

**ST. MARY'S COUNTY GOVERNMENT
DEPARTMENT OF LAND USE
AND GROWTH MANAGEMENT**

*William B. Hunt, AICP, Director
Harry Knight, Deputy Director*



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MEMORANDUM

To: Board of Appeals
From: Stacy Clements, Environmental Planner
Subject: VAAP # 21-1886, Simms
Date of Hearing: January 27, 2022

SECTION I. Development Data:

Request: Variance from Section 71.8.3 to disturb the Critical Area Buffer to regrade 585 square feet of an existing riparian access road using 190 square feet of soil from an adjacent vegetated bank.

Owner: John & Kristen Simms (the "Applicant")

Location: 47040 Christianna Lane, Drayden, MD
Tax Map: 62 **Grid:** 5 **Parcel:** 191 **Election District:** 2
Subdivision: Christianna Farms **Lot:** 500-1
Lot Size: 3.0 AC
Land Use: Rural Preservation
Zoning: Rural Preservation District (RPD)
Overlay: Resource Conservation Area (RCA)

SECTION II. Notification: The property and variance request were advertised in *The Southern Maryland News* on January 7, 2022, and January 14, 2022. The agenda was posted on the County's website on Wednesday, January 19, 2022.

SECTION III. Applicable Regulations: St. Mary's County Comprehensive Zoning Ordinance (CZO)

1. **Section 24.4.** Specific Standards for Granting Variances in the Critical Area
2. **Section 71.8.3.** The 100-Foot Critical Area Buffer

SECTION IV. Recommended Action: Staff recommends the following action (with modifications and additions following discussion):

"In the matter of VAAP # 21-1886 having made a finding that the standards for granting a variance and the objectives of Sections 24.4 of the St. Mary's County Comprehensive Zoning

Ordinance (**have / have not**) been met, I (**approve / deny**) the variance request from Section 71.8.3 to disturb the Critical Area Buffer to regrade 585 square feet of an existing riparian access road using 190 square feet of soil from an adjacent vegetated bank.”

SECTION V. Property and Critical Area Case Information:

1. The subject property (hereinafter the “Property”) is a 3-ac lot located in Christianna Farms Subdivision on Christianna Lane in Drayden, adjacent to the tidal waters of the St. Mary’s River.
2. The Critical Area Buffer is established a minimum of 100-feet landward from the mean high-water line of tidal waters and tidal wetlands. Therefore, the Property is constrained by the Critical Area Buffer (the “Buffer”). A house with attached and detached garages currently exist on the property (Attachment 2).
3. Per the site plan (Attachment 3), the Applicant is proposing to regrade 585 square feet of an existing riparian access road using 190 square feet of soil from an adjacent vegetated and eroding bank.
4. The Maryland Critical Area Commission provided a comment letter dated September 24, 2021 (Attachment 4).
5. COMAR 27.01.09.01-2, Table H, specifies Buffer mitigation of 3:1 for areas of permanent disturbance, 1: 1 for areas of temporary disturbance. Additionally, 1:1 mitigation is required for canopy removal. Therefore, the applicant is required to provide 1,425 sf of plantings to meet these requirements. A planting agreement and plan will be required prior to the issuance of the building permit.
6. The Department of Land Use and Growth Management reviewed the site plan in accordance with stormwater management requirements and exempted the site plan on August 6, 2021, due to less than 5,000 sf of soil disturbance. The St. Mary’s County Soil Conservation District also issued an exemption for less than 5,000 sf of soil disturbance on September 9, 2021.
7. If the variance is granted, it shall lapse one year from the date of the grant of the variance, if the Applicant has not obtained the building permit, per Section 24.8.1.

SECTION VI. Critical Area Standards: Pursuant to Section 24.4 of the Ordinance, before a Critical Area variance may be granted, the Board of Appeals must find the following:

- a. *That 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.*

The Property is constrained by the Critical Area Buffer due to the tidal waters of the St. Mary's River and tidal wetlands.

- b. That 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.*

The Applicant proposes to regrade 585 square feet of an existing riparian access road using 190 square feet of soil from an adjacent vegetated and eroding bank to maintain the Property's existing access to the St. Mary's River.

- 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.*

The Applicant's proposed improvement is intended maintain the Property's existing access to the St. Mary's River.

- d. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.*

The Applicant's proposed improvement is intended maintain the Property's existing access, an old farm road, to the St. Mary's River, which existed prior to the subdivision of the property into building lots.

- 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.*

The applicant will be required to mitigate the proposed development with an approved planting plan established on-site (per COMAR 27.01.09.01) as part of the Building Permit process. The plantings are intended to offset any negative effects and provide improvements to water quality along with wildlife and plant habitat.

- f. The variance is the minimum necessary to achieve a reasonable use of the land or structures.*

The Applicant proposes to regrade an existing riparian access road using soil from an adjacent vegetated and eroding bank to maintain the Property's existing access to the St. Mary's River.

SECTION VII. Attachments:

- Attachment 1: Standards Letter
- Attachment 2: Critical Area Buffer Map
- Attachment 3: Site Plan

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Attachment 4: Critical Area Commission letter
Attachment 5: Zoning Map