

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Wendy A. Lee
18943 Hodges Lane, Leonardtown, Maryland

Case No. VAAP #18-1092

DECISION AND ORDER

Introduction

Wendy A. Lee (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 18943 Hodges Lane, 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 build a 440 square-foot deck attached to the existing 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 1969 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 1970, according to Real Property Data, Maryland Department of Assessments and Taxation, and is located entirely within the 100-Foot Critical Area Buffer (the "Buffer"). A private well and septic system serve the Property.

The Property fronts Herring Creek and is constrained by tidal wetlands located at the shoreline and adjacent to the Property. The Buffer has been measured 100 feet landward from the mean high water line of Herring Creek and the tidal wetlands pursuant to *COMAR 27.01.09.01.E(3)*.

The existing soil type on the Property is Mattapex silt loam (MuA) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. MuA soils are not hydric or highly erodible and are found mainly at lower elevations adjacent to the major rivers and streams in the County.

The Property is within Special Flood Hazard Area Zone AE with a base flood elevation of five (5) feet according to the 2014 Flood Insurance Rate Maps (FIRM), panel 308F. The AE zone is defined in the Ordinance as an area 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. The house and proposed deck are more than 50 feet from the AE flood zone.

Approximately 4,400 square feet of woodland cover the Property. The Applicant does not plan to clear any 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 contains a shed, walkways, driveway, and parking area in addition to the house, and has been improved with a pier on Herring Creek. The existing amount of lot coverage is 5,615 square feet, or 11.6 percent of the Property. All but a portion of the driveway is in the Buffer. The site plan does not show the Buffer, and it is unclear what portion of the driveway is outside the Buffer.

The Applicant plans to add a 22-foot by 20-foot deck (440 square feet) to the rear of the house. The deck will not count as lot coverage as long as the Applicant provides a minimum of one-eighth of an inch (1/8") of spacing between the deck boards to allow water to flow through freely.

| Property lot coverage in square footage (acreage: 48,352 square feet) | | | | | |
|--|---------------|-----------|----------|------------------------|-------------|
| Existing | To be removed | Remaining | Proposed | Following construction | Allowed 15% |
| 5,615 | 0 | 5,615 | (440) | 5,615 | 7,253 |

The St. Mary's Health Department has not yet approved the site plan. The proposed disturbance is less than 5,000 square feet, so an engineered erosion and sediment control plan was not required and the Applicant is exempt from stormwater management requirements.

The Maryland Critical Area Commission does not oppose the variance request.

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.

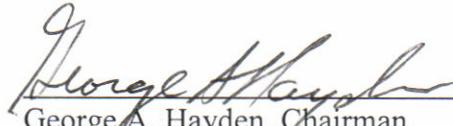
ORDER

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

Wendy A. Lee VAAP ##18-1092
18943 Hodges Lane, Leonardtown, Maryland

Ordinance enacted pursuant thereto, a variance to disturb the Critical Area Buffer to add a 440 square-foot deck to the existing single-family dwelling is ***granted with the condition that the applicant must receive Health Department approval prior to the issuing of a permit.***

Date: September 27, 2018



George A. Hayden, Chairman

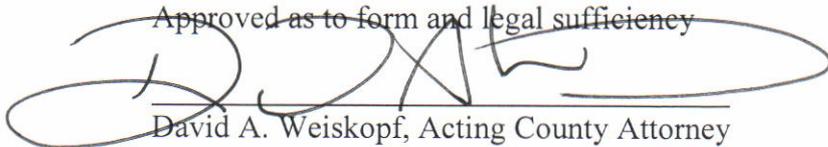
Those voting to grant the variance:

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

Those voting to deny the variance:

Mr. Miedzinski

Approved as to form and legal sufficiency



David A. Weiskopf, Acting County Attorney