

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Anthony T. Swann and Jean E. Swann
25000 Twin Oaks Way, Hollywood, Maryland

Case No. VAAP #17-1088

DECISION AND ORDER

Introduction

Anthony T. Swann and Jean E. Swann (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 25000 Twin Oaks Way, 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 October 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 prior to the adoption of the Maryland Critical Area law on December 1, 1985.

The Property is constrained by the 100 foot Critical Area Buffer (Buffer) as measured from the edge of the mean high water line of Cuckold Creek.

The Property contains a single-family dwelling with a porch, walkways, driveway, two sheds, and a detached deck located at the shoreline for a total of 4,493 square feet of lot coverage. The existing dwelling is entirely contained inside the Buffer.

The Applicants propose to construct a replacement single-family dwelling with a stoop and a walkway, which will total 1,762 square feet of new lot coverage following construction.

The maximum allowed lot coverage on a lot of this size is 5,777 square feet, or 15 percent of the Property. The Applicants propose to remove 1,447 square feet of the existing lot coverage, leaving a total of 3,046 square feet of lot coverage on the Property. The Property will contain a total amount of 4,808 square feet of lot coverage, which is 12 percent of the Property. The access stairs to the pier do not count towards lot coverage because they are considered riparian access. The 192 square feet of existing and proposed decks would not count as lot coverage if they have the required spacing to allow water to pass through; however, decks count as permanent soil disturbance in the Buffer.

The Property is covered in approximately 31,831 square feet of existing woodland and other vegetation. The Applicants propose to remove 1,500 square feet of vegetation in the Buffer.

The Property will be served by a private deep well drilled to an approved confined aquifer and a private septic system.

The existing soil types on the Property are MuA, Mattapex silt loam, 0-2 percent slopes, and MuC2, Mattapex silt loam, 5-10 percent slopes according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. The MuA soil type is found at lower elevations, adjacent to the major rivers and streams in the County. The hazard of erosion is none to slight. The MuC2 soil type is found mainly along the tributaries of the major streams of the County. This soil type is moderately eroded.

The shoreline of the Property is within Special Flood Hazard Area Zone AE5 and X (unshaded) according to Flood Insurance Rate Map (FIRM) panel 182F. All development is outside the Special Flood Hazard Areas or floodplains.

The St. Mary's Health Department approved the site plan on July 13, 2017, and the St. Mary's Soil Conservation District (SCD) approved the site plan on August 9, 2017. The Department of Land Use and Growth Management determined that stormwater management was not required because the Applicants will be disturbing less than 5,000 square feet of land.

The Critical Area Commission does not oppose the variance to construct a replacement single-family dwelling. However, the Commission opposes construction of the proposed deck closer to the water than the existing house.

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.

Although the replacement dwelling will increase the amount of lot coverage on the Property, the amount of lot coverage within the 100-Foot Buffer will be reduced by 67 square feet. The existing footprint is being utilized, and the total amount of lot coverage on the Property following construction will be only 12 percent. The allowable lot coverage is 15 percent of the Property.

The replacement dwelling is using the same footprint on the side facing the water and an existing stoop and deck are being removed, which covered most of the back side of the house, and being replaced with a deck that will only be one side of the back, although the new deck will be closer to the water. The new deck is consistent with a reasonable use of the entire Property and does not confer any special privileges to the applicants.

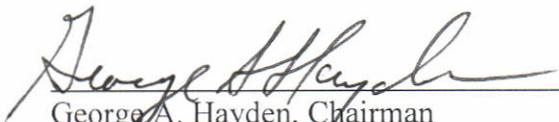
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for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

In light of all facts, the Applicants' proposal is the minimum necessary to achieve a reasonable use of the land and structures.

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: November 9, 2017

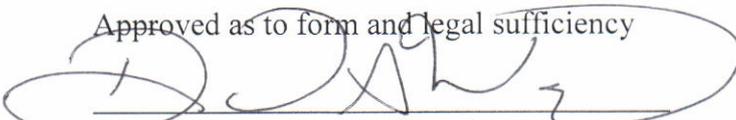

George A. Hayden, Chairman

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


David A. Weiskopf, Acting County Attorney