

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-1370

GAHL PROPERTY

SECOND ELECTION DISTRICT

VARIANCE REQUEST HEARD: NOVEMBER 9, 2023

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: DEC 14, 2023

Pleadings

Wade Walter Gahl and Katherine Ryan Gahl (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 71.5.2 to disturb the non-tidal wetland buffer (“the Wetland Buffer”) to construct a 24’ x 28’ deck.

Public Notification

The hearing notice was advertised in The Southern Maryland News, a newspaper of general circulation in St. Mary’s County, on October 20, 2023 and October 27, 2023. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before October 25, 2023. The agenda was also posted on the County’s website by November 3, 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 November 9, 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 located at 45954 Burns Drive, Valley Lee, Maryland (“the Property”). The Property is 1.67 acres, more or less, is zoned Rural Preservation District (RPD), and is found at Tax Map 58, Grid 19, Parcel 284.

The Variance Requested

Applicant seeks a variance from CZO Section 71.5.2 to disturb the non-tidal wetland buffer to construct a 24’ x 28’ deck.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.5.2 requires there be a minimum 25-foot buffer preserved from the edge of non-tidal wetlands and shall be expanded up to 100-feet to include areas of adjoining hydric soils.

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 consists of 1.67 acres with an existing home with an attached garage. DNR mapped non-tidal wetlands impacting the property, per Attachment #2. Per the CZO the buffer is expanded to 100 feet for hydric soil types.
- Applicants propose a 24' x 28' deck to the back of their house, which will impact the Wetland Buffer.
- The Health Department has approved the site plan and Stormwater Management has granted an exemption due to less than 5,000 s.f. of cumulative disturbance.
- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Non-tidal Wetlands Map
 - #3: Site Plan
 - #4: Location Map
 - #5: Zoning Map

Applicant's Testimony and Exhibits

Applicants appeared before the Board in-person at the hearing. Applicants presented a slideshow which contained pictures of their family and photographs of the site, and offered oral testimony. The following evidence and testimony was included in Applicant's presentation:

- Applicants showed pictures of their house. It is apparent the house was designed for a deck, based on the pictures shown. There are double doors that open to nothing but a railing.
- Applicants think a deck would enhance their enjoyment of the property.
- The deck would have little to no impact on neighbors and negligible impact on the ground, since they are only disturbing ground to put in posts.
- Applicants are not including any steps to minimize impacts.
- There will be no clearing beyond the minimal amount necessary to put in the posts.

Public Testimony

No members of the public appeared to offer testimony related to this matter. A letter from Jim Weaver, a neighboring property owner, opposing Applicants' request was received and added to the record.

Decision

County Requirements for Granting Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.3¹ 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;

¹ The staff report and Applicant's standards letter were written with references to COMAR's Critical Area variance standards. As the lateral line setback is not a part of the County's Critical Area program, the normal variance standards should apply.

- (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.

Here, the Applicants have demonstrated that, were the Board of Appeals to strictly interpret the CZO, the particular physical surroundings of the property would result in practical difficulty for the Applicants. A deck is a reasonable and customary amenity, the value of which need not be elaborated upon. The expanded non-tidal wetlands buffer constrains almost the entirety of the area around Applicants' house. Based upon the conditions shown on the site plan and maps in the staff report The Board of Appeals was not offered, and does not see, any means by which a lesser variance than the variance requested would allow for the Applicant to build a deck. Applicants are constrained by the existing location of the house.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted in the paragraph above, the Property is almost entirely constrained by the expanded non-tidal wetlands buffer. Such conditions are not generally present.

Third, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicants desire to build a deck, a reasonable request,

and Applicants' proposal site plan does not ask for anything extraordinary, excessive, or uncharacteristic of what may be found on similarly situated properties.

Fourth, the need for the variance does not arise from actions of the Applicants. The need stems from the presence of the Wetlands Buffer and the location of the existing home, built before Applicants moved to the Property.

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. None have spoken against the project, although one wrote opposed. To the extent that neighbor is concerned Applicants will "take steps to channel the water to dry the land out around the deck," therefore causing "an increase in water flow speed causing down stream erosion and destroy the habitat," the Board finds evidence in the record before it to support this speculation.

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, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The proposed deck will be similar to already existing decks in the general neighborhood, and Applicants' dwelling, once so improved, will be in harmony with its neighbors. For these reasons, the Board of Appeals finds that the variance, will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to the application of Wade Walter Gahl and Katherine Ryan Gahl, petitioning for a variance from CZO Section 71.5.2 to disturb the non-tidal wetland buffer for construction of

a 24' x 28' 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 § 24.8, that the Applicants are granted a variance from CZO Section 71.5.2 to disturb the non-tidal wetland buffer for construction of a 24' x 28' deck;

UPON 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 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.

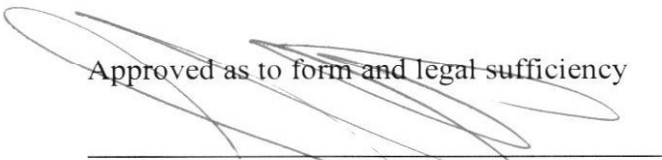
Date: DEC 14, 2023


Daniel F. Ichniowski, Chairperson

Those voting to grant the variance:

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

Those voting to deny the variance:


Approved as to form and legal sufficiency

Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANTS

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.