

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Bruce and Ryan Nicol
45093 Smiths Nursery Road, Hollywood, Maryland

Case No. VAAP #18-1053

DECISION AND ORDER

Introduction

Bruce and Ryan Nicol (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 45093 Smiths Nursery 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 September 27, 2018, 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 subject property (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 Program on December 1, 1985. The existing single-family dwelling was built in 1965 according to Real Property Data, Maryland Department of Assessments and Taxation. The Applicants plan to remove the existing house and build a new one in the same location, but with an expanded footprint.

A private well and septic system serve the Property.

The Property fronts Cuckold Creek and is constrained by the Critical Area Buffer (the "Buffer"), which has been measured 100 feet landward from the mean high water line of Cuckold Creek, pursuant to the *Code of Maryland Regulations (COMAR) 27.01.09.01.E(3)*. All but the southwest corner of the Property is within the Buffer, and the existing house is entirely within the Buffer. A portion of the driveway is outside the Buffer.

The existing soil type on the Property is Mattapex silt loam (MuC2) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. This soil type is considered moderately sloping and is found mainly in areas along the major streams of the County. It is neither hydric nor highly erodible in nature.

Tidal wetlands and steep slopes, or slopes greater than 15 percent, can be found along the Property's shoreline.

Special Flood Hazard Area Zone AE encroaches on the Property along its shoreline, according to the 2014 Flood Insurance Rate Maps (FIRM), panel 182F. Zone AE is defined in the County's floodplain management regulations as Special Flood Hazard Areas subject to inundation by the 1-percent annual chance (100-year) flood; base flood elevations are determined; and floodways may or may not be determined. In areas subject to tidal flooding, the Limit of Moderate Wave Action (LiMWA) is delineated to define the landward limit of the Coastal A Zone.

The base flood elevation of the AE zone on the Property is five (5) feet. Development is proposed outside zone AE.