

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of John J. Myles and Jeanne Edwards
22353 St. Clements Avenue, Leonardtown, Maryland

Case No. VAAP #17-1611

DECISION AND ORDER

Introduction

John J. Myles and Jeanne Edwards (hereinafter "Applicants"), 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 22353 St. Clements Avenue, Leonardtown, Maryland (hereinafter the "Property"). The application seeks a variance from Section 32.1 of the Comprehensive Zoning Ordinance to reduce the required 25-foot front yard setback to 18 feet to add a second story to an existing single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on January 11, 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:

- a. 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.
- b. The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification.
- c. 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.
- d. The alleged difficulty has not been created by the property owner or the owner's predecessors in title.
- e. 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.

- f. 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.
- g. 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") contains a one-story, 667 square-foot single-family dwelling, which was originally constructed in 1940 according to the Maryland Department of Assessments and Taxation (DAT), Real Property Data. The Applicants plan to add a second story to the house.

The Property fronts Saint Clements Avenue, 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 RNC District. The existing single-family dwelling encroaches seven feet into this setback. The front steps or stoop encroach an additional four feet into the setback, but this encroachment is permitted for access to the house according to Section 61.7.4 of the Ordinance.

Single-family dwellings were not required to meet any particular setbacks in 1940 as the County did not adopt its first Comprehensive Zoning Ordinance until 1974.

Public water and public sewer serve the property.

Section 52.2.3 of the Ordinance stipulates that a structure lawfully occupying a site on the effective date of this Ordinance, or of amendments thereto, that does not conform with the standards for front yards, side yards, rear yards, height, floor area, driveways, screening, buffer yards, landscaping, or open space for the district in which the structure is located shall be deemed a nonconforming structure and may be used and maintained, except as otherwise provided in this chapter. Therefore, the existing single-family dwelling is considered nonconforming. A variance to reduce the front yard setback will eliminate the nonconforming status of the house and allow the Applicants to proceed with their proposed second story addition.

According to the site plan, the existing structures and connecting walkways straddle all shared property lines showing that Lots 26, 27, 28, and 29 are used as one zoning lot. The Applicants have been made aware that the lots need to be consolidated to bring the site into compliance, as far as possible, with Critical Area regulations. Pursuant to Section 41.2.3.a of the Ordinance, Development meeting the Resource Protection Standards set forth in the Zoning Ordinance may occur on land that was:

Subdivided into recorded, legally buildable lots, where the subdivision received the County's final approval prior to June 1, 1984, provided that these lands are brought into compliance with the requirements of this chapter insofar as possible, which shall include, but not be limited to, the consolidation or reconfiguration of adjacent lots in common ownership to achieve a density more in keeping with the density and habitat protection requirements of this chapter. Consolidation of lots in common ownership shall not be required when impacts to steep slopes or Habitat Protection Areas would result or would increase as a result of the consolidation proposal.

Conclusions of Law

The existing, one-story single-family dwelling was built in 1940, prior to the adoption of the County's first comprehensive zoning ordinance in 1974 and the requirement for principal structure setbacks. The house was built 18 feet from the front property line. The current zoning ordinance requires a 25-foot setback from this property line; thus, rendering the house nonconforming. A strict interpretation of the Ordinance would prohibit improvements to the house without a variance.

The basis for the variance is the subsequent adoption of the St. Mary's County Comprehensive Zoning Ordinance on May 13, 2002, and amendments thereto, requiring a front yard setback of 25 feet in the RNC District.

The variance to allow a second-story addition to an existing single-family dwelling will not change the nonconforming setback and will not, therefore, negatively affect the overall character of the neighborhood, or impair property values. The neighboring, residential properties were also developed prior to the adoption of the current setback regulations, and many of these properties have nonconforming setbacks. Moreover, the variance will not result in an increase in traffic or an increase in the danger of a fire. All other required setbacks have been met by the proposed residential addition.

The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan, which encourages owners of existing structures to maintain and retrofit the buildings and grounds so they become attractive and energy efficient.

ORDER

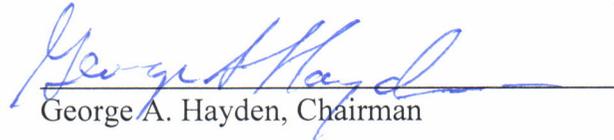
NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for variance and the objectives of Sections 24.4 and 32.1 of the St. Mary's County Comprehensive Zoning Ordinance have been met, a variance to reduce the front yard setback from 25 feet to 18 feet is *granted*.

John J. Myles and Jeanne Edwards
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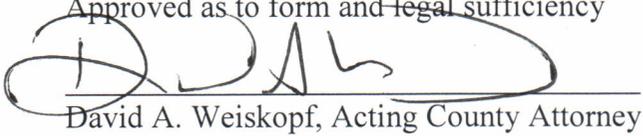

George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency


David A. Weiskopf, Acting County Attorney