

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Vann Scott Brooks and Marie Brooks
21905 Tobacco Lane, Leonardtown, Maryland

Case No. VAAP #16-0906

DECISION AND ORDER**Introduction**

Vann Scott Brooks and Marie Brooks (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 21905 Tobacco Lane, Leonardtown, 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 August 11, 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 prior to the adoption of the Maryland Critical Area law on December 1, 1985. The Property is essentially constrained in its entirety, excluding a small area northwest, by the Critical Area Buffer as measured landward from the mean high water line of Porpoise Creek on its east side and St. Clements Bay on its west side. The Property also contains nontidal wetlands.

The Property contains a single-family dwelling with an attached porch and deck, a detached garage, a shed, walkways, and a driveway for a total of 6,100 square feet of lot coverage. The Applicants plan to remove a total of 2,775 square feet consisting of the existing dwelling and attachments, a portion of the driveway, and part of the walkways, leaving 3,325 square feet of existing lot coverage. The Applicants propose to add 2,901 square feet of lot coverage with the construction of a new house and porch for a total of 6,226 square feet of lot coverage post development inside the Critical Area Buffer. This amount, plus 154 square feet of existing lot coverage outside the Buffer, equals 6,380 square feet of lot coverage, or 12.7 percent of the Property. The allowed amount of lot coverage on a property of this size in the Critical Area is 7,537 square feet or 15 percent of the Property. The Property is covered in approximately 18,622 square feet of existing woodland, which is 37.1 percent of the Property. The Applicants plan to clear approximately 1,061 square feet, or 5.7 percent, of the existing woodland in preparation for construction.

Keyport Silt Loam (KRB2) is the soil type found on the Property according to the Natural Resources Conservation Service (NRCS) Web Soil Survey. KRB2 soils are neither hydric nor highly erodible in class. They are found on slopes with a 5% to 10% gradient and erode moderately and drain moderately well. The Department of Land Use and Growth Management approved the proposed stormwater management measures on June 21, 2016. The St. Mary's Soil Conservation District approved an engineered erosion and sediment control plan on June 29, 2016.

All proposed development will be constructed outside the Special Flood Hazard Areas.

A private well and a septic mound system serve the Property. The Health Department approved the site plan on June 21, 2016.

The Commission does not oppose the variance request.

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.

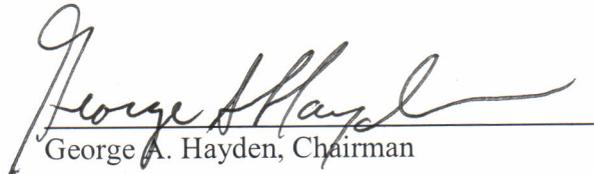
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for 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, does not oppose 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: September 8, 2016


George A. Hayden, Chairman

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