

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of the application of Howard Michael and Georgette Rice for a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer and a variance from Schedule 32.1 of the Ordinance to reduce the side yard setback on the south side of the property in order to construct a replacement single-family dwelling.

Case No. VAAP #12-2275
Rice

ORDER

WHEREAS, Application VAAP #12-2275 – Rice was duly filed with the St. Mary's County Board of Appeals (the "Board") by Howard Michael & Georgette Rice (the "Applicants"), on or about August 22, 2013; and

WHEREAS, the Applicants seek a Variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance, as amended, (the "Ordinance"), to disturb the Critical Area Buffer and from Schedule 32.1 to reduce the side yard setback on the south side of the property in order to construct a replacement single-family dwelling. The property contains 18,000 square feet; is zoned Rural Preservation District (RPD), Resource Conservation Area (RCA) Critical Area Overlay; and is located at 14524 E. Way Drive, Scotland, Maryland; Tax Map 73A, Grid 22, Lots 95 and 96 (the "Property"); and

WHEREAS, after due notice, a public hearing was conducted by the Board on Thursday, September 12, 2013 in Main Meeting Room, Chesapeake Building, 41770 Baldrige Street, of the Governmental Center in Leonardtown, Maryland, at 6:30 p.m., and all persons desiring to be heard were heard, documentary evidence received, and the proceedings electronically recorded.

NOW, THEREFORE, having reviewed the testimony and evidence presented at the hearing, the following facts, findings, and decision of the Board are noted:

SUMMARY OF TESTIMONY

Carrie Ann Heinz, Environmental Planner, summarized the Staff Report. Howard Rice, Applicant, testified to the need for the variances and addressed the standards.

SUMMARY OF DOCUMENTARY EVIDENCE

The Board accepted into evidence the following exhibits:

- Exhibit No. 1 – Affidavit of Property Posting and Mailing Receipts
- Exhibit No. 2 – Staff Report

FINDINGS OF FACT

The subject property (the "Property") is a lot in the Critical Area of St. Mary's County. Scotland Beach Subdivision was recorded prior to December 1, 1985, the date of adoption of the Critical Area regulations by the State of Maryland. The Property is entirely constrained by the Critical Area Buffer (the "Buffer") measured from the mean high water line of Tanner Creek and from adjacent tidal wetlands and the upland boundary of adjacent non-tidal wetlands. The Buffer has been expanded to include the Elkton silt loam (Ek) soils found on the Property, which are hydric. Ek soils are found primarily on lands with lower elevations where the water table is at or near the surface for the majority of the year. The Property is in the Resource Conservation Area (RCA) Critical Area Overlay District.

The Property contains a single-family dwelling with attached decks, a shed, and a wooden walkway connecting to a pier for a total of 1,343 square feet of lot coverage. The existing single family dwelling was constructed in 1964 and is served by a private well and septic holding tank.

The Applicants propose to replace the existing house with a two-story single-family dwelling, an attached porch and deck for a total of 1,501 square feet of lot coverage. The Property is located within the AE floodplain with a base flood elevation of 4 feet, NAVD according to Flood Insurance Rate Map 404E. The Applicants plan to build the new house on 8-foot tall pylons, thus elevating the structure well above the minimum required flood protection elevation (FPE) of 5 feet. The Applicants plan to remove the existing shed. The proposed deck and the wooden walkway connecting to the pier are not counted in the total lot coverage calculation as long as the Applicants maintain a ¼ inch space between deck boards. A total net gain of 158 square feet of lot coverage is proposed to be added to the property. Vehicle parking is to occur underneath the elevated house. The proposed replacement dwelling will be Energy Star certified and meet or exceed LEED environmental industry standards.

Approximately 22 percent of the Property is wooded. The Applicants do not propose to clear any woody vegetation in the construction of the replacement dwelling. The area of disturbance is estimated at 5,000 square feet.

The existing home is currently ten feet from the south property line. The proposed house will be twelve feet from the south property line, encroaching approximately three (3) feet into the required 15-foot side yard setback on the south side of the Property.

The Health Department approved the proposed development on June 20, 2013. The Critical Area Commission has reviewed this variance request and they do not oppose it.

CONCLUSIONS OF LAW

The Board makes the following findings regarding General Standards for Granting Variances set forth in Section 24.3 of the Ordinance:

- a. *Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty.*

The Property is significantly constrained by tidal wetlands on the east side and non-tidal wetlands on the north side of the Property. In order to avoid these environmental features, the Applicants have located the proposed house closer to the south property line than what is permitted in accordance with Schedule 32.1 of the Ordinance.

For these reasons, the Board finds that, because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty.

- b. *The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification.*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations. The majority of the lots were 9,000 square feet in size. In order to create a reasonably sized lot for redevelopment, the Applicants combined lots 95 and 96 to create a larger lot of 18,000 square feet. Regardless, the Property remains constrained by tidal and non-tidal wetlands.

For these reasons, the Board finds that the conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification.

- c. *The purpose of the variance is not based exclusively upon reasons of convenience, profit or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding.*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations. The majority of the lots were 9,000 square feet in size. In order to create a reasonably sized lot for redevelopment, the Applicants combined lots 95 and 96 to create a larger lot of 18,000 square feet. Regardless, the Property remains constrained by tidal and non-tidal wetlands.

For these reasons, the Board finds that the purpose of the variance is not based exclusively upon reasons of convenience, profit or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding.

- d. *The alleged difficulty has not been created by the property owner or the owner's predecessors in title.*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations.

For these reasons, the Board finds that the alleged difficulty has not been created by the property owner or the owner's predecessors in title.

- e. *The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance.*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations. The majority of the lots were 9,000 square feet in size. The existing home is currently ten feet from the south property line.

For these reasons, the Board finds that the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance.

- f. *The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.*

The existing home is currently ten feet from the south property line.

For these reasons, the Board finds that the proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

- g. *The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.*

Chapter 3, "A Growth Management Strategy," of the Comprehensive Plan establishes a vision for community design, which includes encouraging owners of existing structures to maintain and retrofit the buildings and grounds so they become attractive and energy efficient. The proposed replacement dwelling will be Energy Star certified and meet or exceed LEED environmental industry standards.

For these reasons, the Board finds that the variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

The Board makes the following findings regarding Specific Standards for Granting Variances set forth in Section 24.4 of the Ordinance:

- a. *That 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;*

Scotland Beach Subdivision was recorded in 1921, prior to the adoption of the Critical Area regulations by the State of Maryland on December 1, 1985. The Property is entirely constrained by the Critical Area Buffer.

For these reasons, the Board finds that 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. *That 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;*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations. The Property is entirely constrained by the Critical Area Buffer.

For these reasons, the Board finds that 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;*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations. The owners of such lots have the right to develop or redevelop them.

For these reasons, the Board finds that 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;*

The Scotland Beach Subdivision was recorded in 1921, which was prior to the adoption of zoning and environmental regulations.

For these reasons, the Board finds that the variance request is not based upon conditions or circumstances that are the result of actions by the applicant.

- e. *The granting of the 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;*

The Applicants have chosen to construct their replacement home in such a location so that no disturbance to existing tidal or non-tidal wetlands will occur. Additionally, the proposed replacement construction will result in a minimal net gain of lot coverage. The Applicants are voluntarily elevating the structure 3 feet above the required flood protection elevation of 5 feet which will ensure not only the safety of the homeowner but the properties of

other homeowners in the area in that if a flood event were to occur, the proposed structure is less likely to break away and cause damage elsewhere.

For these reasons, the Board finds that the granting of the 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;*

In order to create a reasonably sized lot for redevelopment, the Applicants combined lots 95 and 96 to create a larger lot of 18,000 square feet. Regardless, the Property remains constrained by tidal and non-tidal wetlands. The footprint of the proposed single-family dwelling will occupy an area of 1,267 square feet, which is a modest size. The proposed porch will increase this footprint by 234 square feet.

For these reasons, the Board finds that the variance is the minimum necessary to achieve a reasonable use of the land or structures.

DECISION

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Section 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 Applicant has rebutted the presumption that the specific development activity proposed by the Applicant 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, the requests to reduce the side yard setback on the south side of the property and to disturb the Critical Area to construct a replacement single-family dwelling are approved.

This Date: October 10, 2013


George A. Hayden
Chairman

Those voting in favor of the request:

Mr. Hayden, Mr. Guy, Mr. Greene, Mr. Payne and Mr. Moreland

Those voting against the requested variance:

Approved as to form and legal sufficiency:


George R. Spaulding
Attorney