

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

In the Matter of Fang Frank Xu & Jingqi Fu  
47834 Cross Manor Road, Saint Inigoes, Maryland

Case No. VAAP #17-0048

**DECISION AND ORDER****Introduction**

Fang Frank Xu & Jingqi Fu (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 47834 Cross Manor Road, Saint Inigoes, 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 build a deck attached to the Existing single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on December 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 1979 according to Real Property Data, Maryland Department of Assessments and Taxation. The Property is currently served by a private well and septic.

The Property fronts Saint Inigoes Creek. The Property is constrained by the Critical Area Buffer (the “Buffer”), which has been measured 100 feet landward from the mean high water line of Saint Inigoes Creek and adjacent tidal wetlands, pursuant to the *Code of Maryland Regulations (COMAR) 27.01.09.01.E(3)*. The entire rear side of the house is in the Buffer.

The existing soil types on the Property are Matapeake fine sandy loam (MmA), according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. The hazard of erosion is none to slight. It is neither hydric nor highly erodible in nature.

There is an area of steep slopes confined to the shoreline of the Property.

A portion of the Property along its shoreline is within Special Flood Hazard Area Zone AE6, according to the 2014 Flood Insurance Rate Maps (FIRM), panel 341F. 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 10,950 square feet of woodland and other vegetation cover the Property. The Applicants do not propose any clearing at this time to construct the deck.

According to the site plan provided by the Applicants, and as shown in the table below, the Property contains a single-family dwelling, walkways, driveway, deck, garage, and shed, for a total of 11,021 square feet.

The Applicants plan to add 205 square feet of permanent soil disturbance to extend an existing 662 square foot deck within the 100’ Critical Area Buffer. The allowed amount of lot coverage on a property of this size is 9,474 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      |
| 1,778  | 0             | 1,778     | (205)    | 1,778                  | (205)                       |
| <b>Lot coverage outside C.A. Buffer shown in square feet</b> |               |           |          |                        |                             |
| Existing   | To be removed | Remaining | Proposed | Following construction | Net increase outside Buffer |
| 9,243  | 0             | 9,243     | 0        | 9,243                  | 0                           |
| <b>Totals</b>  |               |           |          |                        |                             |
| 11,021   | 0             | 11,021    | (205)    | 11,021                 | (205)                       |

The St. Mary’s Health Department approved the site plan on November 16, 2018. The St. Mary’s Soil Conservation District (SCD) granted an exemption on November 15, 2018. Stormwater management was approved on February 2, 2017.

The Maryland Critical Area Commission does not oppose the variance request.

**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. 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 add 205 square feet to the existing deck is ***granted with the condition that the deck has quarter inch spacing between the boards.***

Date: January 15, 2019

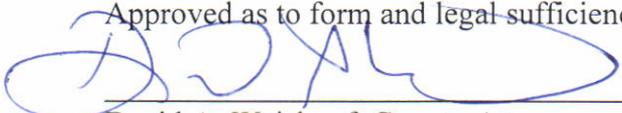
  
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John Brown, Vice-Chairman

Those voting to grant the variance:

Mr. Brown, Mr. Greene, Mr. Miedzinski,  
Ms. Delahay and Mr. Richardson

Those voting to deny the variance:

Approved as to form and legal sufficiency

  
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David A. Weiskopf, County Attorney