

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

APPLICANT: Troy Vaughn

ASSESSMENT DISTRICT: 7

CASE NUMBER: 2023-0149-V

COUNCILMANIC DISTRICT: 7

HEARING DATE: October 24, 2023

PREPARED BY: Joan A. Jenkins
Planner

REQUEST

The applicant is requesting a variance to allow a dwelling with less buffer than required on property located at 844 Cedar Drive in Deale.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of 2.35 acres of land and is located with road frontage on the north side of Cedar Drive west of Deale Beach Road. The subject property is identified as Parcel 78 in Block 2 on Tax Map 78. The majority of the subject property has been zoned R5 - Residential District with a sliver in the northeast corner zoned R2 - Residential District since the adoption of comprehensive zoning of the Seventh Council District zoning maps effective October 7, 2011.

This is a waterfront property on Parker Creek which lies within the Chesapeake Bay Critical Area and is designated LDA - Limited Development Area on the western half and RCA - Resource Conservation Area on the eastern half.¹ The shoreline is mapped in a non buffer modified area. The entire western portion of the subject property west of the existing dwelling is encumbered by the 300' expanded buffer due to the presence of hydric soils. The site is currently improved with a one-story single-family dwelling, a shed near the shoreline in the northwest corner, a pier, and associated facilities. It is served by a private well and septic system.

APPLICANT'S PROPOSAL

The applicant proposes to demolish the existing semi-detached dwelling and remove the driveway and to construct a new two-story single-family dwelling with a garage connected by a breezeway, irregularly shaped 63 feet wide by 48 feet deep with a height of 32 feet, and relocate the driveway.

REQUESTED VARIANCES

§ 18-13-104(a) of the Code requires that there shall be a minimum 100-foot buffer landward from

¹ This Office notes that the Critical Area designations shown on the site plan are from those adopted August 1988. The Critical Area has been updated and adopted October 2021. The current Critical Area Designations and appropriate calculations should be shown on all site plans associated with this project.

the mean high-water line of tidal waters, tributary streams and tidal wetlands.

§ 18-13-104(b) of the Code states that except as provided in subsection (c), 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. The buffer shall be expanded as follows: (2) If there are nontidal wetlands, nontidal wetlands of special State concern, hydric soils or highly erodible soils, the buffer shall be expanded in accordance with COMAR, Title 27. § 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). § 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.” § 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 limit of disturbance associated with the proposed redevelopment will include temporary disturbance of 8,443 sq ft for the limit of disturbance area and permanent disturbance of 2,438 sq ft of the expanded buffer, necessitating a variance to this provision as shown on the site plan. Exact buffer disturbance will be determined at the time of permit.

FINDINGS

The site is a waterfront property that is long and narrow with road frontage along most of the southern side. The property well exceeds the area and width requirements of a lot in the R5 District. The expanded buffer encumbers approximately half of the western portion of the property.

The existing critical area lot coverage is 2,940 square feet (2.9%). The proposed coverage will be 6,648 square feet (6.5%). Lot coverage in the LDA and RCA should be calculated separately, however, the proposed coverage is less than the maximum critical area lot coverage allowed by Code.

A review of the County 2023 aerial photograph shows that this is a large parcel sandwiched between smaller subdivided lots to the south and an even larger parcel to the north.

The **Health Department** commented that they do not have an approved plan for this project, but have no objection to the variance request as long as a plan is submitted and approved by the Health Department.

The **Development Division (Critical Area Team)** has no objection to the proposed redevelopment and commented that mitigation will be determined at permit.

The **Critical Area Commission** commented that appropriate mitigation is required, including at a 3:1 ratio for the square footage of Buffer disturbance, plus at an additional 1:1 ratio for the square footage of tree canopy removed from the site. Additionally, Buffer establishment is required for the amount of lot coverage proposed outside of the Buffer. Further, at the time of grading permit the applicant shall provide an updated site plan that separately lists out the existing and proposed lot coverage by Critical Area land designation as the lot coverage is limited to 15% of the land located within the LDA, and separately, the amount of land located within the RCA.

For the granting of a critical area variance, a determination must be made on the following:

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 of the County's critical area program would result in an unwarranted hardship. In this case due to the presence of the 300-foot expanded buffer due to hydric soils on the property, redevelopment or reconfiguration is virtually impossible without variance relief. As such some relief is warranted to allow the applicant to redevelop the property.

A literal interpretation of the County's critical area program will deprive the applicant of rights that are commonly enjoyed by other properties in similar areas by denying the applicant the right to redevelop the property with a dwelling. The granting of the variance will not confer on the applicant a special privilege that would be denied by COMAR, Title 27. This request is not a result of actions by the applicant and does not arise from any condition relating to land or building use on any neighboring property. There is no evidence that the granting of the variances will adversely affect water quality or impact fish, wildlife or plant habitat and the proposal is in harmony with the general spirit and intent of the County's critical area program. The applicant has overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law and has evaluated site planning alternatives.

With regard to the requirements for all variances:

Approval of the variance would not alter the essential character of the neighborhood, impair the use or development of adjacent property, or be detrimental to the public welfare. With proper mitigation, the proposal will not reduce forest cover in the limited development area or the resource conservation area and will not be contrary to acceptable clearing and replanting practices.

The variances as proposed are considered the minimum necessary to afford relief by this Office. The proposal consists of redeveloping the property by placing the improvements no closer to the shoreline than the existing dwelling and expansion is away from the water. Finally, while it may be possible to locate the proposed dwelling further away from the water and outside the expanded buffer, the improvements have been limited to the LDA portion of the site as shown and the County Critical Area team and the State Critical Area Commission have offered no objection to the proposal. As such, the redevelopment is considered to represent the minimum variance necessary by OPZ.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 under which a variance may be granted, this Office recommends ***approval*** of a variance to § 17-8-301 to allow construction of the dwelling and associated features as shown on the site plan.

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.