

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 18-2520

CHRISTOPHER and DAWN TURNER

SIXTH ELECTION DISTRICT

DATE HEARD: November 14, 2019

ORDERED BY:

**Mr. Hayden, Mr. Brown, Mr. Ichniowski,
Mr. Miedzinski and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: December 12, 2019

Pleadings

Christopher and Dawn Turner, the applicants, seek a variance (VAAP # 18-2520) to disturb the critical area buffer to construct an addition to a home and expand a deck on subject property.

Public Notification

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on October 30, 2019 and November 6, 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, November 6, 2019. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on November 14, 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 about the proposed variance requested by the applicants.

The Property

The applicants own the subject property located at 45258 Saint Cuthbert Farm Road, Hollywood, Maryland 20636. It is in the Rural Preservation District (RPD) and is identified on Tax Map 21, Grid 23, Parcel 114, Lots 6. This lot is designated in the Chesapeake Bay Critical Area as Resource Conservation Area (RCA) Overlay.

The Variance Requested

The applicants request a critical area variance from the prohibition of § 71.8.3.b. of the St. Mary's Zoning Ordinance against development activities in the buffer to construct an addition to a home and expand a deck as shown on the site plan admitted into evidence at the hearing as Exhibit 2 of Attachment 3.

The St. Mary's County Comprehensive Zoning Ordinance

The St. Mary's County Comprehensive Zoning Ordinance ("SMCCZO") requires there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands. § 71.8.3. 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." No new impervious surfaces and development activities are permitted in the 100-foot buffer unless the applicant obtains a variance. § 71.8.3.b.1.c of the SMCCZO.

The Evidence Submitted at the Hearing by LUGM

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 before the adoption of the Maryland Critical Area Program on December 1, 1985.
- The Property fronts the Patuxent River and is constrained by the Critical Area Buffer (the "Buffer"). The Buffer is established as minimum of 100-foot landward from the mean high-water line of tidal waters, tidal wetlands, and tributary streams (CZO 71.8.3).
- The Property has an existing 700 sq. ft. house and a 475 sq. ft. deck. The Applicant is proposing a 720 sq. ft. addition to the house and replacing the existing deck with a 560 sq. ft. deck. Approximately 280 sq. ft. of the house addition is within the Buffer and all the deck is within the Buffer. The entire Property is in the 1000' Critical Area Boundary.
- The proposed development is in unshaded X and is more than 50' feet away from a regulated Special Flood Hazard Area, according to Flood Insurance Rate Map (FIRM) panel 182F.
- The Property is served by private well and septic.
- Per *COMAR 27.01.09.01*, plant mitigation is required for development activities within the Buffer. A Buffer Management Plan will be required and approved prior to the issuance of a building permit for this project.
- The St. Mary's County Health Department approved the site plan on October 24, 2019. The site plan was approved on September 3, 2019 by the St. Mary's