

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Stephen M. & Cory R. Combs
45168 Lighthouse Road, Piney Point, Maryland

Case No. VAAP #18-0393

DECISION AND ORDER**Introduction**

Stephen M. & Cory R. Combs (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 45168 Lighthouse Road, Piney Point, Maryland (hereinafter the "Property"). The application seeks a variance from Section 32.1 of the Comprehensive Zoning Ordinance to: reduce the required 10-foot side yard setback to 5 feet on the west side of the property to replace part of the existing single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on July 12, 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.

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") fronts Piney Point Creek to the north and is separated from the Potomac River to the south by Lighthouse Road. The Property is a long, exceptionally narrow lot, 50 feet wide by approximately 400 feet long, located in the Tolson Subdivision. This subdivision was recorded in 1908 (EBA 8/49) before the adoption of the County's first comprehensive zoning ordinance in 1974. The existing single-family dwelling was constructed in 1940.

Although the Property is located in the Critical Area of St. Mary's County and is constrained by the Critical Area Buffer, no variances from the Critical Area regulations are required.

Public sewer and a private well serve the Property.

The Property is located in Special Flood Hazard Area AE with a base flood elevation of five (5) feet according to Flood Insurance Rate Map (FIRM) 319F. AE zones are special flood hazard areas subject to inundation by the 1-percent annual chance (100-year) flood. Base flood elevations are determined, and floodways may or may not be determined. In areas subject to tidal flooding, the Limit of Moderate Wave Action (LiMWA) is delineated to define the landward limit of the Coastal A zone.

The Applicants will be required to elevate the entire house by eight (8) feet, which includes the base flood elevation of five (5) feet plus the three-foot freeboard.

The existing single-family dwelling has a nonconforming side yard setback of five (5) feet on the west side of the Property. According to Schedule 32.1 of the Ordinance, the required principal structure side yard setback is 10 feet in the RL District. The Applicants seek variance relief from the 10-foot setback on the west side of the Property in order to eliminate the nonconforming status of the house. The Applicants meet the 10-foot side yard setback on the east side of the Property.

The Applicants plan to replace a 28-foot by 24-foot section of the existing house, as shown on the site plan submitted with this application, and then elevate the entire finished house in accordance with floodplain regulations.

The St. Mary's Soil Conservation District (SCD) reviewed and approved the proposed site plan on April 12, 2018, determining that an engineered erosion and sediment control plan was not