

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-1384

MORRIS PROPERTY

SIXTH ELECTION DISTRICT

DATE HEARD: November 14, 2024

ORDERED BY:

**Mr. Hayden, Mr. Bradley,
Mr. Payne, Mr. Richardson and Ms. Weaver**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: December 12, 2024

Pleadings

Steven Morris (“Applicant”) seeks a variance (VAAP # 23-1384) from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 41.5.3.i(1) to exceed lot coverage limits to construct a pole barn.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on October 25, 2024 and November 1, 2024. The hearing notice was posted on the property by October 30, 2024. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County’s website on November 8, 2024. Therefore, the 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 November 14, 2024 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the Applicants.

The Property

Applicants own real property situate 24669 Greenview Drive, Hollywood, MD (“the Subject Property”). The Subject Property is in the Residential Neighborhood Conservation zoning district (“RNC”), lies within a Limited Development Area (“LDA”) Critical Area overlay, and is

identified at Tax Map 27, Grid 10, Parcel 631. It is Lot 9 of the Peacock Manor subdivision.

The Variance Requested

Applicants seek a variance from St. Mary's County Comprehensive Zoning Ordinance ("CZO") Section 41.5.3.i.(1) to exceed lot coverage limits to construct a pole barn.

The St. Mary's County Comprehensive Zoning Ordinance

CZO Section 41.5.3.i.(1) limits lot coverage of a lot in the LDA to 15 percent of the lot area for lots and parcels that are larger than a half-acre.

Staff Testimony

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

- The subject property (the "Property") is a grandfathered lot in the Critical Area of St. Mary's County, since it was recorded in the Land Records of St. Mary's County at Plat Book 5 Page 107 (Attachment 2), prior to the adoption of the Maryland Critical Area Program on December 1, 1985. The existing single-family dwelling was built in 1976 according to Real Property Data, Maryland Department of Assessments and Taxation.
- According to the site plan, this property is a 1.14-acre lot located on Greenview Drive in Hollywood and is adjacent to the tidal waters of Cuckold Creek.
- The Critical Area Buffer (the "Buffer") is established a minimum of 100-feet landward from the mean high-water line of tidal waters (CZO 71.8.3). Therefore, the Property is constrained by the Buffer (Attachment 3).
- The Property, as it currently exists, has 8,443 square feet of lot coverage. The site plan (Attachment 4) proposes constructing a 1,200 square foot pole barn, while removing 1,257 square feet of decorative gravel, asphalt driveway, and pavers leading to the water's edge.

The total lot coverage for the parcel with the new construction is 8,386 square feet.

- The Property, as determined by CZO 41.5.3, limits lot coverage to 15 percent of the lot area for lots and parcels that are larger than ½ acre. Thus, the lot coverage limit for this property is 7,449 square feet. The Applicant is proposing to add 1,200 square feet of new lot coverage resulting in a total 8,386 square feet after removing 1,257 square feet of grandfathered lot coverage: an excess of 937 square feet of new lot coverage.
- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2). The total mitigation required for this proposal is 2,811 square feet of plantings to meet these mitigation requirements; however, the applicant can receive a credit of 332 square feet off the total mitigation requirement for the lot coverage removed from the buffer reducing the total mitigation to 2,479 square feet. A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded on October 8, 2024. The Commission states that the applicant has the burden to prove each and every Critical Area variance standard, including the standard of unwarranted hardship (Attachment 8).
- The Department of Land Use and Growth Management approved the site plan for zoning requirements. The Health Department approved the site plan. The project does not require site plan approval from the St. Mary's County Soil Conservation District or Stormwater Management as the proposal calls for less than 5,000 square feet of soil disturbance
- The following Attachments to the Staff Report were introduced:
 - #1: Critical Area Standards Letter;
 - #2: Plat Book 5 Page 107
 - #3: Critical Area Map

- #4: Site Plan;
- #5: Location Map;
- #6: Land Use Map;
- #7: Zoning Map; and,
- #8: Critical Area Commission Response

Applicant Testimony and Exhibits

Presenting before the Board of Appeals on the Applicant's behalf was Christopher Longmore, Esq. Mr. Longmore presented a slideshow, offered testimony, and responded to the Board's questions. The Applicant's presentation included the following:

- Applicant is requesting a variance from the Critical Area provisions of the Comprehensive Zoning Ordinance, including Section 41.5.3.i, to exceed the lot coverage limits of the Critical Area provisions.
- Applicant proposes to remove 1,257 square feet of lot coverage from his property and to construct a 1,200 square foot pole barn.
- The net effect will be to reduce the lot coverage on the subject property and the new lot coverage will be farther away from the mean high tide boundary than the lot coverage that is being removed from the property.
- The entire lot is a grandfathered lot within the Critical Area.
- Granting the variance will reduce overall lot coverage on the site in addition to removing lot coverage from the 100 foot buffer.
- Granting the variance will render the property, on the whole, more consistent with the Critical Area laws and regulations if the variance is granted.

Public Testimony

No members of the public appeared to offer in-person testimony for or against the project.

Decision

County Requirements for Critical Area Variances

COMAR 27.01.12.04 requires an applicant to meet each of the following standards before a Critical Area variance may be granted:

- (1) Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;
- (2) A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;
- (3) The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program;
- (4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;
- (5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;
- (6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area; and,
- (7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

Additionally, the Maryland Code Annotated, Natural Resources Article, §8-1808(d)(2)(ii) requires the Applicants to overcome the presumption that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances of this matter, the Board finds and concludes the Applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

First, the Board finds that denying the Applicants' request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), the Court of Appeals established the 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, he would be denied a use on the Subject Property that would be both significant and reasonable. As stated by the Applicant's counsel and recognized by this Board, pole barns are commonplace improvements that greatly enhance a property owner's ability to use and enjoy his or her property. Applicant already exceeds lot coverage limits by virtue of a single-family dwelling built prior to the Critical Area program's development. There is no ability to supplement the dwelling with the proposed pole barn without exceeding lot coverage limits.

Second, denying the variance would deprive the Applicant of rights commonly enjoyed by other similarly situated property owners in the property's zoning district and critical area overlay. The proposed pole barn is of the same character as pole barns, garages, and other similar structures that similarly situated property owners enjoy and that this Board has approved before.

Third, granting a variance will not confer a special privilege upon the Applicant. Applicant's proposed site plan has been subjected to a public hearing, held to the required standards, includes all required mitigation plantings, environmental considerations, and conforms to the greatest extent it can to all applicable regulations. State law mandates that any property

owner have a right to seek variances from their local Critical Area program and may receive such a variance when they meet their high burden of proof. We conclude they have.

Fourth, the need for the variance does not arise from the actions of the Applicant. The Applicant's proposal stems the previously constructed dwelling that exists on the property. The Board does not find in the record any suggestion the Applicant has contributed in their own right to their hardship.

Fifth, the need for the variance does not arise from any nonconforming feature on either the Subject Property or a neighboring property.

Sixth, granting the variance will 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. Moreover, as Applicant notes, the proposal will reduce overall lot coverage and, in particular, reduce lot coverage in the Buffer.

Finally, the Board finds, overall, that granting the variance is in the spirit of the Critical Area program. Applicant has availed himself of his right to seek a variance and presented a site plan that identifies a reasonable and significant use that cannot be accomplished without exceeding lot coverage limits. Development has been minimized to the greatest extent practicable. The required mitigation will leave more plantings and green coverage on the lot than existed prior to this development proposal. As such, the Board finds the spirit and intent of the Critical Area

program is preserved, and that the required balance between state law's mandate to allow reasonable derogations from the Critical Area program on the one hand and continued protection and stewardship of the Chesapeake Bay and our environmentally sensitive resources on the other has been struck.

As a result of satisfying these standards and carrying their burden in doing so, 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.

Accordingly, we find the requested variance should be granted.

ORDER

PURSUANT to Applicant's request for a variance from CZO Section 41.5.3.i.(1) to exceed lot coverage limits to construct a pole barn; and,

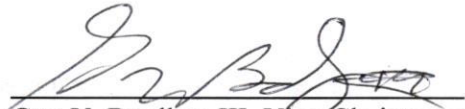
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicants are granted a variance from Section 41.5.3.i.(1) to exceed lot coverage limits to construct a pole barn.

The foregoing variance is subject to the condition that the Applicants 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 the Applicants 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: December 12, 2024

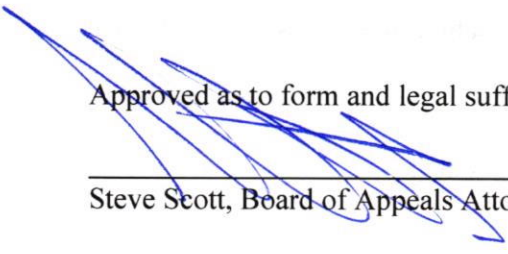

Guy V. Bradley, III, Vice-Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Payne, Mr. Richardson, and Ms. Weaver

Those voting to deny the variance:

Approved as to form and legal sufficiency:


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 Petition for Judicial Review with the Circuit Court for St. Mary's County within thirty (30) days of the date this order is signed. 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.