

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP # 20-2089

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HODSKINS PROPERTY

SIXTH ELECTION DISTRICT

DATE HEARD: APRIL 8, 2021

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ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

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DATE SIGNED: May 13, 2021

### **Pleadings**

Cindi Hodskins (“the Applicant”) seeks a variance (VAAP # 20-2089) from Comprehensive Zoning Ordinance (“CZO”) § 52.3.3.e for a proposed expansion or enlargement exceeding 25 percent of the existing non-conforming structure (a detached garage), which is less than 5 feet from the side property line and 10 feet from the principal structure, and CZO § 71.8.3 to disturb the Critical Area Buffer (“Buffer”) to add a 15 foot by 24 foot deck.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on March 19, 2021 and March 26, 2021. 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 Property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County’s website on March 31, 2021. 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 April 8, 2021 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 Applicant.

### **The Property**

The Applicant owns 23,958 and 8,041 square foot lots at 45311 Clarkes Landing Road, Hollywood, Maryland (the “Property”). The Property is in the Rural Preservation District (“RPD”)

zoning district with a Limited Developed Area (“LDA”) Overlay and is identified on Tax Map 27, Grid 18, Parcels 372 and 931.

### **The Variances Requested**

The Applicant requests a variance from CZO § 52.3.3.e for a proposed expansion or enlargement exceeding 25 percent of a existing detached garage, which is less than 5 feet from the side property line and 10 feet from the principal structure, and CZO § 71.8.3 to disturb the Buffer to add a 15 foot by 24 foot deck.

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

Pursuant to CZO § 52.3.3.e, “In the event the area of the proposed expansion or enlargement exceeds 25 percent of the existing structure or use the enlargement or expansion must be approved by the Board of Appeals. However, the total amount of expansion or enlargement allowed for any nonconforming use shall not exceed 50 percent. The standards to be employed in deciding on the application shall be the same as those contained in Chapter 25 for conditional uses.”

Next, under CZO § 71.8.3, “No new . . . development activities . . . shall be permitted in the 100-foot buffer, unless: . . . The applicant obtains a variance pursuant to Article 2.”

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

Stacy Clements, an Environmental Planner for the St. Mary’s County Department of Land Use and Growth Management (“LUGM”), presented the following evidence:

- The Property, recorded in the Land Records on 02/02/1968 in Deed Book MRF 139 Page 419, Ex. 2, Att. 2, contains a single-family dwelling, a garage and a shed. According to the Maryland Department of Assessments and Taxation records, the house was constructed in 1966. The garage, according to St. Mary’s County Aerial Maps, before 1973, Thus, both

the home and garage were constructed prior to the adoption of the current zoning and subdivision regulations in St. Mary's County and before the adoption of the Maryland Critical Area Program on December 1, 1985. The existing house currently infringes on the 100 foot Critical Area Buffer and is eligible for a Critical Area variance from the standards.

- The Property is situated adjacent to the Mill Creek, a tributary of the Patuxent River. The Buffer is established a minimum of 100-feet landward from the mean highwater line of tidal waters, tidal wetlands, and tributary streams and, therefore, is constrained by the Buffer. CZO § 71.8.3.
- Per the site plan Ex. 2, Att. 3, the Applicant is proposing to add a 360 square foot deck to the house and 730 square foot second floor to the existing detached garage. The proposed deck is entirely within the 100-foot Buffer. The proposed path does not require a variance as each property owner on the waterfront is allowed a 3' path to the pier, without a variance, per CZO § 71.9.8.j.
- In accordance with CZO § 72.3.3.a(2)(c), mitigation is required at a ratio of 3:1 per square foot of the variance granted for permanent disturbance within the Buffer of 360 square feet with 1,080 square feet to be provided by on-site plantings. A planting agreement and plan will be required prior to the issuance of a building permit.
- The Maryland Critical Area Commission provided a comment letter dated October 21, 2020. Ex. 2, Att. 4.
- Pursuant to CZO § 52.3.3, a non-conforming structure, proposing an "expansion or enlargement that exceeds 25 percent of the existing structure or use the enlargement or expansion must be approved by the Board of Appeals. However, the total amount of expansion or enlargement allowed for any nonconforming use shall not exceed 50 percent."

The proposed addition is a 100 percent expansion; therefore, it can only be approved by Variance. The existing non-conforming structure (detached garage) does not comply with the regulation of Schedule 32.1 footnote 4 to maintain a 5-foot side yard setback, nor does it comply with the requirement of Section 51.2.4.c, that 10 feet shall remain between the detached garage and any other structure.

- The St. Mary's County Health Department approved the site plan on October 16, 2020. The St. Mary's Soil Conservation District approved on October 15, 2020. LUGM reviewed the site plan in accordance with stormwater management requirements and exempted the site plan on September 4, 2020 due to less than 5,000 sf of soil disturbance.
- If the variance is granted, it shall lapse one year from the date of the grant of the variance, if the Applicant has not obtained the building permit, per CZO § 24.8.1.
- The following Attachments to the Staff Report were introduced:
  - # 1: General Standards & Critical Area Standards Letter
  - # 2: Deed MRF 139/419
  - # 3: Critical Area Commission Comments dated October 21, 2020
  - # 4: Site Plan
  - # 5: Location Map
  - # 6: Zoning Map
  - # 7: Critical Area Buffer Map

#### **Applicant's Testimony and Exhibits**

The Applicant appeared in person before the Board. The following evidence was presented:

- The Applicant purchase the home three years ago. The home had been a rental for

approximately a decade, and the home and landscaping was in a state of disrepair.

- The Applicant presented photographs of the property, which included further descriptions of the site plan.
- The existing garage roof needs replacing, so the Applicant will be adding a second floor for storage. The second floor will have the same footprint as the first, and the elevation will be consistent with the surrounding neighborhood.
- The natural buffer on the right side of the property will be increased by the required mitigation.
- The 15 foot by 24 foot proposed rear deck will be located on the southwest rear of the house inside the Critical Area, which runs through the home.
- The Applicant does not have a mount septic system; rather, it is a pit system in with the drain field in the front of the house.
- The Applicant has approval from the St. Mary's County Health Department and meets the minimum setback from the well.
- There will be no plumbing in the garage.
- The approximate steps would be relocated on the 24-foot line of the deck. Ex. 4, Att. 1.
- The distance between the Applicant's garage is more than 10 or 15 feet.

### **Decision**

#### County Requirements for Granting Variances

##### *Standards for a Critical Area Variance*

The St. Mary's County Comprehensive Zoning Ordinance § 24.4.1 sets forth six separate requirements that must be met for a variance to be issued for property in the Critical Area. They are summarized as follows: (1) whether a denial of the requested variance would constitute an

unwarranted hardship; (2) whether a denial of the requested variance would deprive the Applicant of rights commonly enjoyed by other property owners in similar areas within the St. Mary's County Critical Area Program; (3) whether granting the variance would confer a special privilege on the Applicant; (4) whether the application arises from actions of the Applicant; (5) whether granting the application would not adversely affect the environment and would be in harmony with the Critical Area Program; and (6) whether the variance is the minimum necessary for the Applicant to achieve a reasonable use of the land or structures. Maryland Code Annotated, Natural Resources Article, § 8-1808(d)(2)(ii) also requires the Applicant to overcome the presumption that the variance request should be denied.

*Standards for Granting a Setback Variance*

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 Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. Several factors support this decision.

#### *Critical Area Variance - Deck*

Concerning the proposed variance to disturb the Critical Area Buffer to add a deck, the Board first finds that denying the Applicant's request would constitute unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), the Court of Appeals established the statutory definition for "unwarranted hardship" as it pertains to prospective development in the Critical Area:

[I]n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

*Id.* at 139. Here, the Applicant has demonstrated that, absent the variance, they would be denied a use of the Property that would be both significant and reasonable. Specifically, the Property is constrained by the Buffer due to the tidal waters of Mill Creek, and the proposed deck is entirely within the 100-foot Critical Area Buffer. Consequently, any development in this part of the property would require a variance.

Second, denying the variance would deprive the Applicant of rights commonly enjoyed by other similarly situated property owners in the RPD and LDA. The Applicant proposes to add a 360 square foot deck to an existing house on an existing residential waterfront property, a structure which exists on many properties in these areas. Further, the house was constructed in 1966 and the garage, according to St. Mary's County Aerial Maps, before 1973, both prior to the adoption of the current zoning and subdivision regulations in St. Mary's County and before the adoption of the Maryland Critical Area Program on December 1, 1985. Similarly situated properties would likewise eligible for a variance.

Third, the home is on a recorded, grandfathered lot in an existing community, and it is common for properties in the neighborhood and Critical Area overlay to have a deck in the backyard. Thus, granting the variance will not confer any special privileges to the Applicant that would be denied to others.

Fourth, the need for the variance does not arise from actions of the Applicant. Rather, the home on the Property was built prior to the adoption of the current Critical Area regulations and therefore before the St. Mary's County's Critical Area Program.

Next, granting the variance would not adversely affect the environment. Pursuant to Code of Maryland Regulations § 27.01.09.01, the Applicant will be required to mitigate the proposed development with an approved planting plan established on-site as part of the Building Permit process. The plantings are intended to offset any negative effects and provide improvements to water quality along with wildlife and plant habitat. Moreover, in accordance with the CZO § 72.3.3.a(2)(c), mitigation is required at a ratio of 3:1 per square foot of the variance granted for permanent disturbance of 360, square feet, and thus 1,080 square feet is to be provided by on-site plantings. The required plantings will improve plant diversity and habitat value for the site and

will improve the runoff characteristics for the Property, all of which should contribute to improved infiltration and reduction of non-point source pollution leaving the site. For these reasons, the Board finds that granting the variance to replace an existing home in the Critical Area Buffer will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat. Moreover, the Board finds that granting the variance will be in harmony with the general spirit and intent of the Critical Area Program. As a result of the required mitigation, the Applicant has also overcome the presumption in § 8-1808(d)(2)(ii) of the Natural Resources Article that the variance request should be denied.

Finally, the Critical Area variance is the minimum variance necessary to afford relief. The Applicant is proposing to construct a deck, a structure that exists among other properties in the area.

#### *Expansion/Enlargement Variance*

First, the Board finds that strictly interpreting the CZO concerning the Applicant's proposed expansion or enlargement of their garage 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 particular physical condition of this Property derives from the location of the existing detached garage in relation to the side yard setback and its location less than 10 feet away from the principal structure, namely the garage.

Second, the specific physical conditions listed immediately above that create the practical difficulty are not generally found on other properties in the RPD and LDA Overlay. 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 existing detached garage has a non-conforming setback from the side property line and the principal structure. The Applicant is requesting to construct a vertical addition onto the existing garage.

Fourth, the need for the variance does not arise from actions of the Applicant. Instead, the difficulty was created in part by the age of the Property, which predates the existing zoning regulations. Specifically, the existing detached garage was constructed prior to the current regulations.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. Neither the RPD district nor the Applicant’s neighboring properties will be adversely altered if the Board 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, though no public comments were

received.

Sixth, the proposed addition will not increase the residential use of the property because it remains a single-family dwelling.

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 139, Folio 419, and the Applicant seeks to continue that use, albeit by expanding a detached garage. Ex. 2, Att. 2. Moreover, Chapter 3, "A Growth Management Strategy," of the Comprehensive Plan establishes a vision for community design, which includes encouraging owners of existing structures to maintain and retrofit the buildings and grounds, so they become attractive and energy efficient.

### **ORDER**

PURSUANT to the application of Cindi Hodskins, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance § 52.3.3.e for a proposed expansion or enlargement exceeding 25 percent of the existing non-conforming structure (a detached garage), and CZO § 71.8.3 to disturb the Critical Area Buffer ("Buffer") to add a 15 foot by 24 foot deck, which shall include relocated stairs and add a gravel access path to the existing pier; and

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

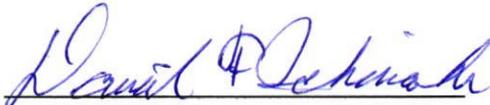
ORDERED, by the St. Mary's County Board of Appeals, that the Applicants is granted a variance from CZO § 52.3.3.e for the proposed expansion or enlargement exceeding 25 percent of the existing structure and from CZO § 71.8.3 to disturb the Critical Area Buffer to add a 15 feet by 24 feet deck to include relocated stairs and add a gravel access path to the existing pier.

Additionally, the foregoing variance is also subject to the following condition that the

Applicant 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 Applicant 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: May 13, 2021

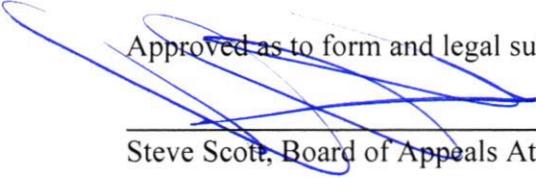
  
Daniel F. Ichniowski, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency

  
Steve Scott, Board of Appeals Attorney

**NOTICE TO APPLICANT**

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.