

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 19-0350

JOHN BOYLES

THIRD ELECTION DISTRICT

DATE HEARD: August 29, 2019

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: September 12, 2019

Pleadings

John Boyles, the applicant, seek a variance (VAAP # 19-0350) to: disturb the critical area buffer and clear more than 30% of existing forest or developed woodland to build a single-family dwelling.

Public Notification

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on August 14, 2019 and August 21, 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 Thursday, August 22, 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 August 29, 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 applicant owns the subject property located at 22445 Archer Street, Leonardtown, Maryland 20650. It is in the Residential Neighborhood Conservation District (RNC) and is known as Parcel 100, Grid 11, Lots 5 & 6 on Tax Map 39. This lot is designated in the Chesapeake Bay Critical Area as Limited Development Area (LDA).

The Variance Requested

The applicants request a critical area variance from the prohibitions of § 71.8.3 of the St. Mary's County Zoning Ordinance against disturbing the buffer and § 72.3.1.c(2) against clearing in excess of 30% of any forest or developed woodland in the Critical Area to construct a single-family dwelling with a garage, porches, sidewalks and a driveway, 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).

Additionally, the St. Mary's County "Critical Area" includes all water of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article; and all land and water areas within 1,000 feet beyond the landward boundaries of State or private wetland and the heads of tide designated under Title 9 of the Environment Article (41.1.1 of the St. Mary's Comprehensive Zoning Ordinance; "SMCZO"). No person shall develop, alter, or use any land for residential, commercial, industrial or institutional uses, nor conduct agricultural, fishery, or forestry activities in the St. Mary's County Critical Area except in compliance with the applicable provisions of this Ordinance. (41.1.3 of SMCZO).

If a project involves the alteration of forest, all forest cover removed must be mitigated pursuant to Section 72.3.5. Clearing in excess of 30 percent of any forest or developed woodland is prohibited. (72.3.c.(2) of SMCZO).

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 prior to the adoption of the Maryland Critical Area Program on December 1, 1985.