

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

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

Case No. VAAP #17-1818

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

Jason and Christine Fisher (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 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 a garage and to expand the existing driveway.

After due notice, a public hearing was conducted at 6:30 p.m. on January 11, 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 1978 according to Real Property Data, Maryland Department of Assessments and Taxation.

The Property fronts Cuckold Creek and is constrained by the Critical Area Buffer (the "Buffer"), which has been measured 100 feet landward from the mean high water line of Cuckold Creek, pursuant to *COMAR 27.01.09.01.E(3)*, and then expanded to include the steep slopes and highly erodible soils on the Property in accordance with *COMAR 27.01.09.01.E(7)*.

The existing soil type(s) on the Property is Evesboro-Westphalia Complex (EwE2) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. This soil type is considered moderately erosive and is found on 25-40 percent slopes.

According to the site plan provided by the Applicants, and as shown in the table below, the Property contains an existing dwelling, attached deck, walkways, a detached shed, and driveways for a total of 5,690 square feet of lot coverage. The Applicants plan to add 1,490 square feet of new lot coverage for a sum of 7,180 square feet. The new lot coverage comprises a 900 square-foot detached garage and a 590 square-foot driveway expansion, which represents 3 percent of the Property. The allowed amount of lot coverage on a property of this size is 15 percent of the property.

<b>Property lot coverage in square footage ( acreage: 1.14 )</b>					
Existing	To be removed	Remaining	Proposed	Following construction	Allowed 15%
5,690	0	5,690	1,490	7,180	7,449
<b>Buffer lot coverage in square footage</b>					
Existing	To be removed	Remaining	Proposed	Total	Net increase in Buffer
5,690	0	5,690	1,490	7,180	1,490

The shoreline of the Property is within Special Flood Hazard Area Zone AE-5 according to Flood Insurance Rate Map (FIRM) panel 184F. 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 more than 50 feet from the Special Flood Hazard Area, Zone AE.

A private well and septic system serve the Property.

Approximately 44,376 square feet of woodland and other vegetation cover the Property. The Applicants plan to clear 2,075 square feet, or 4.6 percent of the 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 St. Mary's Health Department approved the site plan on January 2, 2018. The St. Mary's Soil Conservation District (SCD) did not review the site plan as the disturbance to the land is less than 5,000 square feet. The Department of Land Use and Growth Management reviewed the site plan in accordance with stormwater management requirements. The Applicants are disturbing less than 5,000 square feet and, therefore, no stormwater management measures are required.

The Maryland Critical Area Commission does not oppose the variance.

### **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.

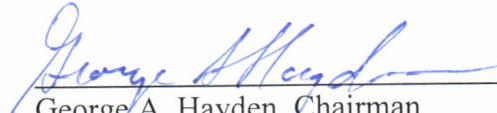
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for 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 construct a detached garage and expand the existing driveway is **granted**.

Date: February 8, 2018

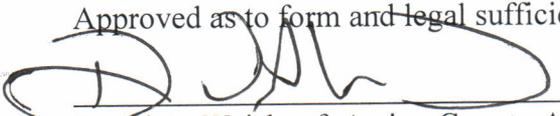
  
George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency

  
David A. Weiskopf, Acting County Attorney