

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-0698

DEL CID PROPERTY

NINTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: JULY 13, 2023

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: Aug 10, 2023

Pleadings

Nelson & Silvia Del Cid (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.9.6.h for a reduction of the lateral line setback from 25’ to 0’ 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 June 23, 2023 and June 30, 2023. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before June 28, 2023. The agenda was also posted on the County’s website on July 7, 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 July 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 proposed amendment requested by the Applicant.

The Property

The subject property (hereinafter “the Property”) is located at 16384 Thomas Road, Piney Point, Maryland and can be found at Tax Map 69, Grid 15, Parcel 206. It is zoned Rural Preservation District (“RPD”) with a Rural Conservation Area (“RCA”) Critical Area overlay.

The Variance Requested

Applicant seeks a variance from Comprehensive Zoning Ordinance (“CZO”) § 71.9.6.h to reduce the lateral line setback from 25’ to 0’ to construct a pier.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.9.6 creates a minimum setback of 25' from any extended property lines established by that section for any pier, mooring, pile, slip, boathouse, or similar improvement proposed for construction. CZO § 71.9.7 allows for adjacent property owners to waive this requirement through a written agreement; if an agreement cannot be attained, a property owner may seek to pursue a variance from the Board of Appeals.

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 ("the Property") is located on the Potomac River and contains 16.16' linear feet of shoreline. The Applicants propose to install a 6' x 133' pier with a 12' x 16' head, two power lifts, and a boat lift. The proposed pier will impact the southern extended lateral property line, as shown on the Applicant's site plan.
- The purposes of §71.9.6 are, inter alia, to ensure access, maintain maneuvering room between structures, and reduce conflicts between adjoining properties.
- The Maryland Department of the Environment has authorized the proposed pier and boat lift as of June 13, 2023.
- The Soil Conservation District has exempted the site plan from stormwater management as it poses less than 5,000 square feet of disturbance.
- Critical Area requirements are met as there will be no clearing, grading, or stockpiling of material onsite. All work will be completed by barge.
- Attachments to the Staff Report:

- #1: Standards Letter
- #2: Site Plan
- #3: Tract One Lateral Line Plan & Deed
- #4: Recorded Lateral Line Agreement
- #5: MDE General Title Wetlands License No. 15-GL-1017
- #6: Location Map
- #7: Zoning Map
- #8: Land Use Map
- #9: Environmental Map

Applicant's Testimony and Exhibits

Applicant was represented before the Board by their agent, Bip Kimball. Mr. Kimball offered testimony, presented a slide show presentation, and asked questions posed by the Board.

The following testimony was among that presented:

- The lot is exceptionally narrow in terms of possible locations to build the pier.
- There is a small existing platform over the rocks on the Property that will be removed once the pier is installed.
- The property owner to the north of the Property has consented and signed a lateral line agreement.
- The pier will pose no heightened danger or nuisance to the adjacent property in the event of a hurricane that any other pier would not.
- The pier will not pose any navigational hazard to the southern property, which is unimproved with any pier of its own.
- The existing platform is wood and will be replaced by a wooden dock.

Public Testimony

No members of the public appeared to offer testimony related to this matter

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. 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.

Denial of this variance would impose a practical difficulty upon Applicants. Applicants have an extraordinarily narrow band of property on which to build a pier, and it does not appear

possible any such improvement could be built without impacting the lateral property lines of either adjacent neighbor. Piers are common improvements for such properties and the inability to construct one would deny Applicants an amenity many similarly situated neighbors enjoy.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. Few waterfronts are as limited in buildable area as the Property.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicants have demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. Given the constrained buildable area of the lot, the siting of the proposed pier is one of necessity, rather than mere whim or convenience for the Applicants.

Fourth, the need for the variance does not arise from actions of the Applicants. As noted previously, Applicant’s need for a variance stem from the particular physical characteristics of 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 were notified of the variance request and given an opportunity to speak on the matter; none availed themselves of this opportunity, and the Applicants’ northernly neighbor assented to the proposed development. The navigational hazards posed by the proposed pier appear negligible; there appears to be a surfeit of available area on the southernly neighbor’s parcel for a pier to be built in the future, if ever one is, that is not constrained or limited by the proposed pier in this matter.

Sixth, the proposed development will not increase the residential use of the property and

the Board, as discussed above, 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. As noted above, there is little apparent danger that this pier will create a navigational hazard for adjacent property owners. The salutary effects of this setback – vital in other projects – are simply not as immediately present in Applicants' project. Consequently, the Board finds granting the variance, in this instance, strikes an appropriate balance between providing for the public welfare and maintaining consistent zoning standards on the one hand, while allowing property owners sufficient flexibility to vary from these standards as long as the overall spirit, principles, and mandates of the Comprehensive Plan may be maintained on the other.

ORDER

PURSUANT to the application of Nelson & Silvia Del Cid, petitioning for a variance from Comprehensive Zoning Ordinance § 71.9.6.h for a reduction of the lateral line setback from 25' to 0' 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 CZO § 21.1.3.a and CZO § 24.8, that the Applicants are granted a variance from CZO § 71.9.6.h for a reduction of the lateral line setback from 25' to 0' to construct a pier;

UPON FURTHER CONDITION THAT, 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 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: Aug 10, 2023

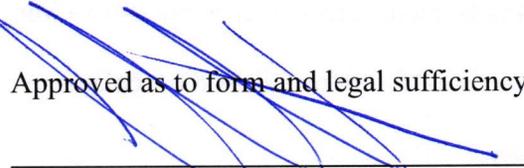

Daniel F. Ichniowski, Chairperson

Those voting to grant the amendment:

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

Those voting to deny the amendment:

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 St. Mary's County Circuit Court.

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.