

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

In the Matter of John James McAllister, III  
40416 Breton Beach Road, Leonardtown, Maryland

Case No. VAAP #17-1935

**DECISION AND ORDER**

**Introduction**

John James McAllister, III (hereinafter “Applicant”), 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 40416 Breton Beach Road, Leonardtown, 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 add a 644 square-foot deck to the Existing single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on July 12, 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 and reconfigured through the Boundary Line Adjustment Process on October 8, 2010. The existing single-family dwelling was built in 2013 according to Real Property Data, Maryland Department of Assessments and Taxation.

The Property fronts Breton Bay and is constrained by both tidal and non-tidal wetlands. The Critical Area Buffer (the “Buffer”) is measured from the mean high water line of Breton Bay and the tidal wetlands pursuant to *COMAR 27.01.09.01.E(3)*, and then expanded to include the non-tidal wetlands on the Property in accordance with *COMAR 27.01.09.01.E(7)*.

The existing soil types on the Property are Woodstone sandy loam (WsA) and Mattapex fine sandy loam (MtA), according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Mattapex fine sandy loam is not considered to be erosive and is found on slopes of 0-2 percent. Woodstone sandy loam is considered slightly erosive and is found on 0-2 percent slopes. The main concern with both of these soils is seasonal wetness and drainage.

According to the site plan provided by the Applicant, and as shown in the table below, the Property contains a single-family dwelling with a porch, a shed, walk, and a driveway for a total of 7,538 square feet of lot coverage. The Applicant plans to construct a 644 square-foot deck. The proposed deck will have ¼” spacing to allow water infiltration and will not count towards the lot coverage total, but is considered permanent disturbance. The proposed disturbance represents 1.07 percent of the Property. The allowed amount of lot coverage on a property of this size is 9,017 square feet.

<b>Property lot coverage in square footage ( acreage: 1.38 acres)</b>					
Existing	To be removed	Remaining	Proposed	Following construction	Allowed 15%
7,538	0	7,538	(644)	7,538	9,017
<b>Buffer lot coverage in square footage</b>					
Existing	To be removed	Remaining	Proposed	Total	Net increase in Buffer
4,533	0	4,533	(644)	4,533	(644)

The Property is within Special Flood Hazard Area Zone X (Unshaded), VE-8, and AE-5 according to Flood Insurance Rate Map (FIRM) panel 341F. The proposed development is

in Zone X (Unshaded), which is defined in the County's floodplain management regulations as areas outside of Zones designated A, AE, A1-30, AO, VE, V1-30, and X (Shaded). Development is proposed in Zone X (Unshaded) and is not in a regulated Special Flood Hazard Area.

A private well and septic system serve the Property.

Approximately 1,400 square feet of trees, shrubs, and other vegetation cover the Property. The Applicant does not plan to clear any 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 December 5, 2017, and the St. Mary's Soil Conservation District (SCD) issued an exemption 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 Applicant is disturbing less than 5,000 square feet and, therefore, no stormwater management measures are required.

The Maryland Critical Area Commission provided comments which are attached to this report. The 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.

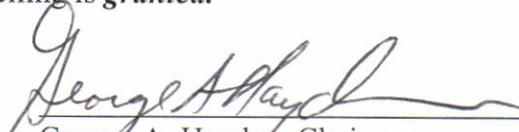
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for 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 add a 644 square foot deck to the existing single-family dwelling is **granted**.

Date: July 26, 2018

  
George A. Hayden, Chairman

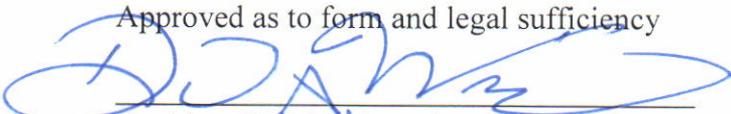
Those voting to grant the variance:

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

Those voting to deny the variance:

NONE

Approved as to form and legal sufficiency

  
David A. Weiskopf, Acting County Attorney