

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 19-1258

CHRISTINE BLINN

EIGHTH ELECTION DISTRICT

DATE HEARD: October 10, 2019

ORDERED BY:

**Mr. Hayden, Mr. Brown, Ms. Delahay,
Mr. Miedzinski and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: November 14, 2019

Pleadings

Christine Blinn, the applicant, seek a variance (VAAP # 19-1258) to disturb the critical area buffer to replace and construct a deck on subject property.

Public Notification

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on September 25, 2019 and October 2, 2019. The hearing notice was also posted on the property. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within Two Hundred (200) feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County's website on Tuesday, October 8, 2019. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on October 10, 2019, at the St. Mary's County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the applicants.

The Property

The applicant owns the subject property located at 45910 Harbor Lane, Lexington Park, MD 20653. It is in the Residential Neighborhood Conservation (RNC) District. It is

identified on Tax Map 35A, Grid 5, Parcel 3 and Lot 11. This lot is designated in the Chesapeake Bay Critical Area as Limited Development Area (LDA) Overlay.

The Variance Requested

The applicant requests a critical area variance from the prohibition in § 71.8.3.a.(1), against disturbing the expanded buffer to replace and build a deck as shown on the site plan admitted into evidence at the hearing as Exhibit 2 of Attachment 3.

The St. Mary's County Comprehensive Zoning Ordinance

The St. Mary's County Comprehensive Zoning Ordinance ("SMCCZO") requires there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands. § 71.8.3. Title 27 of the Code of Maryland Regulations (COMAR) Section 27.01.01 (B) (8) (ii) states a buffer exists "to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance." No new impervious surfaces or development activities are permitted in the 100-foot buffer unless the applicant obtains a variance. § 71.8.3.b.1.c of the SMCCZO.

The Evidence Submitted at the Hearing by LUGM

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management (LUGM), presented the following evidence:

- 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 before the adoption of the Maryland Critical Area Program on December 1, 1985.

- The Property fronts Patuxent River and is constrained by the Critical Area Buffer (the "Buffer"), by steep slopes, and severely and moderately erodible soils. The Buffer is established a minimum of 100-feet landward from the mean high-water line of tidal waters, tidal wetlands, and tributary streams (CZO 71.8.3) and is expanded to include contiguous steep slopes, hydric soils whose development or disturbance may impact streams, wetlands or other aquatic environments, and highly erodible soils [CZO 71.8.3.a.(1)].
- The existing soil types on the Property, according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey, are Evesboro-Westphalia complex (EwE2), which is found on slopes of 20 to 45 percent, is considered well drained and severely erodible; and Mattapex silt loam (MuaB), found on slopes of 2 to 5 percent which are considered moderately well drained and moderately erodible.
- According to the site plan provided by the Applicant, the Property has 8,376 square feet of existing lot coverage. The applicant proposes removing an 80 square foot shed and a 610 square foot deck. They are proposing to replace the deck with a new 730 square foot deck and adding new stairs for a total of 8,356 square feet of lot coverage, thus reducing the lot coverage by 20 square feet. The allowed amount of lot coverage on a property of this size is 5,946 sf.
- The Property is within Special Flood Hazard Area Zone X and AE-5 according to Flood Insurance Rate Map (FIRM) panel 203F. The proposed development is in

unshaded X and is more than 50' feet away from a regulated Special Flood Hazard Area.

- The Property is served by public water and sewer.
- Approximately 6,200 square feet of trees, shrubs, and other vegetation cover the Property. The Applicant does not plan to clear the existing vegetation within the Expanded Critical Area Buffer.
- In accordance with *COMAR 27.01.09.01-2.H*, mitigation is required for development located within the Expanded Critical Area Buffer. The permanent disturbance of 790 square feet is calculated at a ratio of three to one per square foot of the variance granted. A credit of 610 square feet of lot coverage removed, per *COMAR 27.01.09.01-2.I*, is deducted for a total of 1,760 square feet of mitigation plantings.
- The Department of Land Use and Growth Management reviewed the site plan in accordance with stormwater management requirements and exempted the site plan from stormwater management regulations, due to less than 5,000 square feet of disturbance, on June 19, 2019.
- The Maryland Critical Area Commission provided a report on September 26, 2019 (see Attachment 2).
- If the variance is granted, the Applicant must comply with Section 24.8 of the Ordinance pertaining to lapse of variance. Variances shall lapse one year from the date of the grant of the variance, if the Applicant has not complied with Section 24.8.

- The following Attachments to the Staff Report were presented:
 - #1: Standards Letter of September 18, 2019 from Christine Blinn;
 - #2: Critical Area Commission letter dated September 26, 2019;
 - #3: Site Plan;
 - #4: Location Map;
 - #5: Land Use Map;
 - #6: Zoning Map;
 - #8: Contour and Soils Map;
 - #9: Floodplain Map.

Applicants Testimony and Exhibits

The Applicant represented herself at the hearing. The following evidence was presented by the Applicant:

- Photo's of the property were introduced;
- A diagram of the recorded plat was introduced;
- Photo's of the deck joists were introduced;
- Photo's of the back of the house were introduced;
- Photo's of the 2nd deck was introduced;
- The first section of the home was built in 1954; the second section was built in 2008;
- When the applicant purchased the home, she knew the deck would need to be replaced due to its deteriorating condition;
- The applicant has already removed unsafe sections of the deck;

- The concrete wall supporting a portion of the deck has cracks;
- A diagram of where the proposed deck would be located was introduced;
- A diagram of the plans for the new deck was introduced.

Decision

County Requirements for Critical Area Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.4.1 sets forth six separate requirements that must be met for a variance to be issued for property in the critical area. They are summarized as follows: (1) whether a denial of the requested variance would constitute an unwarranted hardship, (2) whether a denial of the requested variance would deprive the applicants of rights commonly enjoyed by other property owners in similar areas within the St. Mary's County Critical Area Program, (3) whether granting the variance would confer a special privilege on the applicants, (4) whether the application arises from actions of the applicants, (5) whether granting the application would not adversely affect the environment and be in harmony with the critical area program, and (6) whether the variance is the minimum necessary for the applicants to achieve a reasonable use of the land or structures. State law also requires the applicants overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances, the Board finds and concludes that the applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. There are a number of factors that support this decision. First, in the case of

Assateague Coastal Trust, Inc. v. Roy T. Schwalbach, et al., 448 Md. 112, 2016, the Court of Appeals established the statutory definition for “unwarranted hardship” as used in the Critical Area law. The Court stated:

(I)n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the Property without a variance.

In this application the Board finds that denying the applicants' request would deprive the applicants of a use that would be "both significant and reasonable." The Property already has a deck, but it is unsafe. Without a variance the applicant would be unable to replace a deteriorating and failing deck.

Second, the property is almost completely enveloped in the 100-foot Critical Area Expanded Buffer. Other property owners with recorded lots that are constrained by similar conditions of the Critical Area provisions of the Ordinance do have the opportunity to file for a variance and seek relief from the regulations.

Third, that the strict interpretation of the Critical Area provisions would prohibit the applicants from replacing an unsafe deck, a right that is commonly enjoyed by other property owners in the Limit Development Area (LDA).

Fourth, the need for the variance does not arise from actions of the applicant. The decks were in poor condition when the home was purchased by the Applicant.

Fifth, the critical area variance is the minimum necessary to afford relief to the applicant to build a deck on the Property. Without a variance, the applicant would be unable to replace the current unsafe decks; and

Sixth, that the granting of the variance would not adversely affect the environment. The Board finds that Critical Area Planting Agreement, which is required, will alleviate any impacts to water quality due to the creation of impervious surface in the Critical Area. The Planting Agreement requires mitigation at a ratio of three to one (3:1) per square foot for all disturbance within the Buffer.

The Board further finds the required plantings will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, which should contribute to improved infiltration and reduction of non-point source pollution leaving the site. For these reasons, the Board finds that the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area program.

The applicant has overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), of the State law that the variance request should be denied.

ORDER

PURSUANT to the application of Christine Blinn, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Critical Area Regulations to allow disturbance to the Critical Area Buffer to construct a deck; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the applicant is granted a critical area variance from the prohibition in § 71.8.3.a.(1) against disturbing the buffer to allow the construction of a deck as shown on Applicants site plan.

The foregoing variance is subject to the condition that the applicant shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for the applicant to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: November 14, 2019

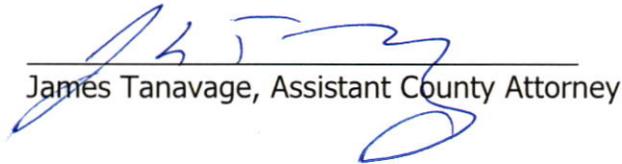

George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency


James Tanavage, Assistant County Attorney

NOTICE TO APPLICANTS

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed (COMAR 27.01.12.07.C).

Further, § 24.8 provides that a variance shall lapse one year from the date of the grant of the variance by the Board of Appeals unless: 1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; or 2) A longer period for validity is established by the Board of Appeals; or 3) The variance is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.