

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

Robert K. and Barbara L. Armour  
37520 River Springs Road, Avenue, Maryland

Case No. VAAP #18-0976

**DECISION AND ORDER**

**Introduction**

Robert K. and Barbara L. Armour (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 37520 River Springs Road, Avenue, 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 27, 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 1957 according to Real Property Data, Maryland Department of Assessments and Taxation. The Applicants plan to remove the existing house and build a new one farther from the water.

A private well and septic system serve the Property.

The Property fronts White Neck 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 White Neck Creek, pursuant to the *Code of Maryland Regulations (COMAR) 27.01.09.01.E(3)*. The existing single-family dwelling, frame garage, and one-story block building are located within the Buffer. The existing well and well house will be properly abandoned.

The existing soil types on the Property are Mattapex fine sandy loam (MtB2) and Woodstown sandy loam (WsB) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. MtB2 soils are considered gently sloping and are found mainly at lower elevations. WsB soils are also considered gently sloping and are found on uplands and on lower terraces along the major rivers. MtB2 soils and WsB soils are not hydric or highly erodible in nature.

Tidal wetlands are adjacent to the Property, and steep slopes, or slopes greater than 15 percent, can be found along the Property's shoreline.

Special Flood Hazard Area Zone AE encroaches on the Property according to the 2014 Flood Insurance Rate Maps (FIRM), panel 257F. 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; and 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.

The base flood elevation of the AE zone on the Property is six (6) feet. Development is proposed outside zone AE.

Approximately 6,062 square feet of woodland and other vegetation cover the Property. It appears from a review of the site plan that at least one tree will need to be removed for the septic reserve area (SRA).

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 in accordance with *COMAR 27.01.09.01*.

According to the site plan prepared by Chesapeake Trails Surveying (CTS), and as shown in the table below, the Property contains a single-family dwelling, outbuildings, driveway, and walkway for a total of 6,962 square feet, or 17.7 percent, of lot coverage on the Property. The Buffer contains 2,466 square feet of lot coverage, and 4,496 square feet of lot coverage are located outside the Buffer.

The Applicants plan to remove all of the existing lot coverage on the Property and replace it with a single-family dwelling, a smaller driveway, and walkway(s) for a total of 4,503 square feet of new lot coverage. However, 92 square feet of the 4,503 square feet is replacing an equal amount of the existing driveway located outside the Buffer. The allowed amount of lot coverage on a property of this size is 15 percent, or 5,915 square feet. The overall reduction of lot coverage on the Property is 2,459 square feet, or 6.3 percent.

A large portion of the new house will be within the Buffer as shown on the site plan. The septic tank, pump tank, and septic reserve areas will be located outside the Buffer and, essentially, encumber the front area of the Property.

<b>Lot coverage in C.A. Buffer shown in square feet</b>					
Existing	To be removed	Remaining	Proposed	Following construction	Net decrease in Buffer
2,466	2,466	0	1,993	1,993	473
<b>Lot coverage outside C.A. Buffer shown in square feet</b>					
Existing	To be removed	Remaining	Proposed	Following construction	Net decrease outside Buffer
4,496	4,496	0	2,418-new 92 replace	2,510	2,078
<b>Totals</b>					
6,692	6,962	0	4,503	4,503	2,551

The St. Mary's Health Department approved the site plan on August 30, 2018. The St. Mary's Soil Conservation District (SCD) approved the site plan on September 5, 2018, and Land Use and Growth Management approved the stormwater management measures on August 24, 2018.

The Maryland Critical Area Commission provided comments and 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 by 473 feet, the existing footprint is being utilized, and the total amount of lot coverage on the Property will only be 11.4%, which is below the 15% allowed.

The replacement dwelling is not using the same footprint and is actually moving the house away from the water by approximately 45 feet.

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

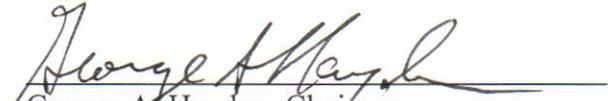
**NOW, THEREFORE, BE IT ORDERED**, that, having made a finding that the standards for a variance and the objectives of Sections 24.4 and 71.8.3 of the St. Mary’s County Comprehensive Zoning Ordinance have been met, and further finding, for all reasons stated herein, that the Applicants have rebutted 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**.

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37520 River Springs Road, Avenue, Maryland

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Date: October 18, 2018

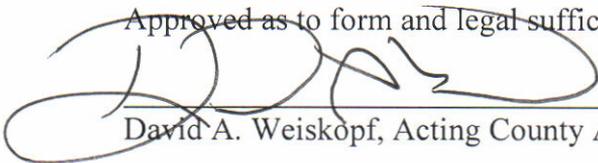
  
George A. Hayden, Chairman

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