

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 22-2084

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FERBER PROPERTY

SECOND ELECTION DISTRICT

DATE HEARD: September 19, 2024

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ORDERED BY:

Mr. Hayden, Mr. Bradley, Mr. Payne,  
Mr. Richardson and Ms. Weaver

ENVIRONMENTAL PLANNER: STACY CLEMENTS

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DATE SIGNED: October 10, 2024

### **Pleadings**

Kenneth & Delores Ferber (“Applicants”) seek variances from Schedule 32.1 for a reduction of the mandatory front yard setback from 25 feet to 22 feet, the right side yard setback from 15 feet to 5 feet, and the left side yard setback from 15 feet to 10 feet in for a principal structure and variances for an accessory structure from Schedule 32.1 for a reduction of the mandatory front yard setback from 25 feet to 1 foot and the right side yard setback, per Footnote 11, from 5 feet to 3 feet, and a variance from Section 51.2.4.c to reduce the minimum setbacks for a detached accessory structure from the principal structure from 10 feet to 5 feet to replace a shed.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on August 30, 2024 and September 6, 2024. The hearing notice was posted on the property by September 4, 2024. The file contains the certification of mailing to all adjoining landowners, even 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 13, 2024. 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 September 19, 2024 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were asked to stand and were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the Applicants.

### **The Property**

Applicants own real property situate 43850 Avon Way, Leonardtown, Maryland (“the Subject Property”). The Subject Property is in the Rural Preservation Zoning District (“RPD”), has a Limited Development Area (“LDA”) and Buffer Management (“BMO”) Critical Area overlay, and is identified at Tax Map 61, Grid 1, Parcel 249, Lot 18 of the Lanedon subdivision.

### **The Variance Requested**

Applicants seek variances from Schedule 32.1 for a reduction of the mandatory front yard setback from 25 feet to 22 feet, the right side yard setback from 15 feet to 5 feet, and the left side yard setback from 15 feet to 10 feet in for a principal structure and variances for an accessory structure from Schedule 32.1 for a reduction of the mandatory front yard setback from 25 feet to 1 foot and the right side yard setback, per Footnote 11, from 5 feet to 3 feet, and a variance from Section 51.2.4.c to reduce the minimum setbacks for a detached accessory structure from the principal structure from 10 feet to 5 feet to replace a shed.

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

Schedule 32.1 of the Comprehensive Zoning Ordinance (“CZO”) requires a 25’ front yard setback on any parcel bordering a Minor Collector or lessor public right of way. A side yard setback of 5’ is also required. Accessory structures shall be 25 feet from the right of way and, per Footnote 11, five feet from either side of a property. In addition to the yard setbacks, CZO § 51.2.4.c requires a setback of 10’ between a detached accessory structure, such as a shed, and a principal structure.

### **Staff Testimony**

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

- The Subject Property contains a single-family dwelling (principal structure) and the shed. The house is currently being constructed, in accordance with the zoning and subdivision regulations of St. Mary’s County and the variances approved by the Board of Appeals on December 8, 2022. (Attachment 2) The house has non-conforming setbacks, due to the approval of a setback variance in 2022. They are as follows: 22’ front yard setback and 10’ for each side yard setback. Upon the request of the Board of Appeals, the Applicant was also required to move the shed and a concrete pad to the south side of the property for access to the rear of the property. (Attachment 3).
- The Applicant made the required changes to the site plan (Attachment 4) and building permit was issued by Land Use and Growth Management (LUGM) staff. (Attachment 6).
- In September 2023, the surveyor submitted a revised permit application (Attachment 7) and site plan (Attachment 8) with floor plans (Attachment 9) illustrating two swales on each side yard of the house to handle waterflow, new steps off of the deck, the shed to be relocated to the south side of the property, and moving the concrete pad on the south side of the house to the north side of the house labeling it as “proposed stoop.” A permit for the revisions was reissued by LUGM staff in February of 2024. (Attachment 10)
- In June 2024, the surveyor submitted an updated site plan delineating field conditions on the property, which included revised steps, a larger stoop, two additional pads on the south side of the property, and the shed relocated to original location, which is to be replaced. (Attachment 11)
- Pursuant to Schedule 32.1 of the CZO for principal structures in the Rural Preservation District, a 25’ setback is required along with 15’ side yard setbacks. The Applicant requests a reduction of the mandatory front yard setback from 25’ to 22’, the right-side yard setback

from 15' to 5', and the left side yard setback from 15' to 10' for the principal.

- Pursuant to Schedule 32.1 of the Ordinance, a 25' front setback and, per Footnote 11, a 5' side setback is required for accessory structures. The Applicant is requesting a reduction of the 25' front yard setback to 1' and a 2' reduction of the left side yard setback to 3' for the replacement shed. Additionally, CZO 51.2.4.c requires a minimum required distance between a principal structure and an accessory structure of 10', the Applicant is requesting a reduction of 5'.
- The site plan is approved by the Health Department. It is exempt from Stormwater Management and Soil Conservation standards due to less than 5,000 sf of soil disturbance. The planting plan needs to be updated to reflect the new lot coverage proposed on the lot. Land Use and Growth Management requires the setback variance to approve the permit.
- A timeline of pertinent events in this project's lifecycle was provided as part of the staff report.

The following Attachments to the Staff Report were introduced:

Attachment 1: Standards Letter

Attachment 2: Original Site Plan for hearing date 12/08/2022

Attachment 3: Board of Appeals Order signed 01/12/2023

Attachment 4: Approved Site Plan for February 2023 Permit

Attachment 5: Original Approved Floor Plan

Attachment 6: Single Family Dwelling Detached Permit 22-2084 issued 06/16/2023

Attachment 7: Revised Permit Application dated 09/29/2023

Attachment 8: Revised Site Plan

Attachment 9: Revised Floor Plans

Attachment 10: Revised Single Family Dwelling Detached Permit 22-2084 issued  
02/14/2024

Attachment 11: Revised Site Plan

Attachment 12: Location Map

Attachment 13: Land Use Map

Attachment 14: Zoning Map

### **Applicant Testimony and Exhibits**

Applicants were represented before the Board by Steven Vaughn, a Professional Land Surveyor with Little Silences Rest, Inc. Mr. Vaughn presented a slideshow to the Board that included pictures, maps, and site plans pertinent to the project. Additionally, he answered questions posed to him by the Board. We highlight the following which was included among his testimony:

- The house in this site plan has the same basic footprint as the house approved in the original variance. Mr. Vaughn summarized the major differences between the 2022 site plan and the site plan before the Board in this matter as the relocation of the shed back to the north side of the house and the relocation of the “concrete pad” to the north side of the house.
- Mr. Vaughn stated that they received a call from the Soil Conservation District that stated swales needed to be installed on both sides of the property. That was revised in September of 2023.
- Another change that had to be made was per the Health Department. Mr. Vaughn explained that remains of the old septic system were encountered when the new septic system was installed, and that forced reconfiguration of the new septic system.

- Mr. Vaughn stated that the stoop had to be relocated to the front of the door on the north side of the house and that it was added to the site plan. That plan was approved by the County without a variance and construction continued pursuant to that approval.
- In July, 2024 the County asked for an as-built site plan which was provided. On review of the site plan the County determined new variances would be required from the Board. Mr. Vaughn explained the differences between the as-built site plan and the plan approved by the County.

### **Public Testimony**

The following members of the public appeared to offer testimony related to this matter:

*Charles Sirico, 43875 Avon Way, Leonardtown, Maryland*

- Mr. Sirico lives in the Lanedon neighborhood in close proximity to the Subject Property. He stated that most of his questions had been answered by the Applicants' presentation and that he saw no issue with the proposal. He told the Board there was a right-of-way south of the Ferbers' property that could be used to get behind the properties if necessary.

Additionally, the following neighbors submitted written comments, which were made part of the record and reviewed by the Board: Thomas C. Swann, Aaron Rawson, Julie Brown-Rund, John Ferber, and Denise Raley.

### **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 – Standard Variance Requirements

Upon review of the facts and circumstances, the Board finds and concludes that the Applicant is entitled to most – but not all – of the relief requested.

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, setbacks, 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.

Denial of this variance would impose a practical difficulty upon Applicant. The fundamental issue with the property remains what it was when it first came before the Board: the Subject Property is an exceptionally narrow artifact of a time before modern subdivision regulations. Development of any modern dwelling of reasonable size is difficult, if not outright impossible, without encroaching upon general side yard setbacks. Taking into account this consideration and noting the difficulties neighboring properties have experienced with substantially the same issues, we find that strict conformity to the literal requirements of the Comprehensive Zoning Ordinance presents a practical difficulty to the Applicants.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. As noted above, the need for the variance stems from the

extreme narrowness and shallowness of the Subject Property. These constraints are not typical and stem from the time of the original subdivision.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” The house they are building and the shed they are keeping are not particularly large, lavish, or unusual for the neighborhood. On the whole, they are reasonable improvements suitable to the neighborhood they are proposed in. We do not readily grasp any “low hanging fruit” before the Board by which we could offer the Applicants less relief than we do without depriving the Applicants of a reasonable use of their land.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, Applicant’s need for a variance stem from the particular physical characteristics of the Property and the constraints they necessarily impose on future development. We give no weight – and must give no weight – to the fact that the house has already been partially constructed, and we must put ourselves and the Applicant in the position we would have been had this modification to the original variance come before the Board prior to construction. Applicants demonstrated sufficiently that there would have been, no matter what, a practical difficulty meeting the setback requirements of the Comprehensive Zoning Ordinance.

Fifth, the variance will neither detrimentally affect the public welfare, substantially injure other properties or improvements, nor change the character of the district. The neighboring property owners were notified of the variance request and given an opportunity to speak on the matter. Several neighbors did, and there is a split among them as to whether they support or oppose the proposed development. The Board notes once more that it believes the requested variance allows the same general development that has been permitted in the neighborhood to-date. We feel that, aside from the one variance the Board does not feel it can grant, that permitting this

development will not prove injurious to adjacent properties and the overall character of the neighborhood shall be preserved.

Sixth, the proposed development will not increase the residential use of the property, and for the same reason finds it will not increase congestion or the risk of fire or endanger public safety. This development is for a replacement house and will cause no greater residential use or congestion than what would be entitled to exist previously.

On the whole, Board finds that the relief it will grant will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicant asks for an improvement that would be permitted as-of-right on most other parcels and would be permitted as-of-right on this parcel if it had only a few additional feet to it. Driving the fact that it does not are the choices of a developer decades ago, and not any action of the Applicants. Allowing this encroachment into the front-yard, side-yard, and principal structure-accessory structure setbacks does not alter or disrupt the general spirit, intent, and purpose of the Comprehensive Plan.

Lastly, the Board has indicated before that there is one aspect of the proposal that it cannot grant a variance for. The Board does not believe the Applicants have met their burden with respect to the replacement shed and feels it best for the public welfare that the ten foot separation between the shed and the principal dwelling be preserved. As noted at the hearing, the Board feels that the risk of fire is too great – particularly considering the density of the neighborhood – to allow this element of the site plan to remain.

### **ORDER**

**PURSUANT** to Applicants' request for variances from Schedule 32.1 for a reduction of the mandatory front yard setback from 25 feet to 22 feet, the right side yard setback from 15 feet to 5 feet, and the left side yard setback from 15 feet to 10 feet in for a principal structure and

variances for an accessory structure from Schedule 32.1 for a reduction of the mandatory front yard setback from 25 feet to 1 foot and the right side yard setback, per Footnote 11, from 5 feet to 3 feet, and a variance from Section 51.2.4.c to reduce the minimum setbacks for a detached accessory structure from the principal structure from 10 feet to 5 feet to replace a shed; 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, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicants are **GRANTED** variances from Schedule 32.1 for a reduction of the mandatory front yard setback from 25 feet to 22 feet, the right side yard setback from 15 feet to 5 feet, and the left side yard setback from 15 feet to 10 feet in for a principal structure and variances for an accessory structure from Schedule 32.1 for a reduction of the mandatory front yard setback from 25 feet to 1 foot and the right side yard setback, per Footnote 11, from 5 feet to 3 feet;

**UPON CONDITION THAT**, the shed is to be replaced on the north side of the property and the minimum setback for detached accessory structures from the principal structure of ten feet is maintained.

The foregoing variances are subject to the 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: October 10, 2024

  
George Allan Hayden, Chairman

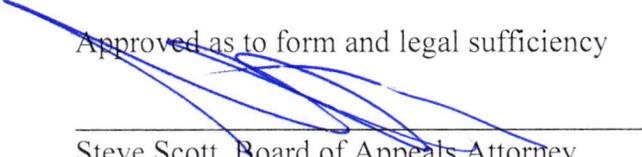
Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Payne,  
and Ms. Weaver

Those voting to deny the variance:

Mr. Richardson

Approved as to form and legal sufficiency

  
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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 Petition for Judicial Review with the Circuit Court for St. Mary's County within thirty (30) days of the date this order is signed. 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.