

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 21-2589

HOUCHENS & KING

EIGHTH ELECTION DISTRICT

DATE HEARD: JANUARY 13, 2022

ORDERED BY:

**Mr. Miedzinski, Ms. Delahay,
Mr. Payne and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: February 10, 2022

Pleadings

Joseph Houchens & Curtis King (“the Applicants”) seek a variance (VAAP # 21-2589) for a reduction of the mandatory side yard setbacks to construct additions to an existing 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 24, 2021, and December 31, 2021. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including 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 5, 2022. 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 13, 2022 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

The Applicants own the subject property located at 45658 Tennyhill Street, California, Maryland (the “Property”). The Property is in the Residential, Low-Density (“RL”) zoning district and is identified on Tax Map 50, Grid 12, Parcel 379, Lot 112.

The Variance Requested

The Applicants request a variance from Schedule 32.1 of the St. Mary’s Comprehensive

Zoning Ordinance (“CZO”) for a reduction of the mandatory side yard setbacks to construct additions to an existing house.

The St. Mary’s County Comprehensive Zoning Ordinance

Under Schedule 32.1, a 10-foot side setback is required in the RL.

The Evidence Submitted at the Hearing by LUGM

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 (Property) contains a single-family dwelling (principal structure). The house was constructed in 2021, in accordance with the current zoning and subdivision regulations of St. Mary’s County.
- The Applicants are proposing an “attached shed” addition onto the existing attached garage, which will intrude into the minimum 10’ required side yard setback. The existing attached garage is 12’ from the side property line. The proposed 10’ wide addition will encroach 8’ into the side yard, resulting in a 2’ setback from the shared side property line.
- The Applicants also propose a porch and deck addition to the rear of the house. The proposed porch encroaches 1’ into the side yard setback.
- The proposed deck will protrude into the side and rear yard setbacks no more than 6’, on the condition that the deck has no roof or walls. This is allowed without a variance, per CZO § 61.7.4.a. “Open or unenclosed decks or platforms, not including a permanently roofed-over porch; awnings and canopies, provided they do not extend or project into the yard more than six feet.”
- The proposed development is exempt from Stormwater Management due to less than 5,000 sf of soil disturbance.

- If the variance is granted, it shall lapse one year from the date of the grant of the variance, if the Applicant has not obtained the building permit, per Section 24.8.1.
- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter of Intent
 - # 2: Site Plan
 - # 3: Location Map
 - # 4: Zoning Map

Applicants Testimony and Exhibits

The Applicants appeared in person before the Board. The following evidence was presented:

- The proposed garage extension (shed) would be constructed on top of an existing concrete slab that was built when the home was constructed.
- The ingress and egress to the shed will be a garage door opener from the front, and there will be a door connecting the extension to the remainder of the garage from the inside.
- Their HOA has approved the proposed shed and deck.
- The home fills the available buildable area, and the slope from the back of their house to the end of their property is 7–8 feet of drop, limiting the space on which to place the shed. In fact, the slope is steep they cannot use a push lawn mower.
- The area for the covered porch is 6–10 inches above the build line on the side of their house.

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

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. § 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, set backs, 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, the Applicants have demonstrated that, were the Board of Appeals to strictly interpret the CZO, the particular physical surroundings of the property would result in practical difficulty for the Applicants. Specifically, Phase 6 of the Elizabeth Hills subdivision was recorded in 2016 after the lots were approved as meeting the minimum requirements, including the minimum lot width of 75 feet.

Second, the specific physical conditions creating the practical difficulty are not generally found on other properties in the RL. All new residential building lots with RL zoning must comply with the same minimum lot dimensions specified in Schedule 32.1 of the CZO.

Third, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, the Applicants are requesting to construct additions to a new house, constructed in 2021. The Applicants are the first owners.

Fourth, the need for the variance does not arise from actions of the Applicants. Again, the Applicants are requesting to construct additions to a new house, constructed in 2021, and the Applicants are the first owners.

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.

Sixth, 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. The proposed additions to the house and will not increase the residential use of the property.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Property has already been developed for residential use. Chapter 3, "A Growth Management Strategy," of the Comprehensive Plan, establishes a vision for community design, which includes encouraging owners of existing structures to maintain and retrofit the buildings and grounds, so they become attractive and energy efficient.

ORDER

PURSUANT to the application of Joseph Houchens & Curtis King, petitioning for a variance from Schedule 32.1 of the St. Mary's County Comprehensive Zoning Ordinance for a reduction of the mandatory side yard setbacks to construct additions to an existing 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, that the Applicants are granted a variance from Schedule 32.1 of the St. Mary's County Comprehensive Zoning Ordinance for a reduction of the mandatory side yard setbacks to construct additions to an existing house.

Additionally, the foregoing variance is also subject to the following condition that the 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 the 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: February 10, 2022


Daniel F. Ichniowski, Chairman

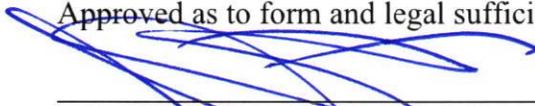
Those voting to grant the variance:

Ms. Delahay, Mr. Payne, and Mr. Richardson

Those voting to deny the variance:

Mr. Miedzinski

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.