

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

**APPLICANT:** James Gary Mullins

**ASSESSMENT DISTRICT:** 3rd

**CASE NUMBER:** 2023-0141-V

**COUNCILMANIC DISTRICT:** 5th

**HEARING DATE:** October 17, 2023

**PREPARED BY:** Robert Konowal  
Planner

**REQUEST**

The applicant is requesting variances to allow a dwelling addition (roof over existing deck) with less setbacks than required and with new lot coverage nearer to the shoreline than the closest façade of the existing principal structure on property located at 203 Pauline Court in the Funkhouser Property Subdivision, Arnold.

**LOCATION AND DESCRIPTION OF SITE**

The subject site is located with approximately 20 feet of road frontage at the west end of Pauline Court, 5000 feet northwest of Howard Avenue. These lands have an area of 23,735 square feet and are shown as Lot 2 in Parcel 797, Grid 17, Tax Map 32. The subject property is for the most part zoned R5-Residential District; however, there is a very small portion of these lands along the shoreline that is zoned OS-Open Space District. This zoning has been effective since the adoption of the zoning maps for the Fifth Council District on January 29, 2012.

The site is a waterfront lot located on the east side of Mill Creek in the Chesapeake Bay Critical Area. The lot is designated "IDA-Intensely Developed Area". The shoreline is located within the mapped buffer modification area.

The subject property is currently developed with a one story single-family detached dwelling with walkout basement on the water side of the property. There is an attached deck on the waterside of the dwelling measuring 10'-1" in depth and 30'-7" in width. Immediately adjacent to the waterside of the home at ground level is a concrete patio measuring 10'-1" in depth and 34'-6" in width. Finally a deck and pool are located in the rear yard along the north property line.

**APPLICANT'S PROPOSAL**

The applicant proposes to roof the existing attached deck. A new deck/walkway is proposed to be constructed to the south that will provide access from the main floor of the house over the existing patio to the proposed roofed deck.

## **REQUESTED VARIANCES**

Section 17-8-702(b) of the Anne Arundel County Code states that during the expansion or replacement of an existing structure no new lot coverage shall be placed nearer to the shoreline than the closest façade of the existing principal structure. The applicant is proposing approximately 309 square feet of new lot coverage to be located 10'-1" forward of the closest façade of the existing structure by constructing a roofing over the existing deck. A variance is required for this additional lot coverage.

No setback variance is required for the proposed improvement.

## **FINDINGS**

### *Background*

This property has been the subject of a previous variance (2009-0231-V) to perfect stairs, a deck and a retaining wall. The stairs which included a landing were approved by the Hearing Officer. A subsequent Board of Appeals decision (BA 4-10V) granted the retaining wall.

### *Variance Criteria*

This Office finds that the subject property at 23,735 square feet in area and 90 feet in width significantly exceeds the requirements of the Code for a lot in an R5 zone. The subject property is already well developed with waterside amenities, which include a 12 foot by 27 foot concrete patio and 10 foot by 30 foot long deck, both conveniently located directly off the dwelling. Denial of the variance to cover the existing deck with a roof would not cause hardship in the use of this property.

A literal interpretation of the County's Critical Area program in this case would not deprive the applicant of rights that are commonly enjoyed by other properties in similar areas. The conversion of an open pervious deck to a covered impervious open porch is not a common right enjoyed by other waterfront properties. Rather, the granting of the critical area variance for lot coverage nearer to the shoreline would in this case confer on the applicant a special privilege that would normally be denied by COMAR, Title 27.

Since the variance is not considered to be warranted, it cannot be the minimum necessary to afford relief. Notwithstanding the fact the variance is not considered to be warranted, a 10-foot by 30-foot long covered porch located in the modified buffer area is considered to be excessive in size and would not be the minimum variance necessary to afford relief if relief was in fact warranted.

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. However, the variance does not minimize potential adverse effects on water quality and would not be in harmony with the general spirit and intent of the County's Critical Area program.

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. In this case, there are other opportunities on-site (deck in north side yard next to pool) to provide a sheltered outdoor amenity area in accordance with the Code. Furthermore, the applicant has not adequately evaluated and implemented alternatives such as reducing the size of the proposed roof over the deck.

Approval of the variances would not necessarily alter the essential character of the neighborhood, as the improvement is generally in line with the established set back pattern along this section of shoreline. The proposed development would be located well enough away from the dwelling to the north so as to not negatively impact that property. The requested variance would not be contrary to acceptable clearing and replanting practices required for development in the Critical Area, nor is there any evidence to suggest that the variance would be detrimental to the public welfare.

In conclusion, the requested variance cannot be supported as it is not considered to be warranted nor is it the minimum necessary to afford relief from the Code.

### **AGENCY COMMENTS**

The **Development Division (Critical Area Team)** indicated that provided the applicant can provide evidence of full compliance with the approval requirements outlined in the County Code, the Team has no objection to this request.

The **Critical Area Commission for the State of Maryland** indicated that appropriate mitigation will be required.

The **Anne Arundel County Department of Health** advised that the Department has reviewed the on-site sewage disposal and determined that the proposed request does not adversely affect the on-site sewage disposal and well water supply systems. The Health Department has no objection to the request.

### **RECOMMENDATION**

Based upon the standards set forth under Section 18-16-305 in the Anne Arundel County Code by which a variance may be granted, the Office of Planning and Zoning recommends that the variances to allow new lot coverage nearer to the shoreline than the closest façade of the existing principal structure 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.

