

CALVERT COUNTY BOARD OF APPEALS ORDER

Case No. 15-3841

Public Hearing: January 8, 2015

Chris Turner has applied on behalf of the property owners Al Hunt & Judy Woodruff for a variance in the 100' waterfront buffer requirement to convert a deck to a sunroom. The property is located at 3040 Honey Cove Court, Prince Frederick (Tax Map 30, Parcel 200, Lot 12, Honey Cove Estates) and is zoned FFD/LDA Farm & Forest District/Limited Development Area.

The case was presented January 8, 2015 before Board of Appeals members Mrs. Susan Hance-Wells, Chair; Mr. Daniel Baker, Jr., Vice Chair; and Mr. John Ward, Member (the Board). Mr. Chris Turner was present at the hearing and represented the property owners Mr. Al Hunt and Ms. Judy Woodruff.

AUTHORITY OF THE BOARD OF APPEALS

The jurisdiction of the Board of Appeals is based on Section 4-305 of the Land Use Article of the Annotated Code of Maryland, as amended. Article 11 Section 1.01.B of the Calvert County Zoning Ordinance provides that the Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of the Ordinance.

TESTIMONY & EVIDENCE PRESENTED

1. The following Applicant's Exhibits were dated and entered into the record at the January 8, 2015 hearing:
 - Exhibit No. 1 - Board of Appeals Application
 - Exhibit No. 2 - Property Plat
 - Exhibit No. 3 - Affidavit of Sign Posting
2. A Staff Report prepared by Roxana Whitt, the Board of Appeals Administrator, was entered into the record at the January 8, 2015 hearing, marked Staff Exhibit No. 1 and included the following correspondence:

- Letter dated December 15, 2014 from Jennifer Anderson, Natural Resources Planner, Chesapeake Bay Critical Area Commission, Re: BOA Case No. 15-3841
- Memorandum dated September 5, 2014 from John Swartz, Planner III, Department of Community Planning and Building, RE: BOA Case No. 15-3841
- Memorandum dated 5 December 2014 from John Knopp, Project Engineer, Department of Public Works, RE: BOA Case No. 15-3841
- Memorandum dated December 4, 2014 from Geoff Westbrook, Calvert Soil Conservation District, RE: BOA Case No. 15-3841

FINDINGS OF FACT & CONCLUSIONS

Based on the application and testimony and evidence presented at the hearing the Board makes the following Findings of Fact and Conclusions pursuant to Article 11-1.01.B of the Calvert County Zoning Ordinance:

1. The Board finds that the application was filed pursuant to Article 11-1.01.B of the Zoning Ordinance, which provides that the Board may grant variances from the strict application of the Critical Area requirements of the Ordinance.
2. The Board finds the case was properly advertised, the property was posted, and affected property owners were notified in accordance with the Board's Rules of Procedure.
3. The Board finds the applicant is requesting a variance in the 100' waterfront buffer requirement to convert a deck to a sunroom.
4. The Board finds that the Zoning Ordinance is adopted to protect the public interest; that protection of sensitive environmental features, in accordance with Critical Area law, is in the public interest; that development of environmentally sensitive areas without just cause is contrary to the public interest; that the property was developed in 1975 before adoption of the Critical Area Law and imposition of the 100' waterfront buffer; that when constructed, the house and shore side deck were placed close to the creek; that the current owners did not own the property when the house was constructed; that the owners have removed a deck that was in disrepair and intend to replace it with a sunroom of the same size and in the same location; that replacement of the prior attached deck with the proposed sunroom is of little consequence to the buffer or the public because the area beneath is already a deck; that mitigation for the additional impervious lot coverage is required and will be provided; that the mitigation offsets the minimal impact; that the proposed structure does not conflict with other residential uses in the neighborhood or on the adjoining properties; and the applicants' representative testified there is currently no evident

erosion on the property. Based on these findings the Board concludes the requested variance will not result in injury to the public interest.

5. The Board finds that the Comprehensive Plan is the official policy document for Calvert County, establishing goals, visions and actions that are reflected in various ordinances, regulations and instructions; that the Zoning Ordinance is adopted to implement the goals of the Comprehensive Plan and to regulate land uses as part of the effort to promote the health, safety and quality of life for all Calvert County residents; that, in accordance with the Zoning Ordinance, residential development is allowed on this parcel; that, in accordance with Maryland's Critical Area law, the Zoning Ordinance provides for consideration of variances that allow for development in the buffer provided that the criteria for approval are met and mitigation is performed; that the property owner in the subject case has made application for the required permits and variance in accordance with the Zoning Ordinance and Critical Area provisions; that the applicants have no intention of changing the allowable use of land, namely residential; and that the proposed residential development includes features that are consistent with the protection of the environmentally sensitive features noted in the Comprehensive Plan. Based on these findings the Board concludes the requested variance will not adversely affect implementation of the Comprehensive Plan.
6. The Board finds that the proposed sunroom is eight feet wide and replaces the eight feet wide deck that was previously attached to the rear of the house, in the same location; that no structure other than an in kind deck replacement could be built on the rear of the house without variance approval; and that a deck does not accomplish the needs of the family to provide access for a family member with a disability. Based on these findings the Board concludes the requested variance is the minimum adjustment necessary to afford relief from the regulations.
7. The Board finds that special circumstances are created by the existing development on site and the requirement for the waterfront buffer; that the house predates the Critical Area law; that its location within the buffer precludes even a modest expansion without variance approval; that denial of a modest expansion, particularly one with such minimal impact and of no consequence to the neighboring properties, would seem to inflict unwarranted hardship; that the applicants' representative testified that the owners of the property have a son who is wheelchair bound and that the proposed development will allow this person to be in contact with visitors and family members that use the rear yard recreationally, whereas a deck would not. Based on these findings the Board concludes the applicant has demonstrated that a literal enforcement of the Critical Area program would result in unwarranted hardship.
8. The Board finds that porches and sunrooms at the rear/shore side of houses are common features throughout the County; that the development in this case is not out of character with development on other waterfront properties in Calvert County; that the right to a modest expansion of a grandfathered Critical Area structure is a right that been afforded to numerous other properties; and that the Board has previously

granted variances for additions to existing residences when the impacts are minimal and where it has been shown that no reasonable alternative exists. Based on these findings the Board concludes that the request is a right that has been permitted to others in accordance with the Critical Area program.

9. The Board finds that it has previously approved Critical Area variances for very similar construction; and that sunrooms have not been routinely determined to be a special privilege. Based on these findings the Board concludes that granting the variance as requested does not confer a special privilege on the applicant.
10. The Board finds that the variance request arises from the special circumstances of the property noted above and is unrelated to any actions the applicant may have taken on the property. Based on these findings the Board concludes the requested variance does not result from actions by the applicant.
11. The Board finds that the Soil Conservation District has determined that the erosion and sediment control plan meets requirements of that office; that the project is exempt from stormwater management according to the Department of Public Works; that a Mitigation Plan has been approved by the County's Critical Area Planner, and the Plan includes planting of 2 trees and 9 shrubs; that this mitigation plan offsets any increases in stormwater resulting from an increase in impervious surfaces; and that testimony was received indicating that there is currently no erosion on the property. Based on these findings the Board concludes that granting the requested variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat.
12. The Board notes that it received a recommendation from the Critical Area Commission to condition a potential approval of the subject application such that "the applicant may not acquire a future variance to construct a new deck." The Board finds that there are too many possible scenarios for placement of a future deck on this property to anticipate at this time, and that the question of whether or not a future deck might meet variance criteria is best left to a future Board to decide, in accordance with Critical Area law.
13. Based on the findings of fact set forth above the Board concludes that the applicant has overcome the presumption of non-conformance with the general spirit and intent of the Critical Area Law.

ORDER

It is hereby ordered by a unanimous decision that the variance in the 100' waterfront buffer requirement to convert a deck to a sunroom as requested by Chris Turner on behalf of the property owners Al Hunt & Judy Woodruff be **GRANTED**.

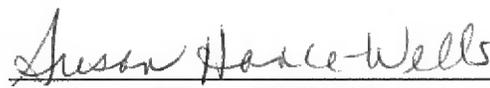
It is hereby ordered by a unanimous decision that the Critical Area recommended condition that “the applicant may not acquire a future variance to construct a new deck” is not added to this order because that is a wide open issue as to which decks and where they could be located. In addition, as pointed out by the Board’s Administrator, necessary changes in code by the some other County or some other state agency might force a change.

APPEALS

In accordance with Section 6 of the Calvert County Board of Appeals Rules of Procedure, “any party to a case may apply for a reconsideration of the Board’s decision no later than 15 days from the date of the Board’s Order.”

In accordance with Section 11-1.07 of the Calvert County Zoning Ordinance, Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Maryland Rules, Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

Entered January 16 2015
Pamela P. Helie, Clerk



Susan Hance-Wells, Chair