

M A R Y L A N D

Office of Planning and Zoning

Jenny Jarkowski, Planning and Zoning Officer

MEMORANDUM

TO: Kelly Krinetz, Planning Administrator

FROM: Michael Day, Planner

SUBJECT: 141 S. Winchester Rd
2023-0012-P
Disturbance within the Critical Area Expanded Buffer

DATE: August 11, 2023

This project is an after the fact Variance for multiple improvements onsite including:

1. Deck and pergola adjacent to existing pool.
2. Addition at North Side of house.
3. New Septic System.
4. New well.
5. Enlarging paving for the circular drive.
6. Addition of deck over existing patio. (Additional Work shown on the plan includes Water Access steps which would be permitted without a variance and clearing in violation for which mitigation is required.)

A review of the above referenced prefile variance request has generated the following comments (each improvement will be looked at individually):

1. Deck and pergola adjacent to existing pool

The proposed deck has three sections and is adjacent to the existing patio surrounding the pool within the Critical Area expanded buffer. This deck is roughly 88 feet long with a total square footage of roughly 1,000 sqft. This is an oversized deck and cannot be supported as it is not the minimum necessary. The portion of the deck nearest to the slopes is shown hanging partially over the existing steep slopes, this cannot be supported as the deck is proposed in the Critical Area buffer as well as the steep slopes and associated steep slope buffer all of which are areas intended to be protected from development (it is noted this small deck is now proposed to be removed). Additionally, there is an existing patio surrounding the pool that is roughly 1,780 sqft not including the pool, this provides an area around the pool for lounging and recreation that further supports that the additional deck is not the minimum necessary since this site already has an area that provides an outdoor amenity. What is listed as a pergola appears to be a covered structure which should be labeled as such; it is noted that this was shown on the lot coverage tabulations in the prefile but appears to have been removed from the current tabulations. It should be noted that the overall lot coverage of this site is reported as 11,189 sqft which is less than the 11,943 sqft shown with the Pre-file plan. The pergola/deck was omitted from the lot coverage tabulations but it has not been demonstrated that this area would not count as lot coverage. It is not clear what the total amount of lot coverage proposed is as the lot coverage amounts on the prefile and this application has changed and it is not clear why some improvements have been omitted from the

lot coverage tabulations that were previously included. Whether the decks do or do not count as lot coverage does not change the recommendation that this expansive deck constructed without permits is not the minimum necessary and can not be supported for variance approval.

2. Addition at the north side of the house

The addition on the north side of the house is placed in a location that is outside of the 50 ft buffer to steep slopes (while still in the expanded buffer do to the expansion based the percent slope) and in a location that maximizes the distance from the shore. The existing house has a relatively modest footprint of 1,751 sqft and has a second story existing. Due to these factors there is not a strong objection to this addition provided the lot as a whole remains under the lot coverage limit and appropriate mitigation is provided.

3. New Septic System

There is no objection to the new upgraded septic system proposed on site, provide no clearing is required for installation.

4. New Well

There is no objection to the proposed well provided there is no clearing required for installation.

5. Enlarging paving for circular driveway

The expansion of the driveway in the expanded buffer cannot be supported. The driveway expansion is not the minimum necessary as the expanded area of paving is roughly 35 feet at its widest near the garage. A circle drive is not a requirement for a long driveway and is not required for delivery trucks. If necessary, a redesigned driveway could provide an area for delivery vehicles to back up in a more compact area with less lot coverage. If the circle drive is required one lane of travel would be the minimum necessary, potentially with pull off areas, so as to not block access to the driveway. This extra driveway area puts the property as a whole over the 15% lot coverage limit. At a minimum the driveway should be redesigned to minimize the lot coverage and bring the property as a whole into compliance the lot coverage limit. As stated previously it is not clear the total lot coverage as the tabulations and improvements have changed from the prefile but it is not clear what as changed onsite to warrant this reduction in lot coverage.

6. Addition of deck over existing patio.

There is no objection to the deck over the existing patio as this area is already developed and will no add any additional lot coverage.

Recommendation:

OPZ/ Critical Area recommends at a minimum reducing the proposed development to meet the 15% lot coverage limit for this property. This proposal is not the minimum necessary as it would exceed the lot coverage limit for the property. In addition this property is mapped as Critical Area Buffer/expanded buffer which is one of the most protected areas, to exceed the development limitations in this area would not be in harmony with County or State Critical Area Laws. Proper mitigation will be required at time of permitting.

Wes Moore
Governor

Aruna Miller
Lt. Governor



Erik Fisher
Chair

Katherine Charbonneau
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

September 27, 2023

Ms. Sterling Seay
Planning Administrator
Anne Arundel County Zoning Division
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Miski After-The-Fact Variance (2023-0155-V)

Dear Ms. Seay:

Thank you for providing information on the above-referenced variance request to perfect unpermitted improvements and new lot coverage on this lot and within the Critical Area Buffer. The unpermitted improvements/disturbance within the Critical Area Buffer include: a deck and a covered pergola adjacent to an existing pool patio; an addition to the north side of the house, a deck constructed onto of an existing patio, areas of driveway expansion, deck and stairs constructed at the top of a steep slope, water access steps, a new septic unit, and the clearing of developed woodland. The unpermitted improvements/disturbance outside of the Buffer include driveway expansion, the installation of a stone level spreader and drywell, and the clearing of developed woodlands.

The application material indicates that the applicant is seeking a variance from the Buffer provisions to retain the following unpermitted improvements: the deck and pergola on the north side of the existing pool and patio, the driveway expansion, the deck over an existing patio, the addition to the house, the new septic system, and the driveway expansion. The proposed site plan notes that the unpermitted deck area on top of a steep slope will be removed. This property is a 1.71-acre lot located within the Limited Development Area (LDA). The lot coverage limit for a lot of this size is 11,189 square feet (or 15% of the site). As a result of the unpermitted lot coverage, the existing lot coverage on the subject site totals 11,943 square feet (or 16.0% of the site) which is 755 square feet over the maximum allowed.

After-the-Fact Variance Request for Unpermitted Lot Coverage in the Buffer

Per the Anne Arundel County Zoning Code Article 3 Section 1-207(c), a variance for a property with an outstanding violation in the critical area shall be conditioned on the applicant completing the following within 90 days of the date of decision, as applicable:

- i. obtaining an approved mitigation or restoration plan;
- ii. completing the abatement measures in accordance with the County critical area program; and
- iii. paying any civil fines assessed and finally adjudicated.

Critical Area Standards for After-the-Fact Improvements

This office opposes a variance to legalize the unpermitted Buffer impacts associated with the deck and covered pergola to the north side of the existing pool patio, and the driveway expansion as those improvements do not meet the Critical Area variance standards, and because the lot coverage on this site currently exceeds the maximum amount by 755 square feet.

Maryland's Critical Area law provides that variances to a local jurisdiction's Critical Area program may only be granted if the Administrative Hearing Officer finds that an applicant has satisfied the burden of proof to meet each and every one of the County's Critical Area variance standards, including the standard of unwarranted hardship. The applicant fails to meet this standard and others, as discussed below; therefore, we oppose the request to legalize unpermitted Buffer impacts.

First, State law defines "unwarranted hardship" to mean that, without the requested variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot. It does not appear that this request can meet this variance standard for the following reasons:

1. There appears to be ample opportunity to remove all of the unpermitted improvements and lot coverage from the site/Buffer to bring it back into conformance with the lot coverage limit.
2. The applicant currently has reasonable and significant use of their entire lot with the existing dwelling, pool, pool patio, walkways, garage with parking areas, driveway, and riparian access.¹ A denial of this variance request to perfect unpermitted improvements in the Critical Area Buffer and on the site that results in an overage of the lot coverage limits does not constitute an unwarranted hardship as the applicant will still enjoy reasonable and significant use of the property the unpermitted improvements are removed.

Second, approval of this variance would grant the applicant a special privilege that would be denied to others on similar properties within the Critical Area, as no individual is guaranteed the right to construct ancillary improvements in the Buffer such as decks, a covered pergola, a home addition, and expanded areas of driveway that exceeds the lot coverage limit for lots of this size when there is opportunity to remove all of the unpermitted improvements to reduce lot coverage and Buffer impacts.

Third, the County's Critical Area program and the State Critical Area regulations place strict limits on disturbance to the Buffer in order to meet the goals of the Critical Area law. Approving a variance to allow such an extensive amount of lot coverage to be located in such a sensitive location (the Critical Area Buffer and on steep slopes) when the lot coverage exceeds the maximum amount for lots of this size is not a right commonly enjoyed by other, similar properties developed under the County's Critical Area program.

Fourth, this request is unequivocally the result caused by actions of the applicant, including the commencement of unpermitted development that resulted in lot coverage located in the Buffer and on steep slopes that exceeds the maximum limit allowed for lots of this size. The applicant willfully proceeded on their own accord without proper permits and constructed the decks, covered pergola,

¹ Note, the unpermitted improvements were not included in the aforementioned list.

house addition, and installed a new septic system, drywell, and driveway expansion as well as cleared developed woodland on the lot, in the Buffer, and on steep slopes showing complete disregard for the requirements and process.

Finally, the cumulative impact of development in the Critical Area has a substantial and negative impact on the Chesapeake Bay. Given the lot is waterfront to the Severn River and given the amount of existing unpermitted lot coverage currently in the Buffer; granting this variance request to allow unpermitted lot coverage within the Buffer to remain that contributes to the excess in the lot coverage on the site would absolutely result in adverse impacts to water quality and fish, wildlife, and plant habitats. Therefore, legalizing the improvements and additional lot coverage in the Buffer would not be in harmony with the spirit and intent of the Critical Area law and regulations or the County's Critical Area program.

We recommend that AHO deny the variance request to legalize the unpermitted deck and covered pergola that is located to the north side of the existing pool and patio and the driveway expansion on the site.

We note, in accordance with COMAR 27.01.09.01-2.H, mitigation for a violation is required to be performed at a 4:1 ratio plus 1:1 for any canopy cleared (including the unpermitted clearing of developed woodland on the site). This mitigation is cumulative to mitigation that is required for the granting of a variance, a 3:1 ratio for permanent Buffer disturbance. Therefore, should the variance be granted the applicant will be required to provide 7:1 mitigation for all unpermitted lot coverage in the Buffer, plus an additional 1:1 if any tree canopy coverage was removed within the Buffer.

Variance Request for the House Addition, Deck Over Existing Patio, & New Septic System

This office would not oppose a variance request to retain the deck over the existing patio on the south side of the existing pool and patio, the house addition, the septic system, drywell, and the stone level spreader provided they do not exceed the lot coverage limits for this site and provided that all other unpermitted lot coverage in the Buffer is removed and the areas are restored in native vegetation.

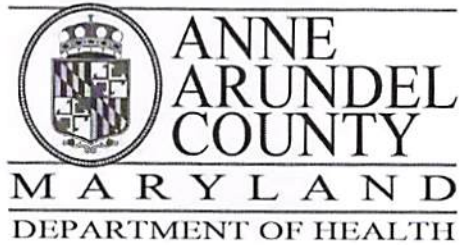
Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please feel free to contact me at jennifer.esposito@maryland.gov.

Sincerely,



Jennifer Esposito
Natural Resources Planner

cc: Ms. Charlotte Shearin, Critical Area Commission
AA 304-23




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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

DATE: September 26, 2023

RE: Miski Ahmad
141 S. Winchester Road
Annapolis, MD 21409

NUMBER: 2023-0155-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to perfect a dwelling addition, accessory (decks & pergola), and associated features with disturbance to slopes of 15% or greater, less buffer than required, with more lot coverage than allowed, and with less setbacks than required.

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.

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

cc: Sterling Seay



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Address Points: 141 S WINCHESTER RD,
21409

129

115

141 S Winchester Rd Looking East



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141 S Winchester Looking North

