

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Mark Cullison
16394 Thomas Road, Piney Point, Maryland

Case No. VAAP #18-1404

DECISION AND ORDER

Introduction

Mark Cullison (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 16394 Thomas Road, Piney Point, 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 December 13, 2018, 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 grandfathered lot in the Critical Area of St. Mary's County because it was recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area Program on December 1, 1985. The Property is currently vacant. The Property will be served by a private well and public sewer.

The Property fronts tidal wetlands and nontidal wetlands that border Island Creek. The Property is constrained by the Critical Area Buffer (the "Buffer"), which has been measured 100 feet landward from the mean high water line of the tidal wetlands and expanded for nontidal wetlands and hydric soils, pursuant to the *Code of Maryland Regulations (COMAR) 27.01.09.01.E(7)*. All but a small section of the west side of the Property is within the Buffer. A portion of the proposed driveway is outside the Buffer.

The existing soil types on the Property are Tidal Marsh (Tm), Othello silt loam (Ot), and Mattapex silt loam (MuA), according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Tidal marsh consists of areas that are periodically covered by tidal water and commonly supports only marsh grasses, sedges, and low shrubs. Othello silt loam is considered a hydric soil and has a water table that is at or near the surface for long periods. The hazard of erosion is none to slight. Mattapex silt loam is moderately well drained with a seasonally high water table. The hazard of erosion is none to slight. It is neither hydric nor highly erodible in nature.

Tidal wetlands and nontidal wetlands can be found along the Property's shoreline. There are no steep slopes present on the Property.

Special Flood Hazard Area Zone AE6 encompasses the entire Property, according to the 2014 Flood Insurance Rate Maps (FIRM), panel 376F. Zone AE is defined in the County's floodplain management regulations as Special Flood Hazard Areas subject to inundation by the 1-percent annual chance (100-year) flood; base flood elevations are determined; and floodways may or may not be determined. In areas subject to tidal flooding, the Limit of Moderate Wave Action (LiMWA) is delineated to define the landward limit of the Coastal A Zone.

The base flood elevation of the AE zone on the Property is six (6) feet and a Flood Protection Elevation of nine (9) feet is required. The proposed development will comply with the County's floodplain regulations by elevating the finished floor, recordation of a nonconversion agreement, and by building a floodplain compliant garage and carport below the Base Flood Elevation.