

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

**VAAP NUMBER 23-2460**

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**BAUMGARTNER PROPERTY**

**SIXTH ELECTION DISTRICT**

**DATE HEARD: October 10, 2024**

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**ORDERED BY:**

**Mr. Hayden, Mr. Loughran,  
Mr. Payne, Mr. Richardson and Ms. Weaver**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: November 14, 2024**

### **The Variance Requested**

Applicants seek a variance from St. Mary's County Comprehensive Zoning Ordinance ("CZO") Section 71.8.3 to disturb the 100' Critical Area Buffer to construct a deck with steps.

### **The St. Mary's County Comprehensive Zoning Ordinance**

CZO § 71.8.3 requires there be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. No new impervious surfaces or development activities are permitted in the 100-foot buffer unless an applicant obtains a variance. CZO § 71.8.3(b)(1)(c).

### **Staff Testimony**

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 was recorded in the Land Records of St. Mary's County in Liber M.R.B 235 at Folio 38 on September 26, 1985 prior to the adoption of the Maryland Critical Area Program on December 1, 1985. The lot was reconfigured in 2008 with the recording of Plat Book 65 Page 93.
- According to the Maryland Department of Assessments and Taxation and Plat Book 65 Page 93 the Subject Property is a 1.14-acre parcel located on Little Creek Lane in Hollywood. The existing single-family dwelling was built in 1986.
- The Critical Area Buffer (the "Buffer") is established a minimum of 100-feet landward from the mean high-water line of the tidal waters of Nats Creek.
- The site plan proposes constructing a 650 s.f. deck with steps which, if built, will impact the 100' Critical Area Buffer.
- Mitigation is required at a ratio of 3:1 for permanent disturbance within the Buffer

(COMAR 27.01.09.01-2.H). The total mitigation required for this proposal is 2,100 square feet of Buffer plantings to meet these mitigation requirements. A planting plan and agreement will be required prior to the issuance of the building permit.

- The Critical Area Commission responded on September 6, 2024. The Commission states that the applicant has the burden to prove each and every Critical Area variance standard, including the standards of unwarranted hardship and is the minimum necessary to achieve reasonable use of land and structures.
- The Department of Land Use and Growth Management approved the site plan for zoning and floodplain requirements. The Health Department approved the site plan. The project is exempt from the St. Mary's County Soil Conservation District or Stormwater Management as the proposal calls for less than 5,000 square feet of soil disturbance.
- The following Attachments to the Staff Report were introduced:
  - #1: Critical Area Standards Letter;
  - #2: Deed Liber MRB 235, Folio 38
  - #3: Plat Liber 65, Folio 93
  - #4: Critical Area Map
  - #5: Site Plan;
  - #6: Critical Area Commission Response;
  - #7: Location Map;
  - #8: Land Use Map; and,
  - #9: Zoning Map.

**Applicant Testimony and Exhibits**

Presenting before the Board of Appeals were Applicant Cary Baumgartner and Mr. Richard

Gass. Mr. Baumgartner and Mr. Gass addressed the Board's question and offered oral testimony.

The Applicants' remarks included, but were not limited to, the following points:

- The original of the tract is exceptionally long and narrow and originally had a structure from the 1930s or 1940s that spread across the lines of both Tract 1 and Tract 2. This house burnt in 1984 or 1985 and was replaced by the current house, built on the same footprint as the original.
- In an effort to make the lot's shape "more regular," a Boundary Line Adjustment Plat was done combining Tract 1 and parts of Tract 2 to get the house on one parcel. This BLAP also had the effect of expanding the amount of water frontage on Tract 1.
- Mr. Baumgartner only has one point of access from his second floor as the house is currently configured. The proposed deck will provide a second point of access.
- The deck cannot be put on the other side of the house, as the Critical Area Commission appears to suggest, because of the steep drop-off on the other side of the house.
- The Applicants are making efforts to preserve one large oak tree that exists in the front yard, something further elaborated on in the Applicants' standards letter.
- A deck is a typical improvement for a waterfront homeowner.
- Accessory buildings have been removed from the property under the Applicants' ownership – namely, a tool and garden shed that was 9.25' x 12', a boathouse locker that was 6.3' x 6.3', and a pump house that was 4.2' x 4.2'.
- Mr. Baumgartner testified that the additional exit is necessary given his age and the conditions that present with his age.

#### **Public Testimony**

No members of the public appeared to offer in-person testimony for or against the project.