

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Vickey M. Hluchanek and Patrick G. Monan
16395 Ball Point Road, Piney Point, Maryland

Case No. VAAP #16-1638

DECISION AND ORDER

Introduction

Vickey M. Hluchanek and Patrick G. Monan (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 16395 Ball Point Road, Piney Point, 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 single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on May 11, 2017, 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 because it was recorded prior to the adoption of the Maryland Critical Area regulations on December 1, 1985. The Property is 1.33 acres in size and contains hydric soils and non-tidal wetlands. The Property is entirely constrained by the Critical Area Buffer as measured landward from the mean high water line of St. George Creek. The Buffer is expanded to include nontidal wetlands and Othello Silt Loam (Ot) soils. Ot soils are hydric and poorly drained soils according to the Natural Resource Conservation Service's Web Soil Survey. The St. Mary's Soil Conservation District (SCD) approved an erosion and sediment control plan on March 14, 2017.

The Property is currently vacant, but contains a paved drive that extends beyond the front boundary to serve other properties. The portion of the paved drive on the Applicants' property comprises 2,626 square feet of lot coverage. The Applicants propose to construct a single-family dwelling with an attached deck and porch and to add a driveway for an additional 1,698 square feet of lot coverage. The total amount of lot coverage on the Property following construction will be 4,324 square feet. If the Applicants construct the 140 square-foot deck with spacing between the deck boards to allow water to flow through, the deck would not count as lot coverage, leaving 4,184 square feet of lot coverage on the Property. The allowed amount of lot coverage on a property this size is 8,730 square feet.

The Property contains approximately 36,585 square feet of vegetation, which is 62.9 percent of the Property. However, the majority of this vegetation is nontidal wetlands grasses. The proposed clearing of the wetlands grasses and the disturbance to the nontidal wetlands was mitigated under a prior authorization from the Maryland Department of the Environment. The Maryland Department of the Environment plans to issue a new authorization for the current proposal under this permit.

The entire Property is located within Special Flood Hazard Area Zone AE with a base flood elevation of 6 feet per Flood Insurance Rate Map (FIRM) panel 376F. The proposed single-family dwelling will be constructed in the AE zone, and the first floor must be elevated at or above nine (9) feet to comply with the County's freeboard requirements.

The Maryland Critical Area Commission does not oppose the variance.

A private well and public sewer system will serve the Property. The St. Mary's Health Department approved the site plan on February 1, 2017.

The Board of Appeals previously granted variances on May 11, 2006 and July 22, 2010.

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.

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 single-family dwelling is **granted**.

Date: June 8, 2017


George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency


George R. Sparling, County Attorney