

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 18-1958

WILLIAM CHESSER, RICHARD CHESSER, and DEBORAH SCHULTZ T/C

NINTH ELECTION DISTRICT

DATE HEARD: December 19, 2019

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: January 9, 2020

Pleadings

William Chesser, Richard Chesser, and Deborah Schultz T/C (“the Applicants”) seek a variance (VAAP # 18-1958) to disturb the Expanded Critical Area Buffer to construct a porch with stairs and add stairs to an existing porch on the subject property.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on December 4, 2019 and December 11, 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 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 December 11, 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 December 19, 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 46006 OConnors Lane, Piney Point, Maryland 20674. It is in the Rural Preservation District (RPD) and is identified on Tax Map 69, Grid 2, Parcel 37, Lot 3. This lot is designated in the Chesapeake Bay Critical Area as Limited

Development Area (LDA) Overlay.

The Variance Requested

The Applicants request a Critical Area variance from the prohibition of § 71.8.3.a(1) of the St. Mary's Comprehensive Zoning Ordinance ("CZO") against development activities in the Expanded Critical Area Buffer to construct a porch with stairs and add stairs to an existing porch as shown on the site plan, which was admitted into evidence at the hearing as Attachment 3 of Exhibit 2.

The St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.8.3 requires that there shall be a minimum 100-foot buffer¹ landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. Moreover, section 71.8.3.a(1) provides that when hydric soils are contiguous with the 100-foot buffer, the buffer shall be expanded to include the hydric soils. No new impervious surfaces or development activities are permitted in the 100-foot buffer unless an applicant obtains a variance. CZO § 71.8.3(b)(1)(c).

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, 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.

¹ Code of Maryland Regulations ("COMAR") § 27.01.01(B)(8)(a)(ii) defines a "buffer" as an area that "exists . . . to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance."

- The Property fronts St. George Creek and is constrained by the Critical Area Buffer (“the Buffer”), tidal wetlands, and hydric 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.
- The existing soil type on the Property, according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey, is Othello silt loam (Ot), which is a hydric soil found on slopes of 0 to 2 percent. It is considered poorly drained and slightly erodible.
- The Property has an existing 1,165 sq. ft. house. The existing porch square footage is included with house square footage. The property also has 240 square feet of sidewalks, 2,194 square feet of driveway, and a 222 square foot shed. The Applicants are proposing a 395 square foot porch addition to the house and adding 560 square feet of stairs to access the existing and proposed porch. The entire Property is in the Expanded Critical Area Buffer.
- The proposed development is in AE 6 Flood Hazard Area and is located within a regulated Special Flood Hazard Area, according to Flood Insurance Rate Map (“FIRM”) panel 376F. The Applicants are proposing to raise the existing house above base floor elevation.
- The Property is served by private well and public sewer.
- Per Code of Maryland Regulations § 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 6, 2019. The site plan was approved on September 3, 2019 by the St. Mary’s County Soil Conservation