

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

In the Matter of Robert D. and Mary L. Boidock  
18999 Little Pond Lane, Valley Lee, Maryland

Case No. VAAP #16-1837

**DECISION AND ORDER****Introduction**

Robert D. and Mary L. Boidock (hereinafter "Applicants"), filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 18999 Little Pond Lane, Valley Lee, Maryland (hereinafter the "Property"). The application seeks a variance to reduce the required front yard setback from 25 feet to zero.

After due notice, a public hearing was conducted at 6:30 p.m. on March 9, 2017, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

**Legal Standard**

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

1. Because of particular physical surroundings such as exceptional narrowness, shallowness size, shape or topographical conditions of the property involved, strict enforcement of the 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; provided, any development necessarily increases property value, and that alone shall not constitute a finding of an exclusive reason.
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.
7. The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

### **Findings of Fact**

The Property, located in the McKay's Beach Subdivision, fronts the Potomac River and contains a single-family dwelling with an attached deck and a raised 192 square foot shed with a wood ramp. The house was constructed under permit no. 04-0591. The Property also contains a driveway and parking area of approximately 1,800 square feet in size. The north-northwest side of the Property contains a septic mound system.

The shed is located on the property line at its closest point from the front property line. The required front yard setback in the Rural P reservation District is 25 feet from a minor collector or lesser road classification.

### **Conclusions of Law**

§5-114 of the *Courts and Judicial Article* of the *Annotated Code of Maryland* provides:

(b) In general. -- (1) A person may not initiate an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred.

(2) A governmental entity may not initiate an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred if the building or structure was constructed or reconstructed:

- (i) In compliance with an otherwise valid building permit, except that the building permit wrongfully permitted the building or structure to violate a setback line restriction; or
- (ii) Under a valid building permit, and the building or structure failed to comply with a setback line restriction accurately reflected in the permit.

The local amendments to the International Residential Code adopted by the Commissioners of St. Mary's County provide that no building permit is required for a one-story detached structure under 300 square feet. The evidence establishes that the shed in question is 192 square feet. No building permit was required. Legally, construction for which no building permit is required is the same as construction in compliance with a building permit.

No "action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction" has been initiated. Nor would the County be able to initiate such an

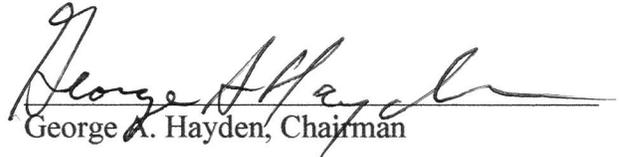
action or proceeding since the County would be unable to prove that the initiation is not “more than 3 years after the date on which the violation first occurred.”

The Applicants do not require a variance since §5-114 of the *Courts and Judicial Article* of the *Annotated Code of Maryland* established the legal status of the shed in question as constructively in compliance with the front yard setback requirements in the St. Mary’s County Comprehensive Zoning Ordinance.

**ORDER**

**NOW, THEREFORE, BE IT ORDERED**, that, having made a finding that there is no actionable violation of the Applicants do not require a variance the application for a variance is dismissed as *moot*.

Date: April 13, 2017

  
George A. Hayden, Chairman

Those voting to approve the Order:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to disapprove the Order:

Approved as to form and legal sufficiency:

  
George R. Sparling, County Attorney