

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

**VAAP 20-2477**

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**Bryner Property**

**EIGHTH ELECTION DISTRICT**

**DATE HEARD: April 8, 2021**

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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: May 13, 2021**

### **Pleadings**

John & Julie Bryner (“the Applicants”) seek a variance (VAAP # 20-2477) to disturb the Expanded Critical Area Buffer to raise the existing house out of the floodplain.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on March 19, 2021 and March 26, 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 March 31, 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 April 8, 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 23480 River Hill Court, Lexington Park, MD (“the Subject Property”). The Subject Property is in the Residential, Neighborhood Conservation (“RNC”) Zoning District and is identified on Tax Map 35A, Grid 17, Parcel 32. This lot is designated in the Chesapeake Bay Expanded Critical Area Buffer with an 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 in order to raise the existing house out of the floodplain.

### **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. Moreover, section 71.8.3.a(1) provides that when slopes of 15% or more are within the 100-foot buffer, the buffer shall be expanded for hydric and highly erodible soil conditions. 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, recorded in the Land Records on 12/06/1988 in Plat Book 30, Page 90. Ex. 2, Att. 2. According to the Maryland Department of Assessments and Taxation records, the single-family house was constructed in 1989, prior to the adoption of the current zoning and flood plain regulations in St. Mary's County. The existing house is currently in the Expanded Critical Area Buffer and is eligible for a Critical Area variance from the standards.
- The Subject Property is situated adjacent to the Patuxent River. The Critical Area Buffer

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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."

is established a minimum of 100-feet landward from the mean high-water line of tidal waters, tidal wetlands, and tributary streams and expanded for hydric and highly erodible soil conditions up to 300-feet. CZO § 71.8.3. Therefore, it is constrained by the Critical Area Buffer (the “Buffer”).

- Per the site plan, Ex. 2, Att. 3, the Applicants illustrate the “temporary disturbance” necessary to raise the existing house. The existing house is entirely within the Expanded Critical Area Buffer. Temporary disturbance in the Buffer requires a variance.
- In accordance with COMAR § 27.01.09.01-2 Table H, mitigation is required at a ratio of 1:1 per square foot of the variance granted for temporary disturbance within the Critical Area Buffer. This proposal requires 2,300 sf of mitigation 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 December 4, 2020. Ex. 2, Att. 4.
- LUGM reviewed the site plan in accordance with stormwater management requirements and exempted the site plan on September 4, 2020 due to less than 5,000 sf of disturbance. The St. Mary’s County Soil Conservation District also issued an exemption for less than 5,000 s.f. of disturbance.
- If the variance is granted, it shall lapse one year from the date of the grant of the variance, if the Applicant has not obtained the building permit, per CZO § 24.8.1.
- The following Attachments to the Staff Report were introduced:
  - #1: Standards Letter;
  - #2: Resubdivision of Lot 500-2, Section 1-C, Plat Book 30/90;