

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

In the Matter of Donald and Jeanne Hammett  
48721 Whitaker Road  
St. Inigoes, Maryland

Case No.: VAAP #15-0690

**DECISION AND ORDER****Introduction**

Donald and Jeanne Hammett (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 48721 Whitaker Road, St. Inigoes, 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 an addition to a single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on October 13, 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 is a grandfathered lot in the Critical Area of St. Mary's County because it was recorded in 1981, prior to the adoption of the Maryland Critical Area law on December 1, 1985. Lot 10 was originally recorded in 1978 as Section 1 of St. Ingoes Landing.

The Property is essentially constrained in its entirety by the Critical Area Buffer (Buffer) as measured from the edge of the mean high water line of a tributary stream which drains into Jutland Creek to the south and west of the Property. This Buffer is expanded for tidal wetlands, steep slopes, highly erodible soils, and hydric soils.

The Property contains a two-story single-family dwelling and basement with an attached deck, a detached building containing a shop, a detached building containing a studio, and a detached shed for a total of 3,462 square feet of lot coverage. The two existing driveways equal 7,548 square feet of lot coverage for a sum of 11,010 square feet of lot coverage. If the deck has space between the deck boards to allow water to flow through freely, then the deck would not count as lot coverage. The existing amount of lot coverage would equal 10,620 square feet.

The Applicants propose to construct an addition on the east side of the house for another 1,185 square feet of lot coverage. The Applicants also plan to build a third driveway which will extend from one of the existing driveways off Whitaker Road to the addition. This new driveway will create another 1,845 square feet of lot coverage for a total of 9,393 square feet of lot coverage in driveway alone. The amount of lot coverage on the Property following construction will be 13,650 square feet, or 5.12 percent of the Property. This amount does not include the 390 square-foot deck.

The purpose for the request is the desire of the Applicants to "age in place" and to adapt the home that they have occupied for thirty-eight years in order to permit continued residency when the natural infirmities that occur in the aging process make the full occupancy of a multi-story home impractical.

The proposed increased access will encompass an area that is already essentially cleared.

The soil types found on the Property are Tidal Marsh (Tm), Croom gravelly sandy loam (CrD3), and Sassafras-Chillum complex (SmC2) according to the Natural Resources Conservation Service (NRCS) Web Soil Survey. The Tm soils are hydric and commonly support only marsh grasses and sedges and a few other salt tolerant herbs and small shrubs. Tm soils are suitable for use as habitat for wetland wildlife. The CrD3 soils are highly erodible soils found on 10-15 percent slopes. They are best suited for woodland. The SmC2 soils are found on 6-12

percent slopes. Although not considered highly erodible soils, a moderate amount of surface soil has eroded and the hazard of further erosion is moderate to severe. The St. Mary's Soil Conservation District approved the site plan on February 10, 2016.

Approximately 82 percent of the Property is covered in vegetation according to the aerial photo accompanying this report. The Applicants plan to clear 2.25 percent of the existing vegetation.

The southern part of the Property is within Special Flood Hazard Areas Zone AE 4 and AE 5 according to Flood Insurance Rate Map (FIRM) panel 344F. All development is outside the Special Flood Hazard Areas or floodplains.

A private well and septic system serve the Property. The Health Department approved the site plan on May 16, 2016.

Critical Area Commission comments, dated July 27, 2016, are attached. The Commission expressed concern over the location of the proposed addition, the addition of a third driveway, and the fact that the Applicants did not show the environmental features on the Property, other than to designate an area as wetlands.

#### **Conclusions of Law**

The Property is constrained in its entirety 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 Applicants propose to add living space to their existing house, which is generally supported by the Critical Area Commission and staff, particularly in an instance where a property owner needs to create space on one level to avoid steps. The granting of a variance to allow the addition of living space would not confer a special privilege upon the Applicants.

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.

**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 an addition to a single-family dwelling is **granted**.

Date: November 10, 2016

  
George A. Hayden, Chairman

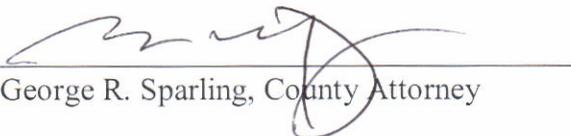
Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Miedzinski

Those voting to deny the variance:

Mr. Payne

Approved as to form and legal sufficiency:

  
George R. Sparling, County Attorney