

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**VAAP NUMBER 20-1209**

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**TRGINA PROPERTY**

**SEVENTH ELECTION DISTRICT**

**DATE HEARD: February 11, 2020**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: March 11, 2021**

### **Pleadings**

Raymond & Carol Trgina (“the Applicants”) seek a variance (VAAP # 20-1209) to disturb the Critical Area Buffer to construct a house addition with an areaway.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 22, 2021 and January 29, 2021. 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 February 3, 2021. 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 February 11, 2021 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 improved property at 22865 Grampton Road, Clements, MD (“the Subject Property”). The Subject Property is in the Rural Preservation District (“RPD”) Zoning District and is identified on Tax Map 31, Grid 20, Parcel 29. This lot is designated in the Chesapeake Bay Critical Area with a Resource Conservation Overlay (“RCA”) 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 Critical Area Buffer to construct a house addition with an areaway.

### **The St. Mary's County Comprehensive Zoning Ordinance**

CZO § 71.8.3 requires that there shall be a minimum 100-foot buffer<sup>1</sup> landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. 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 ("LUGM"), presented the following evidence:

- The Subject Property (hereinafter the "Property"), recorded in the Land Records on 09/09/1975 in Deed Book 235 Page 6 contains a single-family dwelling and a woodshed. Ex. 2, Att. 2. According to LUGM records, the house construction was permitted in 1980, prior to the adoption of the current zoning and subdivision regulations in St. Mary's County and before the adoption of the Maryland Critical Area Program on December 1, 1985. The Applicant then renewed the permit to build the house in 1985 and the Use and Occupancy Permit was issued in 1991. The existing house is entirely within the 100' Critical Area Buffer and is eligible for a Critical Area variance from the standards.
- The Property is situated adjacent to the Tomakokin Creek, a tributary of St. Clements Bay.

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<sup>1</sup> Maryland Code of Maryland Regulations § 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 Critical Area Buffer is established a minimum of 100-feet landward from the mean highwater line of tidal waters, tidal wetlands, and tributary streams (CZO 71.8.3), in this case, it is tidal wetlands impacting the Property, therefore, it is constrained by the Critical Area Buffer (the “Buffer”).

- Per the site plan (Attachment 4) the Applicant is proposing to add a 552-sf addition and 47-sf areaway to the existing 909 sf house. The proposed addition is almost entirely within the 100’ Critical Area Buffer.
- In accordance with the St. Mary’s County Comprehensive Zoning Ordinance Section 72.3.3.a(2)(c), mitigation is required at a ratio of 3:1 per square foot of the variance granted for permanent disturbance within the Critical Area Buffer of 599 sf or 1,797 sf. A 1:1 ratio is applied to the temporary disturbance of the site or 571 sf. Therefore, the total 2,368 sf of mitigation is to be provided by on site plantings. A planting agreement and plan will be required prior to the issuance of a building permit.
- The Maryland Critical Area Commission provided a comment letter dated August 12, 2020 (Attachment 3).
- Pursuant to Section 32.3.2 of the Ordinance, “Front, rear, and side setbacks on lots existing prior to the effective date of this Ordinance shall apply from the edge of road right-of-way and from any Sensitive Areas, as defined in Chapter 71.” The lot was in existence prior to the effective date of the current ordinance, has more than 15,000 sf of buildable area, and has on site water and septic, therefore, the existing house does not conform to the required setback from “sensitive areas” (the Buffer). Non-conforming structures, per CZO Section 52.3.3.e, proposing an “expansion or enlargement that exceeds 25 percent of the existing structure or use the enlargement or expansion must be approved by the Board of Appeals.