

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Mark Cullison
16394 Thomas Road, Piney Point, Maryland

Case No. VAAP #18-1404

DECISION AND ORDER

Introduction

Mark Cullison (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 16394 Thomas Road, Piney Point, 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 single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on December 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 Property is currently vacant. The Property will be served by a private well and public sewer.

The Property fronts tidal wetlands and nontidal wetlands that border Island Creek. The Property is constrained by the Critical Area Buffer (the "Buffer"), which has been measured 100 feet landward from the mean high water line of the tidal wetlands and expanded for nontidal wetlands and hydric soils, pursuant to the *Code of Maryland Regulations (COMAR) 27.01.09.01.E(7)*. All but a small section of the west side of the Property is within the Buffer. A portion of the proposed driveway is outside the Buffer.

The existing soil types on the Property are Tidal Marsh (Tm), Othello silt loam (Ot), and Mattapex silt loam (MuA), according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Tidal marsh consists of areas that are periodically covered by tidal water and commonly supports only marsh grasses, sedges, and low shrubs. Othello silt loam is considered a hydric soil and has a water table that is at or near the surface for long periods. The hazard of erosion is none to slight. Mattapex silt loam is moderately well drained with a seasonally high water table. The hazard of erosion is none to slight. It is neither hydric nor highly erodible in nature.

Tidal wetlands and nontidal wetlands can be found along the Property's shoreline. There are no steep slopes present on the Property.

Special Flood Hazard Area Zone AE6 encompasses the entire Property, according to the 2014 Flood Insurance Rate Maps (FIRM), panel 376F. 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 and a Flood Protection Elevation of nine (9) feet is required. The proposed development will comply with the County's floodplain regulations by elevating the finished floor, recordation of a nonconversion agreement, and by building a floodplain compliant garage and carport below the Base Flood Elevation.

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Approximately 13,716 square feet of woodland and other vegetation cover the Property. Approximately 15,471 square feet of the property are tidal wetlands. The Applicants plan to clear 1,580 square feet of vegetation from the Critical Area Buffer to construct the new dwelling.

According to the site plan prepared by Robert Trautman, and as shown in the table below, the Property is vacant without any existing lot coverage.

The Applicants plan to add 3,877 square feet of lot coverage. 180 square feet of lot coverage will be outside the Buffer. The remaining 3,697 square feet will be in the Critical Area Buffer. The allowed amount of lot coverage on a property of this size is 5,445 square feet.

Lot coverage in C.A. Buffer shown in square feet					
Existing	To be removed	Remaining	Proposed	Following construction	Net increase in Buffer
0	0	0	3,697	3,697	3,697
Lot coverage outside C.A. Buffer shown in square feet					
Existing	To be removed	Remaining	Proposed	Following construction	Net increase outside Buffer
0	0	0	180	180	180
Totals					
0	0	0	3,877	3,877	3,877

The St. Mary’s Health Department approved the site plan on September 26, 2018, and the St. Mary’s Soil Conservation District (SCD) was sent the site plan on July 12, 2018, and will comment on the plan once they receive their review fee. Stormwater management was approved on October 3, 2018.

The Critical Area Commission does not oppose the variance to construct a replacement single-family dwelling.

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.

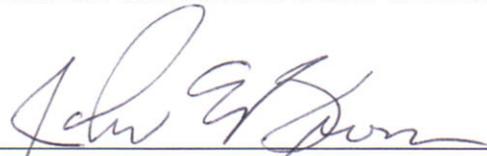
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for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

Date: January 10, 2019



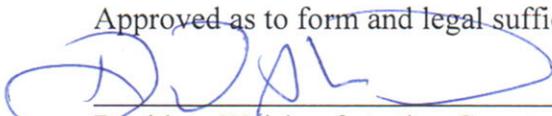
John Brown, Vice-Chairman

Those voting to grant the variance:

Mr. Brown, Mr. Greene, Mr. Miedzinski,
Ms. Lynn Delahay and Mr. Richardson

Those voting to deny the variance:

Approved as to form and legal sufficiency



David A. Weiskopf, Acting County Attorney