

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Roy and Cynthia Daugherty
24786 Half Pone Point Road, Hollywood, MD

Case No. VAAP #15-2313

DECISION AND ORDER

Introduction

Roy and Cynthia Daugherty (hereinafter "Applicants"), filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 24786 Half Pone Point Road, Hollywood, Maryland (hereinafter the "Property"). The application seeks a variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to add a porch and decks to the existing single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on April 14, 2016, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

Legal Standard

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

- a. Special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship.
- b. Strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County.
- c. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area of St. Mary's County.
- d. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.
- e. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.

- f. The variance is the minimum necessary to achieve a reasonable use of the land or structures.

Findings of Fact

The Property is a grandfathered lot in the Critical Area of St. Mary's County because it was recorded prior to the adoption of the Maryland Critical Area law on December 1, 1985. The Property is 20,473 square feet in size and is constrained by the Critical Area Buffer (Buffer) as measured 100 feet landward of the mean high water line of the Patuxent River. The existing single-family dwelling, which was constructed in 1955, is located within the Buffer.

The Applicants propose to build a 34-foot by 14-foot screened porch to the rear or water side of the house and to add a 14-foot by 12-foot deck on each side of the screened porch for a total of 812 square feet of new lot coverage in the Buffer. The overall amount of lot coverage on the Property following development will be 3,333 square feet or approximately 16 percent of the Property. The maximum amount of lot coverage allowed on a property of this size is 31.25 percent. The Property contains about 600 square feet of vegetation in the form of trees and shrubs. No vegetation will be removed prior to construction.

The shoreline of the Property is within the 1 percent annual chance floodplain; zone AE per Flood Insurance Rate Map (FIRM) panel 201F. The base flood elevation for this site is seven feet. The existing house and the proposed additions are located more than 50 feet from this Special Flood Hazard Area.

The St. Mary's County Health Department and Soil Conservation District have approved the proposed additions to the existing house.

The Critical Area Commission does not oppose the variance request.

Conclusions of Law

The Property is constrained by the Critical Area Buffer (the "Buffer"). A strict interpretation of the Ordinance would prohibit any development in the Critical Area Buffer.

The basis for the variance is the subsequent adoption of the St. Mary's County Critical Area Program on March 27, 1990.

The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for the removal of any trees with a diameter greater than two inches. The required vegetation will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, which will contribute to improved infiltration and reduction of non-point source pollution leaving the site in the future.

Since the Critical Area Commission, an agency deemed to have expertise and vested with the legal mandate to protect the critical areas of the State, does not oppose the variance, there is a strong inference that the Applicants meet the standards for a variance.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Sections 24.4 and 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, and further finding, for all reasons stated herein, that the Applicants have rebutted the presumption that the specific development activity proposed by the Applicants does not conform with the general purpose and intent of Subtitle 18 of Title 8 of the *Natural Resources Article of the Annotated Code of Maryland* and regulations adopted pursuant thereto and the requirements of St. Mary's County Comprehensive Zoning Ordinance enacted pursuant thereto, a variance to disturb the Critical Area Buffer to construct a 34-foot by 14-foot screened porch and two 14-foot by 12-foot decks is **granted**.

Date: May 12, 2016


George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney