

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 21-2955

HUCKO PROPERTY

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: AUGUST 11, 2022

ORDERED BY:

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

ENVIRONMENTAL PLANNER: LEAH LANGFORD

DATE SIGNED: September 8, 2022

Pleadings

Jeannie Hucko (“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 a deck over an existing shed and provide access to a new structure.

Public Notification

The hearing notice was advertised in The Southern Maryland News, a newspaper of general circulation in St. Mary’s County, on July 22, 2022 and July 29, 2022. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before July 27, 2022. The agenda was also posted on the County’s website on August 3, 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 August 11, 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 26460 Peninsular Drive, Hollywood, MD 20636 (“the Property”). The Property is 31,035 square feet, more or less, is zoned Rural Neighborhood Conservation (RNC), has a Limited Development Area (LDA) Critical Area overlay, and is found at Tax Map 20B, Subdivision 17, Block K, Lot 9.

The Variance Requested

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

construct a deck over an existing shed and provide access to a new structure.

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).

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 31,035 square feet, more or less, and contains an existing house and two sheds. It is located in the Hollywood Shores neighborhood.
- The Buffer extends 100' from the tidal waters of Cole Creek, and has not been expanded for the presence of hydric soils or steep slopes.
- Per the Applicant's site plan, Applicant proposes to convert the roof of an existing shed into a 120 s.f. deck with steps to access the deck.
- The currently existing concrete water access path is in disrepair. Applicant proposes to replace this water access path with a new wooden walkway.
- The site plan has been approved by all applicable agencies.
- The Critical Area Commission does not oppose this request, per its response letter of June 14, 2022.
- Mitigation to be performed has been calculated as follow: 1:1 mitigation for 500 s.f. of disturbance resulting from the wooden stairway replacement, 3:1 mitigation for 150 s.f. of permanent disturbance resulting from the deck and steps, 1:1

mitigation for 60 s.f. of temporary disturbance resulting from the deck and steps.

In total, 1,010 s.f. will be required.

- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Critical Area Commission Letter of June 14, 2022
 - #3: Site Plan
 - #4: Land Use Map
 - #5: Zoning Map
 - #6: Critical Area Buffer Map

Applicant's Testimony and Exhibits

Applicant and her husband, Tim Hucko, presented testimony before the Board. The following evidence and testimony was included in Applicant's presentation:

- The purpose of the proposed work is replacement of severely degraded concrete steps, and conversion of an unsafe roof on an existing shed to usable decking.
- The existing affected structures – the concrete walkway and shed – pose a safety hazard if not repaired.
- The proposed work will not significantly affect or add to existing lot coverage, and will eliminate hazards and nuisances posed by the existing structures.
- The existing structures were built prior to Applicant's purchase of the property in 2021.
- Grant of the variance would give the Applicant an opportunity to remove deteriorating debris that could negatively affect the environment.
- The Applicant and her husband are a Certified Wildlife Habitat through Bay Wise, a University of Maryland Extension. This means their property and stewardship of it, to-

date, have been found by the program to adhere to best practices.

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 proposed alteration takes an existing unsafe structure and converts it to a feature that has some practical, usable benefit; namely, a deck, a common feature of many such waterfront properties. The Board also notes that this variance would eliminate a deteriorating roof that Applicant noted is presently unsafe, an opinion which Applicant’s testimony and proffered pictures of the structure manifestly support.

Second, denying the variance would deprive the Applicant of rights commonly enjoyed by other similarly situated property owners in the Rural Neighborhood Conservation and Limited Development Area. As stated above, Applicant proposes a relatively modest conversion of an unsafe shed to a simple, usable deck. Such decks are common features enjoyed by many similarly situated property owners. Grant of this variance would place the Applicant upon the same footing as their neighbors and fellow property-owners: use and access to a deck suitable for recreation and use by Applicant, her family, and their guests.

Third, granting a variance to will not confer a special privilege upon Applicant. 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 and decks 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 her lot. Additionally, Applicant testified that the existing shed and steps were built long before Applicant purchased the property in 2021.

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. Applicant's proposed scope of work would also ensure elimination of structures that are currently failing and contributing to environmental degradation of the local area.

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. Applicant has taken care to use as much of the existing footprint as possible.

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 critical area provisions, denial of this variance would constitute a practical difficulty. Moreover, the Property is constrained by its geographical location on the bank of Cole Creek. Unless Applicant would prefer to construct an entirely new structure elsewhere on her property – which would likely be a far greater impact than the minor work proposed today – Applicant is constrained to the footprint of the existing shed built by one of her predecessors in title. This, additionally, speaks towards the second standard, in so far as most parcels within the Critical Area, generally speaking, do not contend with such existing structures.

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.

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 her Property, and their particular development plan is oriented around existing structures that the Applicant did not herself place, but which she reasonably intends 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 were notified of the variance request and given an opportunity to speak on the matter; none have availed themselves of this opportunity. Further, 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 existing structures and that the proposed work will 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 Jeannie Hucko, petitioning for a variance from CZO Section 71.8.3 to disturb the Critical Area Buffer to to construct a deck over an existing shed and provide access to a new structure; 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 deck over an existing shed and provide access to a new structure;

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: Sep 13, 2022, 2022

Daniel F. Ichniowski

Daniel F. Ichniowski (Sep 13, 2022 14:51 EDT)

Daniel F. Ichniowski, Chairperson

Those voting to grant the amendment:

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

Those voting to deny the amendment:

Approved as to form and legal sufficiency

Stephen H. Scott

Stephen H Scott (Sep 13, 2022 15:18 EDT)

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.

HUCKO ORDER VAAP 21-2955

Final Audit Report

2022-09-13

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By:	Amanda Yowell (amanda.yowell@stmarysmd.com)
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-  Signer sscott@scottlawllc.com entered name at signing as Stephen H Scott
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