

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 20-0810

HEINSSEN PROPERTY

THIRD ELECTION DISTRICT

DATE HEARD: OCTOBER 8, 2020

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: October 22, 2020

Pleadings

Robert & Ruth Heinssen (“the Applicants”) seek a variance (VAAP # 20-0810) to disturb the Critical Area Buffer (the “Buffer”) and to encroach upon the 25-foot front setback to replace an existing house with a single-family dwelling less than minimum 25-foot setback from the front property line.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on September 18, 2020 and September 25, 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 30, 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 October 8, 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 Applicants own a 13,938 square foot property at 22128 Breton Street, Leonardtown, Maryland (the “Property”). The Property is in the Residential Neighborhood Conservation (“RNC”) zoning district with an Limited Developed Area (“LDA”) Overlay and is identified on

Tax Map 39A, Grid 19, Parcel 9, Lots 1–5 and Part of Lot 6, Section 30 in the St. Clements Shores.

The Variances Requested

The Applicants request a variance from the Comprehensive Zoning Ordinance (“CZO”) § 71.8.3, to disturb the Critical Area Buffer and from Schedule 32.1 to encroach upon the 25-foot front setback to replace an existing house.

The St. Mary’s County Comprehensive Zoning Ordinance

Pursuant to CZO § 71.8.3, “No new . . . development activities . . . shall be permitted in the 100-foot buffer, unless: . . . The applicant obtains a variance pursuant to Article 2.”

Next, pursuant to CZO Schedule 32.1, the minimum front setback is 25 feet.

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 Property is a grandfathered lot in the Critical Area of St. Mary’s County because it was recorded in the Land Records (sometime prior to 1939) 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 situated between St. Clements Bay and Breton Street. It is entirely constrained by the Buffer and tidal wetlands. Under CZO § 71.8.3, the Buffer is established a minimum of 100-feet landward from the mean high-water line of tidal waters, tidal wetlands, and tributary streams. There is an existing house.
- According to the site plan provided by the Applicants, the Property owner proposes a replacement single-family dwelling with sidewalks and steps, and a deck resulting in a total of 3,611 square feet of soil disturbance.