

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Norman & Shelly O'Foran
21963 Gyrfalcon Lane, Avenue, Maryland

Case No. VAAP #18-1713

DECISION AND ORDER

Introduction

Norman & Shelly O'Foran (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 21963 Gyrfalcon Lane, Avenue, 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 driveway.

After due notice, a public hearing was conducted at 6:30 p.m. on April 11, 2019, 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 Property fronts St. Clements Bay and is constrained by the Critical Area Buffer (the "Buffer"). The Critical Area Buffer (the "Buffer") is measured from the mean high water line of St. Clements Bay pursuant to COMAR 27.01.09.01.E(3).

The existing soil types on the Property are Matapeake fine sandy loam (MmA) and Bib silt loam (Bm), according to the Natural Resources Conservation Service, U.S. Department of Agriculture, Web Soil Survey. Matapeake are considered well drained and are found on slopes of 0-2 percent. Bibb soils are considered poorly drained and are found on slopes of 0-1 percent. The area of disturbance consists entirely of Matapeake fine sandy loam.

According to the site plan provided by the Applicant, the Property proposes a single-family dwelling with a porch, a deck, a garage and a driveway for a total of 5,128 square feet of lot coverage. The new lot coverage will be comprised of a 1,258 single family dwelling, a 500 square foot garage, 3,005 square feet of driveway, and 365 square feet of walks and porches, which represents 9.34% percent of the Property. The allowed amount of lot coverage on a property of this size is 15%.

The Property is within Special Flood Hazard Area Zone AE-5 & VE-6 according to Flood Insurance Rate Map (FIRM) panel 163F. The proposed development is in unshaded X.

A private well and sewer will serve the Property.

Approximately 35,798 square feet of trees, shrubs, and other vegetation cover the Property. The Applicant plans to clear 6,675 square feet of the existing vegetation outside of the buffer. The Applicant does not plan to clear any of the existing vegetation within the buffer.

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 Health Department approved the site plan on March 1, 2019. The St. Mary's Soil Conservation District (SCD) approved an erosion and sediment control plan on February 11, 2019. The Department of Land Use and Growth Management reviewed the site plan in accordance with stormwater management requirements and approved the site plan on March 4, 2019.

The Maryland Critical Area Commission 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.

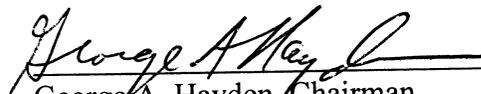
The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for 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 approximately 358 square feet within the Critical Area Buffer to construct a driveway is **granted**.

Date: May 16, 2019


George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Ichniowski,
Mr. Miedzinski and Mr. Richardson

Those voting to deny the variance:

Norman & Shelly O'Foran VAAP ##18-1713
21963 Gyrfalcon Lane, Avenue, Maryland

Page 542

Approved as to form and legal sufficiency



David A. Weiskopf, County Attorney