

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Carol Kurtz and Gary Kurtz
45894 Patuxent Lane, California, Maryland

Case No. VAAP #17-0518

DECISION AND ORDER

Introduction

Carol Kurtz and Gary Kurtz (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 45894 Patuxent Lane, California Maryland (hereinafter the "Property"). The application seeks a variance from Section 41.5.3.i of the Comprehensive Zoning Ordinance to exceed the lot coverage limit in the Critical Area to construct a walkway and expand a patio.

After due notice, a public hearing was conducted at 6:30 p.m. on June 8, 2017, and July 12, 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 of St. Mary's County because it was recorded as part of the Leverings Subdivision prior to the adoption of the Maryland Critical Area Program on December 1, 1985. The Property fronts the Patuxent River and is constrained by the 100-Foot Critical Area Buffer (the "Buffer") as measured from the mean high water line of the river.

The Property contains a 3,387 square-foot, two-story single-family dwelling and an attached garage. The footprint of the house, which includes the garage, measures 2,224 square feet. The Property also has a driveway, walkways, and a patio for an overall total of 3,529 square feet of lot coverage. The allowed amount of lot coverage on a property of this size is 3,594 square feet or 31.25 percent of the property. Approximately 4,780 square feet of woodland and other vegetation cover the Property.

The existing soil types on the Property is Keport silt loam (KrA) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. This soil type is considered moderately well-drained and is typically found in flat areas at lower elevations.

The shoreline of the Property is within Special Flood Hazard Area Zone VE according to Flood Insurance Rate Map (FIRM) panel 203F. Existing and proposed development is outside flood zone VE.

One of the Applicants has a serious disability that affects her balance and walking ability.

The Applicant plans to add a walkway and expand the existing patio for a total of 240 square feet of new lot coverage. Following construction, 32.77 percent of the Property will consist of lot coverage. No clearing is proposed.

Critical Area Commission comments, dated May 9, 2017. The Commission did not support the variance request as proposed.

Conclusions of Law

The Property is constrained in its entirety 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 Applicants propose to construct a walkway and expand a patio. The Applicants seek to add a total of 240 square feet of new lot coverage, which would exceed the allowed amount of lot coverage on the Property by 175 feet. The Applicants are entitled to expand the patio with up to 65 square feet of new lot coverage. Construction of the walkway is directly attributable to, and necessary for, accommodation of a disability. Construction of a walkway 4 feet in width to the existing patio would require 84 feet of new lot coverage. Accordingly, the Applicants are requesting a variance of 91 square feet over and above the accommodation. This additional lot coverage is consistent with a reasonable use of the entire Property so long as the expansion does not encroach onto steep slopes or further into the Buffer than rear the existing patio.

The granting of a variance to allow the construction the walkway and expansion of a patio would not confer a special privilege upon the Applicants.

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 exceed the lot coverage limit in the Critical Area by 175 square feet to construct a walkway and expand a patio in accordance with Exhibit A attached hereto is **granted**.

Date: August 10, 2017


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

