

ST. MARY'S COUNTY BOARD OF APPEALS

Raju K.G. and Sarah Varghese
16995 Piney Point Road, Piney Point, MD

Case No. VAAP #15-0649

DECISION AND ORDER**Introduction**

Raju K.G. and Sarah Varghese (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 16995 Piney Point Road, Piney Point, 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 single-family dwelling and appurtenances.

After due notice, a public hearing was conducted at 6:30 p.m. on April 14, 2016, 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 it was recorded prior to the adoption of the Maryland Critical Area law on December 1, 1985. The Property is little more than an acre in size and is located on a narrow portion of St. George Island and is constrained in its entirety by the Critical Area Buffer as measured landward from the mean high water line of the Potomac River on its west side, St. George Creek to the east, and tidal wetlands on the Property's northern boundary. The Property also contains nontidal wetlands.

The existing conditions of the Property include a two-story dwelling with a porch, stoop and stairs, walkways, and a driveway and parking area for a total of 8,559 square feet of lot coverage. The Applicants plan to remove 7,161 square feet of this amount, leaving 1,398 square feet of existing lot coverage. The Applicants propose to construct a single-family dwelling with a covered deck, stoop, and driveway for a total of 5,498 square feet of lot coverage, or 11.16 percent of the Property. Following the addition of 5,498 square feet of lot coverage, the Property will contain 6,896 square feet of lot coverage. The maximum allowed lot coverage on a lot of this size is 7,384 square feet, or 15 percent of the Property.

The Applicants do not plan to clear any vegetation in preparation for construction.

The Property contains Othello (Ot) soils. According to the U.S. Department of Agriculture Soil Conservation Service, Ot soils are poorly drained, nearly level, deep soils. These soils are found on low terraces adjacent to some major rivers. The seasonal water table is high and the soils are wet for long periods. Consequently, Ot soils are considered hydric soils.

The entire Property is located within Special Flood Hazard Area Zone AE with a base flood elevation of 6 feet and Special Flood Hazard Area Zone VE with a base flood elevation of 7 feet per Flood Insurance Rate Map (FIRM) panel 338F. The proposed single-family dwelling will be constructed in the AE zone, and the first floor must be elevated at or above nine (9) feet to comply with the County's freeboard requirements. Zone AE is defined in the County's floodplain management regulations as: "Special flood hazard areas subject to inundation by the 1-percent annual chance (100-year) flood; base flood elevations are determined; 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 LiMWA is the inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the VE Zone and LiMWA will be similar to, but less severe than those in the VE Zone. Zone VE is a coastal flood zone with velocity hazard (wave action).

The Department of Land Use and Growth Management approved the proposed stormwater management measures on August 23, 2015. The St. Mary's Soil Conservation District approved an engineered erosion and sediment control plan on October 22, 2015.

The Property is on public sewer, and a well drilled to an approved, confined aquifer will also serve the Property. The Metropolitan Commission approved the site plan on August 31, 2015 and the Health Department approved the site plan on October 19, 2015.

The 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 basis for the variance is the subsequent adoption of the St. Mary's County Critical Area Program on March 27, 1990.

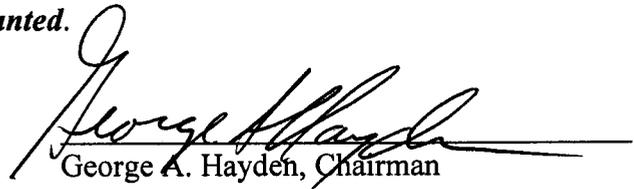
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for 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 Applicants meet 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 Sections 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 single-family dwelling and appurtenances is **granted**.

Date: May 12, 2016


George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney