

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 21-1414

PEIL & EVANS PROPERTY

NINTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: MAY 12, 2022

ORDERED BY:

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

ENVIRONMENTAL PLANNER: LEAH LANGFORD

DATE SIGNED: June 9, 2022

Pleadings

John Peil and Jocelyn Evans (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 71.5.2 to disturb the non-tidal wetland buffer (“the Wetland Buffer”) to construct a replacement house.

Public Notification

The hearing notice was advertised in The Southern Maryland News, a newspaper of general circulation in St. Mary’s County, on April 22, 2022 and April 29, 2022. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before April 27, 2022. The agenda was also posted on the County’s website on May 4, 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 May 12, 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 located at 15977 Camp Merrylande Road, Piney Point, MD 20674 (“the Property”). The Property is 4.46, more or less, is zoned Rural Preservation District (RPD), has a Resource Conservation Area (RCA) Critical Area overlay, and is found at Tax Map 69, Grid 21, Parcel 121.

The Variance Requested

Applicant seeks a variance from CZO Section 71.5.2 to disturb the non-tidal wetland buffer

to construct a replacement house.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.5.2 requires there be a minimum 25-foot buffer preserved from the edge of non-tidal wetlands and 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 4.46 acres, more or less, which the Maryland Department of the Environment ("MDE") confirms is impacted by extensive non-tidal wetland. See Attachment #2 to the Staff Report. The Wetland Buffer is also expanded for hydric soils to include much of the remainder of the lot.
- An existing dwelling on the property was, according to Maryland Department of Assessments and Taxation, built in 1950, prior to the adoption of the current zoning regulations of St. Mary's County.
- Applicants' site plan proposes removing the dwelling and constructing a replacement in the expanded Wetland Buffer.
- MDE has approved disturbance to the 25-foot non-tidal wetland buffer. See Attachment #4 to the Staff Report.
- LUGM reviewed the site plan for stormwater management and zoning and issued its approval. The St. Mary's County Soil Conservation District and St. Mary's County Metropolitan Commission have also approved the site plan.
- If a variance is granted but a building permit is not issued, the variance shall lapse one year from the date of its grant.

- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Non-tidal Wetlands Map
 - #3: Site Plan
 - #4: MDE Letter of Authorization
 - #5: Location Map
 - #6: Zoning Map

Applicant's Testimony and Exhibits

Applicants appeared before the Board in-person at the hearing. Applicants presented a slideshow which contained site plans, building plans, photographs of the site, and offered oral testimony. The following evidence and testimony was included in Applicant's presentation:

- The Property is heavily constrained by the presence of non-tidal wetlands.
- Applicants do not wish to use the footprint of the existing home because of its extremely close proximity to the non-tidal wetlands and the shoreline.
- Applicants have selected the highest elevation on the Property on which it is feasible to construct a new home. They have consciously chosen the site in order to reduce environmental impacts as much as possible.
- Repurposing the existing structure is not feasible due to extreme decay, and rehabilitation is impracticable to consider.
- The footprint of the existing house is approximately 1,000 square feet, and the proposed new construction is approximately 1,500 square feet.
- There is a healthy, natural buffer existing on the Property and Applicants' site plan minimizes impacts to existing vegetation as much as reasonably feasible.

- Applicants' chosen builder has experience building within the Critical Area and has built other structures on St. George's Island.

Public Testimony

No members of the public appeared to offer testimony related to this matter. A letter from Frederick and Angela Sullivan, neighboring property owners, in support of Applicants' request was received and added to the record.

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.

Here, the Applicant has 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 Applicant. The expanded non-tidal wetlands buffer constrains almost the entirety of the Property, limiting avenues for development on the Property were the CZO's provisions strictly and rigidly enforced. Based upon the conditions shown on Applicant's site plan and what can be observed from images of the Property provided during Applicant's presentation, it is impracticable for Applicant to build elsewhere. Nor, given the state of disrepair of the existing structure and its immediate proximity to the shoreline, is it practical or reasonable to consider requesting Applicants to limit themselves to use of the existing structure and footprint. The Board of Appeals was not offered, and does not see, any means by which a lesser variance than the variance requested would allow for the Applicant to achieve the same significant and reasonable use of the Property.

Second, the circumstances present in this matter are not generally applicable to other similarly situated properties. As noted in the paragraph above, the Property is almost entirely constrained by the non-tidal wetlands buffer. Such conditions are not generally present.

Third, the purpose of seeking the variance is not "based exclusively upon reasons of convenience, profit or caprice." Rather, Applicant desires to build a home, a reasonable request, and Applicant's site plan does not ask for anything extraordinary, excessive, or uncharacteristic of what may be found on similarly situated properties. Applicant's request is not motivated by a desire to build in a more convenient or cost-effective location of his property; Applicant's request is necessitated by the fact that the Property is encumbered by the Wetlands Buffer.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted

previously, the variance is required as a result of this Property's physical characteristics.

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 have spoken against the project, and two have written in favor of it. Moreover, MDE has given its approval of the proposed development.

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 proposed building will be similar to already existing homes in the general neighborhood, and Applicants' new dwelling, once constructed, will be in harmony with its neighbors. Applicants noted that they have selected a builder who has built similar structures in the immediate neighborhood. Mitigation plantings required will be of benefit to the local wildlife habitats. Finally, Applicants' construction will not materially increase lot coverage beyond what is already present. For these reasons, the Board of Appeals finds that the variance, and the development it will facilitate, will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to the application of John Peil and Jocelyn Evans, petitioning for a variance from CZO Section 71.5.2 to disturb the non-tidal wetland buffer for construction of a replacement 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, pursuant to CZO § 24.8, that the Applicant is granted a variance from CZO Section 71.5.2 to disturb the non-tidal wetland buffer for construction of a replacement house;

UPON 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 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: June 9, 2022

David W. Miedzinski
Daniel F. Ichniowski, Chairperson
By: David Wayne Miedzinski, Acting Chairperson

Those voting to grant the amendment:

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

*: Mr. Ichniowski, unable to sign on June 9th, chaired the May 12th hearing and voted to grant the amendment at that time.

Those voting to deny the amendment:

Approved as to form and legal sufficiency

[Signature]
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.