

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

APPLICANTS: Glynis & Alfred Lisiewski

ASSESSMENT DISTRICT: 2

CASE NUMBER: 2023-0129-V

COUNCILMANIC DISTRICT: 6

HEARING DATE: September 19, 2023

PREPARED BY: Joan A. Jenkins
Planner II



REQUEST

The applicant is requesting a variance to allow a dwelling with less setbacks and buffer than required, and with disturbance to slopes of 15% or greater on property known as 103 Wallace Manor Road in Edgewater.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of 66,585 square feet (1.53 acres) of land and is located with approximately 20 feet of frontage on the southwest side of Wallace Manor Road. The site is identified as Lot 2R of Parcel 94 in Block 13 on Tax Map 51 in the Wallace Manor subdivision.

The property is zoned R1 – Residential District as adopted by the comprehensive zoning of Councilmanic District 6 zoning maps, effective October 7, 2011.

The site is waterfront on Gingerville Creek that lies entirely within the Chesapeake Bay Critical Area overlay designated as LDA - Limited Development Area and is designated as non-buffer modified area (BMA). Steep slopes and the expanded buffer encumber the property.

The property is currently improved with a two-story single-family dwelling with a basement and a waterfront deck, and associated features.

APPLICANT'S PROPOSAL

The applicant proposes to demolish the existing dwelling and deck improvements and construct an irregularly-shaped two-story single-family detached dwelling with a basement, a waterfront deck and an attached garage, all measuring approximately 121 feet by 38 feet by 30 feet high. A walkway, driveway, and associated improvements are also proposed.

REQUESTED VARIANCES

§ 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 streams and tidal wetlands; and § 18-13-104(b) stipulates that the 100-foot buffer shall be expanded beyond 100 feet to

include slopes of 15% or greater. § 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). Section 27.01.01 (B) (8) (ii) of COMAR states a buffer exists “to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.” Section 27.01.09 E.(1)(a)(ii) of COMAR authorizes disturbance to the buffer for a new development activity or redevelopment activity by variance. The proposal shows 7,889 square feet of permanent lot coverage disturbance to the expanded buffer and an undetermined temporary limit of disturbance. Therefore, the proposed redevelopment necessitates a variance to disturb the expanded buffer. Actual disturbance to be determined at the time of permitting.

§ 17-8-201 of the Anne Arundel County Subdivision and Development Code states that development in the LDA designated areas may not occur on 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. The proposal shows 555 square feet of permanent disturbance and 58 square feet of temporary disturbance to the steep slopes. Actual disturbance to be determined at the time of permitting.

§ 18-4-601 sets forth the bulk regulations for property in the R1 District including setbacks and maximum height of structures. The proposal meets the requirements for the R1 - Residential District therefore a variance is not required for setbacks.

FINDINGS

The subject site far exceeds the minimum area and dimensional requirements of the Code for the R1 district. While the property is heavily encumbered by steep slopes and the expanded critical area buffer, the environmental constraints on the property do not prevent redevelopment of the site without a critical area variance.

The existing critical area lot coverage is 8,341 square feet (12.5%). The proposed coverage will be 7,889 square feet (12%), which is less than the 9,988 square feet maximum critical area lot coverage allowed by Code.

A review of the County 2023 aerial photograph shows an eclectic mix of dwellings on large lots in this waterfront community.

While each variance must stand on its own merit there have been three nearby properties with variances for steep slope disturbance. Case number 2014-0332-V at 71 Wallace Manor was approved March 23, 2015 for a dwelling with steep slope disturbance. 2018-0201-V at the same address was approved March 13, 2019 to perfect accessory structures (retaining structure & turn-around) with less buffer and steep slope disturbance. Case number 2013-0178-V at 101 Wallace Manor was approved October 3, 2013 for dwelling additions with steep slope disturbance and less buffer than required.

In the pre-file for this project the Critical Area Team noted that the proposed footprint is elongated, and it appears that the disturbance could be reduced with a more compact footprint that fits within the plateau area on site. They also noted that the architectural drawings must be submitted with the application in order to fully evaluate compliance with the approval standards for a Critical Area Variance as outlined in Article 18-16-305. The footprint has not changed significantly from the pre-file to the application.

The applicant's letter of explanation states that it is physically impossible to avoid the expanded buffer and steep slopes in order to redevelop the property without relief from the code. The letter notes that the principal structure, save the waterfront deck, will be located entirely outside the 100-foot buffer and that the distance to the shoreline has been increased from the original dwelling.

The **Fire Marshal** and the **Department of Recreation and Parks** had no comments.

The **Department of Health** commented that they do not have an approved plan for this project and have no objection to the request so long as a plan is submitted and approved by the department. They also noted that a valid perc application must also be submitted to the Department of Health.

The **Department of Inspections and Permits (Engineering Division)** provided a list of items to be addressed with the grading permit and had no objection to the request.

The **Development Division (Critical Area Team)** commented that this request is to disturb 15% and greater slopes and to disturb the expanded Buffer in the Critical Area. It is the applicant's position that it is physically impossible to avoid the expanded buffer and steep slopes in order to redevelop the property and while it may be true that some relief is needed, the question here would be how much. The applicant focuses on the distance of the existing and proposed improvements from the 100' tidal buffer to exhibit an improvement to the environmental impacts. Currently there is an existing home with a 1400 sq. ft. footprint sitting at the top of a 46% slope to the east, a 34% slope to the south and a 22% slope to the north. The 46% slope abuts tidal waters and the 34% sloped area abuts a Palustrine wetland complex with an intermittent stream. The proposed dwelling has a roughly 3,000 square foot, elongated design that sits along the top of the 34%-46% sloped areas abutting the sensitive environmental areas. The slight increase in distance to the shoreline is not the only information to be considered.

While it is true that some relief may be warranted, this house design does not address the environmental constraints of the site. In addition, the application provides no justification for the approval standards as outlined in 18-16-305. For these reasons, the proposed design and location do not meet the test for relief for the development of this site. As stated in the pre-file comments, the applicant should consider a more compact footprint to minimize the impacts to the environmental features on site.

As presented in these as well as the Critical Area Commission comments, there are methods to reduce if not completely eliminate the variance request.

The **Critical Area Commission** commented that while the lot is constrained by the expanded Critical Area Buffer and steep slopes, the proposal does not appear to meet each and every one of the Critical Area variance standards including unwarranted hardship and that the proposal is the minimum necessary to provide relief. The applicant has every opportunity to locate the proposed dwelling closer to Wallace Manor Road and further from Gingerville Creek entirely outside of the expanded Critical Area Buffer. Doing so would completely eliminate the need for this variance request. Also, it appears that the applicant could reduce the footprint of the proposed house to better align the proposal with the Critical Area law and regulations. In order to grant the variance, the Administrative Hearing Officer must determine that the applicant meets each and every one of the Critical Area Variance standards.

Critical Area Variance Standards

A literal interpretation of the County’s Critical Area program will not deprive the applicant of rights commonly enjoyed by other properties in similar areas of the Critical Area by denying the proposed residential development in this particular location when there is room on the lot to develop without a variance.

While some relief may be warranted due to the property being nearly totally encumbered by the expanded buffer, the granting of the variance as proposed would confer on the applicant a special privilege that would be denied by COMAR, Title 27. The variance request is not based on conditions or circumstances that are the result of actions by the applicant and does not arise from any condition relating to land or building use on any neighboring property. The granting of the variance may adversely affect water quality or impact fish, wildlife or plant habitat and would not be in harmony with the general spirit and intent of the County’s Critical Area Program. The applicants have not overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law. The County made recommendations at the pre-file stage to reduce the house size. However, little effort was made to address these concerns. In order to minimize the environmental impacts, the applicants should evaluate and implement site planning alternatives.

General Variance Standards

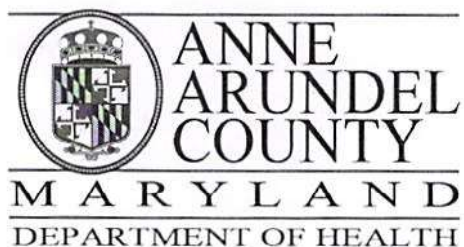
With regard to the requirements for all variances, approval of the variance will not alter the essential character of the neighborhood, as this proposal would be a replacement of an existing dwelling. Approval of the variance will not substantially impair the appropriate use or development of the adjacent properties, as the proposed dwelling will meet the minimum setback requirements. The variance will not reduce forest cover in the limited development area or resource conservation area, will not be contrary to acceptable clearing and replanting practices, and will not be detrimental to the public welfare. However, the proposed improvements should be redesigned to minimize the environmental impacts.

It appears that a smaller yet reasonable sized house could be built with the footprint shifted northeast toward the road without disturbance to the expanded buffer. The proposed development has a footprint that is too large for the site therefore, the request is not deemed to be the minimum necessary to afford relief in this case.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends ***denial*** of the proposed critical area variances to disturb the expanded buffer and the steep slopes.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant to construct the structure(s) as proposed, the applicant 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.



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Phone: 410-222-7095 Fax: 410-222-7294
Maryland Relay (TTY): 711
www.aahealth.org

Tonii Gedin, RN, DNP
Acting Health Officer

MEMORANDUM

TO: Sadé Medina, Zoning Applications
Planning and Zoning Department, MS-6301

FROM: Brian Chew, Program Manager *BC*
Bureau of Environmental Health

DATE: August 9, 2023

RE: Alfred A. Lisiewski Jr.
103 Wallace Manor Road
Edgewater, MD 21037

NUMBER: 2023-0129-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow a dwelling and associated facilities with less setbacks and buffer than required and with disturbance to slopes of 15% or greater.

The Health Department does not have an approved plan for this project. The Health Department has no objection to the above referenced variance request as long as a plan is submitted and approved by the Health Department. A valid perc application must also be submitted to the Department of Health.

If you have further questions or comments, please contact Brian Chew at 410-222-7413.

cc: Sterling Seay



Mark Wedemeyer, Director

Memorandum

To: Office of Planning and Zoning

From: Hala Flores, Engineer Manager, Department of Inspections and Permits

Date: 8/8/2023

Subject: 103 Wallace Manor Road
Edgewater, MD. 21037
2023-0129-V - Disturb 15% and greater slope (17-8-201(a) and disturb within the expanded buffer in the critical area (17-8-301(b))

The applicant is seeking a variance for the demolition of an existing home, associated decking, and construction of a new single-family home. The property is fronting Gingerville Creek within the LDA designation of the critical area. The proposed structure is located further away from the shoreline and outside the expanded buffer than the existing structure was.

Review – This property has been reviewed by I&P Engineering and the Prefile comments were addressed.

There is no existing SWM on the property. The proposed construction is proffering three types of SWM treatments. Green Roof Areas on the west side of the home, a Rain harvesting tank (Cistern), and an ultra-urban Planter box. The variance application needs to clearly indicate the existing versus the proposed impervious area for the site and the LOD. Clearly mark all existing impervious areas to be removed on the plan. The application also needs to indicate the required and provided ESDv.

- 1- The property appears to share a private driveway with other properties. Clarify this in the variance application and provide the common access agreement and label the L. F. on the plan.
- 2- Provide a slope stability investigation report in the direction of the proposed flow path. This shall include a narrative description of the slope stability, a photo tour, and recommendations for slope stability (as needed).
- 3- Provide adequate disconnection for the driveway and other non-rooftop imperviousness by clearly hatching these areas and proposing 12 soil amendment with compost and permanent vegetative stabilization such as SOD.
- 4- The MEP criteria for water quality may not be under 1 inch water quality volume.

Determination – This office has no objection to the request as long as the comments above are addressed with the grading permit.

Critical Area Variance Guidance
Critical Area Review Team/Development Division

Applicant: Lisiewski
Case #: 2023-0129-V
Date: 8/30/23

For a property located in the critical area, a variance to the requirements of the County's Critical Area Program may be granted if the Administrative Hearing Officer makes the findings based on the following criteria.

- Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness or shallowness of lot size and shape, strict implementation would result in an unwarranted hardship.
- A literal interpretation of the Critical Area Laws would deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provision of the critical area program.
- The granting of a variance will not confer on an applicant any special privilege that would be denied by the County's Critical Area program to other lands or structures within the Critical Area.
- The request is not the result of actions by the applicant including the commencement of development before an application for a variance was filed and does not rise from any condition relating to land or building use on any neighboring property.
- The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and will be in harmony with the general spirit and intent of the County's Critical Area program.
- The applicant, by competent and substantial evidence, has overcome the presumption contained in Natural Resources Article, 8-1808, of the state Code.
- The applicant has evaluated and implemented site planning alternatives in accordance with 18-16-201.

This request is to disturb 15% and greater slopes and to disturb the expanded Buffer in the Critical Area. It is the applicant's position that it is physically impossible to avoid the expanded buffer and steep slopes in order to redevelop the property and while it may be true that some relief is needed, the question here would be how much. The applicant focuses on the distance of the existing and proposed improvements from the 100' tidal buffer to exhibit an improvement to the environmental impacts. Currently there is an existing home with a 1400 sq. ft. footprint sitting at the top of a 46% slope to the east, a 34% slope to the south and a 22% slope to the north. The 46% slope abuts tidal waters and the 34% sloped area abuts a Palustrine wetland complex with an intermittent stream. The proposed dwelling has a roughly 3,000 square foot, elongated design that sits along the top of the 34%-46% sloped areas abutting the sensitive environmental areas. The slight increase in distance to the shoreline is not the only information to be considered.

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As presented in these as well as the Critical Area Commission comments, there are methods to reduce if not completely eliminate the variance request.



Jennifer Esposito -DNR- <jennifer.esposito@maryland.gov>

CAC Comments_Lisiewski 2023-0129-V & No. 5 Maryland Ave LLC 2023-0131-V

1 message

Jennifer Esposito <jennifer.esposito@maryland.gov>
To: Sadé Medina <pzmedi22@aacounty.org>

Tue, Aug 22, 2023 at 3:25 PM

Good afternoon,

The Critical Area Commission has reviewed the following variances and we provide the following comments :

- **2023-0129-V; Lisiewski (AA 277-23):** The applicant is requesting a variance to disturb the Critical Area Buffer and steep slopes in order to remove an existing dwelling and associated lot coverage, and to rebuild a larger dwelling and associated lot coverage. While the lot is constrained by the expanded Critical Area Buffer and steep slopes, the proposal does not appear to meet each and every one of the Critical Area variance standards including unwarranted hardship and that the proposal is the minimum necessary to provide relief. The applicant has every opportunity to locate the proposed dwelling closer to Wallace Manor Road and further from Gingerville Creek entirely outside of the expanded Critical Area Buffer. Doing so would completely eliminate the need for this variance request. Also, it appears that the applicant could reduce the footprint of the proposed house to better align the proposal with the Critical Area law and regulations. In order to grant the variance, the Administrative Hearing Officer must determine that the applicant meets each and every one of the Critical Area Variance standards.
- **2023-0131-V; No. 5 Maryland Ave LLC (AA 278-23):** Appropriate mitigation is required.

The above comments have also been submitted to the County's project-review portal.



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dnr.maryland.gov/criticalarea

Jennifer Esposito

Critical Area Commission for the
Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100

Annapolis, MD 21401

Office: 410-260-3468

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jennifer.esposito@maryland.gov



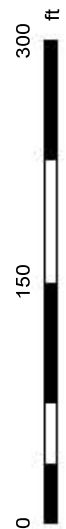
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Notes

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ANNE ARUNDEL COUNTY, VIRGINIA
 OFFICE OF INFORMATION SYSTEMS

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