

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Keith Litz, Litz Custom Homes, Inc.
22453 Saint Clements Avenue, Leonardtown, Maryland

Case No. VAAP #18-0042

DECISION AND ORDER

Introduction

Keith Litz of Litz Custom Homes, Inc (hereinafter "Applicant"), filed an application for two variances from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 22453 Saint Clements Avenue, Leonardtown, Maryland (hereinafter the "Property"). The application seeks variances from Section 32.1 of the Comprehensive Zoning Ordinance to: 1) reduce the required 25-foot front yard setback to 19 feet and 2) to reduce the required 10-foot side yard setback to five (5) feet on the northeastern side of the property to construct a single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on May 10, 2018, 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 subject property (the "Property") consists of lots 9 and 10 of the Saint Clement Shores Subdivision. These two, narrow and small lots front St. Clement Bay and are currently under review to be combined into one lot with the approval and recording of a boundary line adjustment plat. The resultant lot, Lot 500-9, will contain only 3,214 square feet of land.

Although the Property is located in the Critical Area of St. Mary's County and is constrained by the Critical Area Buffer, no variances from the Critical Area regulations are required. The Property is located in the Buffer Management Overlay (BMO), and development is exempt from a variance as long as all other criteria of the BMO are met.

Public water and public sewer serve the property.

A special flood hazard area, Zone VE 7, encroaches halfway across the Property from St. Clement Bay, according to Flood Insurance Rate Map (FIRM) 162F. VE zones are special flood hazard areas subject to inundation by the 1-percent annual chance (100-year) flood, and they are also subject to high velocity wave action.

The Applicant will be required to provide engineered footers and to elevate the proposed house three (3) feet above the base flood elevation of seven (7) feet.

The Property fronts Saint Clements Avenue, which is classified as a minor collector or lesser road. According to Schedule 32.1 of the Ordinance, the required principal structure front yard setback is 25 feet in the RNC District, and the required side yard setback is 10 feet. The proposed single-family dwelling will encroach six feet into the front yard setback and five feet into the side yard setback on the northeastern side of the Property.

The St. Mary's Soil Conservation District (SCD) reviewed the proposed development and determined that an engineered erosion and sediment control plan was not required because the Applicant will be disturbing less than 5,000 square feet. The Applicant is exempt from providing stormwater management for this same reason.

The Metropolitan Commission (MetCom) approved the site plan on January 24, 2018.

Conclusions of Law

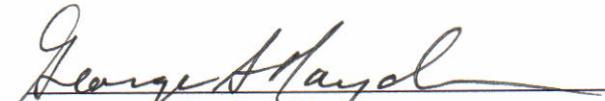
The Applicant requests two variances from Schedule 32.1 of the Comprehensive Zoning Ordinance: 1) to reduce the required 25-foot front yard setback to 19 feet and 2) to reduce the required 10-foot side yard setback to five (5) feet on the northeastern side of the property to construct a single-family dwelling.

After hearing the testimony of the applicant, the neighbors and reviewing the legal standards for granting a variance the Board makes the following conclusions: 1) that the requested side yard setback variance of going from ten feet to five feet will increase the danger of fire and endanger public safety, due to the closer proximity of the houses. 2) that the requested front yard setback satisfies the standards for granting a variance.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for granting a variance and the objectives of Schedule 32.1 of the (St. Mary's County) Comprehensive Zoning Ordinance have been met for the front yard setback, the variance request to reduce the required 25-foot front yard setback to 19 feet is **granted**; and that the variance request to reduce the required 10-foot side yard setback to 5-feet on the northeastern side of the property failed due to the lack of a second on the motion.

Date: June 28, 2018


George A. Hayden, Chairman

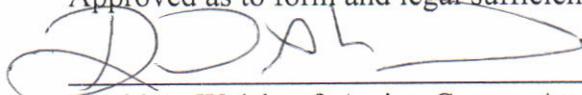
Those voting to grant the variance:

Mr. Hayden, Mr. Greene, Mr. Miedzinski

Those voting to deny the variance:

Mr. Brown and Ms. Delahay

Approved as to form and legal sufficiency


David A. Weiskopf, Acting County Attorney