

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the application of David & Pamela Crawford for a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct a new walkway, porch, deck, two-story detached garage, and driveway and a variance from Section 41.5.3.i to exceed the allowed lot coverage in the Critical Area.

Case No. VAAP #12-0632
Crawford

ORDER

WHEREAS, Application VAAP #12-0632 – Crawford was duly filed with the St. Mary's County Board of Appeals (the "Board") by David & Pamela Crawford (the "Applicants"), on or about October 9, 2013; and

WHEREAS, the Applicants seek a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance, as amended, (the "Ordinance"), to disturb the Critical Area Buffer to construct a new walkway, porch, deck, two-story detached garage, and driveway and a variance from Section 41.5.3.i to exceed the allowed lot coverage in the Critical Area. The property contains 1.9 acres; is zoned Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay; and is located at 23630 Town Creek Drive, Lexington Park, Maryland; Tax Map 35A, Grid 6, Parcel 18 (the "Property"); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, November 14, 2013 in Main Meeting Room, Chesapeake Building, 41770 Baldrige Street, of the Governmental Center in Leonardtown, Maryland, at 6:30 p.m., and all persons desiring to be heard were heard, documentary evidence received, and the proceedings electronically recorded.

NOW, THEREFORE, having reviewed the testimony and evidence presented at the hearing, the following facts, findings, and decision of the Board are noted:

SUMMARY OF TESTIMONY

Yvonne Chaillet, Zoning Administrator, summarized the Staff Report. David Crawford, Applicant, testified to Mrs. Crawford's medical condition that requires wheelchair access to the house and garage as well as a full time nurse on the property.

SUMMARY OF DOCUMENTARY EVIDENCE

The Board accepted into evidence the following exhibits:

Exhibit No. 1 – Affidavit of Property Posting and Mailing Receipts

Exhibit No. 2 – Staff Report

FINDINGS OF FACT

The subject property (the "Property") is a lot recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is bound on its northern and eastern sides by Town Creek. The Property is improved by an existing one-story single-family dwelling with a basement constructed in 1956, a stoop, an existing deck, walkways, and a circular driveway. A private well and septic system serve the single-family dwelling.

The existing house is located entirely within the Critical Area Buffer (the "Buffer"), which has been expanded for the highly erodible Evesboro Westphalia Complex (EwE2) soils. EwE2 soils are found on 20-45 percent slopes. The shoreline of the Property is within the 1 percent annual chance floodplain; zone AE per Flood Insurance Rate Map (FIRM) panel 203E. The base flood elevation for this site is five feet. The proposed

development will be entirely outside the floodplain. The existing vegetative cover on the Property is 53,797 square feet or 65 percent. The Applicants are not proposing to remove any vegetation.

The Property contains 10,184 square feet of lot coverage. The proposed construction includes 642 square feet of additional paved walkways, a 630 square-foot porch, 263 square feet of driveway, and a 1,008 square-foot detached, two-story garage with an apartment upstairs, and 200 square feet of stone apron to connect the driveway to the proposed garage. The Applicants plan to remove 56 square feet of the existing walkway. The Applicants also plan to remove 240 square feet of the existing deck and construct 64 square feet of deck. The overall increase in lot coverage over current conditions is 2,687 square feet. The sum of lot coverage following construction will be 12,871 square feet, or 15.5 percent of the Property. The lot coverage limit for this property is 12,415 square feet or 15 percent.

The project has been approved by the Health Department and the Soil Conservation District. The Critical Area Commission does not oppose the variance request.

Mrs. Crawford's medical condition requires wheelchair access to the house and garage as well as a full time nurse on the property.

CONCLUSIONS OF LAW

The Board addresses the Special Standards for Granting Variances, which are set forth in Section 24.4 of the Ordinance, finding as follows:

- a. *That 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;*

The Property is a lot recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is improved by an existing one-story single-family dwelling constructed in 1956. The existing house is located entirely within the Critical Area Buffer.

For these reasons, the Board finds that 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. *That 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;*

The Property is a lot recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is improved by an existing one-story single-family dwelling constructed in 1956. The existing house is located entirely within the Critical Area Buffer. Owners of lots in the Critical Area that pre-existed the Critical Area laws are frequently granted variances to develop or redevelop the lot.

For these reasons, the Board finds that 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;*

The Property is a lot recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is improved by an existing one-story single-family dwelling constructed in 1956. The existing house is located entirely within the Critical Area Buffer. Owners of lots in the Critical Area that pre-existed the Critical Area laws are frequently granted variances to develop or redevelop the lot.

For these reasons, the Board finds that 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;*

Mrs. Crawford's medical condition requires wheelchair access to the house and garage as well as a full time nurse on the property.

For these reasons, the Board finds that the variance request is not based upon conditions or circumstances that are the result of actions by the applicant.

- e. The granting of the 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;*

The Critical Area program recognizes "grandfathered" properties and the rights of property owners to develop or redevelop them. The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by plantings trees, shrubs, and native vegetation ground cover. Mitigation is required at a ratio of three to one per square foot of the variance granted for permanent disturbance and one to one per square foot of the variance granted for temporary disturbance. Required vegetation can improve plan diversity and habitat value for the site and improve the runoff characteristics for the Property, and contribute to improved infiltration and reduction of non-point source pollution leaving the site in the future.

For these reasons, the Board finds that the granting of the 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;*

Mrs. Crawford's medical condition requires wheelchair access to the house and garage as well as a full time nurse on the property. The Critical Area statute does not require a property owner to apply for a variance to accommodate a disability.

For these reasons, the Board finds that the variance is the minimum necessary to achieve a reasonable use of the land or structures.

DECISION

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Section 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 new walkway, porch, deck, detached two-story garage, and driveway is granted.

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Section 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 has rebutted the presumption that the specific development activity proposed by the Applicant 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 exceed the allowed lot coverage in the Critical Area is granted.

This Date: December 12, 2013



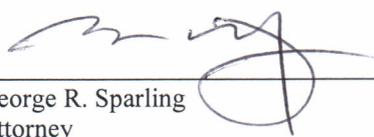
George A. Hayden
Chairman

Those voting in favor of the request:

Mr. Hayden, Mr. Guy, Mr. Edmonds, Mr. Payne and Mr. Moreland

Those voting against the requested variance:

Approved as to form and legal sufficiency:



George R. Sparling
Attorney