

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 22-1658

GUYTHER PROPERTY

SEVENTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: NOVEMBER 10, 2022

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: Dec 8, 2022

Pleadings

Rose Ellen Guyther (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 for a reduction of the mandatory front yard setback and Section 51.2.4.c to reduce the 10-foot setback to 2-feet to replace an existing carport.

Public Notification

The hearing notice was advertised in The Southern Maryland News, a newspaper of general circulation in St. Mary’s County, on October 21, 2022 and October 28, 2022. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before October 26, 2022. The agenda was also posted on the County’s website on November 2, 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 November 10, 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 proposed amendment requested by the Applicant.

The Property

The subject property (hereinafter “the Property”) is located at 38530 Pleasant Harbor Way, Abell, Maryland and can be found at Tax Map 39, Grid 19, Parcel 77. It is zoned Rural Preservation District (“RPD”).

The Variance Requested

Applicant seeks a variance from Comprehensive Zoning Ordinance (“CZO”) § 32.1 and §

51.2.4.c to reduce the minimum front yard setback and to reduce the setback from an existing shed, respectively.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 32.1 requires a minimum 25' front yard setback for an accessory structure such as the proposed carport. CZO § 51.2.4.c requires a 10' setback from any other accessory structure.

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 is located on a developed residential lot in Abell which was recorded in the State records as a Boundary Line Adjustment Plat on June 19, 2008. The existing covered parking area was in existence prior to approval of the current Comprehensive Zoning Ordinance. SDAT records indicate the house on the property was built in 1966.
- The Applicant proposes to replace the existing carport in the same location and same dimensions.
- The proposed site plan has received Health Department, Floodplain, and Critical Area approval. The project is exempt from Soil Conservation District and Stormwater Management requirements as less than 5,000 square feet of soil will be disturbed.
- If the variance is granted, it shall lapse one year from the date of the grant of the variance.
- Attachments to the Staff Report:
 - #1: Standards Letter

- #2: Plat Book 65, Page 55
- #3: Site Plan
- #4: Location Map
- #5: Zoning Map

Applicant's Testimony and Exhibits

Applicant appeared before the Board with her husband, Joseph Guyther. The following testimony was presented:

- Applicant seeks to replace an existing carport with a modern replacement structure, including solar power generators on the roof of the replacement structure.
- Owing to the Property's encumbrance by the Critical Area and the existence of mature vegetation creating shaded areas, it would be impracticable for the proposed structure to be built elsewhere on the Property. Applicant's testimony was that a total of 2,058 square feet of buildable space was available for the proposed carport
- Applicant testified that the existing carport was constructed in 1990, and that the current building restriction lines were implemented in 2012.
- No new ground will be disturbed as a result of the proposed project, and there will be no change in the carport's overall distance to the adjoining private street.

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 Applicant. Applicant showed that her property is constrained by the Critical Area. Considering the particular nature of Applicant’s proposal, Applicant’s testimony concerning the presence of mature shade trees is considered relevant and appropriate to consider. Denial of the project would leave Applicant unable to replace her existing covered parking area, which Applicant correctly notes is an amenity commonly encountered across our County.

This last point speaks to the second standard, that the conditions creating the difficulty are not generally applicable to other similarly situated properties. Applicant demonstrated that the

Critical Area and mature shade trees on her property leave a relatively narrow band of space for Applicant to work within. Additionally, the proposed project takes advantage of the existing footprint of a legal, albeit nonconforming, covered parking area.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicant has 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 covered parking area is one of necessity, rather than a function of whim or simple ease of access for Applicant.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, Applicant’s need for a variance stem from the particular physical characteristics of the Property, the location of the previously existing covered parking area, and the unique nature of Applicant’s project and its dependence on clear access to open skies.

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. Applicant also spoke to the environmental benefit of encouraging solar energy, even at the relatively small scale of this development. The Board accepts, however, that the development of solar energy is both desirable to the public at large, and a reasonable pursuit of the Applicant to minimize her own energy expenses. The Board also notes that, considering the neighborhood, overall population density of the surrounding neighborhood, and the nature of the adjoining street, that the traffic safety factors at play in the underlying CZO ordinance do not resonate as loudly at the Property as they may in other situations. While the general principle underlying the requirement for such setbacks remains valid, the risk of harm to

persons or property are lessened in the instant case, and the Board finds that public welfare will not be jeopardized if the project is allowed to proceed.

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, the need for such setbacks would be felt more keenly if located in a denser neighborhood or a more trafficked stretch of road. The salutary effects of these setbacks – vital in other projects – are simply not as immediately present in Applicant’s 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 spirit, principles, and mandates of the Comprehensive Plan may be maintained on the other.

ORDER

PURSUANT to the application of Rose Ellen Guyther, petitioning for a variance from Comprehensive Zoning Ordinance Schedule 32.1 for a reduction of the mandatory front yard setback and Section 51.2.4.c to reduce the 10-foot setback to 2-feet to replace an existing carport; 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 Applicant is granted a variance from CZO Schedule 32.1 for a reduction of

the mandatory front yard setback and Section 51.2.4.c to reduce the 10-foot setback to 2-feet to replace an existing carport;

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: DEC 8, 2022

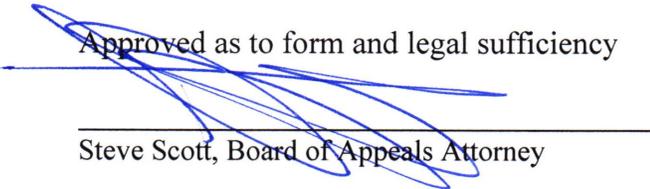

Daniel F. Ichniowski, Chairperson

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.