

**FINDINGS AND RECOMMENDATION
OFFICE OF PLANNING AND ZONING
ANNE ARUNDEL COUNTY, MARYLAND**

APPLICANT: Alister & Joan Bell

ASSESSMENT DISTRICT: 2nd

CASE NUMBER: 2023-0101-V

COUNCIL DISTRICT: 6th

HEARING DATE: August 31, 2023

PREPARED BY: Robert Konowal
Planner

REQUEST

The applicants are seeking a use variance to allow a non accessory private residential storage building with less setbacks than required and with disturbance to slopes of 15% or greater on property located at 1702 Vineyard Trail in the subdivision of Epping Forest, Annapolis.

LOCATION AND DESCRIPTION OF SITE

The subject site is approximately 11,200 square feet in area and has 100 feet of road frontage on the southwest side of Vineyard Trail, approximately 75 feet southeast of Epping Way. The subject property is identified as Lots 5 to 8, 11 and 12 in Parcel 42, Grid 3 on Tax Map 45.

The property is zoned R1-Residential District, as adopted by the comprehensive zoning of Council District 6, effective October 7, 2011. The site is not a waterfront lot but is located in the Chesapeake Bay Critical Area and designated "LDA-Limited Development Area".

The site is currently improved with an irregular shaped storage shed measuring approximately 26.6 feet in width and 23.6 feet in depth.

APPLICANT'S PROPOSAL

The applicants propose to remove the existing shed and replace it in-kind with a new shed with the same dimensions. The new shed is to be used for private residential related storage by the applicants who reside approximately one-half mile to the west at 1704 Marshall Court in Annapolis.

The applicants state they expect to use the shed as a storage facility for hobby projects. These include small boats and outboard engines, antique lawn tractors, mopeds, auto parts, tools and bicycles. The shed will also be used to store bulky household items like beach chairs, garden supplies (shovels, rakes, pots), ladders, extra lumber and plywood, and the like. The applicant's have indicated in their letter of explanation that while it may be possible to construct a small house on the property, they do not desire to do so.

REQUESTED VARIANCES

Section 18-1-101. of the Anne Arundel County Zoning Ordinance defines an accessory structure as a use or structure that customarily is incidental and subordinate to another use or structure.¹ The proposed use of the structure will be used for the storage related to a residential use located at 1704 Marshall Court. Section 18-2-204 of the Code states an accessory structure or use may not be located on a lot other than the lot on which a principal structure is located. The applicant is requesting a variance to allow the replacement in-kind of a shed to allow for the accessory storage at 1702 Vineyard Trail of a principal residential use located at 1704 Marshall Court.

Section 17-8-201(a) of the Anne Arundel County Code states that development on lands designated LDA-Limited Development Area in the Critical Area may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope or the disturbance is necessary to allow connection to a public utility; or is to provide direct access to the shoreline. According to the site plan, the applicant has proposed to permanently disturb 589 square feet of slopes greater than 15% of steep slopes. There will also be an additional area of temporary disturbance during construction. The exact amount of disturbance will be determined at building permit.

A review of aerial photos indicates the structure has been in existence for at least 20 years. Section 18-2-303 provides for an exemption to the bulk regulations if the original structure has been in the same location for at least twenty years; and a building permit is obtained within eighteen months after the removal or destruction of the original structure. No variance to the front lot line setback is therefore required.²

FINDINGS

Area Variance

For the granting of a zoning variance, a determination must be made as to whether, because of certain unique physical conditions peculiar to or inherent in the particular lot or because of exceptional circumstances other than financial considerations, strict implementation of the Code would result in practical difficulties or an unnecessary hardship. The need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the applicant.

In this case exceptional circumstances do exist where there is an existing shed that has stood for many years. Denial of the variance would prevent the replacement of this structure and quite possibly the use of these lands for any residential purpose. The requirement for on-site well and septic and the prevalence of steep slopes over the entire lot make the use of these lands for a single family detached dwelling especially problematic.

¹ The definition of accessory structure does not require that the accessory use be located on the same lot as the dominant or principal use of lands. Therefore a use variance is not required as the use does meet the definition of an accessory use. The requirement that an accessory structure be located on the same lot as the principal use is in the general provisions of the Code which is subject to an area variance.

² The exemption does not apply to provisions of the Critical Area Overlay.

The variance is considered to be the minimum variance necessary as the applicant only seeks to reconstruct the existing structure in-kind.

Approval of the variance would not alter the essential character of the neighborhood as the resulting improvement will be a shed that is typical of the residential neighborhood in which it is located. The structure is located well enough away from dwellings on abutting lands so as to not negatively impact these properties. There is no evidence that approval of the variance will reduce forest cover in the Limited Development and Resource Conservation Areas of the Critical Area, be contrary to acceptable clearing and replanting practices required for development in the Critical Area nor be detrimental to the public welfare.

Critical Area Variance

The subject property at 100 feet in width and 11,200 square feet in area does not meet both the minimum lot width of 120 feet and lot area of 40,000 square feet for a lot in a R1 District. More importantly, these lands are almost entirely encumbered by steep slopes that makes the replacement of a structure impossible without the need for a variance. If the requested use is allowed, denial of a variance to disturb steep slopes would cause hardship in the use of these lands as it would essentially deny development.

The replacement of an existing structure in-kind is the minimum variance necessary to afford relief. The proposed temporary disturbance to steep slopes is not excessive and is what is typically recommended by the County and is the minimum necessary to afford relief.

A literal interpretation of the County's Critical Area program in this case would deprive the applicant of rights that are commonly enjoyed by other properties in similar areas. The granting of the variance to disturb steep slopes would not confer on the applicant a special privilege that would normally be denied by COMAR, Title 27. This request is not the result of actions by the applicant including commencement of development before obtaining required approvals. The variance does not arise from any condition relating to land or building use on any neighboring property.

This Office believes the variance minimizes potential adverse effect on water quality, and it would be in harmony with the general spirit and intent of the County's Critical Area program. The applicants have overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law. The applicants have adequately evaluated and implemented site planning alternatives.

Approval of the variance would not alter the essential character of the neighborhood as the resulting improvement is residential in character and does not violate any established set back pattern. The structure is located well enough away from dwellings on abutting lands so as to not negatively impact these properties. There is no evidence that approval of the variance will reduce forest cover in the Limited Development and Resource Conservation Areas of the Critical Area, be contrary to acceptable clearing and replanting practices required for development in the Critical Area nor be detrimental to the public welfare.

Agency Comments

The Development Division (Critical Area Team) had no objection to an in-kind replacement of the existing structure. Mitigation will be addressed with the permit application.

The **Critical Area Commission for the State of Maryland** indicated that in order for the variance request to be granted, the Administrative Hearing Officer must determine that this request meets each and every one of the Critical Area variance standards and that the request has been minimized to the extent possible. Should this request be granted, appropriate mitigation is required.

The **Anne Arundel County Department of Health** determined that the above referenced property is not currently served by an adequate water supply or sewage disposal facility. Therefore, the approval to construct the accessory structure must be conditioned on the structure being used as non-habitable space only.

RECOMMENDATION

Based upon the standards set forth under Section 18-16-305 under which a variance may be granted, this Office recommends the following;

1. That the variance to allow an accessory structure on a lot other than the lot on which a principal structure is located be ***approved*** on the condition that the structure is to be used only for accessory storage related to a residential use and by the owner of the subject property, that there be no outside storage, that any and all storage only be within the proposed structure that is shown on the attached site plan and that the structure be used as non-habitable space only and,
2. That a variance to disturb slopes 15% or greater to allow a structure as shown on the attached site plan be ***approved***.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.