

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Alex C. and Patricia A. Pulliam
17766 Lawrence Street, St. Inigoes, Maryland

Case No. VAAP #18-0532

DECISION AND ORDER

Introduction

Alex C. and Patricia A. Pulliam (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 17766 Lawrence Street, St. 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 construct a replacement single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on September 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 1963 according to Real Property Data, Maryland Department of Assessments and Taxation.

The Property fronts on Molls Cove and is constrained by the Critical Area Buffer (the “Buffer”), which has been measured 100 feet landward from the mean high water line of Molls Cove, pursuant to *COMAR 27.01.09.01.E(3)*.

The existing soil type on the Property is Sassafras Sandy Loam (SaB2) 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 2-5 percent slopes. The hazard of further erosion is moderate.

According to the site plan provided by the Applicants, and as shown in the table below, the Property contains a single-family dwelling with a waterfront deck, two sheds, and a gravel driveway, for a total of 6,524 square feet of lot coverage. The Applicant plans to remove 2,224 square feet of this amount and add 1,508 square feet of new lot coverage for a sum of 5,808 square feet. The new lot coverage will be comprised of a 600 square foot garage, 180 square-foot addition, 440 square feet of driveway, and 288 square feet of walks and stairs, which represents 5.92% percent of the Property. The allowed amount of lot coverage on a property of this size is 5,445 square feet.

Property lot coverage in square footage (square footage: 25,469)					
Existing	To be removed	Remaining	Proposed	Following construction	Allowed 5,445 square feet
6,524	2,224	4,300	1,508	5,808	
Buffer lot coverage in square footage					
Existing	To be removed	Remaining	Proposed	Total	Net decrease in Buffer
1,736	1,096	640	945	1,585	(151)

The Property is within Special Flood Hazard Area Zone X (Unshaded) according to Flood Insurance Rate Map (FIRM) panel 343F. Zone X (Unshaded) 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 2,800 square feet of woodland 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 June 1, 2018, and the St. Mary's Soil Conservation District (SCD) granted an exemption on June 12, 2018, 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 provided comments and 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 replacement dwelling will decrease the amount of lot coverage within the 100-Foot Buffer, the existing footprint is being utilized, and the total amount of lot coverage on the Property following construction will be only 5.92 percent of the allowable lot coverage.

The replacement dwelling is using the same footprint on the side facing the water and an existing stoop and basement access are being removed along of the back side of the house and being replaced with a morning room and a replacement basement areaway along the back side of the house. Although the new areaway and morning room will be closer to the water, the modest improvements are consistent with a reasonable use of the entire Property and do not confer any special privileges to the applicants.

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 replacement single-family dwelling is **granted**.

Date: September 27, 2018



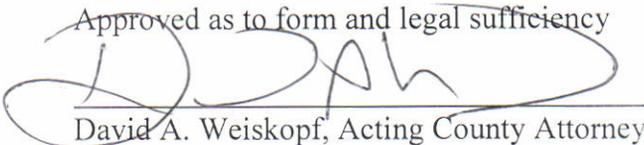
George A. Hayden, Chairman

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