

**ST. MARY'S COUNTY BOARD OF APPEALS**

In the Matter of Alexander Attard and Maria K. Swainson  
24774 Half Pone Point Road, Hollywood, Maryland

Case No. VAAP #15-1379

**DECISION AND ORDER****Introduction**

Alexander Attard and Maria K. Swainson (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 24774 Half Pone Point Road, Hollywood, Maryland (hereinafter the "Property"). The application seeks a variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct a replacement single-family dwelling and appurtenances.

After due notice, a public hearing was conducted at 6:30 p.m. on October 8, 2015, 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. Special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship.
- b. Strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County.
- c. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area of St. Mary's County.
- d. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.
- e. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.

- f. The variance is the minimum necessary to achieve a reasonable use of the land or structures.

### **Findings of Fact**

The Property is a grandfathered lot in the Critical Area of St. Mary's County because the property was recorded prior to the adoption of the Maryland Critical Area Regulations in December 1985. The property is partially constrained by the Critical Area Buffer (the Buffer) measured from the mean high water line of the Patuxent River. The soil type on the Property is Keyport silt Loam (KrA). This soil type is considered a highly erodible soil when present on slopes greater than 5% as described within the 1978 United States Department of Agriculture Soil Conservation Service Soil Survey of St. Mary's County. The Buffer has been expanded further to encompass the highly erodible soils and steep slopes present on the property.

The property contains a single-family dwelling with attached garage, driveway, and shed totaling 4,609 square feet of lot coverage. The existing single family dwelling was constructed in 1976 and is served by a private well and septic system. The Applicants propose to replace the existing dwelling with a two-story single-family dwelling with attached porch and walkway for a total of 3,181 square feet of lot coverage to be added. The existing shed will be fully removed from the property and the existing driveway is to be reduced in size. A total net gain of 286 square feet of lot coverage is proposed to be added to the property.

Approximately 15.5% of the Property is wooded. The Applicants do not propose to clear any vegetation in order to construct the replacement dwelling, patio, and driveway.

The proposed development is not taking place within a mapped floodplain.

The Critical Area Commission does not oppose the variance request.

### **Conclusions of Law**

The Property is constrained by the Critical Area Buffer (the "Buffer"). A strict interpretation of the Ordinance would prohibit any development in the Critical Area Buffer.

The Critical Area program recognizes grandfathered properties and the rights of property owners to develop or redevelop them.

The basis for the variance is the subsequent adoption of the Maryland Critical Area regulations on December 1, 1985.

The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for the removal of any trees with a diameter greater than two inches.

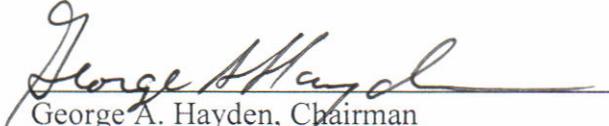
The required vegetation will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, which will contribute to improved infiltration and reduction of non-point source pollution leaving the site in the future.

Since the Critical Area Commission, an agency deemed to have expertise and vested with the legal mandate to protect the critical areas of the State, does not oppose the variance, there is a strong inference that the Applicant meets the standards for a variance.

**ORDER**

**NOW, THEREFORE, BE IT ORDERED**, that, having made a finding that the standards for a variance and the objectives of Section 24.4 and 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, and further finding, for all reasons stated herein, that the Applicants have rebutted the presumption that the specific development activity proposed by the Applicants does not conform with the general purpose and intent of Subtitle 18 of Title 8 of the Natural Resources Article of the *Annotated Code of Maryland* and regulations adopted pursuant thereto and the requirements of St. Mary's County Comprehensive Zoning Ordinance enacted pursuant thereto, a variance to disturb the Critical Area Buffer to construct a replacement single-family dwelling and appurtenances is **granted**.

Date: November 12, 2015

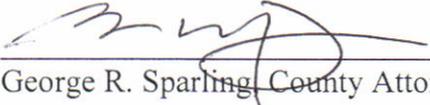
  
George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:

  
George R. Sparling, County Attorney