



## THE COMMISSIONERS OF ST. MICHAELS

SETTLED 1670-1680

INCORPORATED 1804

BOARD OF ZONING APPEALS  
300 MILL STREET  
P.O. BOX 206  
ST. MICHAELS, MD 21663

TELEPHONE: 410.745.9535

FACSIMILE: 410.745.3463

---

### AGENDA

Monday, June 14, 2021

Virtual Meeting

5:30 PM

**Subject to Change**

- I. CALL TO ORDER
  
- II. NEW BUSINESS  
*BOZA-21-603: Variance rear yard setback requirements per Chapter §340-104 of the Code of St. Michaels. Application is for the placement of a deck at 104 Mitchell Street, (Tax map 0200, parcel 1638) for owners Mark Montoya & David Braly.*
  
- III. MATTERS FROM THE COMMISSION AND STAFF
  
- IV. ADJOURNMENT

#### Virtual Meeting Information

*Join meeting on computer or smart phone with video and audio on Zoom:*

<https://us02web.zoom.us/j/3264261778>

Meeting ID: 326 426 1778

*Join meeting by phone with audio only on Zoom:*

1-301-715-8592

Meeting ID: 326 426 1778



## THE COMMISSIONERS OF ST. MICHAELS

### BOARD OF ZONING APPEALS

300 MILL STREET

P.O. BOX 206

ST. MICHAELS, MD 21663

SETTLED 1670-1680

INCORPORATED 1804

TELEPHONE: 410.745.9535

FACSIMILE: 410.745.3463

---

Property Owners: Mark Montoya and David Braly  
Applicant(s): Same  
Case No.: BOZA-21-603  
Property Location: 104 Mitchell Street, St. Michaels, MD  
(Tax Map 0200, Parcel 1638)  
Filing Date: May 10, 2021  
Hearing Dates: June 14, 2021  
Decision Date: July 2, 2021

### OPINION AND DECISION

Chairman William C. Harvey presided over the hearing on June 14, 2021 which was a virtual meeting held via Zoom. Members J. Douglas Rollow and John E. Hunnicutt were in attendance for the hearing. Applicants, Mark Montoya and David Braly, were present at the hearing. Planning and Zoning Officer Kymberly Kudla was also present at the hearing. The hearing commenced at 5:30 pm and concluded at 6:24pm.

#### I. Introduction

This case arises out of an Application for a variance filed Mark Montoya & David Braly, property owners (the "Applicants"). Application No. 20-603 (the "Application") is for a variance from 25' rear setback for the placement of a deck located at 104 Mitchell Street (Tax Map 200, Parcel 1638).

#### II. Jurisdiction

The Board of Zoning Appeals (the "Board"), pursuant to Town Code (the "Town Code"), Articles XII (Board Powers and Duties), is empowered, upon written application therefor, to authorize upon appeal in specific cases a variance from the terms of Chapter 340 of the Town Code. A public hearing must be held, and the Board must make findings that all the requirements of §340-136 have been met.

#### III. Board Exhibits

The following exhibits were admitted as part of the public record:

1. Variance Application, filed on 05/10/2021
2. Responses to variance request
3. Site Plan
4. Staff report prepared by Planning and Zoning Officer, dated May 24, 2021
5. Written property excerpt from Maryland Department of Assessments and Taxation.
6. Notice of Public Hearing.
7. Certification of public notice publication dated May 30, 2021 and June 6, 2021.
8. List of adjacent property owners notified.
9. Affidavit of property posting.

#### IV. Notice

A complete Application was filed on May 10, 2021 (Exhibit 1) with written testimony from the Applicant in response to §340-136 of the Town Code (Exhibit 2). Notice of the Public Hearing was published in the Star Democrat, a mid-shore periodical, on May 30, 2021 and June 6, 2021 (Exhibit 7). The Applicant also signed an Affidavit of property posting (Exhibit 9) on May 28, 2021. Chairman Harvey swore in Applicants. The Board confirmed that Members have visited the site. No additional exhibits or testimony were requested by the Board prior to the hearing.

#### V. Standards for granting of a Variance.

Chairman Harvey stated for the record that in order for the Board to grant a variance, the Application must satisfy the criteria in §340-136 of the Town Code, which requires:

- 1) Special conditions and/or circumstances exist which are peculiar to the land, structures or building involved that are not generally shared by other properties in the same zoning district or vicinity. Such conditions and/or circumstances may include but are not limited to the following: exceptional narrowness or shallowness or both, or irregular shape or topography of the property; unusual and limiting features of the building.
- 2) That such special conditions and/or circumstances noted above cause the strict enforcement of the zoning provision to impact disproportionately upon the property resulting in unnecessary and undue hardship. Hardship arises where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions.
- 3) Such special conditions or circumstances must not be the result of any action or actions of the applicant.
- 4) Granting of the variance must be in harmony with the general purpose and intent of Chapter 340 and must not be injurious to adjacent property, the character of the neighborhood or the public welfare.
- 5) The variance granted must be the minimum necessary to afford relief.

- 6) That no nonconforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a variance.

#### VI. Testimony

Chairman Harvey continued to outline the next steps in the hearing and the ruling options of the Board. Ms. Kudla testified that she had no additional comments to add to her staff report. The members had no further comment. Chairman Harvey invited the applicants to add anything to their application or regarding the six points.

Applicant Braly noted that the structures on the property are extremely close to the property line on all sides and the only area that could serve as outdoor space was the rear of the property if the setback restrictions were relaxed. Mr. Braly agreed that the special circumstances of the property prohibit the use of outdoor space without the variance, that as the owner, he did not cause the special circumstances, that the outdoor space would not impact the neighborhood or the public, and that the variance was the minimum necessary for relief. The applicant then shared his plan for the outdoor deck with the Board.

As there were no additional comments, Chairman Harvey invited the members to comment. Member Hunnicutt confirmed the legal non-conforming status of the house with Ms. Kudla. Member Rollow said the location of the deck would be logical given the layout of the house.

#### VII. Deliberation and Findings

Member Hunnicutt made a motion that the variance be approved. Chairman Harvey seconded it, closed the public portion of the proceedings, and called for discussion. Member Hunnicutt said the owners face a situation not of their own making and they meet all the other above criteria. He concluded that he saw no reason to deny the variance.

Member Rollow stated that granting of the variance would continue a nonconforming use when there are other locations on the property where a deck can be placed.

Chairman Harvey and member Hunnicutt agreed that the applicant met the standards for granting of a variance.

#### Decision

A motion was made to approve the variance as submitted in Variance Application BOZA-21-603 by Member Hunnicutt and seconded by Member Harvey. There was no further discussion. Chairman Harvey called for a vote.

The vote was:

William C. Harvey Aye

J. Douglas Rollow Deny

John E. Hunnicutt Aye

The motion carried by vote of 2:1 in favor and the Board of Zoning Appeals hereby ORDERS that Variance Application BOZA-21-603 is hereby APPROVED.

Chairman Harvey and Members present submit and adopt this Written Opinion and Decision on the day 2<sup>nd</sup> of July, 2021.

BOZA-21-603

St. Michaels Board of Zoning Appeals

*William C. Harvey*

Chairman William C. Harvey

*John E. Hunnicutt*

I. Douglas Rollow

*John E. Hunnicutt*

John E. Hunnicutt