

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Jason and Christine Fisher,
45075 Millstone Lane, Hollywood, Maryland

Case No. VAAP #14-0673

DECISION AND ORDER**Introduction**

Jason and Christine Fisher (hereinafter "Applicant(s)"), 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 45075 Millstone Lane, Hollywood, 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 additions to an existing 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 because the property was recorded 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 Cuckold Creek. The Buffer has been expanded further to encompass the highly erodible soils present on the Property.

The Property contains a single-family dwelling with attached decks, a garage, wooden walkway and pier. A private well and septic system serve the Property.

The Applicants propose renovations in three separate areas of the home. The first two renovations are 300 and 200 square feet in size respectively and are to take place over the existing deck in order to create small additions

of living space. The third renovation is approximately 560 square feet in size, 180 square feet of which will be new lot coverage added to an existing garage. A total of 680 square feet of new lot coverage is proposed on the Property. The Applicants do not plan to remove any existing lot coverage from the Property. (The existing decks and wooden walkway to the pier are not counted as part of the existing lot coverage because the deck boards have a minimum ¼ inch space between them to allow the passage of water onto the ground below.)

The soil type existing on the Property is Evesboro-Westphalia complex (EwE2). This highly erodible soil is typically found on slopes with a gradient of 20-45 percent. The erosion hazard is classified as moderate to severe according to the 1978 United States Department of Agriculture Soil Conservation Service Soil Survey of St. Mary's County.

Approximately 65 percent of the Property is wooded. The Applicants propose to clear approximately 700 square feet (a total of 7 trees) of existing vegetation in order to construct the proposed additions.

The proposed construction is located more than 50 feet from the Special Flood Hazard boundary per FIRM panel number 184E. Therefore, no elevation, or venting, is required for the proposed construction.

The Health Department approved the proposed development on May 1, 2014 and the Soil Conservation District approved the plan on May 6, 2014.

The Critical Area Commission does not oppose the variance provided that the Applicants properly mitigate for the disturbance.

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.

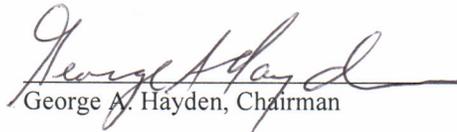
Since the Critical Area Commission does not oppose the variance, the Applicants are presumptively entitled to the variance.

The Applicants have chosen to construct modest sized additions in a manner which calls for minimal disturbance to the existing tree canopy (7 trees to be removed) and will result in a minimal net gain of lot coverage (680 square feet of proposed new lot coverage, 500 square feet of which will occur over existing decks).

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 additions to an existing single-family dwelling is **approved**.

Date: August 14, 2014

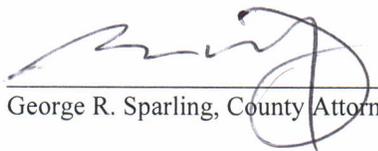

George A. Hayden, Chairman

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