

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

**VAAP NUMBER 18-1924**

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**TIMOTHY MURIS AND PAMELA HARMON**

**SEVENTH ELECTION DISTRICT**

**DATE HEARD: May 16, 2019**

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**ORDERED BY:**

**Mr. Hayden, Mr. Brown, Mr. Ichniowski,  
Mr. Miedzinski and Ms. Delahay**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: June 13, 2019**

### **PLEADINGS**

Timothy Muris and Pamela Harmon, the applicants, seek a variance (VAAP # 18-1924) to disturb 2,334 SF in the critical area buffer to construct a single family dwelling unit with a driveway on property with a street address of 39015 Van Ward Road, Abell, Maryland 20606.

### **PUBLIC NOTIFICATION**

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on May 1, 2019 and May 8, 2019. The hearing notice was also posted on the property. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within Two Hundred (200) feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County's website on Wednesday, May 8, 2019. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

### **FINDINGS**

A public hearing was conducted at 6:30 p.m. on May 16, 2019, at the St. Mary's County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically and the following was presented with regard to the proposed variance requested by the applicants.

#### **The Property**

That the applicants own the subject property located at 39015 Van Ward Road, Abell, Maryland 20606. It is located in the Rural Preservation District (RPD) and is known as Grid 8 in

Parcel 149 on Tax Map 47. This waterfront lot on St. Clements Bay is designated in the Chesapeake Bay Critical Area as limited development area (LDA).

### **The Proposed Work**

The proposal calls for the construction of a single family dwelling unit with driveway for a total of 3,754 square feet of lot coverage. The new lot coverage will be comprised of a 2,110 sf house, 182 sf of sidewalks, 97 sf of porch, and 1,368 sf of driveway for a total of 3,754 sf of proposed lot coverage. The applicant will be removing 382 sf of lot coverage which consists of an existing parking. The total lot coverage will be 4.64% percent of the Property. The allowed amount of lot coverage on a property of this size is 15% as shown on the site plan admitted into evidence at the hearing as Exhibit 9.

### **The St. Mary's County Comprehensive Zoning Ordinance**

§ 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands; and § 71.8.3.a stipulates that the 100-foot buffer shall be expanded beyond 100 feet to include slopes of 15% or more and is to be expanded by the greater of four feet for every 1% of slope or to the top of the slope and shall include all land within 50 feet from the top of the slopes. Title 27 of the Code of Maryland Regulations (COMAR) Section 27.01.01 (B) (8) (ii) states a buffer exists "to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance." § 71.8.3.b.1.c of the St. Mary's County Comprehensive Zoning Ordinance authorizes disturbance to the buffer for new impervious surfaces and development activities by variance. The applicants are proposing to construct a single family dwelling unit with a driveway which will create approximately 2,334 square feet of permanent disturbance in the buffer.

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**The Variance Requested**

The applicants require a critical area variance of 2,334 square feet from the prohibition in § 71.8.3 against disturbing the buffer to allow the construction of the proposed single family dwelling unit with driveway as shown on Exhibit 9.

**The Evidence Submitted At The Hearing**

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management (LUGM), presented the following evidence:

- 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 fronts St. Clements Bay and is constrained by the Critical Area Buffer (the "Buffer") and tidal wetlands. The Critical Area Buffer (the "Buffer") is measured from the mean high water line of St. Clements Bay pursuant to COMAR 27.01.09.01.E(3) and expanded for tidal wetlands.
- The existing soil type on the Property is Keyport silt loam (KrA). According to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Keyport soil is considered moderately well drained and is found on slopes of 0-2 percent.
- The Applicants propose to construct a single family dwelling unit and driveway for a total of 3,754 square feet of lot coverage. The new lot coverage will be comprised of a 2,110 sf house, 182 sf of sidewalks, 97 sf of porch, and 1,368 sf of driveway for a total of 3,754 sf of proposed lot coverage. The applicate will be removing 382 sf of lot coverage

which consists of an existing parking. The total lot coverage will be 4.64% percent of the Property. The allowed amount of lot coverage on a property of this size is 15%.

- Part of the Property is within Special Flood Hazard Area Zone AE-8 & AE-6 according to Flood Insurance Rate Map (FIRM) panel 163F. The proposed development is in unshaded X and is 28' from the Flood Hazard Area.
- A private well and private septic will serve the Property.
- Approximately 57,586 square feet of trees, shrubs, and other vegetation cover the Property. The Applicant plans to clear 382 square feet of the existing vegetation. In accordance with COMAR 27.01.09.01, mitigation is required at a ratio of three to one per square foot of the variance granted and at a ratio of one to one for the area of temporary disturbance.
- The St. Mary's Health Department approved the site plan on February 8, 2019. The Department of Land Use and Growth Management reviewed the site plan in accordance with storm water management requirements and approved the site plan on March 29, 2019. The Soil Conservation District approved the site plan on March 18, 2019 and the Health Department reviewed and approved the site plan on March 21, 2019.
- The Maryland Critical Area Commission does not oppose the variance and stated in their letter that "The Buffer has been expanded due to the presence of extensive tidal wetlands around the entire perimeter of the property. The Buffer expansion has significantly reduced the area available to build outside the Buffer. The lot cannot be developed without impacting the Buffer. Proposed lot coverage is 3,754 square feet or 4.6%. Construction of the house, porch, and walkway will result in 2,334 square feet of permanent Buffer disturbance."