

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

APPLICANT: William Wloczewski

ASSESSMENT DISTRICT: 5th

CASE NUMBER: 2023-0115-V

COUNCILMANIC DISTRICT: 2nd

HEARING DATE: August 31, 2023

PREPARED BY: Robert Konowal
Planner

REQUEST

The applicant is requesting a variance to allow a dwelling addition (sunroom and deck) with less setbacks and buffer than required on property located at 35 Old Farm Road in Glen Burnie.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of 32,907 square feet of land and is located with approximately 25 feet of road frontage on the southeast side of Old Farm Road, 270 feet southwest of Country Club Drive. The property is identified as Lot 2 in Parcel 336 in Block 14 on Tax Map 10.

The property has been zoned R5-Residential District since the adoption of comprehensive zoning of the Second Council District, effective January 29, 2012. This waterfront lot is located in the Chesapeake Bay Critical Area and is designated IDA – Intensely Developed Area. The site is encumbered by steep slopes and the expanded buffer to tidal waters.

The property is currently improved with a two-story single-family dwelling with a waterfront deck, walkway and steps to the waterfront, a shed, and a pier. There appears to be a concrete or graveled area established c.2005 that is located in the buffer next to the southwest lot line that is being used for the storage of watercraft. The property is served by public water and sewer facilities.

APPLICANT'S PROPOSAL

The applicant is proposing to remove the existing waterfront deck that measures approximately 12 feet in depth and 27 feet in width (325 sq ft in area) and construct a sunroom 12 feet in depth and 22 feet in width (264 sq ft in area) and a deck with stairs to the side of the sunroom measuring 12 feet in depth and 20 feet in width (240 sq ft) all within the expanded buffer.

REQUESTED VARIANCES

Section 18-13-104 (a) of the Anne Arundel County Zoning Ordinance requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary stream, and tidal wetlands; and Section 18-13-104(b)(1) stipulates that the 100-foot buffer shall

be expanded beyond 100 feet to include slopes of 15% or greater, nontidal wetlands, nontidal wetlands of special State concern, and hydric soils or highly erodible soils. Section 17-8-301 of the Subdivision Code states that development on properties containing buffers shall meet the requirements of Title 27 of the State Code of Maryland (COMAR). COMAR states a buffer exists “to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.” COMAR authorizes disturbance to the buffer for a new development activity or redevelopment activity by variance.

The applicant is proposing to construct a sunroom and a deck located in the expanded buffer to tidal waters. This will create a total of 504 square feet of permanent disturbance and an undetermined amount of temporary disturbance during construction in the expanded buffer. If approved, the actual disturbance will be determined at permitting.

Section 18-4-601 of the Code sets forth the bulk regulations for development in an R5 District. The proposal meets all setbacks; therefore, a variance to setbacks is not required.

FINDINGS

Background

These lands were the subject of previous Administrative Hearing Officer (2021–0160-V) and Board of Appeals decisions (BA 2-22V) to disturb 544 square feet of the expanded Critical Area buffer. Those cases pertained to the proposed construction of a sunroom measuring 16 feet in depth and 22 feet in width and a deck adjacent to the sunroom measuring 16 feet in depth and 12 feet in width. The variance was denied by the Administrative Hearing Officer and appealed by the applicant to the Board of Appeals. The Board denied the appeal.

Variance Criteria

The subject property at 32,907 square feet and approximately 150 feet in width far exceeds the minimum lot area requirement of 7,000 square feet for a lot in the R5-Residential District and far exceeds the minimum width requirement of 60 feet for a lot in the R5 District. The lot is however irregularly shaped and the expanded buffer does cover a significant portion of the lot. The front facade of the existing dwelling (c.1998) appears to have been built at the demarcation line of the expanded buffer. The existing deck (c.2002) has been constructed within the expanded buffer. As is the case for the boat storage area (c.2005) that is located in the expanded buffer there is also no approved variance on file for the existing deck.

For the granting of a critical area variance, a determination must be made as to whether, because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the property, strict implementation of the County’s critical area program would result in an unwarranted hardship. In this case, the lot is encumbered by steep slopes and the expanded buffer. The existing dwelling is located at the edge of the expanded buffer. Further development forward of the facade is impossible without some variance relief. However, the subject dwelling was constructed in 1998 when Critical Area regulations were in force and adequate provision should have been made at that time for any desired amenities in conformance

with the Critical Area law. In this regard any hardship that might exist has been self-created by the previous owner and now assumed by the current owner.

The applicant is already considered to have reasonable use of the lot with a house, deck and pier. Furthermore there is ample room on the southwest side of the dwelling (40 feet minus 7 foot side lot line setback or 33 feet) to construct a sunroom and/or a deck without disturbance to the expanded buffer. The applicant has indicated that the existing garage door prevents a wrap around deck to a side attached sunroom. This condition can easily be surmounted by providing stairs or a wheelchair ramp on either side of the garage door up to the existing deck and a new side attached sunroom and deck.

A literal interpretation of the County's critical area program will not deprive the applicant of rights that are commonly enjoyed by other properties in similar areas within the critical area of the County. A sunroom in the expanded buffer is not a commonly held right by other properties in the Critical Area and would confer on the applicant a special privilege others do not enjoy.

Since the variance is not considered to be warranted it cannot be the minimum necessary to afford relief.

The variance request is based on conditions or circumstances that are indirectly the result of actions by the applicant. The inability to provide a deck and sunroom on the water side of the dwelling without the need for a variance is the result of actions by the previous homeowner and assumed by the current owner, who located the dwelling in 1998 as close to the water that Critical Area law allowed.

The variance request does not arise from any condition relating to land or building use on any neighboring property.

Approval of the variance will adversely affect water quality or impact fish, wildlife or plant habitat as it will increase runoff in the buffer that is located next to steep slopes. The applicant has not overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law, and has not evaluated and implemented site planning alternatives. In this case a sunroom and deck can be located to the side of the dwelling outside the expanded buffer.

With regard to the requirements for all variances, approval of the variance would not alter the essential character of the neighborhood as the size and location of the proposed addition are not out of context with adjacent properties. Approval of the variance will not substantially impair the appropriate use or development of adjacent property as the improvements will be located well away from the dwellings on the abutting lots. The variance will not be contrary to acceptable clearing and replanting practices, and there is no evidence it will be detrimental to the public welfare.

In summary, the request is not considered warranted as both a sunroom and deck could be located outside the expanded buffer. Denial would not cause hardship in the use of these lands.

AGENCY COMMENTS

The **Anne Arundel County Department of Health** commented that the property is served by public water and sewer and they have no objection to the request.

The **Development Division (Critical Area Team)** advised that the existing structure is located outside of the expanded buffer and should remain so. There is ample room for expansion in other areas of the site without disturbance of the buffer

The **State Critical Area Commission indicated** that provided the Administrative Hearing Officer finds that each and every one of the Critical Area variance standards have been met, appropriate mitigation is required.

RECOMMENDATION

With regard to the standards by which a variance may be granted as set forth in Section 18-16-305, under the County Code, the Office of Planning and Zoning recommends that the variance request to permanently disturb 504 square feet of the expanded buffer for the construction of a sunroom and deck be ***denied***.

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.