

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 19-0861

JOHN AND SHARON HARWOOD

FIRST ELECTION DISTRICT

DATE HEARD: August 8, 2019

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: 8-29, 2019

Pleadings

John and Sharon Harwood, the applicants, seek a variance (VAAP # 19-0861) to: disturb the critical area buffer; to replace a garage on subject property.

Public Notification

The hearing notice was advertised in The Enterprise, a newspaper of general circulation in St. Mary's County, on July 24, 2019 and July 31, 2019. 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 (200) 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 Tuesday, August 6, 2019. 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 August 8, 2019, 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 subject property located at 17161 Jutland Drive, St. Inigoes, Maryland 20684. It is in the Rural Preservation District (RPD) and is known as

Grid 15 in Parcel 193 on Tax Map 67. This waterfront lot on Jutland Creek is designated in the Chesapeake Bay Critical Area as Resource Conservation Area (RCA) overlay.

The Variance Requested

The applicants request a critical area variance from the prohibition in § 71.8.3 against disturbing the buffer to replace a 660-square foot garage as shown on the site plan admitted into evidence at the hearing as Exhibit 2 of Attachment 3.

The St. Mary's County Comprehensive Zoning Ordinance

The St. Mary's County Comprehensive Zoning Ordinance ("SMCCZO") requires there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands. § 71.8.3. Title 27 of the Code of Maryland Regulations (COMAR) Section 27.01.01 (B) (8) (ii) states a buffer exists "to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance." No new impervious surfaces and development activities are permitted in the 100-foot buffer unless the applicant obtains a variance. § 71.8.3.b.1.c of the SMCCZO.

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 (the "Property") is a grandfathered lot in the Critical Area of St. Mary's County because it was recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area Program on December 1, 1985.

- The Property fronts Jutland Creek and is constrained by the Critical Area Buffer (the "Buffer"). The Buffer is measured from the mean high-water line of Jutland Creek pursuant to COMAR 27.01.09.01.E(3).
- The existing soil types on the Property are fine sandy loam (MtB2) and Mattapex silt loam (MuA), according to the Natural Resources Conservation Service, U. S. Department of Agriculture, Web Soil Survey. Mattapex fine sandy loam is found on slopes of 2-5% and considered well drained and are moderately erodible. Mattapex silt loam soils are considered moderately well drained and are found on slopes of 0-2%. The area of disturbance consists entirely of Mattapex sandy loam.
- According to the site plan provided by the Applicant, the applicants propose to replace a 660 square foot garage. The Property has an existing 1,392 square foot single family dwelling home, a 660 square foot garage, 620 square feet of porches, 684 square feet of decks, a 720 square foot pool, 3,106 square feet of driveway and 340 square feet of sheds. The total lot coverage for the Property will be 7,522 square feet post-development. The lot coverage for the Property pre-development and post-development is 16.76%. The allowed amount of lot coverage on a property of this size is 15%.
- The Property is within Special Flood Hazard Area Zone X according to Flood Insurance Rate Map (FIRM) panel 343F. The proposed development is in unshaded X and is 50' from the Flood Hazard Zone.
- A private well and sewer will serve the Property.

- Approximately 1,300 square feet of trees, shrubs, and other vegetation cover the Property. The Applicant does not plan to clear any of the existing vegetation within the buffer or outside the buffer.
- In accordance with COMAR 27.01.09.01, mitigation is required at a ratio of three to one per square foot of the variance granted for the disturbance of 184 square feet inside the critical area buffer. Afforestation is required for the Property in the amount of 5,430 square feet. A total of 5,982 square feet of mitigation is required.
- The St. Mary's Health Department approved the site plan on May 22, 2019. The St. Mary's Soil Conservation District (SCD) approved an erosion and sediment control plan on May 21, 2019. The Department of Land Use and Growth Management reviewed the site plan in accordance with stormwater management requirements and exempted the site plan on May 14, 2019.
- The Maryland Critical Area Commission provided comments in the form of an email, dated August 6, 2019. Provided the project will not result in any additional lot coverage, the Commission has no comments at this time.
- The following Attachments to the Staff Report were presented:
 - #1: Standards Letter of June 20, 2019 from John and Sharon Harwood;
 - #2: Critical Area Commission email;
 - #3: Site Plan;
 - #4: Location Map;
 - #5: Land Use Map;
 - #6: Zoning Map;

#8: Contour and Soils Map;

#9: Floodplain Map.

Applicants Testimony and Exhibits

The Applicants were represented at the hearing by John Harwood, Co-Applicant.

The following evidence was presented by Mr. Harwood:

- The applicants purchased the home in 1999;
- The house was built in 1966 and the garage was built some time afterwards;
- There has been termite damage to the garage for many years. The applicants are finally trying to fix the problem;
- The applicants wish to get rid of the entire garage and build "up";
- The applicants are not taking any additional lot coverage as part of the construction;
- The applicants will be using the same foundation for the new garage;
- The applicants did not want to fix the garage in a "piecemeal" manner;
- A shed on the site plan is now gone;
- Applicants were going to put stairs going to the 2nd floor of the garage on the outside but changed that plan to the inside so no additional coverage would be used;

Decision

County Requirements for Critical Area Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.4.1 sets forth six separate requirements that must be met for a variance to be issued for property in the

critical area. They are summarized as follows: (1) whether a denial of the requested variance would constitute an unwarranted hardship, (2) whether a denial of the requested variance would deprive the applicants of rights commonly enjoyed by other property owners in similar areas within the St. Mary's County Critical Area Program, (3) whether granting the variance would confer a special privilege on the applicants, (4) whether the application arises from actions of the applicants, (5) whether granting the application would not adversely affect the environment and be in harmony with the critical area program, and (6) whether the variance is the minimum necessary for the applicants to achieve a reasonable use of the land or structures. State law also requires the applicants overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances, the Board finds and concludes that the applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. There are a number of factors that support this decision. First, in the case of *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach, et al.*, 448 Md. 112, 2016, the Court of Appeals established the statutory definition for "unwarranted hardship" as used in the Critical Area law. The Court stated:

(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.

In this application the Board finds that denying the applicants' request to replace a 660 square foot garage would deprive the applicants of a use that would be "both significant and reasonable."

Second, the property is almost completely enveloped in the 100-foot Critical Area Buffer and said lots were created before the Critical Area Program was started. Other property owners with recorded lots that are constrained by similar conditions and the Critical Area provisions of the Ordinance do have the opportunity to file for a variance and seek relief from the regulations.

Third, that the strict interpretation of the critical area provisions would prohibit the applicants from replacing a 660 square foot garage, a right that is commonly enjoyed by other property owners in the Resource Conservation Area (RCA).

Fourth, the property is a recorded, grandfathered lot in an existing community and the granting of the variance will not confer any special privileges to the applicants that would be denied to others.

Fifth, the need for the variance does not arise from actions of the applicants. Again, this recorded lot predates the St. Mary's County's critical area program.

Sixth, the critical area variance is the minimum variance necessary to afford relief.

Furthermore, that the granting of the variance would not adversely affect the environment. The variance will be in harmony with the Critical Area Program. The applicants have overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), of the State law that the variance request should be denied.

The Board finds that Critical Area Planting Agreement, which is required, will alleviate any impacts to water quality due to the creation of impervious surface in the Critical Area. The Board believes that the required plantings will assist in improving and maintaining the functions of the Critical Area. The Planting Agreement requires mitigation at a ratio of three to one (3:1) per square foot of the variance granted for the disturbance inside the Critical Area Buffer in accordance with Chapter 24 of the Ordinance. There is also an afforestation requirement for buffer establishment.

The required plantings will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, which should contribute to improved infiltration and reduction of non-point source pollution leaving the site. For these reasons, the Board finds that the granting of the variance to replace a garage in the Critical Area will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variances will be in harmony with the general spirit and intent of the Critical Area program.

ORDER

PURSUANT to the application of John and Sharon Harwood, petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Critical Area Regulations to allow them to disturb the Critical Area Buffer to replace a 660 square foot garage; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 24 day of August, 2019,

ORDERED, by the St. Mary's County Board of Appeals, that the applicants are granted a critical area variance from the prohibition in § 71.8.3 against disturbing the buffer to allow the construction of 660 square foot garage as shown on Applicants site plan.

The foregoing variance is subject to the condition that the 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: 8-29, 2019



George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency


James Tanavage, Assistant County Attorney

NOTICE TO APPLICANTS

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, § 24.8 provides that a variance shall lapse one year from the date of the grant of the variance by the Board of Appeals 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; or 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.