

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

In the Matter of the application of Howard Michael and Georgette Rice for a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer and a variance from Schedule 32.1 of the Ordinance to reduce the side yard setback on the south side of the property in order to construct a replacement single-family dwelling.

Case No. VAAP #12-2275  
Rice

**ORDER**

**WHEREAS**, Application VAAP #12-2275 – Rice was duly filed with the St. Mary's County Board of Appeals (the "Board") by Howard Michael & Georgette Rice (the "Applicants"), on or about August 22, 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 and from Schedule 32.1 to reduce the side yard setback on the south side of the property in order to construct a replacement single-family dwelling. The property contains 18,000 square feet; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Critical Area Overlay; and is located at 14524 E. Way Drive, Scotland, Maryland; Tax Map 73A, Grid 22, Lots 95 and 96 (the "Property"); and

**WHEREAS**, after due notice, a public hearing was conducted by the Board on Thursday, September 12, 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**

Carrie Ann Heinz, Environmental Planner, summarized the Staff Report. Howard Rice, Applicant, testified to the need for the variances and addressed the standards.

**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 in the Critical Area of St. Mary's County. Scotland Beach Subdivision was recorded prior to December 1, 1985, the date of adoption of the Critical Area regulations by the State of Maryland. The Property is entirely constrained by the Critical Area Buffer (the "Buffer") measured from the mean high water line of Tanner Creek and from adjacent tidal wetlands and the upland boundary of adjacent non-tidal wetlands. The Buffer has been expanded to include the Elkton silt loam (Ek) soils found on the Property, which are hydric. Ek soils are found primarily on lands with lower elevations where the water table is at or near the surface for the majority of the year. The Property is in the Resource Conservation Area (RCA) Critical Area Overlay District.

The Property contains a single-family dwelling with attached decks, a shed, and a wooden walkway connecting to a pier for a total of 1,343 square feet of lot coverage. The existing single family dwelling was constructed in 1964 and is served by a private well and septic holding tank.

The Applicants propose to replace the existing house with a two-story single-family dwelling, an attached porch and deck for a total of 1,501 square feet of lot coverage. The Property is located within the AE floodplain with a base flood elevation of 4 feet, NAVD according to Flood Insurance Rate Map 404E. The Applicants plan to build the new house on 8-foot tall pylons, thus elevating the structure well above the minimum required flood protection elevation (FPE) of 5 feet. The Applicants plan to remove the existing shed. The proposed deck and the wooden walkway connecting to the pier are not counted in the total lot coverage calculation as long as the Applicants maintain a ¼ inch space between deck boards. A total net gain of 158 square feet of lot coverage is proposed to be added to the property. Vehicle parking is to occur underneath the elevated house. The proposed replacement dwelling will be Energy Star certified and meet or exceed LEED environmental industry standards.

Approximately 22 percent of the Property is wooded. The Applicants do not propose to clear any woody vegetation in the construction of the replacement dwelling. The area of disturbance is estimated at 5,000 square feet.

The existing home is currently ten feet from the south property line. The proposed house will be twelve feet from the south property line, encroaching approximately three (3) feet into the required 15-foot side yard setback on the south side of the Property.

The Health Department approved the proposed development on June 20, 2013. The Critical Area Commission has reviewed this variance request and they do not oppose it.

#### CONCLUSIONS OF LAW

The Board makes the following findings regarding General Standards for Granting Variances set forth in Section 24.3 of the Ordinance:

- a. *Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty.*

The Property is significantly constrained by tidal wetlands on the east side and non-tidal wetlands on the north side of the Property. In order to avoid these environmental features, the Applicants have located the proposed house closer to the south property line than what is permitted in accordance with Schedule 32.1 of the Ordinance.

For these reasons, the Board finds that, because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty.

- b. *The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification.*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations. The majority of the lots were 9,000 square feet in size. In order to create a reasonably sized lot for redevelopment, the Applicants combined lots 95 and 96 to create a larger lot of 18,000 square feet. Regardless, the Property remains constrained by tidal and non-tidal wetlands.

For these reasons, the Board finds that the conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification.

- c. *The purpose of the variance is not based exclusively upon reasons of convenience, profit or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding.*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations. The majority of the lots were 9,000 square feet in size. In order to create a reasonably sized lot for redevelopment, the Applicants combined lots 95 and 96 to create a larger lot of 18,000 square feet. Regardless, the Property remains constrained by tidal and non-tidal wetlands.

For these reasons, the Board finds that the purpose of the variance is not based exclusively upon reasons of convenience, profit or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding.

- d. *The alleged difficulty has not been created by the property owner or the owner's predecessors in title.*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations.

For these reasons, the Board finds that the alleged difficulty has not been created by the property owner or the owner's predecessors in title.

- e. *The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance.*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations. The majority of the lots were 9,000 square feet in size. The existing home is currently ten feet from the south property line.

For these reasons, the Board finds that the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance.

- f. *The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

The existing home is currently ten feet from the south property line.

For these reasons, the Board finds that the proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

- g. *The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.*

Chapter 3, "A Growth Management Strategy," of the Comprehensive Plan establishes a vision for community design, which includes encouraging owners of existing structures to maintain and retrofit the buildings and grounds so they become attractive and energy efficient. The proposed replacement dwelling will be Energy Star certified and meet or exceed LEED environmental industry standards.

For these reasons, the Board finds that the variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.