

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the application of Ruth Feicht for a variance from Section 72.3.1 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation in the Critical Area to construct a single-family dwelling.

Case No. VAAP #14-0073
Ruth Feicht Property

ORDER

WHEREAS, Application VAAP #14-0073 – Ruth Feicht Property was duly filed with the St. Mary's County Board of Appeals (the "Board") by Ruth Feicht (the "Applicant"), on or about February 26, 2013; and

WHEREAS, the Applicant seeks a variance from Section 72.3.1 of the St. Mary's County Comprehensive Zoning Ordinance, as amended, (the "Ordinance"), to clear and add lot coverage in the Critical Area Buffer and a variance from Section 41.5.3 of the Ordinance to trade lot coverage in excess of 30 percent of the existing vegetation in the Critical Area to construct a single-family dwelling. The property contains 10,000 square feet; is zoned Residential Neighborhood Conservation (RNC) District, Limited Development Area (LDA) Overlay; and is located at 24230 Patuxent Beach Road, California, Maryland; Tax Map 35, Grid 02, Parcel 03 (the "Property"); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, March 13, 2014 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, Critical Area Planner, summarized the Staff Report. Ruth Feicht, Applicant, summarized the need for the variance indicating she would be willing to mitigate the 30% in the form of plantings 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
- Exhibit No. 3 – Letter to Board of Appeals dated 3/13/14
- Exhibit No. 4 – Memo from St. Mary's County Health Department dated 3/12/14

FINDINGS OF FACT

The subject property (Property) is a wooded, vacant lot of 10,000 square feet and is in the Critical Area Limited Development Area (LDA) Overlay. The property is a grandfathered lot because it was recorded prior to the adoption of the Maryland Critical Area Regulations in December 1985. The existing soil type on the Property is Matapeake silt loam (MnA), which is neither a hydric or highly erodible soil, and according to the 1978 United States Department of Agriculture's Soil Survey of St. Mary's County, requires no special conservation practices. The Property is located in the Leverings Subdivision and is not constrained by the 100 foot Critical Area Buffer (Buffer), tidal or non-tidal wetlands, hydric or highly erodible soils, steep slopes or by the 100- year floodplain according to FIRM (Flood Insurance Rate Map) Panel #203E.

The Applicant proposes to construct a three bedroom house with attached patio and driveway. The property will be served by a well and nitrogen reducing septic system. The footprint of the home will be approximately 910 square feet, and the total proposed lot coverage equals 1,932 square feet or 19.3 percent of the Property. The lot coverage limit for this property is 31.25 percent or 3,125 square feet.

The existing vegetative cover on the property is 8,200 square feet. The Applicant proposes to clear 7,025 square feet or 85.6 percent of the existing vegetation. The clearing limit for the Property is 30 percent or 3,000 square feet of existing vegetation. The amount of proposed clearing is necessary to construct not only the single-family dwelling and driveway, but the sewage disposal system, and deep drilled well.

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 subject property (Property) is a wooded, vacant lot of 10,000 square feet and is in the Critical Area Limited Development Area (LDA) Overlay. The property is a grandfathered lot because it was recorded in 1923 prior to the adoption of the Maryland Critical Area Regulations in December 1985.

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;***

A strict interpretation of the Critical Area provisions of the Ordinance would deny the Applicant the right to develop the Property, which is an entitlement granted to all grandfathered lots of record in the Critical Area. The Applicant is entitled to a variance as the lot was recorded in 1923 prior to the adoption of the Maryland Critical Area Regulations in December 1985 and the amount of proposed clearing is necessary to construct not only the single-family dwelling and driveway, but the sewage disposal system, and deep drilled well.

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;***

A strict interpretation of the Critical Area provisions of the Ordinance would deny the Applicant the right to develop the Property, which is an entitlement granted to all grandfathered lots of record in the Critical Area. The Applicant is entitled to a variance as the lot was recorded in 1923 prior to the adoption of the Maryland Critical Area Regulations in December 1985 and the amount of proposed clearing is necessary to construct not only the single-family dwelling and driveway, but the sewage disposal system, and deep drilled well.

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;*

The lot is only 10,000 square feet in size and is over 80 percent wooded. A large percentage of the existing woodland must be cleared in order to construct a modest size house, porch, driveway, well, and a septic system. The amount of proposed clearing is necessary to construct not only the single-family dwelling and driveway, but the sewage disposal system, and deep drilled well.

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 planting trees and shrubs. 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.

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;*

A reasonable residential use of a property is a single-family dwelling, sized appropriately for the lot, water supply and sanitation, and access from the road. The Applicant has proposed to develop a predominately wooded lot in this manner. In order to construct a modest size house and driveway, along with the sewage disposal system and well, the Applicant must provide a means to manage stormwater runoff.

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 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, a variance to clear 7,025 square feet or 85.6 percent of the existing vegetation to construct a single-family dwelling in the Critical Area, subject to the following conditions: