

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Bruce and Ryan Nicol
45093 Smiths Nursery Road, Hollywood, Maryland

Case No. VAAP #18-1053

DECISION AND ORDER

Introduction

Bruce and Ryan Nicol (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 45093 Smiths Nursery Road, 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 September 27, 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 Applicants plan to remove the existing house and build a new one in the same location, but with an expanded footprint.

A private well and septic system serve the Property.

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 the *Code of Maryland Regulations (COMAR) 27.01.09.01.E(3)*. All but the southwest corner of the Property is within the Buffer, and the existing house is entirely within the Buffer. A portion of the driveway is outside the Buffer.

The existing soil type on the Property is Mattapex silt loam (MuC2) according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. This soil type is considered moderately sloping and is found mainly in areas along the major streams of the County. It is neither hydric nor highly erodible in nature.

Tidal wetlands and steep slopes, or slopes greater than 15 percent, can be found along the Property's shoreline.

Special Flood Hazard Area Zone AE encroaches on the Property along its shoreline, according to the 2014 Flood Insurance Rate Maps (FIRM), panel 182F. 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; and 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.

The base flood elevation of the AE zone on the Property is five (5) feet. Development is proposed outside zone AE.

Approximately 15,760 square feet of woodland and other vegetation cover the Property. The Applicants do not plan to clear any vegetation or woodland in order to demolish the existing house and construct a new one.

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 in accordance with *COMAR 27.01.09.01*.

According to the site plan prepared by Nokleby Surveying, and as shown in the table below, the Property contains a single-family dwelling with two attached porches, a detached garage, driveway, and walkway for a total of 4,801 square feet of lot coverage on the Property. All but 460 square feet of this amount, or 4,341 square feet, is in the Buffer.

The Applicants plan to remove 2,278 square feet of lot coverage from the Buffer, leaving a total of 2,063 square feet of lot coverage in the Buffer. The Applicants plan to add 2,321 square feet of lot coverage in the Buffer for a total of 4,384 square feet of lot coverage in the Buffer. This amount plus the 460 square feet of driveway located outside the Buffer equals a total of 4,844 square feet of lot coverage on the Property. The allowed amount of lot coverage on a property of this size is 5,445 square feet.

| Lot coverage in C.A. Buffer shown in square feet | | | | | |
|--|---------------|-----------|----------|------------------------|-----------------------------|
| Existing | To be removed | Remaining | Proposed | Following construction | Net increase in Buffer |
| 4,341 | 2,278 | 2,063 | 2,321 | 4,384 | 43 |
| Lot coverage outside C.A. Buffer shown in square feet | | | | | |
| Existing | To be removed | Remaining | Proposed | Following construction | Net increase outside Buffer |
| 460 | 0 | 460 | 0 | 460 | 0 |
| Totals | | | | | |
| 4,801 | 2,278 | 2,523 | 2,321 | 4,844 | 43 |

The St. Mary’s Health Department approved the site plan on July 5, 2018, and the St. Mary’s Soil Conservation District (SCD) approved the site plan on June 25, 2018. Less than 5,000 square feet of disturbance is proposed; therefore, an engineered erosion and sediment control plan was not required. Stormwater management was not required for this same reason.

The Maryland Critical Area Commission provided comments and does not oppose the variance.

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 replacement dwelling will increase the amount of lot coverage within the 100-Foot Buffer by only 43 feet, the existing footprint is being utilized, and the total amount of lot coverage on the Property following construction will be of 4,884 square feet of lot coverage on the Property and the allowed amount of lot coverage on a property of this size is 5,445 square feet.

The replacement dwelling is using the same footprint on the sides facing the water and an existing deck is being removed which covered most of the back side of the house and being replaced with a deck that will only be on the front and side of the house, the new deck will not be any closer to the water than the original building was. 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

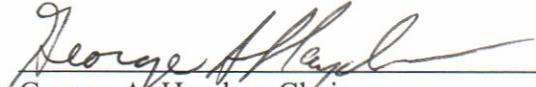
NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Sections 24.4 and 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, and further finding, for all reasons stated herein, that the Applicants have rebutted the 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**.

Bruce and Ryan Nicol
45093 Smiths Nursery Road, Hollywood, Maryland

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Date: October 18, 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