

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 19-131-019

SMITH CREEK MARINE LLC

FIRST ELECTION DISTRICT

DATE HEARD: SEPTEMBER 10, 2020

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: September 24, 2020

Pleadings

Smith Creek Marine LLC (“the Applicant”) seeks a variance (VAAP Number 19-131-019) for development activity in non-tidal wetlands and the required wetland buffer and to clear more than 30 percent of the existing forest to construct a sand mound septic system on a vacant lot (“the Subject Property”).

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on August 21, 2020 and August 28, 2020. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including 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 September 2, 2020. 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 September 10, 2020 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, a 30,928 square foot vacant lot located on Wynne Road in Ridge, Maryland. The Subject Property is in the Rural Preservation District

("RPD") zoning district with a Resource Conservation Area ("RCA") Overlay and is identified on Tax Map 70, Grid 16, Parcel 88, Lot 7 of Wynne Acres.

The Variance Requested

The Applicant requests a variance from the Comprehensive Zoning Ordinance ("CZO") § 71.5.2.b. for development activity in non-tidal wetlands and the required wetland buffer and § 72.3.1.c.(2) to clear more than 30 percent of the existing forest to construct a sand mound septic system on the Subject Property.

The St. Mary's County Comprehensive Zoning Ordinance

Pursuant to CZO § 71.5.2.b:

A 25-foot buffer shall be preserved from the edge of non-tidal wetlands and shall be expanded up to 100 feet to include areas of adjoining hydric soils.

Pursuant to CZO § 72.3.1.c.(2):

If a project involves the alteration of forest, all forest cover removed must be mitigated pursuant to Section 76.3.5. Clearing in excess of 30 percent of any forest or developed woodland is prohibited.

The Evidence Submitted at the Hearing by LUGM

Harry Knight, Deputy Director for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The Subject Property is a vacant lot in the Critical Area, recorded in the Land Records of St. Mary's County in 1960. This was before the adoption of the Maryland Critical Area Program on December 1, 1985. Therefore, the lot is "grandfathered" and eligible for a variance. Ex. 2, Att. 2.
- The Property is zoned RPD with an RCA Overlay.
- The sand mound septic system will serve a restaurant, motel, and pier with multiple

slips.

- The site plan shows that the force main serving the septic will run down the St. Mary's County right-of-way, ending at Lot 7.
- The sand mound septic system will take up a large portion of the lot.
- The Maryland Department of Natural Resources ("DNR") Wildlife and Heritage Service provided a comment letter dated October 24, 2019. They determined there are no State or Federal records for rare, threatened or endangered species on the Property. Ex. 2, Att. 3.
- The Subject Property is comprised of hydric soils, according to the United States Department of Agriculture ("USDA") Natural Resources Conservation Service Web Soil Survey. The specific soil classifications are Othello fine sandy loam (On) and Othello silt loam (Ot).
- The Subject Property contains non-tidal wetlands which were field delineated. The 25 foot buffer is illustrated; however, due to the presence of hydric soils, the required buffer is expanded up to 100 feet pursuant to CZO § 71.5.2.b. As a result, the Subject Property is entirely encumbered by non-tidal wetlands and the required buffers. Ex. 2, Att. 4.
- The Maryland Department of the Environment ("MDE") provided a comment letter dated May 8, 2020. They acknowledged visiting the Subject Property on August 23, 2019 to confirm the field delineation. A payment into the MDE Nontidal Wetland Compensation Fund was deemed acceptable mitigation for the proposed permanent impacts to the wetlands. MDE expressed concern with the infiltration of wastewater; therefore, their final approval is "contingent on demonstrating that the proposed mound