

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 22-1961

FLEURY PROPERTY

THIRD ELECTION DISTRICT

VARIANCE REQUEST HEARD: December 8, 2022

ORDERED BY:

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

ENVIRONMENTAL PLANNER: Stacey Clements

DATE SIGNED: JAV 12, 2023

Pleadings

St. Clements Woods Garage LLC and John Fleury (“Applicant”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 71.5.2.b to disturb the non-tidal wetlands buffer to construct a garage.

Public Notification

The hearing notice was advertised in the *Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on November 18, 2022 and November 25, 2022. A physical posting was made on the property and all property owners within 200 ft. were notified by certified mail on or before November 23, 2022. The agenda was also posted on the County’s website on November 30, 2022. 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 December 8, 2022 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 subject property is located at 22230 Meadow Lane, Leonardtown, Maryland (“the Property”). The Property is approximately 0.18 acres, more or less, is zoned Residential Neighborhood Conservation and is found at Tax Map 39B, Grid 22, and Parcel 10. It comprises Lots 27, 28, 29, and 30 of the Saint Clements Woods subdivision.

The Variance Requested

Applicants seek a variance from CZO Section 71.5.2.b to disturb the non-tidal wetlands

buffer to construct a garage.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.5.2.b requires there be a minimum 25-foot buffer (“the Buffer”) landward from the landward edge of nontidal wetlands, which 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 0.18 acres. MDE mapping delineates a non-tidal wetland impacting the adjoining properties. The Buffer has been expanded, in this case, due to the presence of hydric soils.
- Applicant proposes to construct a two-story 20' x 24' garage located in the non-tidal wetland buffer.
- The Department of Land Use & Growth Management and Soil Conservation District are currently reviewing the site plan. Compliance with applicable stormwater management standards will be required before a permit is issued.
- The Health Department has approved the site plan.
- The variance shall lapse one year from the date of its grant unless a building permit is issued.
- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Non-tidal Wetland Map
 - #3: Site Plan

- #4: Location Map
- #5: Zoning Map

Applicants' Testimony and Exhibits

Steven Vaughn, LSR Land Surveying, 41605 Court House Drive, Leonardtown, Maryland presented testimony before the Board on behalf of Applicants. Applicants provided a slide show that included: maps of the property location, photographs of the site, and the site plan. The following evidence and testimony were included in Applicants' presentation:

- Applicant is requesting a variance to construct a garage partially within the expanded Buffer.
- The Applicant does not possess a sewer allocation for the Property and will not use the proposed garage for any manner of living space or accommodations. Applicant will use the garage for storage only.

Public Testimony

No members of the public appeared or submitted written 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 Applicants are 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. 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.

The Board finds denial of this variance would constitute a practical difficulty for Applicant. Applicant's request is to construct a garage for storage, a common improvement in St. Mary's County which would otherwise be permitted on a similar lot with similar zoning.

The second standard is that the conditions creating the difficulty are not generally applicable to other properties in the same zoning classification. Applicant's need for a variance stems from the physical characteristics of this site.

To the third standard, the purpose of seeking the variance is not "based exclusively upon reasons of convenience, profit or caprice." Rather, Applicant attempts to achieve a reasonable use of the Property – in this case, a garage for storage - enjoyed by owners of other similarly situated properties. The proposed garage will be of a similar build, character, and quality as other structures found in this community, and Applicant asks for no more than what many of his neighbors already have.

Fourth, the need for the variance does not arise from actions of the Applicant. Applicant's

need for a variance stems from the particular physical characteristics of his property; namely, its proximity to nontidal wetlands and the lot's comparatively small size, both of which curtail Applicant's options on the siting of his proposed garage.

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 did so. The Board also believes that the conditions imposed will alleviate possible impacts upon environmental quality owing to encroachment in the Buffer, and further notes that the proposed development will also result in the elimination of other encroachments in the Buffer.

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 Board of Appeals notes that Applicants' request makes use of existing features where it can and that what encroachments in the Buffer remain have been limited by the Applicants to the minimum necessary for them to achieve this reasonable and significant use of their property.

ORDER

PURSUANT to the application of the St. Clements Woods Garage LLC and John Fleury, petitioning for a variance from CZO § 71.5.2.b to disturb the non-tidal wetlands buffer to construct a garage; 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 the requested variance to construct a garage;

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: Jan 12, 2023

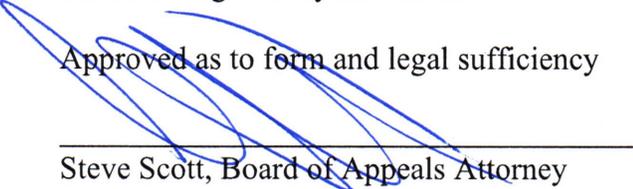

Daniel Ichniowski, Chairperson

Those voting to grant the amendment:

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

Those voting to deny the amendment:

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.