

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 19-0770

JOHN and ANDREA FLEURY

THIRD ELECTION DISTRICT

DATE HEARD: October 10, 2019

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: November 14, 2019

Pleadings

John and Andrea Fleury, the applicants, seek a variance (VAAP # 19-0770) to disturb the critical area buffer to build a new home on subject property.

Public Notification

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on September 25, 2019 and October 2, 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 Tuesday, October 8, 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 October 10, 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 21650 Ferny Hills Lane, Leonardtown, MD 20650. It is in the Rural Preservation District (RPD) and Residential

Neighborhood Conservation (RNC) District. It is identified on Tax Map 40, Grid 15, Parcel 87 and Farmstead 5. This lot is designated in the Chesapeake Bay Critical Area as Resource Conservation Area (RCA).

The Variance Requested

The applicants request a critical area variance from the prohibition in § 71.8.3.a.(1) against land disturbance in the expanded buffer to build a new home 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 or 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 not 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 on July 8, 2014 after the adoption of the Maryland Critical Area Program on December 1, 1985.

- The Property fronts Breton Bay and is constrained by the Critical Area Buffer (the "Buffer"), steep slopes, and severely erodible soils. The Buffer is established a minimum of 100-feet landward from the mean high-water line of tidal waters, tidal wetlands, and tributary streams (CZO 71.8.3) and is expanded to include contiguous steep slopes, hydric soils whose development or disturbance may impact streams, wetlands or other aquatic environments, and highly erodible soils [CZO 71.8.3.a.(1)].
- The existing soil types on the Property are Mattapex fine sandy loam (MtB2), Alluvial land (Aa), Croom gravelly sandy loam (CrD3), Evesboro-Westphalia complex (EwE2), and Kempsville fine sandy loam (KeD3) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Most of the development is within the Kempsville fine sandy loam soil type which is found on slopes of 10-15 percent, is considered well drained and severely erodible.
- According to the site plan provided by the Applicant, the Property proposes a single-family dwelling with a garage, porches, sidewalks, patio, a pool and a driveway for a total of 14,896 square feet of lot coverage. The allowed amount of lot coverage on a property of this size is 94,877 sf.
- The Property is within Special Flood Hazard Area Zone X and AE-6 according to Flood Insurance Rate Map (FIRM) panel 168F. The proposed development is in unshaded X and is more than 50' feet away from a regulated Special Flood Hazard Area.