

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

**VAAP NUMBER 21-1320**

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**BOB HALL IRREVOCABLE TRUST PROPERTY**

**SEVENTH ELECTION DISTRICT**

**VARIANCE REQUEST HEARD: MAY 12, 2022**

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**ORDERED BY:**

**Mr. Ichniowski, Mr. Bradley, Ms. Delahay, Mr. Payne, and Mr. Richardson**

**ENVIRONMENTAL PLANNER: LEAH LANGFORD**

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**DATE SIGNED: June 9, 2022**

### **Pleadings**

The Bob Hall Irrevocable Trust (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 71.8.3 to disturb the Critical Area Buffer to construct an addition to an existing house.

### **Public Notification**

The hearing notice was advertised in The Southern Maryland News, a newspaper of general circulation in St. Mary’s County, on April 22, 2022 and April 29, 2022. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before April 27, 2022. The agenda was also posted on the County’s website on May 4, 2022. Therefore, the Board of Appeals (“Board”) finds and concludes that there has been compliance with the notice requirements.

### **Public Hearing**

A public hearing was conducted at 6:30 p.m. on May 12, 2022 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed amendment requested by the Applicant.

### **The Property**

The subject property located at 22410 Bushwood Road, Bushwood, MD 20618 (“the Property”). The Property is 96.94 acres, more or less, is zoned Rural Preservation District (RPD), has a Resource Conservation Area (RCA) Critical Area overlay, and is found at Tax Map 38, Grid 7, Parcel 12.

### **The Variance Requested**

Applicant seeks a variance from CZO Section 71.8.3 to disturb the Critical Area Buffer to

construct an addition to an existing house.

### **St. Mary's County Comprehensive Zoning Ordinance**

CZO § 71.8.3 requires there be a minimum 100-foot buffer (“the Buffer”) landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. No new impervious surfaces or development activities are permitted in the 100-foot buffer unless an applicant obtains a variance. CZO § 71.8.3(b)(1)(c). The Buffer may also be expanded in the presence of hydric soils.

### **Departmental Testimony and Exhibits**

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management (“LUGM”), presented the following evidence:

- The Property consists of 96.94-acres, more or less, and borders the Wicomico River. The existing home was built in 1976.
- Hydric soils are present on the Property, and the Buffer has been expanded accordingly.
- Per Applicant's site plan, a 144 s.f. living room to be constructed over an existing deck, repair of the remaining 56 s.f. of the existing deck and steps, all within the Buffer.
- The Maryland Critical Area Commission (“CAC”) provided a comment letter dated September 22, 2021, in which the CAC does not state it opposes the requested variance.
- Mitigation will be required at a ratio of 3:1 for 392 s.f. of permanent disturbance and 1:1 for 3,368 s.f. of temporary disturbance. In total, Applicant will be required to provide 4,544 s.f. of plantings to meet mitigation requirements. A

planting agreement and plan will be required prior to the issuance of a building permit.

- LUGM and the St. Mary's County Soil Conservation District reviewed the site plans for stormwater management and exempted the site plan due to the plan proposing less than 5,000 s.f. of soil disturbance. The Health Department, as of the date of the hearing, still had the site plan review.
- If a variance is granted but a building permit is not issued, the variance will lapse after one year.
- Attachments to the Staff Report:
  - #1: Standards Letter
  - #2: Critical Area Map
  - #3: Site Plan
  - #4: Site Plan Detail
  - #5: Critical Area Commission Letter
  - #6: Zoning Map

#### **Applicant's Testimony and Exhibits**

Tom Bond, the designated agent of the Applicant, appeared before the Board via Zoom. Mr. Bond presented a slideshow which contained site plans, building plans, photographs of the site, and offered oral testimony. The following evidence and testimony was included in Applicant's presentation:

- The Property is owned by a trust whose beneficiaries are the children of the late Bob Hall, who together use the Property as a seasonal vacation home. Mr. Bond is a commercial architect by profession and has lent his expertise and knowledge to the

Applicant.

- The purpose of the proposed addition will be to expand enclosed space suitable for all-year use. Currently, the family does not make full use of the Property except during summer months.
- In addition to the work proposed in this request for a variance, the family is performing extensive shoreline protection measures, including a revetment being developed under a separate permit.
- Outside the Buffer, a small bedroom addition is being added to the northwest corner of the house. In addition, a minor entry and corresponding stairs are being added on the north side of the house, as shown in Applicant's presentation, and are also located outside the Buffer.
- Proposed work within the Buffer consists of a living room to be built over an existing deck. This living room will not cover the entirety of the existing deck, and Applicant proposes to remove some portions of the existing deck that will not become a part of the new living room.
- In total, all proposed work will add about 700 square feet to the existing footprint.

### **Public Testimony**

No members of the public appeared to offer testimony related to this matter

### **Decision**

#### **County Requirements for Critical Area Variances**

The St. Mary's County Comprehensive Zoning Ordinance § 24.4.1 sets forth six separate requirements that must be met for a variance to be issued for property in the Critical Area. They are summarized as follows: (1) whether a denial of the requested variance would constitute an

unwarranted hardship; (2) whether a denial of the requested variance would deprive the Applicant of rights commonly enjoyed by other property owners in similar areas within the St. Mary's County Critical Area Program; (3) whether granting the variance would confer a special privilege on the Applicant; (4) whether the application arises from actions of the Applicant; (5) whether granting the application would not adversely affect the environment and would be in harmony with the Critical Area Program; and (6) whether the variance is the minimum necessary for the Applicant to achieve a reasonable use of the land or structures. Maryland Code Annotated, Natural Resources Article, § 8-1808(d)(2)(ii) also requires the Applicant to overcome the presumption that the variance request should be denied.

#### Findings - Critical Area Variance

Upon review of the facts and circumstances, the Board finds and concludes the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. Several factors support this decision.

First, the Board finds that denying the Applicant's request would constitute unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), the Court of Appeals established the statutory definition for "unwarranted hardship" as it pertains to prospective development in the Critical Area:

[I]n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

*Id.* at 139. Here, Applicant has sufficiently demonstrated that, absent the variance, they would be denied a use of the Property that would be both significant and reasonable. The existing house is modest, and only fit for seasonal use. The proposed additions, though modest in scope, seem

nevertheless able to grant the Applicant's beneficiaries full-year use of the Property. Without such additions, the Property would likely remain unsuitable for full-year use.

Second, denying the variance would deprive the Applicant of rights commonly enjoyed by other similarly situated property owners in the Rural Preservation District and Resource Conservation Area. As stated above, Applicant proposes relatively modest additions to what is a relatively modest house. This house, even with the contemplated additions, would be of a size and nature typical for our County and the Property's immediate environs. Grant of this variance would place the Applicant upon the same footing as their neighbors and fellow property-owners: use and access to a house suitable for something more than a vacation home.

Third, granting a variance to will not confer a special privilege upon Applicant. Applicant's proposed site plan asks for a relatively modest dwelling upon the final completion of all proposed additions, and includes all required mitigation plantings, environmental considerations, and, aside from the need for this variance, complies with all applicable regulations. Regarding whether grant of the variance alone constitutes a special privilege, it was noted in the previous paragraph that Applicant's proposed work is of a quality and scale that may be commonly found in the Critical Area in St. Mary's County, even among dwellings constructed after St. Mary's County's adoption of its Critical Area program.

Fourth, the need for the variance does not arise from actions of the Applicant. The Applicant is constrained by the physical features of their lot. Additionally, Applicant's house has been in its same location for four decades; the Applicant's beneficiaries are not at fault that this happens to be where the house was originally constructed.

Fifth, granting the variance would not adversely affect the environment. The Applicant will be required to mitigate the proposed development with an approved planting plan established

on-site (per COMAR 27.01.09.01) as part of the Building Permit process. The plantings are intended to offset any negative effects and provide improvements to water quality along with wildlife and plant habitat. The required plantings will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, all of which should contribute to improved infiltration and reduction of non-point source pollution leaving the site.

As a result, the Applicant has also overcome the presumption in § 8-1808(d)(2)(ii) of the Natural Resources Article that the variance request should be denied.

Finally, the Board of Appeals finds that the requested variance is the minimum necessary to achieve Applicant's intended reasonable use of the Property. As noted previously, Applicant seemingly takes care to use as much of the existing footprint as possible, and the footprint has only been expanded where absolutely necessary to achieve Applicant's goal of a house suitable for year-round use.

#### County Requirements for Granting Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a variance to be issued:

- (1) 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;
- (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. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding;

- (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; and
- (7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

*Id.*

#### Findings – Standard Variance Requirements

Upon review of the facts and circumstances, the Board finds and concludes that the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. Several factors support this decision.

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical surroundings of the Property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Court of Appeals established the standard by which a zoning board is to review "practical difficulty" when determining whether to grant a variance:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

*Id.* at 214–15.

As noted in the Board of Appeals' discussion of the standards for granting a variance from the CZO's critical area provisions, denial of this variance would deny Applicant an ability to modestly expand their existing summer cottage and make of it a year-round home. Moreover, the Property is constrained by its geographical location on the banks of the Wicomico River. Unless Applicant would prefer to construct an entirely new dwelling – which would likely be a far greater impact than the minor additions proposed today – Applicant is constrained to building off the existing footprint of the house. This, additionally, speaks towards the second standard, in so far as most parcels within the Critical Area, generally speaking, are not locked in place to an existing homesite.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Rather, Applicant attempts to achieve a reasonable use of the Property that is enjoyed by owners of other similarly situated properties. The Board of Appeals does not find, and no evidence has been presented to support such a finding, that granting this variance would merely be a “convenience” to Applicant. As noted above, Applicant has an existing cottage that Applicant states, without contradiction from any other, is unsuitable for year-round use. On its face the Board finds this claim reasonable and credible. Applicant proposes

work that would render the house suitable for year-round use, something that must property owners would consider an essential feature of a fully utilized dwelling.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, Applicant's need for a variance stems from the particular physical characteristics of their Property, and their particular development plan is oriented around an existing home that the Applicant's beneficiaries did not themselves place, but which they reasonably intend to make full use of.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district. The neighboring property owners have been notified of the variance request to provide them with an opportunity to speak on the matter; none have spoken against. Furthermore, the Critical Area Commission, given an opportunity to comment upon the project, did not voice any objection or opposition to the requested variance.

Sixth, the proposed development will not increase the residential use of the property and the Board does not find that it will increase congestion or the risk of fire, endanger public safety, or substantially diminish or impair property values in the neighborhood.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Board of Appeals notes that Applicant's request makes use of an existing homesite and that these additions do not materially change the Property's overall impact upon the environment. Applicant's proposed development makes use of an existing structure, and is of a character and nature in harmony with its neighboring parcels.

### **ORDER**

PURSUANT to the application of the Bob Hall Irrevocable Trust, petitioning for a variance

from CZO Section 71.8.3 to disturb the Critical Area Buffer to construct an addition to an existing house; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 21.1.3.a and CZO § 24.8, that the Applicant is granted a variance from CZO Section 71.8.3 to disturb the Critical Area Buffer to construct a single-family dwelling and porch on an existing concrete slab;

UPON FURTHER CONDITION THAT, Applicant shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for Applicant to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: June 9, 2022

*Daniel F. Ichniowski*  
Daniel F. Ichniowski, Chairperson

Those voting to grant the amendment:

Mr. Ichniowski, Mr. Bradley, Ms. Delahay, Mr. Payne, and Mr. Richardson

Those voting to deny the amendment:

~~Approved as to form and legal sufficiency~~

*Steve Scott*  
Steve Scott, Board of Appeals Attorney

**NOTICE TO APPLICANT**

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one year from the date the Board of Appeals granted the variance unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the variance is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.