

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

**VAAP NUMBER 19-2160**

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**LUMPKINS PROPERTY**

**SECOND ELECTION DISTRICT**

**DATE HEARD: OCTOBER 8, 2020**

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**ORDERED BY:**

**Mr. Hayden, Mr. Brown, Ms. Delahay,  
Mr. Miedzinski, and Mr. Richardson**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: October 22, 2020**

### **Pleadings**

Benjamin & Dawn Lumpkins (“the Applicants”) seek a variance (VAAP # 19-2160) to disturb the expanded 100-foot Non-Tidal Wetland Buffer to build a single-family dwelling with a sidewalk, steps, deck, and driveway.

### **Public Notification**

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on September 18, 2020 and September 25, 2020. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County’s website on September 30, 2020. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

### **Public Hearing**

A public hearing was conducted at 6:30 p.m. on October 8, 2020 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the Applicants.

### **The Property**

The Applicants own a 17,446 square foot unimproved property at 17896 Piney Point Road, Piney Point, Maryland (the “Property”). The Property is in the Residential Low Density (“RL”) zoning district with an Intensely Developed Area (“IDA”) Overlay and is identified on Tax Map 65, Grid 4, Parcel 263, Lot 500-5 in the Sheehan Subdivision.

### **The Variance Requested**

The Applicants request a variance from § 71.5.2.b of the St. Mary's Comprehensive Zoning Ordinance ("CZO") to disturb the expanded 100-foot Non-Tidal Wetland Buffer to build a single-family dwelling with a sidewalk, steps, deck, and driveway.

### **The St. Mary's County Comprehensive Zoning Ordinance**

Pursuant to CZO § 71.5.2.b, the 25-foot buffer from the edge of non-tidal wetlands "shall be expanded up to 100 feet to include areas of adjoining hydric soils."

### **The Evidence Submitted at the Hearing by LUGM**

Harry Knight, Deputy Director for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The Property sits on a lot that was recorded in 1966 at Liber 6, Folio 28.
- The existing soil type on the Property is Othello silt loam (Ot), according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Othello silt loam is found on slopes of 0-2 percent and are considered poorly drained (hydric) with a slight erosion hazard. See Attachment 4, Soils and Wetland Map, to view the impacts of hydric soils on Lot 500-5 of Sheehan Subdivision.
- According to the site plan provided by the Applicants, the owner proposes a single-family dwelling with sidewalks and steps, a deck and a driveway for a total of 15,809 square feet of soil disturbance. Included in the calculations for soil disturbance are the rain gardens, necessary for stormwater management, and the installation of a well and connection into the Metropolitan Commission's ("MetCom's") existing sewer line.
- Non-tidal wetlands are located approximately 35 feet from the proposed soil disturbance

for this project, as delineated on Maryland's Department of Natural Resources ("DNR") mapping system. Due to the hydric soil conditions present on the site, the non-tidal wetland buffer is expanded to 100 feet, per Section 71.5.2.b of the CZO.

- MetCom approved the site plan on June 16, 2020. St. Mary's Soil Conservation District received the plan for review on July 1, 2020. LUGM reviewed the site plan for stormwater management, zoning, and Critical Area requirements. Stormwater management and Critical Area were approved on February 21, 2020 and May 6, 2020, respectively. Zoning approval is pending this Board of Appeals hearing.
- If the variance is granted, it shall lapse one year from the date of the grant of the variance, if the Applicants have not obtained the building permit, per CZO § 24.8.1.
- The following Attachments to the Staff Report were introduced:
  - #1: Standards Letter
  - # 2: Location Map
  - # 3: Zoning Map
  - # 4: Soils & Wetlands Map
  - # 5: Site Plan
  - # 6: Sheehan, Plat Book 62/56
  - # 7: Sheehan, Plat Book 6/28

#### **Applicants Testimony and Exhibits**

The Applicants appeared via WebEx before the Board, and their representative, Steven Vaughan, appeared in person. The following evidence was presented:

- The Applicants sought to have a preapplication meeting with the Maryland Department of the Environment, but COVID-19 prevented such a meeting.

- Mr. Vaughan, who is certified in wetland delineation, has been delineating wetlands for 12 years, and has been a professional land surveyor since 2011, does not believe that wetlands exist at the Property.
- The proposed home will be sited to the edge of the woods, just in front of the building restriction line and will be as far away as possible from the mapped wetland.
- The Applicants are proposing to construct a 2,500 square foot single-family, single-story home, with two proposed rain gardens.

### **Decision**

#### **County Requirements for Granting Variances**

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a variance to be issued:

- (1) Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of this 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. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding;
- (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; and

- (7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

*Id.*

### Findings

Upon review of the facts and circumstances, the Board finds and concludes that the Applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. Several factors support this decision.

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical surroundings of the Property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Court of Appeals established the standard by which a zoning board is to review "practical difficulty" when determining whether to grant a variance:

1. Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

*Id.* at 214–15.

Here, the Applicant has demonstrated that, were the Board of Appeals to strictly interpret the CZO, the particular physical surroundings of the property would result in practical difficulty for the Applicant. Specifically, the location of the Property in relation to the non-tidal wetlands

constitutes the particular physical condition of this Property. Specifically, the Property is adjacent to lots that are mapped as non-tidal wetlands.

Second, the specific physical conditions creating the practical difficulty are not generally found on other properties in the RL. That the Property is within the 100-foot expanded Non-Tidal Wetlands Buffer creates a unique situation that restricts much of the development on the Property. Consequently, granting a variance would alleviate the practical difficulty inherent in the specific physical conditions.

Third, the purpose of seeking the variance are not “based exclusively upon reasons of convenience, profit or caprice.” Rather, the Applicants’ proposed variance seeks to construct a house on an undeveloped, recorded lot per Liber 62, Folio 56. Ex. 2, Att. 6.

Fourth, the need for the variance does not arise from actions of the Applicants. Instead, the difficulty was created in part by the age of the Property, which predates the existing zoning regulations, and the location of the expanded Non-Tidal Wetlands Buffer in close proximity to the Property. The original plat was recorded in 1966 at Liber 6, Folio 28, which was prior to the current regulations of enforcing setbacks from sensitive areas. Ex. 2, Att. 7.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. Neither the RL district nor the Sheehan Subdivision will be adversely altered if the Board the grants the variance. Moreover, the neighboring property owners have been notified of the variance request to provide them with an opportunity to speak on the matter. Only one public comment was received, and no objection was noted. Ex. 5, Att. 1.

Sixth, the proposed house will not increase the residential use of the property, beyond that for which it was intended, when it was recorded as a residential building lot in 1966.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Property was created for a residential use per Liber 6, Folio 28 and now is seeking to be developed. Ex. 2, Att. 7. The project is in the Piney Point Growth Area, and Chapter 3, "A Growth Management Strategy," of the Comprehensive Plan establishes a vision for growth areas, which encourages residential development within current residential populations.

### **ORDER**

PURSUANT to the application of Benjamin & Dawn Lumpkins, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Critical Area Regulations to disturb the expanded 100-foot Non-Tidal Wetland Buffer to build a single-family dwelling with a sidewalk, steps, deck, and driveway; and

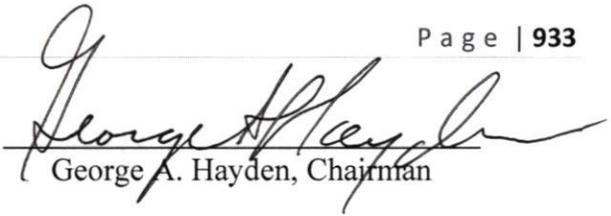
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Applicants are granted a variance from § 71.5.2.b of the St. Mary's Comprehensive Zoning Ordinance to disturb the expanded 100-foot Non-Tidal Wetland Buffer to build a single-family dwelling with a sidewalk, steps, deck, and driveway.

Additionally, the foregoing variance is also subject to the following condition that the Applicants shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for the Applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: 10-22-20, 2020

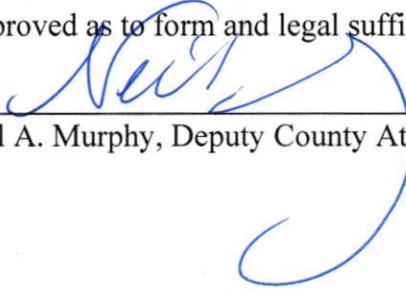
  
George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency

  
Neil A. Murphy, Deputy County Attorney

**NOTICE TO APPLICANTS**

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one year from the date the Board of Appeals granted the variance unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the variance is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.