

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the application of William Swedish and Linda Griggs for a variance from Section 71.9.8.j of the St. Mary's County Comprehensive Zoning Ordinance to exceed the maximum width of an allowed walkway through the Critical Area Buffer to the water's edge and to exceed the maximum size of a landing along the walkway.

Case No. VAAP #13-0001
Swedish

ORDER

WHEREAS, Application VAAP #13-0001 – Swedish was duly filed with the St. Mary's County Board of Appeals (the "Board") by William Swedish and Linda Griggs (the "Applicants"), on or about April 20, 2013; and

WHEREAS, the Applicants seek a variance from Section 71.9.8.j of the St. Mary's County Comprehensive Zoning Ordinance, as amended, (the "Ordinance"), to exceed the maximum width of an allowed walkway through the Critical Area Buffer to the water's edge and to exceed the maximum size of a landing along the walkway. The property contains 15.1 acres; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Critical Area Overlay; and is located at 43699 Sunny Ridge Lane, Hollywood, Maryland; Tax Map 20, Grid 12, Parcel 324 (the "Property"); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, July 11, 2013 in Main Meeting Room, Chesapeake Building, 41770 Baldrige Street, of the Governmental Center in Leonardtown, Maryland, at 6:30 p.m., and all persons desiring to be heard were heard, documentary evidence received, and the proceedings electronically recorded.

NOW, THEREFORE, having reviewed the testimony and evidence presented at the hearing, the following facts, findings, and decision of the Board are noted:

SUMMARY OF TESTIMONY

Yvonne Chaillet, Zoning Administrator, summarized the Staff Report. Kevin Stephens, for the Applicant, gave an overview of the variance request addressing the required standards. William Swedish, Applicant, provided background information that lead to the request for the variance.

SUMMARY OF DOCUMENTARY EVIDENCE

The Board accepted into evidence the following exhibits:

- Exhibit No. 1 – Affidavit of Property Posting and Mailing Receipts
- Exhibit No. 2 – Staff Report

FINDINGS OF FACT

The subject property (the "Property") fronts St. Thomas Creek and contains a one-story single-family dwelling, a detached garage, a shed, a boathouse, and a driveway for a total of approximately 12, 575 square feet of lot coverage. The Property also contains a pier. The Critical Area Commission provided comments regarding this project on June 4, 2013. The Commission does not oppose the requested variance so long as the applicant provides the required mitigation associated with the proposed Buffer disturbance.

CONCLUSIONS OF LAW

The Board addresses the Special Standards for Granting Variances, which are set forth in Section 24.4 of the Ordinance, finding as follows:

- a. ***That 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;***

The Property has limited access to the water due to the steep natural terrain. The Existing access is difficult, if not dangerous, to traverse.

For these reasons, the Board finds that 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. ***That 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;***

Owners of other properties are granted variances to achieve reasonable access to the water.

For these reasons, the Board finds that 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;***

Owners of other properties are granted variances to achieve reasonable access to the water.

For these reasons, the Board finds that 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;***

The Property has limited access to the water due to the steep natural terrain.

For these reasons, the Board finds that the variance request is not based upon conditions or circumstances that are the result of actions by the applicant.

- e. ***The granting of the 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;***

The Critical Area Commission does not oppose the requested variance so long as the applicant provides the required mitigation associated with the proposed Buffer disturbance.

For these reasons, the Board finds that the granting of the 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;

The Critical Area Commission does not oppose the requested variance so long as the applicant provides the required mitigation associated with the proposed Buffer disturbance.

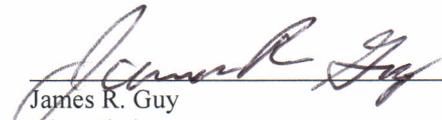
For these reasons, the Board finds that the variance is the minimum necessary to achieve a reasonable use of the land or structures.

DECISION

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Section 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 Applicant has rebutted the presumption that the specific development activity proposed by the Applicant 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 is **GRANTED** to disturb the Critical Area Buffer:

1. to construct a four-foot (4') wide walkway to the water; and
2. to construct a platform measuring eight feet by eight feet (8' x 8').

This Date: August 8, 2013



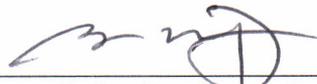
James R. Guy
Vice-Chairman

Those voting in favor of the request:

Mr. Guy, Mr. Greene, Mr. Payne, Mr. Moreland and Mr. Brown

Those voting against the requested variance:

Approved as to form and legal sufficiency:



George R. Sparling, County Attorney