

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

In the Matter of Mark and Dana Cullison  
16406 Ball Point Road, Piney Point, Maryland

Case No. VAAP #17-1447

**DECISION AND ORDER**

**Introduction**

Mark and Dana Cullison (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 16406 Ball Point Road, Piney Point, 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 single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on November 9, 2017, 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 it was recorded prior to the adoption of the Maryland Critical Area law on December 1, 1985.

The Property is constrained by the 100 foot Critical Area Buffer (Buffer), which has been measured 100 feet landward from the edge of tidal wetlands 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 type is Othello (Ot) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey.

The Property contains a driveway for a total of 1,087 square feet of lot coverage.

The Applicants propose to construct a single-family dwelling, a modest expansion of the driveway, and the steps leading to and from the proposed deck, which will total 1,159 square feet of new lot coverage following construction.

The maximum allowed lot coverage on a lot of this size is 2,434 square feet, or 25 percent of the property plus an additional 500 square feet. The Property will contain a total amount of 2,246 square feet of lot coverage, which is 31.5 percent of the Property, or 25 percent plus 500 square feet..

The Property is covered in approximately 3,200 square feet of existing woodland and other vegetation. The Applicants propose to clear 400 square feet, or 12.5 percent of existing vegetation.

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.

The Property will be served by a private deep well drilled to an approved confined aquifer and a private septic system.

The Property is within Special Flood Hazard Area Zone AE according to Flood Insurance Rate Map (FIRM) panel 376F. 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 in Zone AE, and the base flood elevation for this Property is six (6) feet. The Applicants will be required to elevate the proposed house to nine (9) feet to meet the three-foot freeboard requirement.

The St. Mary's Health Department approved the site plan on October 20, 2017, and the Metropolitan Commission (MetCom) approved the site plan on September 28, 2017.

The St. Mary's Soil Conservation District (SCD) reviewed the proposed development and determined that an engineered erosion and sediment control plan was not required because the Applicants will be disturbing less than 5,000 square feet. The Applicants are exempt from providing stormwater management for this same reason.

The Critical Area Commission does not oppose the variance to construct a replacement single-family dwelling.

### **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

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Ordinance enacted pursuant thereto, a variance to disturb the Critical Area Buffer to construct a single-family dwelling is **granted**.

Date: December 12, 2017

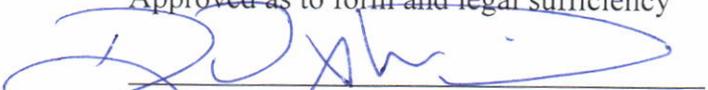
  
George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr.  
Miedzinski and Mr. Payne

Those voting to deny the variance:

Approved as to form and legal sufficiency

  
David A. Weiskopf, Acting County Attorney