

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Leander McCormick-Goodhart
41280 Delabrooke Road, Mechanicsville, Maryland

Case No. VAAP #18-0389

DECISION AND ORDER

Introduction

Leander McCormick-Goodhart (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 41280 Delabrooke Road, Mechanicsville, 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 repair and expand an existing porch to the Existing 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 1830, according to Real Property Data, Maryland Department of Assessments and Taxation, and is located entirely within the 100-Foot Critical Area Buffer (the "Buffer"). The Property also contains an in-ground swimming pool, outbuildings, a driveway, and roads.

The Property fronts the Patuxent River and is constrained by tidal and nontidal wetlands, hydric soils, and the Buffer, which has been measured 100 feet landward from the mean high water line of the River pursuant to *COMAR 27.01.09.01.E(3)*.

The existing soil types on the Property are Mattapex silt loam (MuB2), Othello silt loam (Ot), and Tidal Marsh (Tm) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. MuB2 soils are not hydric or highly erodible. Ot soils are hydric and considered poorly drained soils. This soil is found, mainly, at lower elevations bordering on the major rivers of the County. Tm soils are found in many small areas and a few large, level areas that are periodically covered by tidal water.

The shoreline of the Property is within Special Flood Hazard Area Zone VE with a base flood elevation of nine (9) feet according to the 2014 Flood Insurance Rate Maps (FIRM), panel 084F. VE flood zones are subject to inundation by the 1-percent annual chance (100-year) flood and subject to high velocity wave action. A Coastal High Hazard Area is an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms. Coastal high hazard areas also are referred to as "V Zones" and are designated on FIRMs as zones VE or V1-30.

Zone X (unshaded) is defined as an area outside of zones designated A, AE, A1-30, AO, VE, V1-30, and X (shaded). Zone X is not a regulated flood zone.

Approximately 60 acres 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 Applicant plans to perform extensive repairs to the existing, 116 square-foot kitchen porch and then extend this porch with a new addition of 128 square feet, which is a minimal increase of lot coverage in the Buffer. The existing amount of lot coverage on the Property is approximately 22,745 square feet, or less than one percent of the Property.

The St. Mary's Health Department approved the site plan on March 9, 2018 and the St. Mary's Soil Conservation District approved the site plan on March 8, 2018. 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.

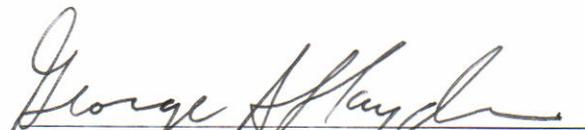
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for 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 Ordinance enacted pursuant thereto, a variance to disturb the Critical Area Buffer to repair and expand an existing porch to the Existing single-family dwelling is **granted**.

Date: September 27, 2018


George A. Hayden, Chairman

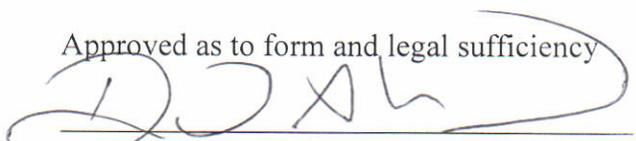
Those voting to grant the variance:

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

Those voting to deny the variance:

NONE

Approved as to form and legal sufficiency


David A. Weiskopf, Acting County Attorney