

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Ronald L. and Marie L. Brvenik
16408 Ball Point Road, Piney Point, Maryland

Case No. VAAP #16-1682

DECISION AND ORDER**Introduction**

Ronald L. and Marie L. Brvenik (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 16408 Ball Point Road, Piney Point, 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 replacement single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on February 9, 2017, 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 located on St. George's Island and is little more than an acre in size. The Property is a grandfathered lot in the Critical Area of St. Mary's County because it was recorded prior to the adoption of the Maryland Critical Area law on December 1, 1985.

The Property contains a single-family dwelling with a porch, deck, walkways, a newly constructed detached garage, gazebo, and a driveway totaling 5,005 square feet of lot coverage. The Applicants are proposing to remove 1,913 square feet of the existing lot coverage leaving a total of 3,092 square feet of lot coverage on the Property. An existing pier and stone revetment are located on the property's frontage on St. George's Creek.

The Applicants propose to construct a replacement single-family dwelling with a porch, deck, and stoop, for a total of 2,260 square feet of lot coverage, or 4.15 percent of the Property. The existing detached garage, which was constructed under permit no. 14-0117, will remain and the new house will be attached to this garage. The total amount of lot coverage on the Property following construction will be 5,352 square feet, or 9.8 percent. The maximum allowed lot coverage on a lot of this size is 8,168 square feet, or 15 percent of the Property.

The Property is covered in approximately 9,100 square feet of existing woodland. The Applicants do not plan to clear any of this vegetation in preparation for construction.

The Property is entirely constrained by the Critical Area Buffer as measured landward from the mean high water line of St. George's Creek on the northeast side and tidal wetlands on the Property's southern boundary. The Property is also constrained by Othello (Ot) Soils. Ot soils are considered hydric soils. According to the U.S. Department of Agriculture Soil Conservation Service, Ot soils are poorly drained, nearly level, deep soils. These soils are found on low terraces adjacent to some major rivers. The seasonal water table is high and the soils are wet for long periods. The presence of Othello soils on the Property requires that the Buffer be expanded up to 300 feet or the extent of the soil, whichever is less. The Buffer on this property has been expanded to 300 feet. This expansion causes the Buffer to cover the entire Property. The proposed work will take place primarily within the minimum 100- foot Buffer.

The entire Property is located within Special Flood Hazard Area Zone AE with a base flood elevation of 6 feet per Flood Insurance Rate Map (FIRM) panel 376F. The proposed single-family dwelling will be constructed in the AE zone, and the first floor must be elevated at or above nine (9) feet to comply with the County's freeboard requirements.

The Property is on public sewer, and a well drilled to an approved, confined aquifer serves the Property.

The St. Mary's Soil Conservation District approved an engineered erosion and sediment control plan on November 16, 2016. The Health Department approved the site plan on October 21, 2016, and the Metropolitan Commission approved the site plan on October 27, 2016. The Department of Land Use and Growth Management approved the proposed stormwater management measures on October 21, 2016.

The Critical Area Commission opposes the variance request because the Applicants are proposing to increase the amount of lot coverage within the 100-Foot Buffer by 230 square feet.

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.

Although the replacement dwelling will increase the amount of lot coverage within the 100-Foot Buffer by 230 square feet, the existing footprint is being utilized, the Applicants do not plan to clear any vegetation, and the total amount of lot coverage on the Property following construction will be only 9.8 percent, only 65% of the allowable lot coverage.

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

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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 replacement single-family dwelling is **granted**.

Date: March 9, 2017


George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency


George R. Sparling, County Attorney