

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 22-2229

BOWLES PROPERTY

THIRD ELECTION DISTRICT

DATE HEARD: January 12, 2023

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: February 9, 2023

Pleadings

James Bowles (“Applicant”) seeks a variance (VAAP # 22-2229) to disturb the 100’ perennial stream buffer and the expanded nontidal wetland buffer for a replacement house.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on December 23, 2022 and December 30, 2022. The hearing notice was also posted on the property. 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 January 4, 2023. 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 January 12, 2023 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 Applicant.

The Property

Applicant owns the real property situate 23051 Brown Road, Leonardtown, Maryland (“the Subject Property”). The Subject Property is in the Rural Preservation District (“RPD”) Zoning District and is identified on Tax Map 33, Grid 15, Parcel 194.

The Variance Requested

Applicant seeks a variance from St. Mary’s County Comprehensive Zoning Ordinance

(“CZO”) § 71.4.2.a(2) to disturb the 100’ perennial stream buffer and from CZO § 71.5.2 to disturb the non-tidal wetland buffer to construct a replacement house.

The St. Mary’s County Comprehensive Zoning Ordinance

CZO § 71.4.2.a(2) establishes a 100’ buffer from each bank of all perennial streams, expanded, if necessary, in accordance with the provisions of 71.8.3.a(1). 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.

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 is a 5.16 acre parcel, more or less. MDE mapping depicts non-tidal wetlands impacting the property.
- The non-tidal wetland buffer is expanded owing to the presence of hydric soils. The expanded non-tidal wetlands buffer includes much of the remaining parcel.
- GIS mapping shows, additionally, a United States Geological Survey perennial stream impacting the property. This stream is a branch of Gravely Run. CZO § 71.4.2 requires a 100’ stream buffer along all perennial streams.
- According to the State Department of Assessments and Taxation, the existing dwelling was built in 1973, prior to the adoption of the current zoning regulations of St. Mary’s County.
- The Applicant’s site plan proposes removing the existing dwelling and constructing a replacement structure in the expanded non-tidal wetland buffer and stream buffer.
- The following Attachments to the Staff Report were introduced:

#1: Standards Letter;

#2: Non-tidal Wetlands Map

#3: USGS Stream Map

#4: Site Plan

#5: Location Map

#6: Zoning Map

Applicant Testimony and Exhibits

The Applicant was represented before the Board by Jeffrey Nieman, a professional land surveyor affiliated with Linear Surveys, Inc. The following items were among the evidence the Applicant presented:

- The Applicant presented a slide show containing pictures, a site plan, depictions of the existing structure, and architectural renderings of the proposed replacement house.
- The Applicant proposes demolition of an existing shed, dwelling, and septic tank. Upon completion of demolition a new dwelling will be constructed, a new Deep Drilled Well will be installed, and a BNR septic system with a 1,000-gallon pump pit will be installed.
- In total, 219 s.f. of the 100' perennial stream buffer and 4,627 s.f. within the expanded 100' non-tidal wetland buffer will be disturbed.

Public Testimony

No members of the public appeared to offer testimony, and no written testimony was received.

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 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

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, Applicant is presented with a parcel that is heavily encumbered by the non-tidal wetlands stream buffer. It effectively bisects the Subject Property. A relative sliver of unencumbered land is left in the northernly portion of the parcel which the Applicant’s site plan indicates is reserved for the future septic system, and the unencumbered southern portions of the property feature steep and uneven topography which would render building on that area impracticable. Expecting the Applicant to constrain himself to building only upon such conditions would, the Board finds, constitute a practical difficulty, and would amount to a tantamount denial of the Applicant’s application.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted in the staff report and the Applicant’s standards letter, the factors driving the need for a variance are environmental conditions not generally encountered on

other similarly situated properties. We mentioned above that a peculiar feature of this property, in particular, is that it is effectively bisected by the MDE-designated wetlands and perennial stream.

Third, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicant seeks to build a house, an elementary and commonplace uses of a property.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, the variance is required as a result of the Subject Property’s environmental features. The Board also notes that the Applicant’s proposed project appears to take care to use existing foundations and cleared spaces where it can, and to keep intrusions into each buffer at the minimum possible to achieve the Applicant’s intended use.

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.

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 James Bowles seeking a variance from CZO § 71.4.2.a(2) to disturb the 100’ perennial stream buffer and from CZO § 71.5.2 to disturb the non-tidal wetland buffer to construct a replacement house; and

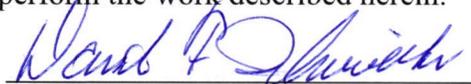
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.3, that the Applicant is granted a variance from CZO § 71.4.2.a(2) to disturb the 100' perennial stream buffer and from CZO § 71.5.2 to disturb the non-tidal wetland buffer to construct a replacement house.

The foregoing variance is subject to the condition that the 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 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: FEB 07, 2022 ~~2023~~

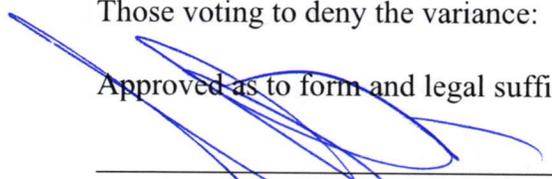

Daniel F. Ichniowski, Chairman

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 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.