Board, including Applicant's slideshow, pictures, and survey depicting the Property, all of which have been entered as part of the record of this proceeding:

- Applicant stated that while it believed it had good title to the disputed access strip, for the sake of expediting the project they would seek a setback variance from the boundaries of the disputed access strip.
- The disputed access strip has not been used in, at the very least, decades.
- Applicant designed its site plan to minimize activity on the portions of the Subject Property closest to the residence situate 17939 St. George's Park Road.

Public Testimony

A written letter was received from Michael and Lisa Blackwell. The following members of the public appeared at the public hearing to offer testimony:

- *Michael Blackwell*, Tall Timbers
 - Mr. Blackwell stated that he had opportunity to meet with Applicant and that, through discussion, many of Mr. Blackwell's concerns noted in the letter had been resolved.
 - Mr. Blackwell stated he did not know of the access strip before this matter.

Decision

County Requirements for Granting Standard Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a standard variance, such as that required to grant the variance for the side setbacks, 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

First, the Board finds that strictly interpreting the CZO would result in practical difficulty to the Applicant. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Supreme Court of Maryland¹ 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

¹ The Supreme Court of Maryland was then known as the Court of Appeals. An amendment to the Maryland Constitution renaming the Court of Appeals to the Supreme Court of Maryland was ratified in the 2022 election. Simultaneously, the Court of Special Appeals was renamed the Appellate Court of Maryland.

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.

Here, Applicant’s parcel is divided – possibly – by a near century old strip of property meant to provide public access to the beach. Assuming this access strip still exists – or even ever existed at all - the uncontested evidence before the Board is that the public has not used it in, at the least, decades. It serves no public purpose or utility. Its location in the dead middle of the Applicant’s property severely constrains Applicant’s ability to develop this property to achieve a reasonable use of the Property, and the Board divines no public or private utility that would be furthered by preserving the setbacks from this access strip. Similarly, the only property owner to be affected by the second requested setback has voiced no objection to the request, and the Board notes that by pushing development towards the northwest of the Subject Property that impacts upon the residences to the southeast are lessened. Accordingly, the Board finds that refusing to grant these variances would constitute practical difficulties.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted above, the issues in this matter stem from the peculiarity of the original plat of this development from the early twentieth-century. While testimony was received that these issues have been encountered before, they are far from commonplace.

Third, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicant proposes to develop a single-family home with commonplace accessory structures, a basic and fundamental use of an unimproved parcel.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted

above, Applicant's difficulties stem from the existence of a possible title defect that arose far before Applicant acquired the parcel.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. The neighboring property owners have been notified of the variance request to provide them with an opportunity to speak on the matter, and testimony was received that the neighbors' concerns have largely been ameliorated. The condition the Board imposes shall, the Board believes, mitigate any remaining potentially adverse effects development will impose upon the immediate neighborhood.

Sixth, the proposed development will not increase the residential use of the property and the Board does not find that it will increase congestion or the risk of fire, endanger public safety, or substantially diminish or impair property values in the neighborhood.

Finally, by satisfying each of the above criteria, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to the application of Rosehill Properties, LLC, petitioning for a variance from Comprehensive Zoning Ordinance Schedule 32.1 for a reduction for a reduction of the left side yard setback from ten feet to zero feet to construct a boathouse and to reduce the side yard setbacks from ten feet to zero feet to construct a dwelling with a two-story deck; 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 Applicants are granted a variance from Comprehensive Zoning Schedule 32.1 for a reduction for a reduction of the left side yard setback from ten feet to zero feet to construct a

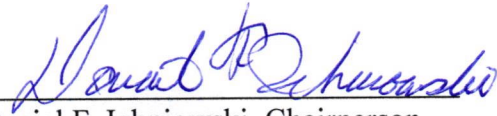
boathouse and to reduce the side yard setbacks from ten feet to zero feet to construct a dwelling with a two-story deck;

UPON CONDITION THAT, Applicant will repair and solely be responsible for any damage to the road caused beyond normal wear and tear as a result of any activities arising from the planned construction; and,

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: MAY 11, 2023


Daniel F. Ichniowski, Chairperson

Those voting to grant the amendment:

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

Those voting to deny the amendment:

Approved as to form and legal sufficiency:


Steve Scott, Attorney to the Board

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 County Board of Appeals. 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.