

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

In the Matter of Peter and Paulina A. Ropshaw  
16166 Drury Road, Ridge, Maryland

Case No. VAAP #12-0502

**DECISION AND ORDER**

**Introduction**

Peter and Paulina A. Ropshaw (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 16166 Drury Road, Ridge, 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 replacement single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on September 13, 2018 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 subject property (the "Property") is a grandfathered lot in the Critical Area of St. Mary's County because it was recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area Program on December 1, 1985. The existing single-family dwelling was built in 1930 according to Real Property Data, Maryland Department of Assessments and Taxation. The Applicants plan to remove the existing house and build a new one in the same location, but with an expanded footprint.

A private well and an existing public sewer line serve the Property.

The Property fronts St. Jerome Creek and is constrained by the Critical Area Buffer (the "Buffer"), which has been measured 100 feet landward from the mean high water line of St. Jerome Creek, pursuant to *COMAR 27.01.09.01.E(3)*, and then expanded to include the hydric soils in accordance with *COMAR 27.01.09.01.E(7)*.

The existing soil types on the Property are Mattapex silt loam (MuB2) and Elkton (Ek) soils according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Only the Ek soils are hydric and are considered poorly drained, nearly level, deep soils. This soil type is found in areas bordering major rivers and in a few small areas on higher upland flats.

Steep slopes can be found along part of the Property's shoreline.

A portion of the Property, particularly along its shoreline, is within Special Flood Hazard Area Zone AE5 according to the 2014 Flood Insurance Rate Maps (FIRM), panel 401F. 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.

Development is proposed outside Zone AE.

Approximately 5,417 square feet of woodland and other vegetation cover the Property. The Applicants do not plan to clear any vegetation or woodland.

In accordance with *COMAR 27.01.09.01* mitigation is required at a ratio of three to one per square foot of the variance granted and at a ratio of one to one for the area of temporary disturbance.

According to the site plan prepared by LSR, Inc. and as shown in the table below, the Property contains a single-family dwelling with an attached porch, three sheds, a carport, driveway, patio, and walkway for a total of 2,711 square feet of lot coverage in the expanded Buffer. The existing lot coverage outside the Buffer equals 568 square feet.

The Applicants plan to remove 1,077 square feet of lot coverage from inside the Buffer and 43 square feet from outside the Buffer. The amount of new lot coverage proposed in the Buffer is 1,711 square feet for a total of 3,345 square feet of lot coverage inside the Buffer. The amount of lot coverage proposed outside the Buffer is 15 square feet for a total of 540 square feet of lot coverage outside the Buffer.

The total amount of lot coverage on the Property, following redevelopment of the Property, will be 3,885 square feet or 10.9 percent of the Property. The allowed amount of lot coverage on a property of this size is 5,445 square feet.

<b>Lot coverage in C.A. Buffer shown in square feet</b>					
Existing	To be removed	Remaining	Proposed	Following construction	Net increase in Buffer
2,711	1,077	1,634	1,711	3,345	77
<b>Lot coverage outside C.A. Buffer shown in square feet</b>					
Existing	To be removed	Remaining	Proposed	Following construction	Net increase outside Buffer
568	43	525	15	540	28
<b>Totals</b>					
3,279	1,120	2,159	1,726	3,885	105

The St. Mary's Health Department approved the site plan on May 18, 2018, and the St. Mary's Soil Conservation District (SCD) approved the site plan on May 19, 2018. Less than 5,000 square feet of disturbance is proposed; therefore, an engineered erosion and sediment control plan was not required. Stormwater management was not required for this same reason.

The Metropolitan Commission (MetCom) approved the site plan on July 19, 2012. The Applicants had initially applied and obtained all approvals, including an administrative variance, in 2012, but did not build at that time.

The Maryland Critical Area Commission provided comments. The Commission is not, generally, opposed to the variance, but recommends that the Applicants locate the proposed porch outside the Buffer, or remove the existing sheds located in the Buffer.

**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.

Although the replacement dwelling will increase the amount of lot coverage on the Property, the amount of lot coverage within the 100-Foot Buffer will only be increased by 77 square feet. The existing footprint is being utilized, and the total amount of lot coverage on the Property following construction will be only 10.9 percent. The allowable lot coverage is 15 percent of the Property.

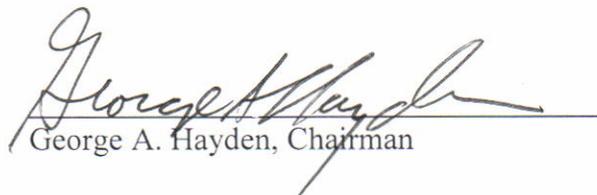
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for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

In light of all facts, the Applicants' proposal is the minimum necessary to achieve a reasonable use of the land and structures.

**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 replacement single-family dwelling is **granted**.

Date: September 27, 2018

  
George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, and  
Ms. Delahay

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Those voting to deny the variance:

Mr. Miedzinski

Approved as to form and legal sufficiency



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David A. Weiskopf, Acting County Attorney