

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**VAAP NUMBER 22-1297**

---

**HANBURY PROPERTY**

**SEVENTH ELECTION DISTRICT**

**DATE HEARD: May 11, 2023**

---

**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

---

**DATE SIGNED: JUNE 8, 2023**

### **Pleadings**

John & Jennifer Hanbury (“Applicants”) seek a variance (VAAP # 22-1297) from Section 51.2.4.c for a detached accessory structure to be located closer than 10 feet to another structure.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on April 21, 2023 and April 28, 2023. The hearing notice was posted on the property by April 26, 2023. 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 May 5, 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 May 11, 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 Applicants.

### **The Property**

Applicants own the real property situate 21581 Montfort Road, Bushwood (“the Subject Property”). The Subject Property is in the Rural Preservation District (“RPD”) Zoning District, has a Resource Conservation Area (“RCA”) Critical Area overlay, and is identified at Tax Map 38, Grid 21, Parcel 286, Lot 4.

### **The Variance Requested**

Applicants seek a variance from St. Mary's County Comprehensive Zoning Ordinance ("CZO") Section 51.2.4.c. for a detached accessory structure to be located closer than 10 feet to another structure.

### **The St. Mary's County Comprehensive Zoning Ordinance**

CZO § 51.2.4.c states that no detached accessory structure shall be located closer than 10 feet to any other accessory or principal structure.

### **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 contains a 4,140 square foot single-family dwelling and various accessory structures, two of which, an in-ground pool and a detached gazebo-like structure, are the subject of this variance request. According to the State Department of Assessments & Taxation, the house was constructed in 2000.
- The Applicant's site plan depicts the existing brick patio and pool. Applicant requests an after-the-fact variance for the 12' x 20' gazebo in place 4.5' away from the pool's edge.
- Stormwater management review is not required as it poses less than 5,000 square feet of soil disturbance. Health Department and Critical Area approvals have been attained.
- The following Attachments to the Staff Report were introduced:
  - #1: Standards Letter;
  - #2: Site Plan;
  - #3: Location Map;
  - #4: Land Use Map;

## #5: Zoning Map

### **Applicant Testimony and Exhibits**

Applicant John Hanbury appeared before the Board in-person and offered testimony. The following items were among the evidence presented to the Board:

- The pool is a fiberglass pool measuring 16' x 35' with paver hardscaping on the surrounding walkways and patio. A final inspection is due by June 23.
- Aside from the proposed gazebo, the pool and surrounding patio are otherwise in the full sun each day. Applicant has observed extreme temperatures on the patio surface during summer, and keeping the gazebo will give the Applicant maximum utilization of the pool and patio.
- Applicant's presentation included pictures of the gazebo in its present location.

### **Public Testimony**

No members of the public appeared to offer testimony for or against the project.

### **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 characteristics of the Subject Property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Supreme Court of Maryland<sup>1</sup> 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

---

<sup>1</sup> The Supreme Court of Maryland was then known as the Court of Appeals. An amendment to the Maryland Constitution renaming the Court of Appeals to the Supreme Court of Maryland was ratified in the 2022 election. Simultaneously, the Court of Special Appeals was renamed the Appellate Court of Maryland.

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, Applicants’ proposed gazebo, which County staff determined to be a “structure” for the purposes of application of the mandatory 10’ setback between structures, poses little to no threat to the safety of Applicants, Applicants’ property, or neighboring property owners if left in its present location. The Board acknowledges that the setback limit in this case is a rule of general applicability and will assume, for the purposes of this hearing, that the gazebo fits the definition of a “structure.” There is no substantial evidence in the record before the Board that leaving the gazebo in its present location will endanger public safety and welfare in any way. Conversely, Applicants have testified that the gazebo, in its current location, substantially augment their ability to use and enjoy their pool, an accessory structure to which they are permitted by right. Given such a balance, the Board finds strict application of the 10’ setback buffer would result in practical difficulty.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties.

Third, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, the Applicants seek a reasonable accessory structure that

will enhance their use and enjoyment of other improvements on their property.

Fourth, the need for the variance does not arise from actions of the Applicant. The full use and enjoyment of the allowed swimming pool, per Applicant's testimony, will be enhanced by close physical proximity of this gazebo.

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 availed themselves of the opportunity.

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 Applicants' request for a variance from Section 51.2.4.c for a detached accessory structure to be located closer than 10 feet to another structure; and,

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

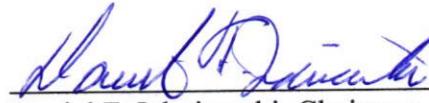
ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.3, that the Applicant is granted a variance from Section 51.2.4.c for a detached accessory structure to be located closer than 10 feet to another structure.

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: July 8, 2023

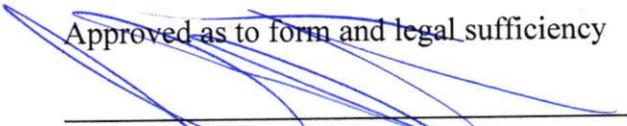
  
\_\_\_\_\_  
Daniel F. Ichniowski, Chairman

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.