

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Mary Anne Blankenship
44560 Forest Landing Rd, Hollywood, Maryland

Case No. VAAP #18-0085

DECISION AND ORDER

Introduction

Mary Anne Blankenship (hereinafter "Applicant"), 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 44560 Forest Landing Rd, 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 add a 694 square-foot deck to the existing single-family dwelling.

After due notice, a public hearing was conducted at 6:30 p.m. on April 12, 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 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 *COMAR 27.01.09.01.E(3)*, and then expanded to include the steep slopes and highly erodible soils on the Property in accordance with *COMAR 27.01.09.01.E(7)*.

The existing soil type(s) on the Property is Evesboro-Westphalia Complex (EwE2) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. This soil type is considered moderately erosive and is found on 25-40 percent slopes.

According to the site plan provided by the Applicant, and as shown in the table below, the Property contains a single family dwelling with an enclosed porch, a detached garage, a patio, a stoop, a shed, and a driveway for a total of 4,077 square feet of lot coverage. The Applicant plans to add a 694 square-foot deck with a minimum of one-eighth (1/8") of an inch of spacing between the deck boards to allow water to flow through freely. The deck will not count as lot coverage as long as the spacing is provided.

Property lot coverage in square footage (acreage: 20,908 square feet)					
Existing	To be removed	Remaining	Proposed	Following construction	Allowed 31.25%
4,077	0	4,077	0	4,077	6,534
Buffer lot coverage in square footage					
Existing	To be removed	Remaining	Proposed	Total	Net increase in Buffer
4,077	0	4,077	0	4,077	0

The shoreline of the Property is within Special Flood Hazard Area Zone AE according to Flood Insurance Rate Map (FIRM) panel 181F. 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; 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. Development is proposed more than 50 feet from the Special Flood Hazard Area, Zone AE.

Approximately 9,511 square feet of woodland and other vegetation cover the Property. The Applicant does not plan to clear any existing vegetation.

In accordance with *COMAR 27.01.09.01* mitigation is required at a ratio of three to one per square foot of the variance granted and at a ratio of one to one for the area of temporary disturbance.

The St. Mary's County Health Department approved the proposed deck on February 22, 2018. The St. Mary's Soil Conservation District (SCD) approved an erosion and sediment control plan on January 24, 2018.

The Maryland Critical Area Commission provided comments and does not oppose the variance request to disturb the Critical Area Buffer to construct the proposed deck.

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.

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 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, a variance to disturb the Critical Area Buffer to add a 694 square-foot deck to the existing single-family dwelling is **granted**.

Date: May 10, 2018

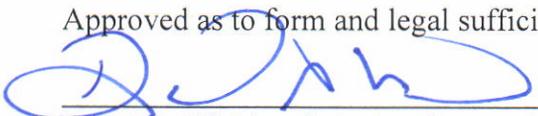

George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Miedzinski and Ms. Delahay

Those voting to deny the variance:

Approved as to form and legal sufficiency


David A. Weiskopf, Acting County Attorney