

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

**VAAP NUMBER 24-0931**

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**DRURY PROPERTY**

**FIRST ELECTION DISTRICT**

**VARIANCE REQUEST HEARD: DECEMBER 12, 2024**

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**ORDERED BY:**

**Mr. Bradley, Mr. Loughran,  
Mr. Payne, and Mr. Richardson**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: January 9, 2025**

**Pleadings**

Thomas and Sharon Drury (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 disturb the Critical Area Buffer and Expanded Critical Area Buffer (“the Buffer”) to construct a replacement house.

**Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on November 22, 2024 and November 29, 2024. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before November 27, 2024. The agenda was also posted on the County’s website on December 6, 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 December 12, 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 16410 Fishermen Way, Ridge, Maryland (“the Property”). The Property is 40,064 square feet, more or less, is zoned Rural Preservation District (“RPD”), has a Limited Development Area (“LDA”) Critical Area overlay, and is found at Tax Map 71, Grid 9, Parcel 49.

### **The Variance Requested**

Applicants seek a variance from CZO § 71.8.3 disturb the Critical Area Buffer and Expanded Critical Area Buffer (“the Buffer”) to construct a replacement 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). Moreover, the 100-foot buffer may be expanded in the presence of hydric soil types.

### **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 recorded in the Land Records of St. Mary’s County per deeds DJB 6368 page 0116, JWW 4237 page 0278, EWA 2392 page 0699, EWA 2392 page 0694, and MRB 281 page 329 (Attachment 2), after the adoption of the Maryland Critical Area Program on December 1, 1985. The existing single-family dwelling was built in 1958 according to Real Property Data, Maryland Department of Assessments and Taxation
- According to the site plan, this property is a 40,064 square foot lot located on Fishermen Way in Ridge and is adjacent to the tidal waters of the Northern Prong of St. Jeromes Creek.
- The Buffer is established a minimum of 100-feet landward from the mean high-

water line of tidal waters and is expanded for hydric soil types. Therefore, the Property is constrained by the Buffer (Attachment 3).

- The site plan (Attachment 4) proposes demolishing an existing residence on the property and removing a portion of the existing driveway and then constructing a house, porches, and decks, which impact the 100' Critical Area Buffer and Expanded Critical Area Buffer. The CZO states in Section 71.8.3.b(1) that a development activity is not permitted in the Buffer unless the Applicant obtains a variance. The proposal results in an additional 264 square feet of lot coverage in the Buffer and the sheds are to remain.
- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2). The total mitigation required for this proposal is 6,364 square feet of plantings to meet these mitigation requirements. A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded on November 20, 2024. The Commission states that the applicant has the burden to prove each and every Critical Area variance standard, including the standards of unwarranted hardship and is the minimum necessary to achieve reasonable use of land and structures. The letter does not state that the Critical Area Commission opposes the variance request. (Attachment 8).
- The Department of Land Use and Growth Management has approved the site plan for zoning and stormwater management requirements. the Health Department and Metcom have approved the site plan. The Floodplain and the Soil Conservation District approvals are pending.

- Attachments to the Staff Report:
  - #1: Critical Area Standards Letter
  - #2: Deeds
  - #3: Critical Area Map
  - #4: Site Plan
  - #5: Location Map
  - #6: Land Use Map
  - #7: Zoning Map
  - #8: Critical Area Commission Response

#### **Applicants' Testimony and Exhibits**

Applicants appeared before the Board virtually. They presented a slideshow which contained site plans, building plans, photographs of the site, and offered oral testimony. The following evidence and testimony was included in their presentation:

- The property is a peninsula that is 90% covered by the Critical Area Buffer.
- The home has cracks in the foundation and is in an overall poor condition, making it infeasible to remodel the existing dwelling. Inspections and surveys of conditions indicate that the existing foundation is unsalvageable and should be replaced in full.
- A new home would also allow the dwelling to be elevated to current FEMA floodplain standards, which the current dwelling does not satisfy.
- Outdated electrical systems, windows, roof, and insulation add to the need to replace, rather than remodel, the current dwelling.
- The proposed new dwelling has been moved as far out of the Critical Area as is feasible. Even so, 80% of the new home will be able to use the existing home's footprint. Further

movement to the east would necessitate removal of mature trees and render the garage impracticable to access as the driveway easement is not relocatable.

- Approximately 2,801 square feet on the property will be disturbed and stabilized. This comes from the fact the previous owner had a driveway much larger than is necessary and it will be downsized. The 2,801 square feet will be replaced with grass.

### **Public Testimony**

No members of the public appeared to offer 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, as is the replacement of an existing, but functionally obsolete, dwelling with a modern equivalent. The overall net increase in lot coverage

is within lot coverage limits. The Applicants demonstrated impediments and obstacles to relocating the house further out of the Buffer, among them a need to remove mature trees and lose full use of a garage – which the Board considers a significant and reasonable use of the Property in its own right.

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 to properties located in the Buffer. 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 of their proposal. Their proposal will not be granted unless accompanied by required mitigation, which shall be significant for a replacement dwelling. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program. Applicants have availed themselves only of their right to petition for such a variance and be given the chance to justify the request to the Board of Appeals, as any other similarly situated property owner has the right to do.

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 home was built in 1951, three and a half decades prior to enactment of the Critical Area program. Utilizing the existing home's footprint (even if only in part), which is desirable for both the Applicants and the



environment, necessarily constrains the Applicants to the existing home's location. Even were Applicants to abandon the footprint altogether, the Board perceives no practicable way the Property could be developed without intrusion into the Buffer, owing to the aforementioned physical constraints of the property. All of this is to say, in so many words, that the proposed design plan's intrusions into the Buffer are plainly not the fault of the Applicants.

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, over 6,300 square feet of mitigation plantings will be required, and the Applicants will perform all plantings on-site. These plantings will mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer. These plantings would not be required unless the Property is redeveloped.

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 the proposed use, which the Board finds to be significant and reasonable in nature. The Applicants demonstrated concrete, physical obstacles to relocating the replacement 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 redevelopment 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.

Accordingly, we conclude the Applicants should be granted the requested relief.

**ORDER**

**PURSUANT** to the application of Thomas and Sharon Drury, petitioning for a variance from CZO § 71.8.3 to disturb the Critical Area Buffer to construct a replacement 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 § 71.8.3 to disturb the Critical Area Buffer to construct a replacement 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: 01/09/, 2024<sup>5</sup>


  
Guy Bradley, Vice Chair

Those voting to grant the variance:

Mr. Bradley, Mr. Loughran, Mr. Payne,  
and Mr. Richardson

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.