

ST. MARY’S COUNTY BOARD OF APPEALS

In the Matter of the application of Edward and Jennifer Kirscht 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 deck.

Case No. VAAP #14-0347
Kirscht

ORDER

WHEREAS, Application VAAP #14-0347 – Kirscht was duly filed with the St. Mary’s County Board of Appeals (the “Board”) by Edward and Jennifer Kirscht (the “Applicants”), on or about April 2, 2014; 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 deck. The property contains 1.19 acres; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District; and is located at 38884 Cottonwood Drive, Abell, Maryland; Tax Map 47, Grid 2, Parcel 260 (the “Property”); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, May 22, 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

Yvonne Chaillet, Zoning Administrator, summarized the staff report.

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 Property is a grandfathered lot in the Critical Area because the Property was 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 northwest side by Canoe Neck Creek. The Property is also constrained by hydric soils. The soils types on the Property are Keyport Silt Loam (KRB2) and Elkton Silt Loam (Ek). Keyport series soils are considered to be moderately erosive and Elkton soils are hydric. All of the proposed development will take place on the KRB2 soils.

The Property contains an existing single-family dwelling and porch, walkways, a stoop, a concrete pad, a carport, and a driveway totaling 5,016 square feet. The proposed 400 square-foot deck does not count as lot coverage. The existing vegetative cover on the Property is 15,450 square feet, or 29.8 percent of the Property. The Applicants are not planning to clear any vegetation to construct their deck. The shoreline of the Property is within the 1 percent annual chance floodplain; zone AE per Flood Insurance Rate Map (FIRM) panel 163E. The base flood elevation for this site is five feet. The proposed development will be entirely outside of the floodplain.

A private well and septic system serve the existing dwelling. The Health Department and the Soil Conservation District have approved the proposed plans.

The Critical Area Commission does not oppose the variance request.

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 grandfathered lot in the Critical Area because the Property was 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 side by Canoe Neck Creek. The Property is also constrained by hydric soils.

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 grandfathered lot in the Critical Area because the Property was 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 Critical Area program recognizes grandfathered properties and the rights of property owners to develop or redevelop them.

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 grandfathered lot in the Critical Area because the Property was 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 Critical Area program recognizes grandfathered properties and the rights of property owners to develop or redevelop them.

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 Property is a grandfathered lot in the Critical Area because the Property was 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 basis for the variance is the subsequent adoption of the Maryland Critical Area regulations on December 1, 1985.

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 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.

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;***

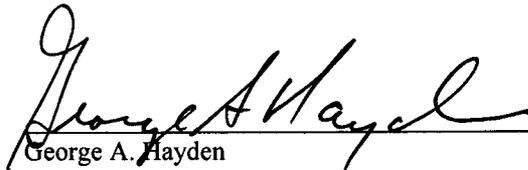
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For these reasons, the Board finds that the variance is the minimum necessary to achieve a reasonable use of the land or structures.

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 *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 deck is ***approved***.

This Date: June 12, 2014



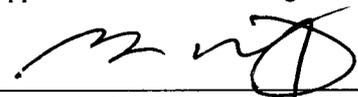
 George A. Hayden
 Chairman

Those voting in favor of the request:

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

Those voting against the requested variance:

Approved as to form and legal sufficiency:



 George R. Sparling, Attorney