

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

APPLICANT: Ahmad Miski

ASSESSMENT DISTRICT: 3rd

CASE NUMBER: 2023-0155-V

COUNCILMANIC DISTRICT: 5th

HEARING DATE: November 7, 2023

PREPARED BY: Robert Konowal
Planner

REQUEST

The applicant is requesting variances to perfect dwelling additions, accessory structures (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 on property located at 141 S. Winchester Road in Annapolis.

LOCATION AND DESCRIPTION OF SITE

The subject site has approximately 123 feet of road frontage on S. Winchester Road, on the east side of Route 50. These lands have an area of 74,592 square feet or 1.71 acres. The property is shown as Parcel 21 in Grid 12 on Tax Map 45. The property has been zoned R1-Residential District since the adoption of the zoning maps for the Fifth Council District on January 29, 2012.

The site is a waterfront lot located in the Chesapeake Bay Critical Area and has been designated "LDA-Limited Development Area". The property is not located along a modified buffer shoreline.

The subject property is currently developed with a single family detached dwelling with attached deck over an existing patio along the northwest side of the dwelling. A detached garage is located in the rear yard. Vehicular access from S. Winchester Road is provided by a single driveway ending in a circular turnaround at the dwelling. An inground pool and hard surface patio surrounding the pool is located to the northwest and slightly forward of the dwelling. A deck, pergola and fireplace are also located along the northwest side of the pool and patio. There is a section of this deck that extends further to the southwest and along the top of the slope. Finally, a shed is located down near the water's edge. The property is served by private well and septic.

APPLICANT'S PROPOSAL

The applicant wishes to perfect certain improvements that have been undertaken without the necessary approvals. In particular, these improvements include an enclosed addition to the northwest side of the dwelling; the deck and pergola adjacent to the pool; enlargement of the circular drive; and the installation of a new well and septic system in the rear yard. The applicant

is proposing to remove the deck that has been constructed along the top of the slope and a portion of an existing sidewalk in the rear yard.

REQUESTED VARIANCES

Section 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. Section 18-13-104. (b) also provides for an expanded buffer where there are contiguous steep slopes of 15% or more and is to be expanded by the greater of four feet for every 1% of slope or to the top of the slope and shall include all land within 50 feet of the top of the slopes. Section 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 stipulates a buffer exists “to protect a stream, tidal wetlands, 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.

Because of steep slopes located along the shoreline in the 100-foot buffer, the buffer is expanded on this site. The enclosed one-story addition to the northwest side of the dwelling (99 sf); the deck over the patio (110 sf); the deck, pergola and fireplace adjacent to the pool (553 sf); the enlargement of the circular drive (793 sf); and the installation of a new well and septic system in the rear yard permanently disturb a total of approximately 1,555 square feet of the expanded buffer. A variance is required for this disturbance. This disturbance does not include the temporary limits of disturbance required for installation of these improvements.

The applicant’s proposal indicates the deck located at the top of and on steep slopes is to be removed. A variance to disturb lands with a slope of 15% or greater is therefore no longer required.

The applicant has provided new lot coverage calculations that show lot coverage on the site to be at the allowable lot coverage limits for this site, once certain improvements are removed. A variance is therefore no longer required for greater lot coverage than allowed.

A review of the site plan indicates no variances to the setback requirements are required.

FINDINGS

Background

There are two open building (B-2019-43) and grading (E-2015-240) violations related to the subject application.

Review of Variance Criteria

In the case of a variance to perfect an unauthorized improvement, when reviewing the request for relief, the improvement is evaluated as if it had not been built and the variance criteria applied accordingly. Furthermore, in the case of an application to perfect, the justification for a

variance may not be based on conditions or circumstances that are the result of actions by the applicants, which includes having commenced development before an application for a variance was filed. In such cases any hardship may be viewed as being self-created.

The requested variances relate to a property that does meet the minimum lot width and area requirements of the Code for a lot in a R1-Residential District. However, more importantly development of the waterfront site is significantly encumbered by the expanded buffer that covers almost $\frac{2}{3}$ the length of the site making any further development of the site almost impossible without the need for a variance.

A review of the existing development of the subject site indicates the applicant already has reasonable use of the site with a two-story dwelling having a footprint of 1,733 square feet and above grade living area of 2,224 square feet along with a 612 square foot inground pool surrounded by a 1,718 square foot stone patio and a generous driveway leading to a 687 square foot detached garage, all located in the expanded buffer.

Denial of the request for variances to allow the deck/pergola system, expanded driveway, and 99 square foot addition (which is to house a sauna and hot tub) in the expanded buffer would not cause hardship in the use of these lands. These additional improvements would not deprive the applicant of rights commonly enjoyed by other properties in the Critical Area. Rather, the granting of a variance to accommodate these improvements would in fact confer a special privilege that would be denied by the Critical Area program to other lands or structures in the County's Critical Area program. The above variances cannot be considered the minimum necessary to afford relief since relief has been found not to be warranted.

With regards to the septic and well improvements that have been undertaken, it would be impossible to provide these improvements without a variance as the dwelling is located in the expanded buffer. It should be noted the applicant has abandoned the existing septic field located in the expanded buffer and has now relocated the required septic drain fields outside the expanded buffer. The deck that has been constructed over the stone patio is located in an already developed part of the expanded buffer and will add no additional lot coverage. Denial of the variances required to accommodate these facilities would cause hardship in the use of these lands and would deprive the applicant of rights commonly enjoyed by other properties in the Critical Area. The granting of these variances would not confer any special privilege that would be denied by the Critical area program to other lands or structures in the County's Critical Area program. The deck addition to the dwelling and the well and septic improvements that have been undertaken do result in the minimum variance necessary to afford relief.

These critical area variances do not arise from any condition relating to land or building use on any neighboring property. However, with the exception of the attached deck over the patio and the well and septic improvements, the only justification for the variances necessary to accommodate the other improvements are based on conditions or circumstances that are the result of actions by the applicants, which includes having commenced development before an application for a variance was filed. Those variances will collectively adversely affect water quality or impact fish, wildlife or plant habitat, and will 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 and has not evaluated and implemented site planning alternatives.

The variance requests will not reduce forest cover in the Limited Development Area and will not be contrary to acceptable clearing and replanting practices. There is no evidence the variances will be detrimental to the public welfare.

Approval of the variances will not alter the essential character of the neighborhood as the development does not violate any established pattern of building setbacks, profiles or massing. There is no evidence that approval of the variances will impair the appropriate use of any abutting property.

Notwithstanding the above, with the exception of the variances related to the attached deck over the existing patio and the well and septic facilities, the requested variances for the deck/pergola system, dwelling addition, attached deck, and driveway expansion have been found to be unwarranted and not the minimum necessary to afford relief.

While the applicant has now revised their plans to conform to the lot coverage limits of the Code we question the practicality of having absolutely no room for error on the ground. Prior to the unpermitted improvements the lot coverage of the site was 10,245 square feet, which allowed for a margin of error and possible minor changes to the site in the future in accordance with the Code.

The **Development Division (Critical Area Team)** advised the proposed pergola and deck are excessive in size and, given the other various other amenities on-site, cannot be supported. The Division also objected to the expansion of the circular driveway as a) the 35-foot width is excessive, and b) the fact that a circular configuration is not necessary to adequately serve the site.

The Division had no objection to the well and septic as no clearing is required for their installation. The Division also had no objection to the addition on the northwest side of the dwelling as it is modest in size, outside the 50-foot slope buffer and maximizes the distance from the shoreline. This recommendation is conditional on the site being in conformity with the lot coverage limitations of the Critical Area program. Finally, the Division had no objection to the deck over the existing patio as this area is already developed and will not result in any additional lot coverage.

The **Critical Area Commission** recommended the variances to legalize the unpermitted deck and covered pergola located on the northwest side of the pool and patio and the driveway expansion be denied. Those variances do not meet the Critical Area variance standards particularly with regard to unwarranted hardship as the applicant already has reasonable and significant use of the site.

The Commission believes approval of these features would grant the applicant a special privilege that would be denied others in the Critical Area. The request for this relief results from actions caused by the applicant, who willfully proceeded on their own accord without the proper permits for the noted improvements as well as the unpermitted clearing of developed woodland. The

applicant, according to the Commission, has shown complete disregard for the requirements and process. Legalizing these improvements would not be in harmony with the Critical Area law.

The Commission did indicate it would not oppose a variance request to retain the deck over the existing patio, the house addition, the septic system, and the drywell and stone level spreader located outside the expanded buffer, provided they do not exceed the lot coverage limits and all other unpermitted lot coverage in the buffer is removed and the area is restored in native vegetation.

The **Engineering Division of the Department of Inspections and Permits** advised there are a number of outstanding site plan deficiencies and as such they do not have sufficient information to provide a recommendation for approval or denial.

The **Health Department** indicated it does not have an approved plan for this project but has no objection to the request as long as a plan is submitted and approved by the Health Department.

RECOMMENDATION

Based upon the standards set forth under § 18-16-305 in the Anne Arundel County Code by which a variance may be granted, the Office of Planning and Zoning recommends the following:

1. ***Approval*** of variances to disturb the expanded buffer to perfect the attached deck over the existing patio and the well and septic system noted on the site plan 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 and,
2. ***Denial*** of those variances to disturb the expanded buffer to perfect all other improvements which include the deck and pergola system, proposed dwelling addition, proposed attached deck, and driveway expansion.

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.