

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the application of James and Alba Rosenbluth 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 replacement single-family dwelling.

Case No. VAAP #13-0438
Rosenbluth

ORDER

WHEREAS, Application VAAP #13-0438 – Rosenbluth was duly filed with the St. Mary's County Board of Appeals (the "Board") by James and Alba Rosenbluth (the "Applicant"), on or about August 14, 2013; and

WHEREAS, the Applicant seeks 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 replacement single-family dwelling. The property contains 1.6 acres; is zoned Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay; and is located at 45341 Nats Creek Road, Hollywood, Maryland; Tax Map 27, Grid 12, Parcel 420 (the "Property"); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, October 10, 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. James Rosenbluth, Applicant, gave an overview of the requested variance and provided the Board with a PowerPoint Presentation.

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
- Exhibit No. 3 – PowerPoint Presentation

FINDINGS OF FACT

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;***

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;***

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;***

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;***

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;***

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;***

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 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 Applicant 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, the request to disturb the critical Area Buffer to construct a replacement single-family dwelling is approved.

This Date: November 14, 2013


George A. Hayden
Chairman

Those voting in favor of the request:

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

Those voting against the requested variance:

Approved as to form and legal sufficiency:


George R. Sparling
Attorney