

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-1082

JOSEPH PROPERTY

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: FEBRUARY 8, 2024

ORDERED BY:

**Mr. Hayden, Mr. Bradley, Mr. Payne,
Mr. Richardson, and Ms. Weaver**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: March 14, 2024

Pleadings

Joseph G. and Mary E. Cooper-Joseph (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 disturb the Critical Area Buffer (“the Buffer”) to construct a home.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 19, 2024 and January 26, 2024. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before January 24, 2024. The agenda was also posted on the County’s website on February 2, 2024. Therefore, the Board of Appeals (“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 8, 2024 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed amendment requested by the Applicants.

The Property

The subject property may be found at 24502 Half Pone Point Road, Hollywood, Maryland (“the Property”). The Property is 33,239 s.f., more or less, is zoned Rural Preservation District (“RPD”), has a Limited Development Area (“LDA”) Critical Area overlay, and is found at Tax Map 27, Grid 12, Parcel 60.

The Variance Requested

Applicants seek a variance from CZO § 71.8.3 disturb the Critical Area Buffer to construct a house.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.8.3 requires there be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands ("the Buffer"). 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).

Departmental Testimony and Exhibits

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented a staff report and PowerPoint presentation that included the following testimony:

- The Property was originally recorded among the Land Records of St. Mary's County at Plat Liber 63, Folio 3 and further subdivided by deeds CBG Liber 26, Folio 204 and CBG Liber 37, Folio 150 prior to the development of the Critical Area program.
- Per the proposed Boundary Line Adjustment Plat, the Property consists of 33,239 s.f.. It is adjacent to the tidal waters of Cuckold Creek and is currently undeveloped.
- The Property is constrained by the Buffer, as shown on Attachment 4. The Buffer is expanded for the presence of steep slopes.
- Applicants propose constructing a house which impacts the expanded Buffer.
- Mitigation is required at a ratio of 3:1 for permanent disturbance within the Buffer

and 1:1 for new lot coverage outside of the Buffer. In all, 6,802 s.f. of mitigation will be required to meet this requirement. A planting agreement and plan will be required prior to the issuance of any building permit.

- The Critical Area Commission responded on January 18, 2024. CAC states its office does not oppose the requested variance but notes the Applicants may be able to reconfigure their site plan to lessen impacts to the Buffer.
- The Department of Land Use & Growth Management approved the site plan for stormwater management. Approvals from the Soil Conservation District and Health Department are still pending.
- Attachments to the Staff Report:
 - #1: Critical Area Standards Letter
 - #2: Plat 63/3; Deed CBG 26/204; Deed CBG 37/150
 - #3: Proposed Boundary Line Adjustment Plat
 - #4: Existing Features Map
 - #5: Site Plan
 - #6: Critical Area Commission Response Letter
 - #7: Location Map
 - #8: Land Use Map
 - #9: Zoning Map
 - #10: Critical Area Map

Applicants' Testimony and Exhibits

Applicants were represented before the Board by Steve Vaughn, a licensed surveyor from Little Silences' Rest, Inc. Mr. Vaughn presented a slideshow which contained site plans, building

plans, photographs of the site, and offered oral testimony. All presentation materials were incorporated into the record.

Public Testimony

No members of the public appeared to offered testimony in this matter.

Decision

County Requirements for Critical Area Variances

COMAR 27.01.12.04 requires an Applicant to meet each of the following standards before a Critical Area variance may be granted:

- (1) Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;
- (2) A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;
- (3) The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program;
- (4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;
- (5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;
- (6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdictions local Critical Area; and

(7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

Additionally, the Maryland Code Annotated, Natural Resources Article, § 8-1808(d)(2)(ii) also requires the Applicant to overcome the presumption that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances, the Board finds and concludes the Applicants are entitled to the requested relief.

The Board finds that denying the Applicants' request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 d. 112 (2016), the Court of Appeals established the statutory definition for "unwarranted hardship" as it pertains to prospective development in the Critical Area:

[I]n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

Id. at 139. Here, Applicants have sufficiently demonstrated that, absent the variance, they would be denied a use of the Property both significant and reasonable. Constructing a single-family dwelling is a foundational use of one's own real property. The proposed home is of a nature and character typical for homes in St. Mary's County, even homes on the waterfront or those impacting the Buffer. The Applicants demonstrated impediments and obstacles to relocating the house further out of the Buffer.

Similarly, the Board finds literal interpretation of the local Critical Area program would

deprive Applicants of a substantial use of land or a structure permitted to others. Single-family homes are commonplace improvements in the Buffer. In all, the Applicants' proposal seems to be one that is typical for similarly situated properties within the Limited Development Area.

To the third factor, the granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures. Applicants avail themselves of their right to seek a variance and are hewing as close to the Critical Area program's strictures as may be reasonably expected given the constraints present on their parcel. Their proposal will not be granted unless accompanied by the mitigation required by law. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program. A variance is, by definition, a departure from at least one element of the local Critical Area program and each request must be considered case-by-case; the Board can find nothing in the record evincing that Applicants have received any special treatment or consideration that would not be conferred upon any other similarly-situated property owner.

Fourth, the variance request is not based upon conditions or circumstances that are the result of actions by the Applicants. Rather, Applicants are constrained by the physical characteristics of their lot and its existing configuration. The existing parcel was subdivided prior to the development of the Critical Area program. Even so, as noted by the Critical Area Commission, overall lot coverage is within the limits set for such grandfathered lots.

Fifth, the variance request does not arise from any conforming or nonconforming condition on any neighboring property.

Sixth, the granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area. When development is permitted in the Critical Area Buffer it must be heavily mitigated. As noted by

staff, 6,802 square feet of mitigation plantings will be required. These plantings will mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer. These plantings – as well as the stormwater management measures the Applicants will install – would not be required unless the Property is developed.

Lastly, by satisfying the above criteria the Board finds that granting of the variance will be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program. In total, the Applicants have demonstrated that a variance is necessary to achieve their intended use. The Applicants demonstrated concrete and physical obstacles to relocating the new house further away from the Buffer, and the overall net increase in lot coverage keeps the Property well within lot coverage limits. The impacts to the Buffer of development will be offset by the mitigation and other site improvements that will be made.

Finally, in satisfying each of the necessary criteria the Applicants have overcome the statutory presumption against granting a variance.

ORDER

PURSUANT to the application of Joseph G. and Mary Beth Cooper Joseph, petitioning for a variance from CZO § 78.3 to disturb the Critical Area Buffer to construct a house; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

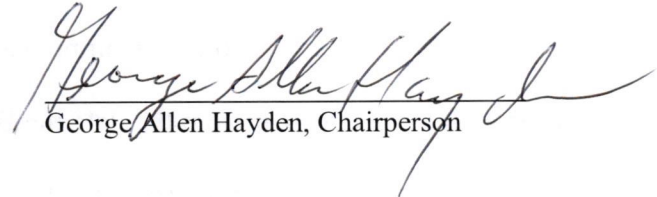
ORDERED, by the St. Mary’s County Board of Appeals, pursuant to CZO § 24.8, that the Applicants are granted a variance from CZO § 78.3 to disturb the Critical Area Buffer to construct a house;

UPON CONDITION THAT, Applicants shall comply with any instructions and

necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for the Applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: 3-14, 2024

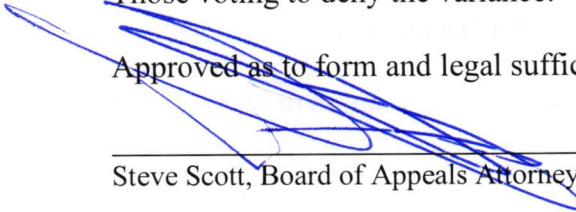

George Allen Hayden, Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Payne, Mr. Richardson, and Ms. Weaver

Those voting to deny the variance:

Approved as to form and legal sufficiency



Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) days from the date of this Order, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Petition for Judicial Review in the St. Mary's County Circuit Court. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one year from the date the Board of Appeals granted the variance unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the variance is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.