

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

In the Matter of Thomas and Margaret Tippet  
21690 Joe Hazel Road  
Leonardtown, Maryland

Case No. VAAP #14-1817

**DECISION AND ORDER****Introduction**

Thomas and Margaret Tippet (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 21690 Joe Hazel Road, Leonardtown, 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 deck.

After due notice, a public hearing was conducted at 6:30 p.m. on June 11, 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 Property is a grandfathered lot in the Critical Area since the Property was recorded in the Land Records of St. Mary's County as a parcel of record prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property contains an existing single-family dwelling, walkways, sheds, a concrete pad, a deck, and a driveway.

The Applicants propose to remove the existing 40 square foot deck in order to construct the new 240 square foot deck.

The Property is bound on its northern and eastern sides by Combs Creek and is almost entirely constrained by the Critical Area Buffer. The existing house and appurtenances are entirely constrained by the Critical Area Buffer. The Buffer on this property is measured from Combs Creek which borders the property on the northern and eastern sides. In order to make any improvements to the existing home, which was constructed in 1997, the Applicants would need to obtain a variance. This property is also constrained by significant slopes along the shoreline.

Existing lot coverage totaling 4,989 square feet is 32.7 percent of the Property. The allowed lot coverage on a property of this size is 31.25 percent of the property, or 4,764 square feet in this case. The existing lot coverage is grandfathered. The proposed 240 square-foot deck does not count as lot coverage as long as space is provided between the deck boards to allow water to flow through freely.

The existing vegetative cover on the Property is 3,592 square feet, or 23.5 percent of the Property. The Applicants are not planning to clear any vegetation to construct their deck.

The soil types on the Property are Woodstown Sandy Loam (WsA). These soils are found on 0-2 percent slopes. Soils in this series are not considered to be hydric or highly erodible.

The shoreline of the Property is within the 1 percent annual chance floodplain (zone AE per Flood Insurance Rate Map (FIRM) panel 164F). The base flood elevation for this site is seven feet. The proposed development will be entirely outside of the floodplain.

A private well and a public sewer system serve the existing dwelling. The Health Department has this plan under review.

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.

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. 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 Critical Area Commission does not oppose 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 240 square foot deck is **granted**.

Date: July 9, 2015



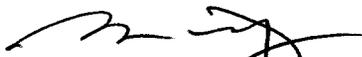
George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency:



George R. Sparling, County Attorney