

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

In the Matter of the application of James & Julianna Hudson for a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct an attached garage with second story living space and a parking area.

Case No. VAAP #13-1207  
Hudson

**ORDER**

**WHEREAS**, Application VAAP #13-1207 – Hudson was duly filed with the St. Mary's County Board of Appeals (the "Board") by James & Julianna Hudson (the "Applicants"), on or about October 8, 2013; and

**WHEREAS**, the Applicants seek a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance, as amended, (the "Ordinance"), to disturb the Critical Area Buffer to construct an attached garage with second story living space and a parking area. The property contains 10,300 square feet; is zoned Residential Low-Density (RL) District, Intensely Developed Area (IDA) Overlay; and is located at 45473 Saint George's Avenue, Piney Point, Maryland; Tax Map 65A, Parcel 39 (the "Property"); and

**WHEREAS**, after due notice, a public hearing was conducted by the Board on Thursday, November 14, 2013 in Main Meeting Room, Chesapeake Building, 41770 Baldrige Street, of the Governmental Center in Leonardtown, Maryland, at 6:30 p.m., and all persons desiring to be heard were heard, documentary evidence received, and the proceedings electronically recorded.

**NOW, THEREFORE**, having reviewed the testimony and evidence presented at the hearing, the following facts, findings, and decision of the Board are noted:

**SUMMARY OF TESTIMONY**

Yvonne Chaillet, Zoning Administrator, summarized the Staff Report. Jeff Errington, Errington Builders, Inc. for the applicant, testified to the need for the variance.

**SUMMARY OF DOCUMENTARY EVIDENCE**

The Board accepted into evidence the following exhibits:

- Exhibit No. 1 – Affidavit of Property Posting and Mailing Receipts
- Exhibit No. 2 – Staff Report
- Exhibit No. 3 – PowerPoint Presentation

**FINDINGS OF FACT**

The subject property (the "Property") is a lot in the Critical Area that was recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is bound on its southern and eastern sides by St. George Creek. The Property is improved by an existing single-family dwelling with a porch, an attached deck, an existing driveway, and a shed. The existing house was constructed in 1936 and is located entirely within the Critical Area Buffer (the "Buffer"). A private well and public sewer serve the single-family dwelling.

The Property contains 4,283 square feet of lot coverage. The Applicants plan to construct an attached garage with second story living space and a parking area. The Applicants plan to remove 161 square feet of the existing driveway before constructing the proposed 625 square-foot driveway addition. This new addition will serve the proposed two-story garage and living space. The overall increase in lot coverage over current conditions is 1,384 square feet. The sum of lot coverage following construction will be 5,667 square feet, or 55 percent of the Property.

The soils types on this Property are Keyport Silt Loam (KrA) found on 0-2 percent slopes. These soils types are not considered to be hydric or highly erodible. The existing vegetative cover on the Property is 8,750 square feet or 85 percent. The Applicants are not proposing to remove any vegetation.

The entire Property is within the 1 percent annual chance floodplain; zone AE per Flood Insurance Rate Map (FIRM) panel 319E. The base flood elevation for this site is four feet. The proposed development will be inside of the floodplain and requires an elevation certificate. The project has been approved by the Soil Conservation District and is under review with the Health Department and the project. The Critical Area Commission does not oppose the variance.

#### CONCLUSIONS OF LAW

The Board addresses the Special Standards for Granting Variances, which are set forth in Section 24.4 of the Ordinance, finding as follows:

- 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 a lot recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is improved by an existing single-family dwelling constructed in 1936. The existing house is located entirely within the Critical Area Buffer.

For these reasons, the Board finds 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.

- 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 Property is a lot recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is improved by an existing single-family dwelling constructed in 1936. The existing house is located entirely within the Critical Area Buffer. Owners of lots in the Critical Area that pre-existed the Critical Area laws are frequently granted variances to develop or redevelop the lot.

For these reasons, the Board finds 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.

- 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 Property is a lot recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is improved by an existing single-family dwelling constructed in 1936. The existing house is located entirely within the Critical Area Buffer. Owners of lots in the Critical Area that pre-existed the Critical Area laws are frequently granted variances to develop or redevelop the lot.

For these reasons, the Board finds that 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;*

The Property is a lot recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is improved by an existing single-family dwelling constructed in 1936. The existing house is located entirely within the Critical Area Buffer.

For these reasons, the Board finds that the variance request is not based upon conditions or circumstances that are the result of actions by the applicant.

- e. *The granting of the 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 Critical Area program recognizes "grandfathered" properties and the rights of property owners to develop or redevelop them. The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by plantings trees, shrubs, and native vegetation ground cover. Mitigation is required at a ratio of three to one per square foot of the variance granted for permanent disturbance and one to one per square foot of the variance granted for temporary disturbance. Required vegetation can improve plan diversity and habitat value for the site and improve the runoff characteristics for the Property, and contribute to improved infiltration and reduction of non-point source pollution leaving the site in the future.

For these reasons, the Board finds that the granting of the 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;*

The Property is improved by an existing single-family dwelling constructed in 1936. The existing house is located entirely within the Critical Area Buffer.

For these reasons, the Board finds that the variance is the minimum necessary to achieve a reasonable use of the land or structures.

**DECISION**

**NOW, THEREFORE, BE IT ORDERED**, that, having made a finding that the standards for variance and the objectives of Section 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 two-story attached garage with second story living space and a parking area is approved.

This Date: December 12, 2013

  
George A. Hayden  
Chairman

Those voting in favor of the request:

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

Those voting against the requested variance:

Approved as to form and legal sufficiency:

  
George R. Sparling  
Attorney