

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of John and Barbara Hamill,
16670 St. Jeromes Neck Road, Dameron, Maryland

Case No. VAAP #14-0219

DECISION AND ORDER**Introduction**

John and Barbara Hamill (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 16670 St. Jeromes Neck Road, Dameron, 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 July 10, 2014, 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 since the property was a lot of record prior to the adoption of the Maryland Critical Area regulations in December 1985. The Property is entirely constrained by the Critical Area Buffer (the "Buffer") measured from the mean high water line of St. Jerome Creek and from tidal wetlands present on the northern portion of the Property. The Buffer has been expanded further to encompass the hydric soils present on the Property.

The Property contains a single-family dwelling with an attached deck, shed, playhouse, driveway, stoop and wooden pier with wooden walkway/pad totaling 2,146 square feet of existing lot coverage. (The 116 square-foot deck is not included in the lot coverage calculations.) The existing single-family dwelling was constructed in 1918 and a private well and septic system serve the Property.

The Applicants propose to replace the existing dwelling with a two-story single-family dwelling with an attached porch, patio, and stoop for a total of 2,264 square feet of new lot coverage. The existing shed and playhouse (totaling 353 square feet) and the existing driveway (268 square feet) will remain on the property. (The proposed deck and the wooden walkway/pad connecting to the pier are not counted in the total lot coverage calculation so long as the Applicants maintain a ¼ inch space between deck boards.) A total net gain of 739 square feet of lot coverage is proposed to be added to the property.

Approximately 23 percent of the Property is wooded. The Applicants propose to clear approximately 3,200 square feet of vegetation in order to construct the replacement dwelling. The total area of disturbance is estimated at 4,913 square feet and tree clearing within the Critical Area Buffer is estimated to be 3,200 square feet.

The soil type existing on the Property is Othello silt loam (Ot). This poorly draining soil type is primarily found at lower elevations bordering major rivers. This soil type is considered to be hydric as described within the 1978 United States Department of Agriculture Soil Conservation Service Soil Survey of St. Mary's County.

The Property is located within the AE floodplain with a base flood elevation of 5 feet, NAVD according to Flood Insurance Rate Map 364E. The Applicants agree to submit an elevation certificate showing the finished first floor elevation at or above the flood protection elevation (FPE) of 6 feet.

The Health Department approved the proposed development on April 14, 2014 and the Soil Conservation District approved the plan on April 4, 2014.

The Critical Area Commission does not oppose the variance request.

Conclusions of Law

The Property is entirely constrained by the Critical Area Buffer (the "Buffer"). A strict interpretation of the Ordinance would prohibit any development in the Critical Area Buffer.

The Critical Area program recognizes grandfathered properties and the rights of property owners to develop or redevelop them.

The basis for the variance is the subsequent adoption of the Maryland Critical Area regulations on December 1, 1985.

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. The Applicants have chosen to construct the replacement home in such a location so that no disturbance to existing tidal wetlands will occur.

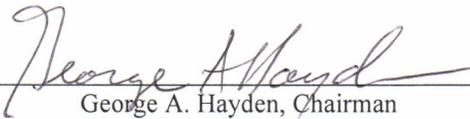
The proposed replacement construction will result in a minimal net gain of lot coverage (approximately 739 square feet).

Since the Critical Area Commission does not oppose the variance, the Applicants are presumptively entitled to the 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 replacement single-family dwelling is **approved**.

Date: August 14, 2014

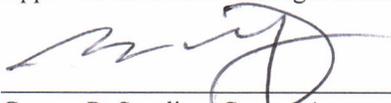

George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney