

The Board accepts the calculation of the extension of lot lines relied upon and verified by the Department of Land Use and Growth Management. Herbert N. Redmond, Jr., a registered surveyor with unquestionable qualifications, testified in opposition to the application. Mr. Redmond's testimony concerned different calculations of the mean high water mark, and his opinion that the mean high water mark is located further inland than as shown on the Applicants' site plan. However, the result of such a recalculation would be approval of an inland extension of the pier. There was no testimony how, if at all, a variation in the location of the mean high water mark would alter the calculation of the lot line extensions.

The Board finds that the Applicants have proven by a preponderance of the evidence that the variance will not be detrimental to the public, and that the proposed pier is consistent with other properties and improvements in the neighborhood.

Section 5.9 of the St. Mary's County Comprehensive Plan, pertaining to shoreline protection, access and development, recognizes private and public access to water.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Section 24.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, a variance to extend the proposed pier into the required 25-foot setback 5 feet on the north side and 15 feet on the south side of the pier is **granted**.

Date: March 12, 2015


George A. Hayden, Chairman

Those voting to grant the variance: Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Richard M. Masica and
Leigh E. Wierichs, 45261 Daniels Road,
Hollywood, Maryland 20636

Case No. VAAP # 14-1771

DECISION AND ORDER

Introduction

Richard M. Masica and Leigh E. Wierichs (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 45261 Daniels Road, Hollywood, Maryland (hereinafter the "Property"). The application seeks variances from Section 71.9.6.h (1) of the Comprehensive Zoning Ordinance to construct a pier within 25 feet of the extended property lines on the north and south sides of the pier.

After due notice, a public hearing was conducted at 6:30 p.m. on January 8 and February 12, 2015, at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. 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 Applicants plan to construct a 56.5-foot long by 6-foot wide timber pier with an 8-foot by 3-foot finger pier expansion. The structure will extend a maximum of 65.15 feet channel ward of the mean high water line and will encroach 5 feet on the north side and 15 feet on the south side of the pier into the required 25-foot setback.

The Maryland Department of the Environment (MDE) issued a General Tidal Wetlands License (No. 11-PR-0301) to the Applicants for construction of the requested pier, conditioned on the Applicants obtaining a variance from St. Mary's County, or letters of agreement with the adjacent property owners regarding encroachment into the required setbacks.

The Property is located at the head of a cove of Cuckold Creek and contains approximately 94 linear feet of shoreline. The shoreline is uniquely curved and irregular. Adjacent and nearby properties all enjoy the benefit of a pier.

The pier proposed by the Applicants will not affect navigation or impede access to the existing piers on the north and south sides.

Conclusions of Law

Since the configuration of the shoreline is unique to this property, these Applicants are in an equally unique position. There is no question that "strict enforcement of the Ordinance will result in practical difficulty" and would deny to the Applicants the riparian right to wharf.

Both the State of Maryland and St. Mary's County Comprehensive Zoning Ordinance afford waterfront property owners a right to a pier. St. Mary's County Comprehensive Zoning Ordinance requires a setback of 25 feet of the extended property line. The reasons for extending property lines or lateral lines into open water are to ensure access, maintain maneuvering room between structures, and reduce conflicts between adjoining properties. The different ways of calculating lateral lines result in extremely varied and unique lateral line configurations for properties, depending upon shoreline formation and length and the general location of the property within a cove, on a point, or on a straight shoreline.