

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Jeffrey P. & Elizabeth D. Proctor
21685 Joe Hazel Road, Leonardtown MD

Case No. VAAP #16-0685

DECISION AND ORDER**Introduction**

Jeffrey P. & Elizabeth D. Proctor (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 21685 Joe Hazel Road, Leonardtown, 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 add a deck to the existing single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on July 28, 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 in 1974, prior to the adoption of the Maryland Critical Area law on December 1, 1985. The Property is pie-shaped, level, and constrained by the Critical Area Buffer (Buffer) as measured 100 feet landward of the mean high water line of Breton Bay. The Property contains a single-family dwelling constructed in 1977, a driveway extending from Joe Hazel Road to the house, and an in-ground pool with a surrounding patio and small deck. The existing single-family dwelling is located, in large part, within the Buffer. The Applicants propose to add a 12-foot by 26-foot deck on the rear or waterside of the house.

The existing lot coverage is 9,157 square feet, which is 21 percent of the Property. The allowed amount of lot coverage on a one-acre property in the Critical Area is 6,534 square feet or 15 percent of the Property. The existing lot coverage exceeds the allowed amount of coverage by 2,623 square feet, but is considered grandfathered as it was placed on the Property before the Critical Area regulations were adopted. The 312 square-foot deck will not count as lot coverage as long as spacing is provided between the deck boards to allow water to pass through freely.

An aerial photo indicates that approximately 5,200 square feet, or 11.9 percent, of the Property is covered in vegetation. No removal of vegetation is proposed.

The shoreline of the Property is within the VE flood zone, which is a coastal floodplain with velocity hazard (wave action) according to Flood Insurance Rate Map (FIRM) panel 164F. The base flood elevation for this site is eight feet. The existing house and the proposed deck are located outside this Special Flood Hazard Area. Tidal wetlands are located at the water's edge and on the adjacent property. Construction of the deck will not affect the wetlands.

The Property's soil types are Keyport fine sandy loam (KpA) and Keyport silt loam (KrB2). These soil types are not highly erodible or hydric in nature. The hazard of erosion is none to slight for the KpA soils and moderate for the KrB2 soils according to the USDA Soil Conservation Service. The Health Department and the Soil Conservation District approved the development in May of this year.

The Critical Area Commission does not oppose the application.

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. 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.

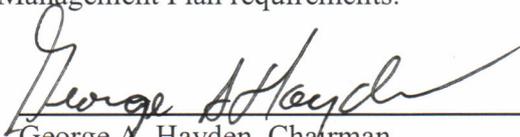
Since the Critical Area Commission, an agency deemed to have expertise and vested with the legal mandate to protect the critical areas of the State, does not oppose the variance, there is a strong inference that the Applicants meet the standards for a variance.

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 312 square foot deck is **granted**, upon the following conditions:

- 1. spacing is provided between the deck boards to allow water to pass through freely; and
- 2. compliance with mitigation and Buffer Management Plan requirements.

Date: September 8, 2016



 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