

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP # 21-1062

Ho Property

NINTH ELECTION DISTRICT

DATE HEARD: February 10, 2022

ORDERED BY:

**Mr. Ichniowski, Mr. Bradley, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: LEAH LANGFORD

DATE SIGNED: MARCH 10, 2022

Pleadings

John Ho and Yvonne Le (“Applicants”) seek a variance (VAAP # 21-1062) to disturb the Critical Area Buffer (“the Buffer”) and to disturb the non-tidal wetland buffer to construct a new house.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 21, 2022 and January 28, 2022. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, even those located across a street, on or before January 26, 2022. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County’s website on February 2, 2022. Therefore, the Board of Appeals (“Board”) finds and concludes the applicable notice requirements are met.

Public Hearing

A public hearing was conducted at 6:30 p.m. on February 10, 2022 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the Applicant.

The Property

The Applicant owns the unimproved property at 16431 Thomas Road, Piney Point, MD (“the Property”). The Property’s land use is Rural Preservation & Tidal Wetlands, is located in the Rural Preservation District (“PRD”) Zoning District, and is identified on Tax Map 69, Grid 8, Parcel 62. This lot is designated in the Chesapeake Bay Critical Area Buffer with a Resource

Conservation Area (“RCA”) Overlay.

The Variance Requested

The Applicant requests a Critical Area variance from § 71.8.3 of the St. Mary’s Comprehensive Zoning Ordinance (“CZO”) to disturb the Critical Area Buffer and from § 71.5.1.b.1 to disturb the non-tidal wetland buffer to construct a single-family dwelling.

The St. Mary’s County Comprehensive Zoning Ordinance

CZO § 71.8.3 requires that there shall be a minimum 100-foot buffer¹ 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). Moreover, CZO § 71.5.1.b.1 requires that “[a] 25-foot buffer shall be preserved from the edge of non-tidal wetlands and shall be expanded up to 100 feet to include areas of adjoining hydric soils.” Similarly, development activities within the 100-foot non-tidal wetland buffer are not permitted unless an applicant obtains a variance. § 71.5.2.d.

The Evidence Submitted at the Hearing by LUGM

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 (hereinafter “the Property”) is a 1.98-acre parcel of land located on St. George’s Island, adjacent to the tidal waters of the Potomac River. The Critical Area Buffer (“Buffer”) is established a minimum of 100-feet landward from the mean high-water line of tidal waters and wetlands. The Buffer is also expanded due to wetlands and hydric soils present on the property. CZO § 71.8.3. Therefore, it is constrained by the

¹ Maryland Code of Maryland Regulations § 27.01.01(B)(8)(a)(ii) defines a “buffer” as an area that “exists . . . to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.”

Critical Area Buffer. See Ex. 2, Staff Report, Att. 2.

- Per the site plan, Ex. 2, Att. 3, the Applicant illustrates the permanent and temporary disturbance necessary to construct the proposed house, deck, and driveway. The proposed house impacts the Critical Area Buffer and Non-Tidal Wetland. Permanent and temporary disturbance in the Buffer requires a variance, as does disturbance to the wetland buffer.
- The Maryland Critical Area Commission provided a comment letter dated January 6, 2022, Ex. 2, Att. 4, which included the following statements: “We recommend that appropriate measures be taken to ensure the resiliency of the proposed improvements, as well as protection of the Buffer and wetlands. If the Board does grant this variance request, the required mitigation ratio is 3:1 for all permanent disturbance in the Buffer, 1:1 for all temporary disturbance, and an additional 1:1 ratio for the square footage of canopy coverage removed.”
- In accordance with COMAR 27.01.09.01-2 Table H, the applicant is required to provide mitigation at a ratio of 3:1 for permanent (6,908 s.f.) and 1:1 for temporary (5,138 s.f.) disturbances. A Major Buffer Management Plan for on-site planting will be required prior to the issuance of the building permit.
- CZO § 71.5.b.1 requires development to preserve a 25’ Non-tidal wetland buffer. A “Joint Federal/State Application for The Alteration of Any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland” has been filed with the Maryland Department of the Environment (“MDE”) and a copy of the MDE permit to disturb the wetlands will be required prior to the issuance of the permit for construction.
- The St. Mary’s County Soil Conservation District (“SCD”) has not yet approved the site plan. However, it is not uncommon for SCD to be the last approval due to its requirement