

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 20-2039

BALLARD PROPERTY

THIRD ELECTION DISTRICT

DATE HEARD: February 11, 2020

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: March 11, 2021

Pleadings

Robert & Cynthia Ballard (“the Applicants”) seek a variance (VAAP # 20-2039) to disturb the Critical Area Buffer to replace a wood retaining wall.

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 21901 Helen Lane, Leonardtown, MD (“the Subject Property”). The Subject Property is in the Residential, Neighborhood Conservation (“RNC”) Zoning District and is identified on Tax Map 40, Grid 16, Parcel 99, Lot 1. This lot is designated in the Chesapeake Bay Critical Area with an 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 in order to construct an attached garage.

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. 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 contains a single-family dwelling with decks and a patio. According to the Tax Assessor, the house was constructed in 1999. The existing patio is entirely within the Critical Area Buffer.
- The Property is a grandfathered parcel in the Critical Area of St. Mary's County, it was recorded in the Land Records on 08/05/1991 in Plat Book 35 Page 1, before the adoption of the Maryland Critical Area Program on December 1, 1985. Ex. 2, Att. 2. Therefore, the lot is "grandfathered" and eligible for a Critical Area variance.
- The Property is situated on Breton Bay and is adjacent to tidal wetlands. Therefore, it is constrained by the Critical Area Buffer (the "Buffer"). The Buffer is established a

¹ 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."