

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Stacy L. Smith and Carol A. Doonis
25003 Briscoe Road, Hollywood, Maryland

Case No. VAAP #17-0371

DECISION AND ORDER**Introduction**

Stacy L. Smith and Carol A. Doonis (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 25003 Briscoe 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 replacement single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on May 11, 2017, 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 because it was recorded prior to the adoption of the Maryland Critical Area law on December 1, 1985.

The Property is constrained by the 100 foot Critical Area Buffer (Buffer) as measured from the edge of the mean high water line of Spring Cove. An area of 3,850 square feet of steep slopes that are 15 percent or greater in grade are also entirely contained within the Buffer.

The Property contains a single-family dwelling with three porches, walkways, a shed, a brick barbecue, a pump house, and a gravel driveway totaling 3,777.5 square feet of lot coverage. The Property has an existing deck and access stairs in the Buffer leading to the existing pier. The existing dwelling is entirely contained inside the Buffer.

The Applicants propose to construct a replacement single-family dwelling with a porch, a deck and stoops, a detached garage (outside the Buffer) and driveway, which will total 4,298.5 square feet of new lot coverage following construction.

The maximum allowed lot coverage on a lot of this size is 13,280 square feet, or 15 percent of the Property. The Applicants propose to remove 1,504.5 square feet of the existing lot coverage, leaving a total of 2,273 square feet of lot coverage on the Property. The Property will contain a total amount of 6,571.5 square feet of lot coverage, which is 7.6 percent of the Property. The access stairs to the pier do not count towards lot coverage because they are considered riparian access. The 192 square feet of existing and proposed decks would not count as lot coverage if they have the required spacing to allow water to pass through; however, decks count as permanent soil disturbance in the Buffer.

The Property is covered in approximately 44,064 square feet of existing woodland. The Applicants propose to remove 600 square feet of vegetation in the Buffer and 200 square feet of vegetation outside the Buffer.

The Property will be served by a private deep well drilled to an approved confined aquifer and a private septic system. The Applicants are required to install a septic system landward of the current location of the dwelling completely out of the Buffer. The St. Mary's County Health Department will approve the plan once an existing well is abandoned.

The soil type found on the Property is Mattapex silt loam (MuA) according to the Natural Resources Conservation Service (NRCS) Web Soil Survey. The Mattapex soil series consists of

moderately well drained, level to moderately sloping, deep soils. Mattapex silt loam is found on 0 to 2 percent slopes and the hazard of erosion is none to slight.

The western portion of the Property is within Special Flood Hazard Area Zone AE 5 according to Flood Insurance Rate Map (FIRM) panel 182F. All development is outside the Special Flood Hazard Areas or floodplains.

The Department of Land Use and Growth Management approved the proposed storm water management measures on March 28, 2017.

The Critical Area Commission opposes the variance request because the Applicants are proposing to increase the amount of lot coverage within the 100-Foot Buffer and remove vegetation within the Buffer when it appears there are areas outside of the Buffer to place the house and avoid clearing. Often, in the past, the Commission has not opposed in kind dwelling replacements in the Buffer.

Conclusions of Law

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

The basis for the variance is the subsequent adoption of the St. Mary's County Critical Area Program on March 27, 1990.

Although the replacement dwelling will increase the amount of lot coverage within the 100-Foot Buffer, the existing footprint is being utilized, and the total amount of lot coverage on the Property following construction will be only 7.6 percent of the allowable lot coverage.

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.

In light of all facts, the Applicants' proposal is the minimum necessary to achieve a reasonable use of the land and structures.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Sections 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 replacement single-family dwelling is **granted**.

Date: June 8, 2017


George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Egeli

Those voting to deny the variance:

Mr. Payne

Approved as to form and legal sufficiency


George R. Sparling, County Attorney