

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

In the Matter of James H. Ball  
26379 Fielding Road, Hollywood, Maryland

Case No. VAAP #08-1969

**DECISION AND ORDER**

**Introduction**

James H. Ball (hereinafter "Applicant(s)"), 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 26379 Fielding Road, Hollywood, 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 single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on January 8, 2015, 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 subject property (the "Property") is a lot in the Critical Area of St. Mary's County recorded as part of the Hollywood Shores Subdivision prior to the effective date of the Critical Area regulations in 1985.

The Property is a heavily wooded, unimproved lot approximately one-half acre in size. The Applicant proposes to construct a two-story single-family dwelling and stoop. This structure and the proposed driveway and walkway equal approximately 1,540 square feet of lot coverage. The maximum allowed amount of lot coverage on the Property is 5,445 square feet.

The Property is constrained by a 100 foot Critical Area Buffer (Buffer) as measured from a perennial stream that traverses the center of the property from east to west according to records. However, the stream does not appear to exist in fact. The Buffer is expanded to include the steep slopes and highly erodible soils. Evesboro Westphalia (EwE2) Soils are found on slopes of 20-45 percent gradient with an erosion hazard of moderate to severe. The Property also contains Mattapex fine sandy loam soils (MtA), which are found on land with a 0-2 percent slope. The proposed single-family dwelling will be constructed on this type soil.

Nearly 80 percent of the Property is covered in woodland, and approximately 48 percent of the woodland, or 9,272 square feet, will be cleared in order to develop the Property.

An individual septic disposal system and a well drilled to an approved, confined aquifer will serve the Property. The septic tank must be a nitrogen-reducing, advanced treatment unit which is based on best available technology. The St. Mary's County Health Department and the Soil Conservation District have approved the site plan. The proposed stormwater management measures have been approved by Land Use and Growth Management, and the Critical Area Commission does not oppose the variance request.

The Critical Area Commission does not oppose the variance.

### **Conclusions of Law**

The Property is a lot recorded prior to the effective date of the Critical Area regulations and is significantly constrained by a Critical Area Buffer (the "Buffer"). A strict interpretation of the Ordinance would prohibit any development in the Critical Area Buffer. Although the stream that requires the Buffer may not exist in fact, the Applicant has located the proposed dwelling outside the Buffer.

The Critical Area program recognizes "grandfathered" properties and the rights of property owners to develop or redevelop them.

The basis for the variance is the subsequent adoption of the Maryland Critical Area regulations on December 1, 1985.

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.

The proposed dwelling is moderate in size and will result in less than 30% of the allowable lot coverage. Since the Critical Area Commission does not oppose the variance, the Applicant is presumptively entitled to the variance.

**ORDER**

**NOW, THEREFORE, BE IT ORDERED**, that, having made a finding that the standards for a variance and the objectives of Section 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 from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct a single-family dwelling is **granted**.

Date: February 12, 2015

  
George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency:

  
George R. Sparling, County Attorney