

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Bruce and Ryan Nicol
44978 Blackistone Circle, Hollywood, Maryland

Case No. VAAP #15-1618

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 44978 Blackistone Circle, 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 and appurtenances.

After due notice, a public hearing was conducted at 6:30 p.m. on January 14, 2016, 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 the parcel of record was recorded prior to the adoption of the Maryland Critical Area regulations in December 1985. The Property is partially constrained by the Critical Area Buffer (the "Buffer") measured from the mean high water line of Cuckold Creek.

The Property contains a single-family dwelling, attached porches, walkways, a driveway, and areas of concrete totaling 5,614 square feet of lot coverage. The existing single-family dwelling was constructed in 1947 and a private well and septic system serve the Property.

The Applicants propose to replace the existing single family dwelling and appurtenances with a new single family dwelling, attached porch, stoop, and attached garage totaling 2,927 square feet in size. The Applicants will be removing the existing home and concrete stoop. The total square footage of lot coverage that will be on the property post construction is 5,226 square feet. The Applicants will be reducing the lot coverage on the property by 388 square feet.

The existing soil types on the Property are Keyport Silt Loam (KrC2) and Keyport Silt Loam (KrA). The KrC2 soils are found on slopes of 5-10 percent and are considered to be moderately erosive. The KrA soils are found on slopes of 0-2 percent and are not considered to be hydric or highly erodible. The Property is located within the AE floodplain with a base flood elevation of 5 feet, NAVD according to Flood Insurance Rate Map 182F. The proposed development is more than fifty feet from the Special Flood Hazard Area.

There is approximately 9,614 square feet of existing vegetation on the property. The Applicants will not need to clear any of the existing vegetation to replace the house.

The Health Department approved the proposed development on October 26, 2015 and the Soil Conservation District approved the plan on September 11, 2015. Staff received comments from the Critical Area Commission on October 16, 2015.

The Critical Area Commission does not oppose the variance request.

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 Maryland Critical Area regulations on December 1, 1985.


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.

Since the Critical Area Commission, an agency deemed to have expertise and vested with the legal mandate to protect the critical areas of the State, does not oppose the variance, there is a strong inference that the Applicant meets the standards for a variance.

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 and appurtenances is **granted**.

Date: March 10, 2016

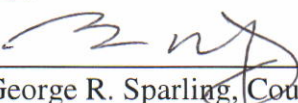

George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney