

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of 2nd District Volunteer Fire Department & Rescue Squad
19330 Piney Point Rd, Valley Lee, Maryland

Case No. VAAP #17-132-006

DECISION AND ORDER

Introduction

The Second District Volunteer Fire Department & Rescue Squad (hereinafter "Applicant"), 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 19330 Piney Point Rd., Valley Lee, Maryland (hereinafter the "Property"). The application seeks a variance from Section 71.4.2.a(2) of the Comprehensive Zoning Ordinance to reduce the required 100-foot buffer from a perennial stream to 50-feet.

After due notice, a public hearing was conducted at 6:30 p.m. on August 9, 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") is the site of a proposed 27,216 square-foot building to house emergency fire, rescue, and ambulance services. The site consists of five parcels, parcels 78, 108, 134, 399, and 418, which will be consolidated into one parcel with the approval of boundary line adjustment plat no. 18-141-009, currently under review.

The existing Second District Volunteer Fire Department is located on parcel 134. The proposed public safety facility will be located on parcel 78. The existing structures on parcel 78 will be removed and the existing well and septic system will be properly abandoned.

The Concept Site Plan for the proposed public safety facility received Planning Commission approval on February 26, 2018. (Minutes attached.) The Plan had been reviewed by the Technical Evaluation Committee (TEC) during its October 2017 review cycle. TEC comments are attached.

Pursuant to Section 71.4.2.a of the Ordinance, a buffer shall be preserved along each side of perennial or intermittent streams measured from the top of the bank of the stream as follows:

- (1) Outside the Critical Area measured 50 feet for each bank for intermittent streams,
or
- (2) For all perennial streams and for intermittent streams inside the Critical Area measured 100 feet from each bank expanded, if necessary, in accordance with the provisions of 71.8.3.a.(1).

A perennial stream traverses the Property from north to south on the east side of the proposed public safety facility. The stream drains into Herring Creek.

The Applicant requests variance approval to reduce the required stream buffer from 100 feet to 50 feet. According to the Applicant and the site plan, some of the parking spaces and stormwater management facilities encroach into the required stream buffer.

Conclusions of Law

The Applicant requests a variance from Section 71.4.2.a(2) of the Comprehensive Zoning Ordinance to reduce the required 100-foot buffer from a perennial stream to 50-feet.

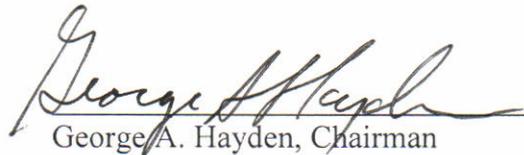
After hearing the testimony of the applicant, the applicant's engineer and architect, the nearest neighbor and reviewing the legal standards for granting a variance the Board makes the following conclusions: That the standards for granting a variance and the objectives of Section 71.4.2.a(2) of the St. Mary's County Comprehensive Zoning Ordinance have been met to approve the variance request to reduce the required 100-foot buffer from a perennial stream to 50 feet" subject to the following conditions:

1. Lighting on the East side of the property be downcast and angled towards the firehouse and to keep the lighting from extending towards Mrs. Evan's home.
2. Pervious materials will be used in the South East last 10 parking spaces for public parking.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for granting a variance and the objectives of Section 71.4.2.a(2) of the (St. Mary's County) Comprehensive Zoning Ordinance have been met for the perennial stream buffer, the variance request to reduce the required 100-foot buffer from a perennial stream to 50 feet is **granted**.

Date: August ____, 2018

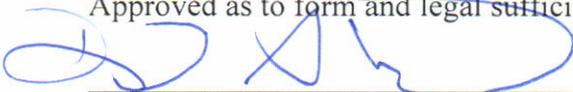

George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Greene, Mr. Miedzinski,
Mr. Brown and Ms. Delahay

Those voting to deny the variance:

Approved as to form and legal sufficiency


David A. Weiskopf, Acting County Attorney