

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 20-0678

GLENN ELROD & GEORGE BUCKLER

FIFTH ELECTION DISTRICT

DATE HEARD: SEPTEMBER 24, 2020

ORDERED BY:

**Mr. Hayden, Mr. Brown, Mr. Ichniowski,
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: October 08, 2020

Pleadings

Glenn Elrod & George Buckler (“the Applicants”) seek a variance (VAAP Number 20-0678) to clear more than 30 percent of the developed woodland on a vacant lot in the Critical Area (“the Subject Property”) to single-family dwelling with a garage, sidewalk and steps, driveway, septic, well, and raingarden on the Subject Property.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on September 4, 2020 and September 11, 2020. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including 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 September 16, 2020. 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 September 24, 2020 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, an approximately 15,000 a square foot vacant lot located at 29776 Wilson Road, Mechanicsville, Maryland in the Golden Beach subdivision.

The Subject Property is in the Rural Neighborhood Conservation (“RNC”) zoning district with a Limited Development Area (“LDA”) Overlay and is identified on Tax Map 5A, Grid 6, Parcel 338, Lot 721, Section 2. The lot is currently undeveloped and 100 percent covered by developed woodland.

The Variance Requested

The Applicants request a variance from Comprehensive Zoning Ordinance (“CZO”) § 72.3.1.c.(2) to clear more than 30 percent of the developed woodland on the Subject Property. Specifically, the Applicants propose to clear 13,120 square feet, or 87 percent, of the existing developed woodland, or forest, on the lot.

The St. Mary’s County Comprehensive Zoning Ordinance

Pursuant to CZO § 72.3.1.c.(2):

If a project involves the alteration of forest, all forest cover removed must be mitigated pursuant to Section 76.3.5. Clearing in excess of 30 percent of any forest or developed woodland is prohibited.

The Evidence Submitted at the Hearing by LUGM

Harry Knight, Deputy Director for the St. Mary’s County Department of Land Use and Growth Management (“LUGM”), presented the following evidence:

- The Subject Property is a vacant lot in the Critical Area, recorded in the Land Records of St. Mary’s County in 1956. Ex. 2, Att. 2. This was before the adoption of the Maryland Critical Area Program on December 1, 1985. Therefore, the lot is “grandfathered” and eligible for a variance.
- Per CZO Chapter 90, “Developed Woodland” is defined as, “Those area of 1 acre or more in size that predominately contain trees and natural vegetation, and which also include residential, commercial or industrial structures or uses. On individual lots or

parcels of less than 1-acre, individual trees, woody vegetation, as well as natural vegetation and forests contribute to the developed woodland coverage for the larger vicinity and shall be subject to the provisions of this Ordinance.”

- According to the site plan provided by the Applicants, the Subject Property owner proposes a single-family dwelling with a garage, sidewalk and steps, driveway, septic, well and raingarden for a total of 13,120 square feet of clearing.
- In accordance with CZO § 72.3.3.a(2)(c), clearing in excess of 30% requires mitigation at a ratio of three to one. The requested variance for the clearing of 13,120 sf results in a total of 39,360 square feet of mitigation to be provided by fee in lieu or plantings.
- The St. Mary’s County Health Department (“Health Department”) approved the site plan on June 18, 2020. The St. Mary’s Soil Conservation District (“SCD”) approved the site plan on June 22, 2020. LUGM reviewed the site plan for compliance with zoning, stormwater management and Critical Area requirements. LUGM approved the site plan for zoning and stormwater management regulations on May 20, 2020. Development in the Critical Area cannot be approved without this variance.
- The Maryland Critical Area Commission provided a comment letter dated July 28, 2020. Ex. 3, Att. 3.
- If the variance is granted, it shall lapse one year from the date of the grant of the variance, if the Applicants have not obtained the building permit, per Section 24.8.1.
- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter from the Applicants
 - # 2: Golden Beach Section 2, Plat 3, Plat Book 003/11, recorded May 25, 1956
 - # 3: Critical Area Commission Comments dated July 28, 2020

4: Site Plan

5: Location Map

6: Critical Area Zoning Map

7: Critical Area Wetlands Map

Applicants' Testimony and Exhibits

The Applicants appeared via WebEx before the Board. The following evidence was presented:

- The Subject Property was recorded in 1956 before the Critical Area laws.
- All agencies have approved the Applicants' proposed development, and the CAC did not oppose the proposal.
- As for mitigation, the Applicants intend to plant trees that are native to the coastal plain of Maryland. The Applicants intend to use Wentworth for the required planting plan.

Decision

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 would 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. Maryland Code Annotated, Natural Resources

Article, § 8-1808(d)(2)(ii) also requires the Applicants to overcome the presumption that the variance request should be denied.

Findings of Fact and Conclusions of Law

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. Several factors support this decision.

First, the Board finds that denying the Applicants' request would constitute unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 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, the Applicants have demonstrated that, were the Board of Appeals to strictly interpret the CZO, the particular physical surroundings of the property would result in unwarranted hardship for the Applicants. Specifically, the Subject Property is entirely encumbered by the Critical Area and the lot is 100 percent forested. Consequently, any improvements to the property would require the Applicants to seek a variance. Absent a variance, the Subject Property would remain a vacant lot, as it has since 1956, the year in which it was recorded in the Land Records of St. Mary's County. As the Subject Property was recorded before the adoption of the Maryland Critical Area Program on December 1, 1985, it is "grandfathered" and eligible for a variance.

Second, denying the variance would deprive the Applicants of rights commonly enjoyed

by other similarly situated property owners in the Rural Neighborhood Conservation District. The Applicants are requesting to construct a residential structure on an otherwise vacant lot in the highly developed residential Golden Beach subdivision. As stated in the previous paragraph, the Subject Property is eligible—as would similarly situated properties—for a variance due to the age of its recordation.

Third, the purpose of seeking the variance is not confer a special privilege on the Applicants. Rather, the Subject Property is covered entirely by forest, the Applicants are proposing to build a house on a grandfathered residential lot, and any improvements made on or to the Subject Property require a variance.

Fourth, the need for the variance does not arise from actions of the Applicants. Instead, the difficulty was created in part by physical characteristics of the Subject Property and the age of recording, which predates the existing zoning regulations. In fact, the property has been a vacant lot in Golden Beach since 1956.

Fifth, granting the variance would not adversely affect the environment. Here, although only 1,880 square feet of the original forest will remain, the CZO requires the Applicants to mitigate the proposed development by paying appropriate fees in lieu, allowing plant and wildlife habitat to be created elsewhere, and through three to one (3:1) per square foot of mitigation on the Subject Property. The Board believes that the required plantings and any fee-in-lieu will assist in improving and maintaining the functions of the Critical Area.

Finally, the variance constitutes the minimum necessary action to achieve a reasonable use of the presently vacant lot. Specifically, the variance would permit the Applicants to construct a house with a garage and driveway and install the required septic and stormwater management.

Based on the above, the Applicants have rebutted the presumption under Natural Resources

§ 8-1808(d)(2)(ii) that a variance should be denied.

ORDER

PURSUANT to the application of Glenn Elrod & George Buckler petitioning for a variance from Comprehensive Zoning Ordinance § 72.3.1.c.(2) to clear more than 30 percent of the developed woodland on the lot to construct a single-family dwelling with a garage, sidewalk and steps, driveway, septic, well, and raingarden on the Subject Property; and

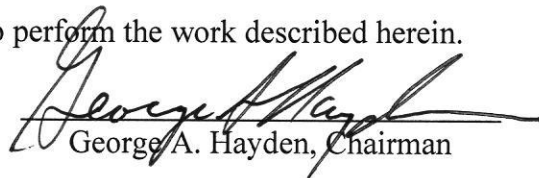
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary’s County Board of Appeals, that the Applicants are granted a variance from CZO § 72.3.1.c.(2) to clear more than 30 percent of existing forest to construct a single-family dwelling with a garage, sidewalk and steps, driveway, septic, well, and raingarden on the Subject Property.

Additionally, the foregoing variance is also subject to the following 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: October 08, 2020

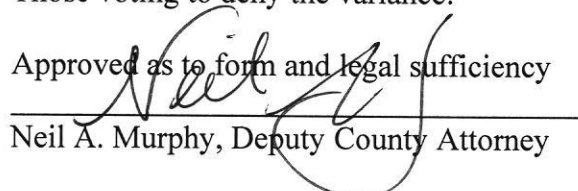

George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Ichniowski
Mr. Miedzinski, and Mr. Richardson

Those voting to deny the variance:

Approved as to form and legal sufficiency


Neil A. Murphy, Deputy 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. 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.