

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Jeffrey Knott and Sheila Knott
45235 Nats Creek Road, Hollywood, Maryland

Case No. VAAP #16-0002

DECISION AND ORDER**Introduction**

Jeffrey Knott and Sheila Knott (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 45235 Nats Creek Road, Hollywood, 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 surrounded on two sides by Nats Creek, and approximately 75 to 80 percent of the Property is inside the 100-Foot Critical Area Buffer (Buffer) as measured from the mean high water line of the Creek.

The Property contains a single-family dwelling, an attached deck, a driveway, a shed, and walkways totaling 8,051 square feet of lot coverage. The existing single-family dwelling was constructed in 1904 and a private well and septic system serve the Property.

The Applicants plan to remove the existing dwelling, which has a footprint of 2,250 square feet, the walkways, which total 67 square feet, the attached deck, and 5,454 square feet of driveway for a total of 7,771 square feet of lot coverage.

The Applicants propose to build a new single family dwelling with a footprint of 3,733 square feet, which includes the attached garage, 149 square feet of walkways, 616 square feet of patio, an 11 square-foot stoop, and 3,125 square feet of driveway. A deck measuring 270 square feet will be constructed on the southeast corner of the house, but will not count as lot coverage as long as spacing is provided between the deck boards to allow water to flow through freely. The amount of existing lot coverage to remain on the Property added to the proposed amount of lot coverage totals 7,914 square feet of lot coverage, which is about 14.6 percent of the Property. The allowed amount of lot coverage is 15 percent of the Property or 8,068 square feet. The Applicants will be reducing the overall lot coverage by 137 square feet. Of the proposed lot coverage, 2,399 square feet of the house, 149 square feet of walkways, 616 square feet of patio, and 11 square feet of stoop, totaling 3,175 square feet, will be within the Critical Area Buffer.

The Property is covered in approximately 24,107 square feet of existing woodland, which is 44.6 percent of the Property. The Applicants plan to clear approximately 1,427 square feet or five and nine tenths (5.9) percent of the existing vegetation in preparation for construction.

The existing soil type on the Property is Keyport Silt Loam (KrA) according to the Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, Web Soil Survey. KrA soils are found on slopes of 0-2 percent and are not considered to be erosive or hydric.

The Property is located within the AE floodplain with a base flood elevation of 5 feet NAVD according to Flood Insurance Rate Map 182F. The proposed development is less than fifty feet from the Special Flood Hazard Area, but is outside of the regulated floodplain.

The St. Mary's Soil Conservation District approved the proposed development on October 27, 2016 and the Department of Land use and Growth Management approved the stormwater management measures on October 26, 2016.

The Maryland Critical Area Commission provided comments in a letter dated October 24, 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.

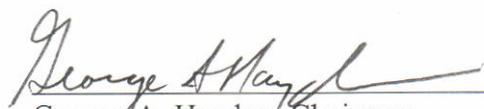
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for 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**.

Date: December 15, 2016


George A. Hayden, Chairman

Jeffrey Knott and Sheila Knott
45235 Nats Creek Road, Hollywood MD

VAAP #16-0002

Page ____

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