

**ST. MARY'S COUNTY BOARD OF APPEALS**

In the Matter of James E. and Mary G. Brown  
25900 Whiskey Creek Road, Hollywood, Maryland

Case No. VAAP #15-0734

**DECISION AND ORDER**

**Introduction**

James E. and Mary G. Brown (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 25900 Whiskey Creek Road, Hollywood, 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 and appurtenances.

After due notice, a public hearing was conducted at 6:30 p.m. on March 10, 2016, 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 Property, known as Lot 11 of the Eagle Crest at Sotterley Manor Subdivision, is approximately one acre in size and is essentially fully wooded. The lot was recorded on April 3, 1986, after the adoption of the Maryland Critical Area program in 1985, but prior to the adoption of the St. Mary's County Critical Area program in 1990. The Property contains an existing 10-foot by 10-foot shed, which the Applicants plan to move to the southeast corner of the Property, an existing pier, and an existing set of steps leading to the pier.

The Applicants propose to construct a two-story single-family dwelling with a walk-out basement, a porch, walkway, and driveway for a total of 2,989 square feet of new lot coverage. The total amount of lot coverage following development will be 3,089 square feet, which includes the 100 square-foot shed. The existing steps to the pier do not count as lot coverage. The maximum amount of allowed lot coverage on the Property is 6,534 square feet, or 15 percent of the Property. Approximately 99 percent of the Property (43,236 square feet) is wooded and approximately 29 percent of the woodland, or 12,837 square feet, will be cleared in order to develop the Property.

The Property fronts on St. Thomas Creek and is constrained by the Critical Area Buffer which encumbers approximately three-fourths (¾) of the Property when expanded for steep slopes and highly erodible soils. The proposed septic reserve areas restrict development on the remaining part of the Property. Two soil types are present on the property: Evesboro Westphalia Complex (EwE2) and Beltsville (BiB2). EwE2 soils are considered to be moderately erosive and necessitate expansion of the Critical Area Buffer (Buffer). BiB2 soils are neither hydric nor highly erodible. The proposed development is outside the mapped floodplain.

An individual septic disposal system and a well drilled to an approved, confined aquifer will serve the Property. The septic tank must be a nitrogen-reducing, advanced treatment unit which is based on best available technology. The St. Mary's County Health Department and the Soil Conservation District have approved the site plan. The proposed stormwater management measures have been approved by the Department of Land Use and Growth Management.

The 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. §41.2.2 of the St. Mary's County Comprehensive Zoning

Ordinance states that "A single, undeveloped lot or parcel of land that was legally of record on the date of the County's Critical Area Program approval (March 27, 1990) may be improved with one single-family dwelling, notwithstanding that such development may be inconsistent with the density provision of this chapter."

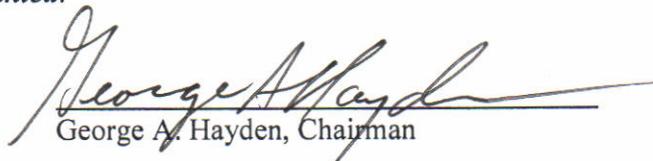
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for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

Since the Critical Area Commission, an agency deemed to have expertise and vested with the legal mandate to protect the critical areas of the State, does not oppose the variance, there is a strong inference that the Applicants meet the standards for a variance.

**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 and appurtenances is **granted**.

Date: April 14, 2016

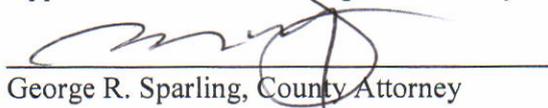
  
George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Egli, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:

  
George R. Sparling, County Attorney