

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-0534

MCLAUGHLIN PROPERTY

FIFTH ELECTION DISTRICT

DATE HEARD: February 13, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: March 13, 2025

Pleadings

Margaret McLaughlin (“Applicant”) seeks an after-the-fact variance (VAAP # 23-0534) from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 71.8.3 to disturb the 100’ Critical Area Buffer for placement of fill material and stone.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 24, 2025 and January 31, 2025. The hearing notice was posted on the property by January 29, 2025. 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 by Friday, February 7, 2025. 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 February 13, 2025 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

Applicant owns real property situate 40405 Beach Drive, Mechanicsville, MD (“the Subject Property”). The Subject Property is in the Residential Neighborhood Conservation zoning district (“RNC”), lies within a Limited Development Area (“LDA”) Critical Area overlay, and is identified at Tax Map 5A, Grid 2, Parcel 56, Lot 438.

The Variance Requested

Applicant seeks an after-the-fact variance from CZO Section 71.8.3 to disturb the 100' Critical Area Buffer for placement of fill material and stone.

The 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. 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). After-the-fact variances may be granted, but only after an Applicant has satisfied any criminal, civil, or administrative penalties assessed for any violation, knowing or unknowing, of the Critical Area program, prepared a restoration or mitigation plan to abate impacts caused by the violation, and undertaken to perform the abatement measures in such an approved restoration or mitigation plan. COMAR 27.01.12.06.B.

Staff Testimony

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") was recorded in the Land Records of St. Mary's County per Plat Book 3 Page 10 (Attachment 2), prior to the adoption of the Maryland Critical Area Program on December 1, 1985. According to Real Property Data, Maryland Department of Assessments and Taxation, the existing house was built in 1995.
- The property is a 22,124 square foot lot located on Beach Drive in Mechanicsville and is adjacent to the tidal waters of Trent Hall Creek.
- The after-the-fact site plan (Attachment 4) depicts 7.5' wide by 100' long stone placement above mean-high water line, which results in 750 square feet of lot coverage and 661 square

feet of fill impacting the 100' 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.

- Mitigation is required at a ratio of 4:1 for the violation of the placement of stone and fill without a permit and 3:1 for the variance for disturbance to the buffer (COMAR 27.01.09.01- 2 Table H). The total mitigation required for this proposal is 10,087 square feet of plantings to meet these mitigation requirements. Prior to the hearing, the Applicant was required to post a bond for the violation mitigation, in order to guarantee the planting requirements will be met. The planting agreement (Attachment 5) has been received and recorded at the Land Records of St. Mary's County and the planting plan (Attachment 6) is on file with the Department of Land Use and Growth Management.
- The Critical Area Commission responded on February 3, 2025. The Commission states the Applicant has complied with all requests. Additionally, the Commission states: the Board of Appeals must find that all variance standards have been met, including that of unwarranted hardship. (Attachment 10)
- The Department of Land Use and Growth Management has approved the site plan for shoreline (pier requirements). The St. Mary's County Soil Conservation District has approved the site plan. The site plan is exempt from the stormwater management requirements due to less than 5,000 square feet of soil disturbance.
- The following Attachments to the Staff Report were introduced:
 - #1: Critical Area Standards Letter;
 - #2: Plat Book 3 Page 10
 - #3: Critical Area Map

- #4: Site Plan;
- #5: Recorded Critical Area Planting Agreement;
- #6: Buffer Management Plan;
- #7: Location Map;
- #8: Land Use Map;
- #9: Zoning Map; and,
- #10: Critical Area Commission Response

Applicant Testimony and Exhibits

Applicant appeared before the Board with Chris Longmore, Esq., of Dugan McKissick & Longmore LLC. Mr. Longmore presented a slideshow that included the Applicant's site plan, pictures of the property, and other information pertinent to the application. The evidence he offered included, but was not limited to, the following points:

- The Applicant is requesting an after-the-fact variance to for fill material and stone placed in the Critical Area Buffer in relation to a revetment approved by the Maryland Department of the Environment.
- The revetment was originally installed to repair prior erosion control measures. The revetment was approved by MDE. Applicant did not realize approvals for landward disturbance related to the revetment's installation were also required.
- The entire lot is grandfathered and within the Critical Area.
- The applicant will fully mitigate all disturbance to the Buffer.
- The only purpose of the disturbance is to protect the property from future erosion.
- The associated violation has been resolved in District Court.

Public Testimony

No members of the public appeared to offer in-person testimony for or against the project.

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 jurisdiction's 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) requires the Applicants to overcome the presumption that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances of this matter, the Board finds and concludes

the Applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

First, the Board finds that denying the Applicants' request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), the Court of Appeals stated "unwarranted hardship," as used in the Natural Resources Article, has the following meaning:

[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 Board concludes the Applicant has satisfied the standard of an unwarranted hardship. The fill-material and stone are necessary to support the installed revetment. The revetment, by its nature, cannot be located anywhere but the boundary of Applicant's land and the adjacent water; the fill-material meant to support the revetment cannot be located anywhere but adjacent to the revetment. Applicant has a fundamental right to protect her property from further erosion and what she proposes is no more than what the appears to be the Board necessary to assert that right.

Second, denying the variance would deprive the Applicant of rights commonly enjoyed by other similarly situated property owners in the Rural Preservation District and Limited Development Area. The aforementioned right to defend one's property from erosion is a basic right afforded to all riparian property owners.

Third, granting a variance will not confer a special privilege upon the Applicant. The right to ask for a variance to the Critical Area program's strictures is required by law. Applicant's proposed site plan has been subjected to a public hearing, held to the required standards, includes

all required mitigation plantings, environmental considerations, and conforms to the greatest extent it can to all applicable regulations. Applicant carries a high burden of proof to meet before a variance can be granted. We cannot find any definition of “special privilege” in statute or case law to suggest that one has been conferred when an Applicant, in compliance with the procedural requirements noted above, meets that burden.

Fourth, the need for the variance does not arise from the actions of the Applicant or their predecessors in title. The erosion Applicant’s property would suffer from absent these measures is a natural process not spurned on or caused by Applicant’s own actions.

Fifth, the need for the variance does not arise from any nonconforming feature on either the Subject Property or a neighboring property.

Sixth, granting the requested variance will not adversely affect the environment. The Applicant will be required to mitigate the proposed development with an approved planting plan established on-site (per COMAR 27.01.09.01). The plantings are intended to offset any negative effects and provide improvements to water quality along with wildlife and plant habitat. The required plantings will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, all of which should contribute to improved infiltration and reduction of non-point source pollution leaving the site.

Finally, the Board finds, overall, that granting the variance is in the spirit of the Critical Area program. Applicant is proposing basic steps necessary to protect her property from further erosion. She appears to the Board to be acting, and to have acted, in good faith, and that the work done prior to receiving this variance was a genuine mistake on her or her contractor’s part. State law mandates that mistake must carry increased planting requirements, but otherwise does not restrict the Board’s ability to grant an after-the-fact variance when an Applicant satisfies the

criteria for doing so. We find Applicant has.

By satisfying these standards the Applicant has also overcome the presumption in § 8-1808(d)(2)(ii) of the Natural Resources Article that the variance request should be denied.

ORDER

PURSUANT to Applicant's request for an after-the-fact variance from CZO Section 71.8.3 to disturb the 100' Critical Area Buffer for placement of fill material and stone; and,

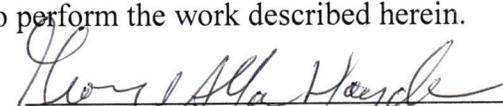
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicant is granted an after-the-fact variance from Section 71.8.3 to disturb the 100' Critical Area Buffer to place fill material and stone.

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: March 13, 2025

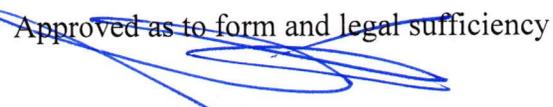

George Allan Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

~~Approved as to form and legal sufficiency~~



Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANT

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 Petition for Judicial Review with the Circuit Court for St. Mary's County within thirty (30) days of the date this order is signed. 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.