

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of John P. & Kathryn Miluski,
17674 Driftwood Drive, Tall Timbers, Maryland

Case No. VAAP #11-0632

DECISION AND ORDER**Introduction**

John P. & Kathryn Miluski (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 17674 Driftwood Drive, Tall Timbers, 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 detached garage and additions to an existing single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on October 23, 2014, 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 a grandfathered lot in the Critical Area of St. Mary's County since the property was a lot of record prior to the adoption of the Maryland Critical Area regulations in December 1985. The Property is nearly entirely constrained by the Critical Area Buffer (Buffer), which is measured from the mean high water of Piney Point Creek and the edge of the tidal wetlands on the south side of the Property.

The Property is in the Resource Conservation Area (RCA) Overlay and the lot coverage limit on the Property is 10,294 square feet or 15 percent of the Property. The existing lot coverage consists of a single-family dwelling with an attached porch and deck, a driveway, and walkways totaling 5,204 square feet. The dwelling was

constructed in 1995. The Applicants propose to construct a screened porch, a deck to replace the back stoop, a mudroom, and an attached garage. Prior to construction of the improvements the Applicants plan to remove 72 square feet of the existing house and 405 square feet of the existing driveway for a total of 477 square feet of lot coverage planned for removal. As a result, the proposed improvements will result in an increase in lot coverage of 1,120 square feet. The total amount of lot coverage on the Property following construction will be 5,847 square feet or approximately nine (9) percent of the Property.

The existing vegetative cover on the Property is approximately 61,855 square feet or 92 percent of the Property. The existing vegetation meets and exceeds the 15 percent afforestation requirement of the lot area. The Applicants do not propose to remove any woody vegetation on the Property per the survey provided.

The existing soil type on the Property is Mattapex Fine Sandy Loam (MtA). This soil type is not a hydric or highly erodible soil as described in the U.S. Department of Agriculture's Soil Survey of St. Mary's County. The Soil Conservation District did not review the proposed project because the disturbance is minimal.

The Commission does not object to granting the variance request as the additions are a reasonable expansion of living space.

Conclusions of Law

The Property is nearly entirely constrained by the Critical Area Buffer (the "Buffer"). A strict interpretation of the Ordinance would prohibit any meaningful development in the Critical Area 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.

Since the Critical Area Commission does not oppose the variance, the Applicants are 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 to disturb the Critical Area Buffer to construct a detached garage and additions to an existing single-family dwelling is **approved**.

Date: January 8, 2015


George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Guy, Mr. Moreland, and Mr. Payne

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney