

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Peter and Patricia Chen
27228 Holly Lane, Mechanicsville, Maryland

Case No. VAAP #18-1662

DECISION AND ORDER**Introduction**

Peter and Patricia Chen (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 27228 Holly Lane, Mechanicsville, Maryland (hereinafter the "Property"). The application seeks a variance from Section 71.7.3.d of the Comprehensive Zoning Ordinance to disturb slopes in excess of 15% and 72.3.1.c.(2) to clear more than 30% of existing forest in the LDA overlay of the Critical Area to construct a single-family dwelling with detached garage.

After due notice, a public hearing was conducted at 6:30 p.m. on January 10, 2019, 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 constrained by slopes with grade greater than 15% with highly erodible soils and is densely forested.

The existing soil types on the Property are Evesboro-westphalia (EwE2) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Evesboro-westphalia is considered to be highly erosive and is found on slopes of 20 to 45 percent.

According to the site plan provided by the Applicant, and as shown in the table below, the applicant plans to construct a 1,386 square-foot single family dwelling, a 624 square-foot detached garage and driveway. The proposed disturbance represents 3,050 square feet of the Property. The allowed amount of lot coverage on a property of this size in the LDA is 5,445 square feet per section 41.5.3 i (1).

Property lot coverage in square footage (total lot acreage: 0.53 acres)					
Existing	To be removed	Remaining	Proposed	Following construction	Allowed
0	0	0	(3,050)	3,050	5,445

The Property is within Special Flood Hazard Area Zone X (Unshaded) according to Flood Insurance Rate Map (FIRM) panel 086E. 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 21,142 square feet of trees, shrubs, and other vegetation cover the Property. The Applicant plans to clear 8,375 square feet of the existing vegetation, or 39.6 % 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 November 29, 2018, and the St. Mary's Soil Conservation District (SCD) has the site plan under review. The Department of Land Use and Growth Management reviewed the site plan in accordance with stormwater management requirements and received a waiver on November 1, 2018.

The Critical Area Commission does not oppose the variance to construct single family dwelling and a detached garage.

Conclusions of Law

The Property is constrained by slopes with grade greater than 15% with highly erodible soils and is densely forested.

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 from 71.7.3.d to disturb slopes in excess of 15% and 72.3.1.c.(2) to clear more than 30% of existing forest in the LDA overlay of the Critical Area to construct a single-family dwelling with detached garage is **granted**.

Peter and Patricia Chen
27228 Holly Lane, Mechanicsville, Maryland
Date: February 14, 2019

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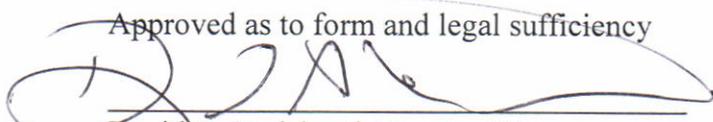
John Brown, Vice-Chairman

Those voting to grant the variance:

Mr. Brown, Ms. Delahay and Mr.
Richardson

Those voting to deny the variance:

Approved as to form and legal sufficiency



David A. Weiskopf, County Attorney