

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Paul Anthony Feicht III and Andy Feicht
45392 Sypher Road, California, Maryland

Case No. VAAP #15-2478

DECISION AND ORDER**Introduction**

Paul Anthony Feicht III and Andy Feicht (hereinafter "Applicants"), filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 45392 Sypher Road, California, Maryland (hereinafter the "Property"). The application seeks a variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct a replacement single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on November 10, 2016, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

Legal Standard

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

- a. 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. 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.
- d. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.
- e. The granting of a 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.

Findings of Fact

The Property is a grandfathered lot in the Critical Area of St. Mary's County because it was recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area law on December 1, 1985. The Property is located on Sam Abell Cove which drains into Mill Creek, which subsequently drains into the Patuxent River.

The existing conditions of the Property consist of a single-family dwelling, driveway, and appurtenances for a total of 4,921 square feet of lot coverage. The Applicants plan to remove 2,987 square feet of this amount, which includes the existing house, and add 4,813 square feet of lot coverage with a new single-family dwelling and attached deck and screened porch, a detached garage, a detached workshop, and a pavilion for a total of 6,490 square feet of lot coverage, which is 14.6 percent of the Property. The allowed amount of lot coverage on the Property is 15 percent of the Property or 6,671 square feet. The proposed, 1,067 square-foot deck is not deemed lot coverage as long as spacing between the boards is provided to allow water to flow through freely. The proposed house, deck, screened porch, and pavilion will be constructed within 100 feet of the mean high water line of Sam Abell Cove.

The Property contains approximately 24,912 square feet of woodland, which is 56 percent of the Property. The Applicants plan to clear 4,398 square feet or 17.6 percent of the existing woodland.

The Property is constrained by the Critical Area Buffer (Buffer) as measured from the mean high water line of the tidal water of Sam Abell Cove. The Buffer is expanded to encompass steep slopes and highly erodible soils. These soils are an Evesboro-Westphalia complex (EwD2) according to the Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, Web Soil Survey. This soil type consists of about 60 percent Evesboro soil and 40 percent Westphalia soil. EwD2 soils are typically found on slopes with a gradient of 12 to 20 percent. The surface of this soil is moderately eroded.

The shoreline of the Property is within Special Flood Hazard Area Zone AE according to Flood Insurance Rate Map (FIRM) panel 184F. No development is proposed in the Special Flood Hazard Area or floodplain.

The Maryland Critical Area Commission provided comments in the attached letter dated May 4, 2016.

Conclusions of Law

The Property is constrained by the Critical Area Buffer (the "Buffer"). A strict interpretation of the Ordinance would prohibit any development in the Critical Area Buffer.

The basis for the variance is the subsequent adoption of the St. Mary's County Critical Area Program on March 27, 1990.

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.

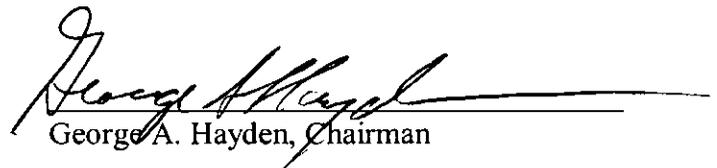
Since the Critical Area Commission, an agency deemed to have expertise and vested with the legal mandate to protect the critical areas of the State, has not opposed the variance, there is a strong inference that the Applicants meet the standards for a variance.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Sections 24.4 and 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 replacement single-family dwelling is **granted**, upon the following conditions:

1. Spacing between the boards in the deck shall be at least one-quarter (1/4) of an inch.
2. The boathouse shall be removed.

Date: December 15, 2016


George A. Hayden, Chairman

Paul Anthony Feicht III and Andy Feicht
45392 Sypher Road, California MD

VAAP #15-2478

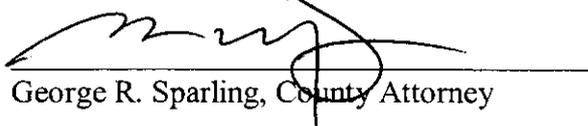
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Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr.
Miedzinski and Mr. Payne

Those voting to deny the variance:

Approved as to form and legal sufficiency


George R. Sparling, County Attorney