

## ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of John Pleisse  
42195 White Point Beach Road, Leonardtown, Maryland

Case No. VAAP #18-0539

### DECISION AND ORDER

#### Introduction

John Pleisse (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 42195 White Point Beach Road, Leonardtown, Maryland (hereinafter the "Property"). The application seeks a variance from Section 32.1 of the Comprehensive Zoning Ordinance to: to reduce the required twenty-five (25)-foot front yard setback to five (5) feet, and a variance from Section 51.2.4.c to reduce the required setback between structures from ten (10) feet to five (5) feet to construct a detached garage.

After due notice, a public hearing was conducted at 6:30 p.m. on November 8, 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.

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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"), known as Lot 11 of White Point Subdivision, fronts the Potomac River and is constrained by the Critical Area Buffer (the "Buffer"), which has been measured 100 feet landward from the mean high water line of the river pursuant to COMAR 27.01.09.01.E(3), and then expanded to include the hydric soils (Fallsington sandy loam) on the Property in accordance with COMAR 27.01.09.01.E(7).

Although the Property is located in the Critical Area of St. Mary's County and is constrained by the 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.

A private well and septic system serve the property.

The shoreline of the Property is within Special Flood Hazard Area Zone VE 9 and Unshaded X according to Flood Insurance Rate Map (FIRM) panel 301F. Zone VE is defined in the County's floodplain management regulations as special flood hazard areas subject to inundation by the 1-percent annual chance (100-year) flood and subject to high velocity wave action (also see coastal high hazard area). A coastal high hazard area is defined as an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms. Coastal high hazard areas also are referred to as "V Zones" and are designated on FIRMs as zones VE or V1-30.

Zone X (unshaded) is defined as: Areas outside of Zones designated A, AE, A1-30, AO, VE, V1-30, and X (shaded). The unshaded X Zone is not regulated.

The Property is located on White Point Beach Road, 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 RPD. Pursuant to Section 51.2.4.c of the Ordinance, "Detached accessory structures shall be located no closer than 10 feet to any other accessory or principal structure." The proposed detached garage will encroach 20 feet into the front yard setback, and the distance between the existing shed and the proposed garage will be five (5) feet.

The St. Mary's Health Department approved the site plan on September 11, 2018. The Applicant will be disturbing less than 5,000 square feet. Consequently, he is exempt from stormwater management and an engineered erosion and sediment control plan.

**Conclusions of Law**

The Applicant requests a variance from Section 32.1 of the Comprehensive Zoning Ordinance to: to reduce the required twenty-five (25)-foot front yard setback to five (5) feet, and a variance from Section 51.2.4.c to reduce the required setback between structures from ten (10) feet to five (5) feet to construct a detached garage.

After hearing the testimony of the applicant, reviewing the applicant's exhibits, and reviewing the legal standards for granting a variance the Board makes the following conclusions: that the requested front yard setback variance satisfies the standards for granting a variance, however the requested variance to reduce the setback between structures has not been met.

**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 5 feet is **granted**; and that having made a finding that the standards for granting a variance and the objectives of Schedule 51.2.4.c of the (St. Mary's County) Comprehensive Zoning Ordinance have not been met for required setback between structures, the variance request to reduce the required setback between structures from ten (10) feet to five (5) feet is **denied**.

Date: December 13, 2018

  
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John Brown, Vice Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

NONE

Approved as to form and legal sufficiency

  
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David A. Weiskopf, Acting County Attorney