

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

**APPLICANT:** Sarah Naghibi

**ASSESSMENT DISTRICT:** 3rd

**CASE NUMBER:** 2023-0144-V

**COUNCILMANIC DISTRICT:** 5th

**HEARING DATE:** October 12, 2023

**PREPARED BY:** Jennifer Lechner  
Planner



**REQUEST**

The applicant is requesting a variance to perfect an accessory structure (pavilion with an outdoor kitchen) with less setbacks than required on property located at 135 Church Road in Arnold.

**LOCATION AND DESCRIPTION OF SITE**

The subject site consists of 1.09 acres of land and is located with frontage on the south side of Church Road and on the west side of Jones Station Road. It is identified as Parcel 204 in Grid 12 on Tax Map 39 in Arnold. The property is zoned primarily R1 - Residential District, with a section along the southeastern property line zoned RLD - Residential Limited Development, since the adoption of the zoning maps for the Fifth Council District on January 29, 2012.

The subject property is currently developed with a two-story single-family detached dwelling, shed, the subject pavilion with outdoor kitchen, and other associated facilities.

**APPLICANT'S PROPOSAL**

The applicant is proposing to perfect a pavilion with an outdoor kitchen which had been constructed by the previous owners.

**REQUESTED VARIANCES**

§ 18-4-501 of the County Code requires that accessory structures in the R1 District be at least 15 feet from the side lot lines. The pavilion is located as close as 5 feet from the western side lot line, necessitating a variance of 10 feet.

**FINDINGS**

The subject property is generally rectangular in shape and exceeds the 40,000 square foot minimum area and 125 foot minimum width currently required for new lots in an R1 District.

The property is the subject of an active building violation, B-2020-181, for the construction of an outdoor kitchen without a permit. Variance case 2020-0062-V had been granted to allow an

accessory structure with less setbacks than required, but expired with no issued permit for the outdoor kitchen. Building permit B02413916 to perfect an accessory structure at the subject property was submitted on December 16, 2022, prior to submission of the variance application. Variance approval must be obtained prior to the building permit being issued.

The applicant's letter states that the original owner constructed the outdoor kitchen in line with an existing shed. The accessory structure is mostly open, having a wall on the back and partial sides. The front, which faces generally toward the house, is open. The inside has a cooktop and rotisserie beside a brick oven. There is no electricity or plumbing.

The **Health Department** requires additional information regarding the type and location of the neighboring on-site sewage disposal system before a decision about this request can be made.

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 and prevent the applicant from developing the lot. The need sufficient to justify a variance must be substantial and urgent, and not merely for the convenience of the applicant.

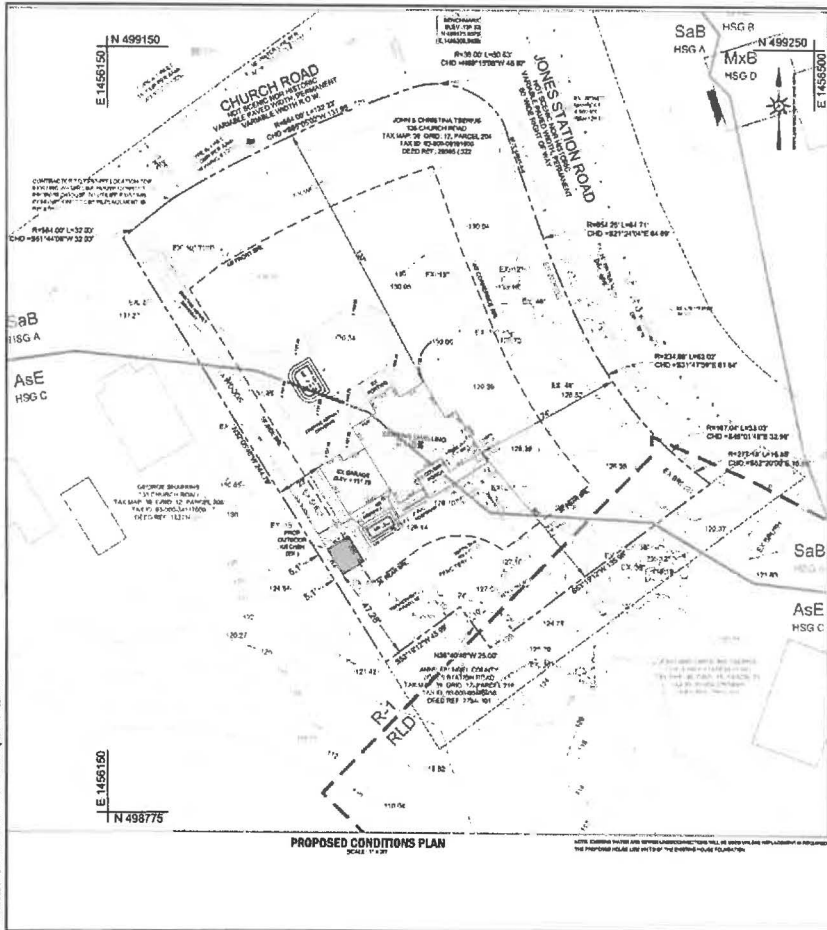
While the applicant states that the septic system and trees cause practical difficulties in developing the lot, they have not adequately demonstrated that there were no alternative locations for the accessory structure elsewhere on the lot that would have met the minimum setback requirements. Furthermore, an accessory building containing an outdoor kitchen is deemed to be a luxury rather than a necessity, therefore, denial would not cause hardship in the use of this residential property. This Office does not consider the after-the-fact nature of this application and any associated expenses or inconveniences to be sufficient justification for the variance.

The variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent properties, or be detrimental to the public welfare. However, since alternative development options appear to exist and that the County does not consider an outdoor kitchen to be a necessity, this Office cannot support the proposed variance to perfect construction of an accessory structure (pavilion with an outdoor kitchen) as the minimum necessary, or necessary at all, in this particular 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 requested zoning variance to § 18-4-501 to perfect the construction of an accessory structure (pavilion and outdoor kitchen) with less setbacks than required.

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.



**VARIANCE NOTE**

12-24-21, 11:48 AM  
 An explanatory statement shall be filed with this plan.

**GENERAL NOTES**

- PROPERTY IS SHOWN ON TAX MAP 337, CHD 8 PARCEL, LOT 1 OF A PD OF A, B.L.A. IN RESIDENTIAL, SINGLE-DWELLING DISTRICT, R-1.
- EXISTING ZONING IS R-1 RESIDENTIAL, DISTRICT.
- THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CONTROL AREA.
- EMPOWERING SITE UTILITIES ARE AS FOLLOWS:  
 - WASTEWATER: PUBLIC SEWER  
 - SANITATION: SEWER, PRIVATE SEPTIC
- THE PROPERTY DISCHARGED WATER IS LOCATED IN THE FLOOD HAZARD ZONE (FHZ) ZONE OF A SPECIAL LOCAL FLOOD HAZARD (SLFH) ZONE. THE LOCAL FLOOD HAZARD (SLFH) ZONE IS A FLOOD HAZARD PERFORMED BY THE CHESAPEAKE BAY REGIONAL WATER TREATMENT PLANT. A FLOOD HAZARD PERFORMED BY THE CHESAPEAKE BAY REGIONAL WATER TREATMENT PLANT. A FLOOD HAZARD PERFORMED BY THE CHESAPEAKE BAY REGIONAL WATER TREATMENT PLANT.
- THE EXISTING UTILITIES AND OBSTRUCTIONS SHOWN ARE FROM THE BEST AVAILABLE RECORD.

**LEGEND**

PROPERTY LINE (BY CITY)	PROPOSED HOUSE FOUNDATION	[Symbol]
EXISTING CONTOUR	PROPOSED CONTOUR	[Symbol]
EXISTING GRY ELEVATION	PROPOSED GRY ELEVATION	[Symbol]
EXISTING ZONING	PROPOSED LIMIT OF SETBACK	[Symbol]
EXISTING UTILITY POLE OF OVERHEAD WIRE	PROPOSED RETENTION WALL FENCE	[Symbol]
EXISTING BOUNDARY LINE	PROPOSED EXISTING OBSTRUCTION ENTRANCE	[Symbol]
EXISTING GUY WIRE	PROPOSED EXISTING OBSTRUCTION ENTRANCE	[Symbol]
PROPOSED CONCRETE WALKWAY	PROPOSED EXISTING OBSTRUCTION ENTRANCE	[Symbol]
PROPOSED CONCRETE DRIVEWAY	PROPOSED EXISTING OBSTRUCTION ENTRANCE	[Symbol]

SCALE 1" = 20'-0"



VICINITY MAP

**Boj Engineering, Inc.**  
 4725 S.W. 11th St.  
 Miami, FL 33155  
 Phone: (305) 446-1111  
 Fax: (305) 446-1112  
 www.bojeng.com

**TSENIS PROPERTY**  
 AN EXISTING SINGLE-FAMILY DWELLING WITH VARIANCE FROM  
 THE CHESAPEAKE BAY REGIONAL WATER TREATMENT PLANT  
 FLOOD HAZARD PERFORMED BY THE CHESAPEAKE BAY REGIONAL WATER TREATMENT PLANT.

Sheet No. 1 OF 1

PLATTED - 11/17/2021 - 11:48 AM  
 INCLUDED: VARIANCE & VARIANCE - 11/17/2021 - 11:48 AM

11/17/2021 11:48 AM - Chesapeake Bay Regional Water Treatment Plant - Flood Hazard Map - CHESAPEAKE BAY REGIONAL WATER TREATMENT PLANT

August 16, 2023

Anne Arundel County Office of Planning & Zoning

Re: VARIANCE REQUEST  
SARAH NAGHIBI  
135 CHURCH ROAD  
ARNOLD, MD 21012  
TM 39, GRID 12 PARCEL 204

Existing structure build date: May 2020

I am respectfully requesting a variance to Article 18-4-501, whereas that title states in part that an accessory structure must be 15' from a side or rear lot line in the RI zoning district. The lot is developed with a single-family dwelling and associated improvements, including out buildings. This lot meets the definition of a buildable lot, subject to the approvals of the County. The site is served by private septic and public water and a paved road, Church Road, a variable width public right of way. The site drains to the headwaters of Mill Creek, and ultimately to the Chesapeake Bay. The site is not located in the Critical Area. The site is zoned RI. The original owner and builder constructed an out building (outdoor kitchen) in line with the rear of an existing shed that remained in place during redevelopment of the property. However, the owner did not know the existing shed was non conforming and built this smaller structure behind and in line with the shed. This put the new structure in violation of the 15' side yard setback.

The original owner/builder constructed an out building, an outdoor kitchen, in May 2020, without proper permitting. In the process of providing a building permit for the structure, it was noted that the outdoor kitchen was inside the 15' side building restriction line.

The structure is 14.5'x 12.17'. It is constructed on a concrete foundation and footers. The building is mostly open, having a wall on the back, and partial sides. The front, which faces generally toward the house, is open. The inside is a cooktop and rotisserie beside a brick oven. There is no electricity or plumbing run to the structure. The back wall has windows. The structure itself is compatible with the architecture of the house, and the style and pattern of the walks on the site. The structures are accessory to the main use, a single-family dwelling. The building would not require a variance if they were located inside the building restriction lines. As this property is not in the Critical Area, there are no lot coverage issues in regard to this building, and the site is well under the 25% allowable coverage by structures. The construction disturbed less than 5,000 square feet.

This plan meets the intent of 18-16-305(a):

1. The subject property is a 1.03-acre RI zoned lot. The house was rebuilt in 2020 and as part of the process an outdoor kitchen was constructed. It is adjacent to an existing shed that remained while the construction of the dwelling was done. The development is confined to the southwest corner of the property, and the outdoor kitchen was constructed to conform to existing patterns of development.

2. The exceptional circumstances and practical difficulties in developing the lot are several. As noted, the development of the site occurs to the rear and southwest of the property.

The site of the house is off the road, the northeast side has a corner setback requirement and several large trees. The septic system and more large trees are in the rear of the property. Based on the placement of existing development, the location where the kitchen is constructed is optimal both for use and conformance to existing development.

This plan meets the requirements of 18-16-305(c), as the proposal is the minimum relief necessary. The development will not impair the use of adjoining properties, nor reduce forest cover. The work performed was not contrary to clearing and replacement practices, and will not alter the character of the neighborhood or be detrimental to the public welfare.

1. The variance request is the minimum to afford relief. The request is small, as the outdoor kitchen is not entirely located inside the setback line. It was placed to conform to existing development patterns on the property.

2. i. This variance will not alter the essential character of the neighborhood. There are many non-conforming accessory structures throughout the R1 zoning district.

ii. This variance will not impair the use of adjoining properties. The structure was placed parallel to existing non-conforming development. The structure is open, airy, and windowed.

iii. The property is not in the Critical Area.

iv. No work will be performed contrary to approved clearing practices, as a permit will be required, and this permit must meet those requirements. However, the work has been completed, and it appears no clearing was necessary to perform the work.

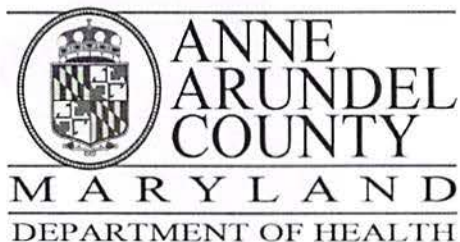
v. The project will not be detrimental to the public welfare, as it is located on private property.

This plan proposes the minimum relief necessary. The development will not impair the use of adjoining properties, nor reduce forest cover. The work performed was not contrary to clearing and replacement practices, and will not alter the character of the neighborhood or be detrimental to the public welfare.

As this proposal is for construction on existing footprints, the request is minimal. It would appear that this request is consistent with other development in this area. Denial of this request would not allow the owner to enjoy property rights common to other properties in this area.

The enclosed plan represents the location of the proposed work to the property. This plan is consistent with other development in the Arnold area. In closing, the variance requested is the minimum necessary to afford relief. Even though the work was performed without permits, the work would have required a variance. We thank you in advance for your consideration to this request.

If you have any questions, or if you require additional information, please feel free to contact me at 518-265-6480.



J. Howard Beard Health Services Building  
3 Harry S. Truman Parkway  
Annapolis, Maryland 21401  
Phone: 410-222-7095 Fax: 410-222-7294  
Maryland Relay (TTY): 711  
www.aahealth.org

**Tonii Gedin, RN, DNP**  
Health Officer

**MEMORANDUM**

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

FROM: Brian Chew, Program Manager  
Bureau of Environmental Health

A handwritten signature in blue ink, appearing to be "BC", written over the name "Brian Chew" in the "FROM" field.

DATE: August 28, 2023

RE: Sarah Naghibi  
135 Church Road  
Arnold, md 21012

NUMBER: 2023-0144-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow an accessory structure (pavillion and outdoor kitchen) with less setbacks than required.

The Health Department has Based on a review of the above referenced request, additional information is needed by the Health Department on: the type and location of the on-site sewage disposal system at 133 Church Road. No decision about this request can be made until the neighboring septic location is shown..

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

cc: Sterling Seay

**2023 AERIAL**

