

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

APPLICANTS: Michael Kluh

ASSESSMENT DISTRICT: 1

CASE NUMBER: 2023-0161-V

COUNCIL DISTRICT: 7

HEARING DATE: November 9, 2023

PREPARED BY: Sumner Handy
Planner

REQUEST

The applicant is requesting Zoning and Critical Area variances to allow a dwelling and associated facilities with less setbacks and buffer than required and with disturbance to slopes of 15% or greater, and a Zoning Use variance to allow a residential use (well) within the OS-Open Space District, at 3934 Bayside Drive in the subdivision of Shoreham Beach, Edgewater.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of 5,000 square feet of land and is located with approximately 50 feet of frontage on the west side of Bayside Drive. The property is identified as part of Lots 4 and 5, in Parcel 92, Block 18 on Tax Map 60. The majority of the subject property is zoned R5-Residential District; however, approximately the westernmost quarter of the lot is zoned OS-Open Space. A portion of the lands zoned Open Space are subject to the Open Space Conservation Overlay as they are partially located within the 100-year floodplain and/or estuarine wetlands as identified by the Maryland Department of Natural Resources. The current zoning was adopted by the comprehensive zoning for the Seventh Council District, enacted on October 7, 2011.

This lot is located next to a small non-tidal pond in the Chesapeake Bay Critical Area and has been mostly designated IDA-Intensely Developed Area; two small fractions of the westernmost portion of the property are designated RCA-Resource Conservation Area. The property is not considered to be a waterfront lot, although the 100-foot buffer does extend onto the property. The site is served by public sewer and private water.

The property is currently vacant except for child's playground equipment located at the west end of the site and a shed.

APPLICANT'S PROPOSAL

The applicant is proposing a two-story, single-family dwelling measuring 35.5 feet by 34.5 feet, and 35 feet in height. A front porch is also proposed, to measure five feet deep by 28 feet wide. Private water service will be provided by a well proposed 10 feet from the western/rear lot line.

REQUESTED VARIANCES

Zoning Variances

Section 18-4-701 of the Code sets forth the bulk regulations for development in an R5 District and requires that a principal structure be set back a minimum of 25 feet from the front lot line. The proposed dwelling will be located as close as 20 feet from the front lot line, necessitating a Zoning Area variance of five feet.

Section 18-9-202 of the Code that specifies the allowed uses in the OS-Open Space District lists “existing residential uses” as a permitted use. Since the well is not an existing residential use of lands, a Zoning Use variance is required to allow this facility.

Variances to Critical Area Program

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) provides for an expanded buffer in cases where there are steep slopes.¹ Section 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.” 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. In the case of the subject property, the 100-foot buffer intersects steep slopes that stretch across the subject property, resulting in an expansion of the buffer throughout the contiguous area of the slopes. There also exists a 25-foot buffer to non-tidal wetlands. The proposal requires a variance to allow disturbance within the expanded buffer and within the buffer to nontidal wetlands, the exact amount of which will be determined at the time of permitting.

Section 17-8-201(b) of the Anne Arundel County Subdivision Article stipulates that development in the Intensely Developed Area (IDA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope; is to allow connection to a public utility; or is to provide direct access to the shoreline. The proposed development requires a variance to allow approximately 140 square feet of disturbance to slopes of 15% or greater, the exact amount of which will be determined at the time of permitting.

¹ There is a question of whether the Critical Area buffer extends onto the property and the case history (2020-0164-V) includes a question of whether any Critical Area variances are necessary to develop the lot. In fact, the Critical Area buffer does extend to cover some portion of the subject property, and a Critical Area variance is required. As one can see in the snipped image on the next page (wherein the subject property is slightly shaded blue and outlined; the non-modified buffer is indicated in purple; and steep slopes are indicated in pixelated yellow and red), the non-modified buffer coincides with steep slopes and, per 18-13-104(b), expands to cover at least all of the sloped land and all land within 50 feet of the top of the steep slopes on the subject property. The expanded buffer covers a portion of land on which the dwelling is proposed to be located, necessitating a Critical Area variance to disturb the buffer to permit the new dwelling. (The identification of the body of water immediately west of the subject property as tidal or nontidal is not relevant to the question of whether the Critical Area buffer expands here.)

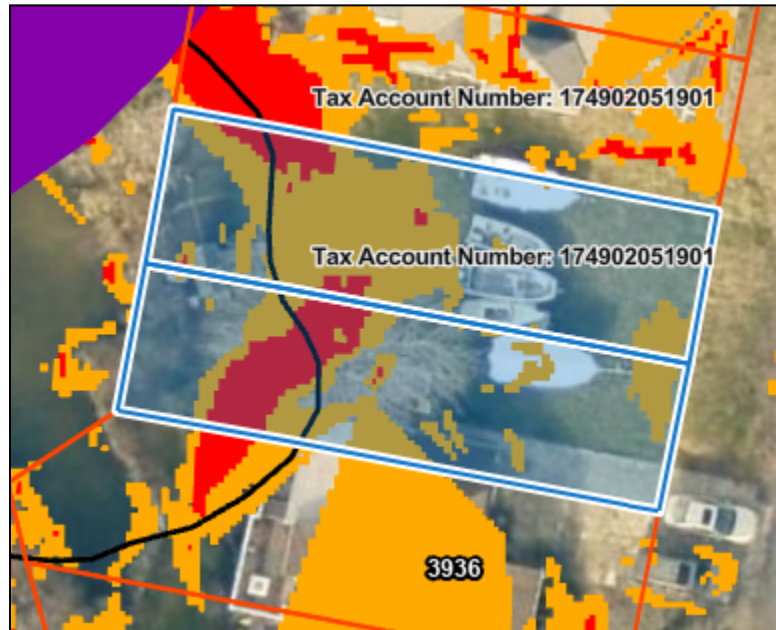
FINDINGS

Background

This property was the subject of case number 2020-0164-V wherein a similar proposal received variance approval. The circumstances since that application have not markedly changed, except that now required for this proposal are Critical Area variances that were not required during the prior consideration of variances at this property.

Zoning Area Variance

For the granting of a zoning variance, a determination must be made that, because of unique physical conditions, there is no reasonable possibility of developing the lot in strict conformance with the Code, or, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship in the development of the lot. This Office finds that the subject property, at 50 feet in width and 5,000 square feet in area, does not meet the minimum 60-foot lot width and 7,000 square foot lot area of the



R5 District. The shallow depth of this site is unique to the neighborhood and the need to minimize disturbance to steep slopes on the western half of the property has driven the location of the dwelling closer to the road. These unique site conditions are exceptional and have created a practical difficulty in developing the lot that necessitates relief from the Code. The area relief requested relates to an attached front porch measuring five feet in depth and 28 feet in width. The porch is of modest size (while wider than the porch proposed in 2020, it is proposed to be no deeper or closer to the front lot line), as is the footprint of the dwelling, and a front porch is considered to be a reasonable appurtenance to a detached single-family dwelling. The porch is proposed to be raised above-grade, allowing parking below. The zoning area variance is considered to be the minimum necessary to afford relief.

Zoning Use Variance

A Zoning Use variance is subject to a greater burden of proof than more typical zoning variances, such as those to setback or height requirements. In order to approve a use variance, three additional criteria must be met: (1) the applicants must be unable to secure a reasonable return or make any reasonable use of their property; (2) the difficulties or hardships are peculiar to the subject property in contrast to other properties in the zoning district; and (3) the hardship is not the result of the applicants' own actions. These lands are located in a residential subdivision of single-family detached dwellings that was originally platted and developed prior to the introduction of zoning. The subject property is dual zoned where approximately the eastern three-fourths of the property is

zoned R5-Residential District and the western quarter is zoned OS-Open Space District.

The subject site is shallow, at just 90 feet in depth, which is unique to the neighborhood. In order to provide for a dwelling, private well, and required facilities on the subject property, it has been necessary to locate the well in that part of the site zoned OS-Open Space. Denial of this use variance would deny use of the residentially-zoned portion of the site for residential purposes as the R5-zoned lands are too small to be developed with a residential use with the required well. Denial would also leave the applicant a portion of lands zoned OS-Open Space, where allowed uses are even more restricted, and which portion is even smaller than the R5-zoned portion. Therefore, it is the opinion of this Office that denial of the use variance would deny the applicant the ability to make any reasonable use of the property. With regard to the second criterion by which a use variance request is assessed, this Office finds that the property's split-zoned character - its existence in two different zoning districts, and the differing and limited uses permitted in those districts - as well as its diminutive size together cause difficulties in developing the lot, and this Office finds these factors to be peculiar to this property indeed. And third, these hardships do not result from the applicant's own actions. Therefore, the three criteria specific to a use variance have been satisfied.

Neither the use of those lands in the OS District for a private well nor the setback variance necessary for the front porch will alter the character of this neighborhood, nor have any negative impact on the use of any adjacent property. The proposed setback is consistent with the setbacks of dwellings on abutting properties. The limited use of the OS-zoned lands is merely for the well required to service the proposed residential use located in the R5 District; both variances are considered to be the minimum variance necessary for relief.

While this Office will recommend approval of these zoning variances, it should be noted here that the Health Department has recommended denial of the requested variances out of concern for the well water supply systems. The applicant is advised to address this issue with the Health Department.

Critical Area Variances

For the granting of a Critical Area variance, a determination must be made as to whether, because of unique physical conditions, strict implementation of the County's Critical Area program would result in an unwarranted hardship to the applicant. The applicant has requested variance approval to disturb the expanded buffer and/or the buffer to nontidal wetlands as well as to disturb steep slopes in the IDA to construct the proposed dwelling and associated facilities. In this case, the lot's limited dimensions, unique amongst lots in the area and the R5 zoning district, and especially the uniquely small portion of the lot zoned R5 wherein a new dwelling is a permitted use, make necessary these variances to allow for the development of this lot. Development on this grandfathered lot, platted before zoning regulations were enacted, requires disturbance to steep slopes and to the buffer; the Critical Area variances necessary to construct the proposed dwelling, porch, and well are considered to be the minimum variances necessary and within the spirit and intent of the Critical Area Program.

This Office finds that a literal interpretation of the Critical Area Program - and denial of the variances to disturb steep slopes and the buffer to develop this residential property - would cause an unwarranted hardship. The granting of these variances would not confer on the applicant a special privilege that would be denied by COMAR, Title 27, and with proper stormwater

management and mitigation, granting of these variance requests will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat. The variance request is not based on conditions or circumstances that are the result of actions by the applicant and does not arise from any condition relating to land or building use on any neighboring property. This Office finds that the applicant has evaluated and implemented site planning alternatives and has overcome the presumption that the proposal is not in harmony with the spirit and intent of the Critical Area program.

AGENCY COMMENTS

The **Health Department** reviewed the proposed water supply system and has determined that the proposed request adversely affects the proposed well water supply systems. The Health Department recommends denial of the request, and further notes that stormwater planter boxes must be located at least 30 feet from a proposed well.

The **Development Division (Critical Area Team)** offered no objection to the request.

The **Engineering Division of the Department of Inspection and Permits** advised that it does not have sufficient information at this time to render a recommendation. That Division's unabridged comments are appended as an exhibit.

The **State of Maryland Critical Area Commission** commented that appropriate mitigation shall be required, so long as the County finds that the proposed well will be located outside of the Resource Conservation Area (RCA). The Commission's unabridged comments are appended as an exhibit.

RECOMMENDATION

With regard to the standards by which a variance may be granted as set forth under Article 18-16-305 under the County Code, the Office of Planning and Zoning recommends ***approval*** of the following as shown on the attached site plan subject to the condition that a storm water management plan be provided to the satisfaction of the Engineering Division in the Department of Inspections and Permits:

1. A Zoning Area variance to Section 18-4-701 of the Code of five feet to the front lot line setback of 25 feet;
2. A Zoning Use variance to Section 18-9-202 of the Code that specifies the allowed uses in the OS-Open Space District to locate a residential water well on lands located in an OS-Open Space District;
3. A Critical Area variance to Section 18-13-104 to allow disturbance to the expanded buffer and the nontidal wetland buffer; and
4. A Critical Area variance to Section 17-8-201(a) to allow disturbance to slopes of 15% or greater.

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.




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
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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: October 4, 2023

RE: Michael Kluh
3934 Bayside Drive
Edgewater, MD 21037

NUMBER: 2023-0161-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow residential uses (well) in the OS district and a variance to allow a dwelling with less setbacks and a buffer than required and with disturbance to slopes of 15% or greater.

The Health Department has reviewed the proposed water supply system for the above referenced property. The Health Department has determined that the proposed request adversely affects the proposed well water supply systems. The Health Department recommends denial of the above referenced request. The proposed stormwater planter boxes must be at least 30 feet from the proposed well.

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

cc: Sterling Seay



Mark Wedemeyer, Director

Memorandum

To: Planner, Zoning Administration Section, Office of Planning and Zoning

From: Hala Flores, Engineer Manager, Department of Inspections and Permits

Date: October 10, 2023

Subject: Kluh Property (3934 Bayside Drive, Edgewater)
2023-0161-V

Request – Allow disturbance on slopes greater than 15% in IDA – 17-8-201

Review - This office has reviewed the subject variance application. A pre-file was not submitted to this office.

The applicant is proposing to construct a single family home on a lot that does not meet the minimum 7000 SF lot requirement for R5 zone. The property is 5000 square feet in area. The site is served by private well and public sewer (mayo system) and fronts a 30 feet wide public right of way along Bayside drive. The site is in the IDA of the critical area. The house is proposed to be partially placed in the steep slopes. The lot is encumbered by non-tidal wetland buffer, steep slopes, and 25 steep slope buffer.

- 1- The grading permit application must include a resource conservation map that clearly delineates all the regulatory environmental resources and the buildable area. No SWM structural practices will be permitted within regulatory environmental resource areas (critical area buffer, steep slopes and buffers, non-tidal wetland buffers, etc).
- 2- Existing condition assessment and photograph of the steep slopes is required prior to ability of this office to make a decision.
- 3- Indicate how the proposed ultra-urban rain gardens will overflow to the steep slopes.
- 4- It is unclear how the proposed driveway is being treated. The use of permeable concrete or paver is recommended
- 5- Consideration will be given for SWM since the LOD appears to be less than 5000 SF and existing shed and play equipment are marked to be removed.
- 6- A public utility easement was not shown for the proposed mayo tank.
- 7- Show the clearance radius for all existing and proposed water wells.

Determination:

This office does not have sufficient information to render a recommendation and defers decision to OPZ. The comments above must be addressed with the grading permit application.



Jennifer Esposito -DNR- <jennifer.esposito@maryland.gov>

Critical Area Comments_2023-0161-V Kluh (AA 347-23)

Jennifer Esposito <jennifer.esposito@maryland.gov>

Mon, Oct 30, 2023 at 3:36 PM

To: Sumner Handy <sumner.handy@aacounty.org>

Cc: Charlotte Shearin -DNR- <charlotte.shearin@maryland.gov>, Sterling Seay <pzseay16@aacounty.org>, Sadé Medina <pzmedi22@aacounty.org>, Kelly Krinetz <PZKRIN00@aacounty.org>

Bcc: Michael Day <mday@aacounty.org>

Good afternoon,

The Critical Area Commission has reviewed the following variance and we provide the following comments:

2023-0161-V; Kluh (AA347-23):

Provided that the County finds that the proposed well will be located outside of the Resource Conservation Area (RCA), then appropriate mitigation is required. We respectfully request for any approval under this variance proposal to be conditioned by the following requirements:

1. For the site plan to label the Critical Area designations and for the County to ensure that the proposed well is located outside of the RCA.
2. The County should verify with MDE the limits of tidal wetlands and nontidal wetlands on the subject and surrounding properties, and to confirm whether the area on the West side of the property is nontidal.
3. The Critical Area Buffer and expanded Buffer will need to be accurately delineated on the site plan based on the tidal/nontidal wetland verification as noted in comment No. 2 above.

Thank you for the opportunity to provide comments. Should you have any questions, please feel free to contact me.


dnr.maryland.gov/criticalarea

Jennifer Esposito

Critical Area Commission for the
Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100
Annapolis, MD 21401

Office: 410-260-3468

(In office: Mon., Wed., Friday)

Cell: 443-569-1361

(Teleworking: Tues., Thurs.)

jennifer.esposito@maryland.gov

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2020-0164-V

WILMA J. KLUH

FIRST ASSESSMENT DISTRICT

DATE HEARD: JULY 13, 2021
CONTINUED TO: JULY 29, 2021

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: **ROBERT KONOWAL**

DATE FILED: **AUGUST 12, 2021**

PLEADINGS

Wilma J. Kluh, the applicant,¹ seeks a use variance (2020-0164-V) to allow a dwelling and associated facilities with less setbacks and buffer than required and with disturbance to slopes of 15% or greater (steep slopes) on property with a street address of 3934 Bayside Drive, Edgewater, MD 21037.²

PUBLIC NOTIFICATION

The hearing notice was posted on the County's website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 300 feet of the subject property was notified by mail, sent to the address furnished with the application. Michael Kluh testified that the property was posted for more than 14 days prior to the hearing. Therefore, I find and conclude that there has been compliance with the notice requirements.

FINDINGS

A hearing was held on July 13, 2021, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicant. The hearing was continued to allow further notice to neighboring property owners and resumed on July 29, 2021.

¹ Wilma J. Kluh is deceased. Her son, Michael Kluh, has been appointed as the personal representative of her estate and appeared at the hearing.

² The application was advertised as needing a variance to the prohibition against disturbing steep slopes. However, as discussed below, the application does not need any critical area variances.

The Property

The subject site consists of 5,000 square feet and has approximately 50 feet of frontage on the west side of Bayside Drive, 100 feet north of Olive Street, Edgewater. The property is identified as part of Lots 4 and 5 of Parcel 92 in Block 18 on Tax Map 60 in the Shoreham Beach subdivision. The majority of the property is zoned R5-Residential District however approximately the westernmost 25 feet is zoned OS-Open Space. The portion of the property zoned OS is subject to the Open Space Conservation Overlay as they are partially located within the 100-year floodplain.

This lot is located next to a small nontidal pond in the Chesapeake Bay Critical Area and has been for the most part designated intensely developed area (IDA). There is a small fraction of the westernmost portion of the property designated resource conservation area (RCA). The property is not considered to be a waterfront lot and the 100-foot buffer does not extend onto the property. The site is served by public sewer and private water.

The property is currently vacant except for child's playground equipment located at the west end of the site.

The Proposed Work

The applicant is proposing to construct a two-story, single-family dwelling measuring 35.5' by 34.5' by 30' in height. A 5' by 20' front porch is also proposed as shown by the site plan introduced into evidence as County Exhibit 2. The proposed dwelling will be located as close as 20 feet from the front lot line.

Private water service will be provided by a well proposed 10 feet from the west lot line in the OS portion of the lot.

The Anne Arundel County Code

§ 18-4-701 provides that a principal structure in an R5 district shall be set back a minimum of 25 feet from the front lot line.

§ 18-9-202 lists “existing residential uses” as a permitted use in an OS district. Since the well is not an existing residential use of lands a use variance is required to allow this facility.

The Variances Requested

The proposal calls for the following zoning variances:

1. A zoning variance of five (5) to the 25-foot front lot line setback requirement of § 18-4-701 to construct the proposed single-family dwelling as close as 20 feet from the front lot line as shown on County Exhibit 2; and
2. A use variance to the provisions of § 18-9-202 to allow the applicant to install the proposed well in the OS district portion of the property as shown on County Exhibit 2.

The Evidence Submitted At The Hearing

Findings and Recommendations of the Office of Planning and Zoning (OPZ)

Robert Konowal, a zoning analyst with the OPZ, presented the following findings:

- These lands are located in a residential subdivision of single-family dwellings that was originally platted and developed prior to the introduction of zoning. The subject property is dual zoned where approximately the east two-thirds of the property is zoned R5 district and the west one-third of the property zoned OS district.
- The subject site is quite shallow at 90 feet in depth and is unique to the neighborhood. In order to provide for a dwelling, mayo tank and private well on the subject property it has been necessary to locate the well in that part of the site zoned OS. Denial of a use variance would essentially deny use of the balance of the site for residential purposes. Denial of a use variance would in our opinion constitute an undue hardship in the use of these lands for the following reasons. Without a use variance the applicant would not be able to secure a reasonable return or use of the property. The hardship is peculiar to this property and finally, the hardship is not a result of the applicant's own actions.
- Area Variance. OPZ finds that the subject property at 50 feet in width and 5,000 square feet in area does not meet the minimum 60-foot lot width and 7,000 square foot lot area of the R5 district. The shallow depth of this site which is unique to the neighborhood and the need to avoid steep slopes on the west half of the property has driven the location of the dwelling closer to the road. These site conditions have created a practical difficulty necessitating relief from the Code.

- The variances are considered to be the minimum necessary to afford relief. The relief requested relates to a one-story front attached porch measuring five feet in depth and 20 feet in width. The porch is of modest size as is the footprint of the dwelling and is considered to result in the minimum necessary for relief. The only use of the OS zoned lands relates to the well required to service the proposed residential use located in the R5 district and as such is also considered to be the minimum variance necessary for relief.
- The use of those lands in the OS district for a private well will not alter the character of that district nor have any negative impact on the use of any adjacent property. The variance to allow the front porch will not alter the essential character of the neighborhood or negatively impact the use of any adjacent property as the setback that has been provided is consistent with the setbacks of dwellings on abutting properties.
- The variances requested will not be detrimental to the public welfare as the development will be subject to Health Department approval.
- The Health Department does not have an approved plan for this project but would have no objection provided a plan is submitted to and approved by them.
- The Development Division (Critical Area Team) had no objection to the request.

- The Engineering Division of the Department of Inspection and Permits advised that the property will be served by individual public Mayo tank and private individual water well. The well will need to be reviewed and approved by the Health Department. The subject application does not have the information of a complete stormwater preliminary plan. The required information for a complete review was not provided. Based on the above, the Engineering Division does not have enough information to make a favorable recommendation on this application. The practice shown does not meet setback to the Mayo tank and the in-flow line passes through the practice. As shown, stormwater management has not been addressed.
- The Critical Area Commission had no objection but did indicate that appropriate mitigation should be provided.
- With regard to the standards by which a variance may be granted as set forth under Article 18-16-305 under the County Code, OPZ recommends *approval* of the variances subject to the condition that a stormwater management plan be provided to the satisfaction of the Engineering Division in the Department of Inspections and Permits.

Other Testimony and Exhibits

Michael Kluh was assisted at the hearing by Kim Burke of Bay Engineering, Inc. Evidence was presented that the lot is substandard in area and width and split-zoned so that the rear portion of the lot is classified as OS district. The wells on nearby properties and the location of the grinder pump at the front of

the property pushes the location of the proposed well into the OS portion of the lot, thus necessitating the requested use variance. The proposed dwelling is modest in size and will fit into the neighborhood. The front setback is needed to allow the applicant to have a front porch. The distance of the dwelling from the front lot line at 20 feet is consistent with the front setbacks of other structures in the neighborhood. The two requested variances are needed to allow the development of this grandfathered property. They are the minimum needed to provide the applicant with relief from Code. No other variances, such as side or rear setback variances, or critical area variances are requested or needed.

A number of neighbors spoke in opposition to granting the requested variances. Marsha Perry testified she owns the property adjacent to the subject property to the south. She strongly opposed granting the requested variances. She testified the subject property floods from the pond between it and the tidal waters in Ramsay Lake. It should be classified as waterfront property and treated as such. She testified that OPZ is not following the Code and is violating the current administration's commitment to protect sensitive environmental features and the Bay.

Nearby neighbors, Mr. & Mrs. Jack Roach and Donald Bartnick, were also opposed to granting the requested variances for the same reasons expressed by Ms. Perry.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

DECISION

§ 18-16-305 sets forth the requirements for granting a zoning variance.

Subsection (a) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of law is observed, public safety secured, and substantial justice done. A variance may be granted only if the Administrative Hearing Officer makes the following affirmative findings:

- (1) Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or
- (2) Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.

The variance process for subsection (1) above is a two-step process. The first step requires a finding that special conditions or circumstances exist that are peculiar to the land or structure at issue which requires a finding that the property whereupon the structures are to be placed or use conducted is unique and unusual in a manner different from the nature of the surrounding properties. The second part of the test is whether the uniqueness and peculiarity of the property causes the

zoning provisions to have a disproportionate impact upon the subject property causing the owner a practical difficulty or unnecessary hardship. “Uniqueness” requires that the subject property have an inherent characteristic not shared by other properties in the area. *Trinity Assembly of God of Baltimore City, Inc. v. People’s Counsel for Baltimore County*, 178 Md. App. 232, 941 A.2d 560 (2008); *Umerley v. People’s Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173 (1996); *North v. St. Mary’s County*, 99 Md. App. 502, 638 A.2d 1175 (1994), cert. denied, 336 Md. 224, 647 A.2d 444 (1994).

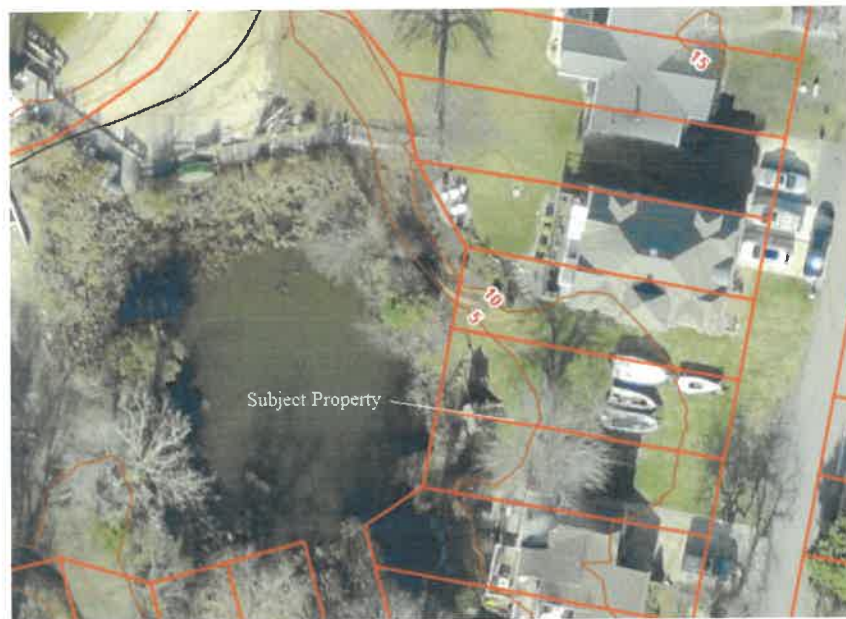
The variance process for subsection (2) - practical difficulties or unnecessary hardship - is simpler. A determination must be made that, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot.

Furthermore, whether a finding is made pursuant to subsection (1) or (2) above, a variance may not be granted unless the hearing officer also finds that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located, (3) substantially impair the appropriate use or development of adjacent property, (4) reduce forest cover in the limited development and resource conservation areas of the critical area, (5) be contrary to acceptable clearing and replanting practices required for development in the critical area, or (6) be detrimental to the public welfare.

No Critical Area Variances Are Required

As a preliminary matter, it should be noted that no critical area variances are required to develop the subject property with a single-family dwelling. The Protestants disagree with this conclusion. However, OPZ has determined that the property is not waterfront. The land between the subject property and the shoreline is classified as intensely developed area. Therefore, the 100-foot buffer does not extend into the subject property. No critical area variances are required.

Although the application was advertised as needing steep slopes, such is not the case. Indeed, there do not appear to be any steep slopes on the property as shown by the following aerial photograph:



Therefore, the critical area law does not apply in this case. I agree with this conclusion by OPZ. However, even if I did not, the law limits this Office to considering only what is presented to it. For both these reasons, therefore, the

following decision will be limited to the zoning variances requested by the applicant.

The following discussion, therefore, will be limited to the zoning variances requested by the applicant.

Use Variances Versus Area Variances

Zoning variances can be divided into two categories, depending on what is being asked for: a variance to vary area requirements (“area variances”), such as setback requirements; or to vary use restrictions (“use variances”). Area variances are needed when a property owner wants to build a structure closer to a lot line than allowed, such as the front porch in this application. Use variances are needed to allow a use on a property that is not permitted by the Code, such as the desire to install a well in the OS portion of the subject property in this application. Since the two variance requests are governed by different laws, they will be considered separately.

The complex classification of the subject property and the surrounding neighborhood is shown by the following:



The applicant's request for variances is an example of the difficult process that must be undertaken by this Office to resolve the rights of a property owner (an applicant who wants to develop a particular parcel of land) over and against the rights of citizens who live in Anne Arundel County and the State of Maryland to protect the environment so that all of us can enjoy the Bay, its tributaries, and the shoreline surrounding the Bay. The elected representatives of Anne Arundel County (when it comes to zoning restrictions) and of the State of Maryland (when it comes to critical area restrictions) have decided to impose limitations on what a property owner can do with their property within 1,000 feet of tidal waters. In other words, citizens have decided, through their elected representatives, to give up rights they might have to do *anything* with their properties in return for *limiting* what other property owners can do with their properties. The general consensus is that we all benefit in the end from this arrangement.

The fly in the ointment, however, is that a great deal of land in Maryland was divided into individual lots before zoning came to Anne Arundel County in 1952 and the critical area law became effective in 1988.³ Such is the case with this application: the two lots the owner wants to develop were created by a lawful subdivision in 1937. At that time, an owner could develop the lots in any way he or she saw fit.⁴ In fact, each of the two lots could have been developed with a single-family dwelling. As the lots are only 25 feet in width, a house on one of the two lots would not be very large, but it could have been built from lot line to lot line because there were no setback restrictions when it was created in 1937.

Zoning was enacted in 1952, and limitations were put on what a property owner could do with a parcel of land. For example, setback requirements were imposed for the first time. But the State and County could not deny all use of a piece of property without paying for its 'taking.' Limiting all development would, in effect, force the property owner to donate the land to the good of the other citizens of the State and County, which, without just compensation, is unconstitutional.

Because many properties had already been subdivided and created by 1952, the County fathers who created the current form of government in 1965 included the Office of Administrative Hearings to provide a mechanism to balance the

³ For the history of the State of Maryland and zoning in Anne Arundel County, a talk delivered to the new County Council in July, 2019 can be viewed at <https://youtu.be/q19qkg8VVXk> or by visiting the website of the Office of Administrative Hearings at <https://www.aacounty.org/departments/admin-hearings/>.

⁴ The transfer of a parcel of land to a new owner does not scrub off the rights the seller had at the time of sale.

impact of laws passed after 1952 on the rights property owners possessed at the time the first zoning restrictions came into effect.

The Use Variance

In *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974), the Maryland Court of Special Appeals discussed the differences between “use variances” and “area variances:”

The Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not. Use variances are customarily concerned with ‘hardship’ cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with ‘practical difficulty.’ *Loyola Loan Ass’n v. Buschman*, 227 Md. 243, 248, 176 A.2d 355, 358 (1961). Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

- 1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. *Pem Co. v. Baltimore City*, 233 Md. 372, 378, 196 A.2d 879, 882 (1964); *Marino v. City of Baltimore*, 215 Md. 206, 218, 137 A.2d 198, 202 (1957); see *Salisbury Bd. v. Bounds*, 240 Md. 547, 555, 214 A.2d 810, 815 (1965). Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. *Daihl v. County Board of Appeals*, 258 Md. 157,

167, 265 A.2d 227, 232 (1970); *Salisbury Bd. v. Bounds, supra*, 240 Md. at 555, 214 A.2d at 814; *Marino v. City of Baltimore, supra*; *Easter v. City of Baltimore*, 195 Md. 395, 400, 73 A.2d 491, 492 (1950).

2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. *Burns v. Baltimore City*, 251 Md. 554, 559, 248 A.2d 103, 106 (1968); *Marino v. City of Baltimore, supra*; *Easter v. City of Baltimore, supra*.

3) The hardship was not the result of the applicant's own actions. *Salisbury Bd. v. Bounds, supra*; *Marino v. City of Baltimore, supra*; *Gleason v. Keswick Impvt. Ass'n*, 197 Md. 46, 50-51, 78 A.2d 164, 165-166 (1951).

Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 38-41, 322 A.2d 226-228 (1974).

Using the three criteria enunciated in the *Anderson* case quoted above, the evidence supports the grant of the requested variance.

1. Inability to secure a reasonable return or make reasonable use of the property.

The property is a residence. There is no commercial potential in the use of a residence, aside from rental or appreciated value that an applicant expects when a residence is purchased. Therefore, this criteria does not apply to the current application.

2. The difficulties or hardships peculiar to the property and in contrast to those of other property owners in the same district.

The property is substandard in area (5,000 square feet as opposed to the required 7,000 square feet) and width (50 feet in width as opposed to the required 60 feet) for a lot in an R5 district. Furthermore, zoning has classified the rear third of the property as Open Space. Had this not occurred, no variance would be necessary to install the well in the OS portion of the property.

The applicant has shown that the well cannot be installed elsewhere on the property because of the required setbacks from wells on other properties and the grinder pit in the front yard of the subject property. The need for the variance is caused by the physical characteristics of the property and the OS zoning of the rear of the property. A dwelling is not habitable without access to potable water. There is no public water available in this neighborhood. Denying the requested use variance would deny the applicant the right to develop the property with a single-family residential dwelling. This would constitute an unwarranted hardship.

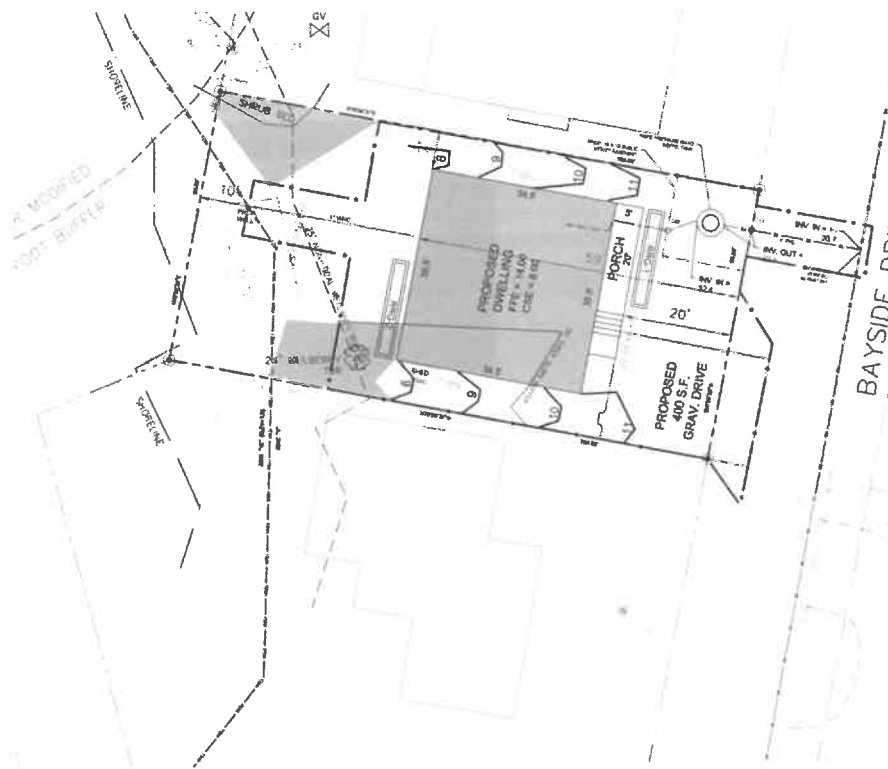
3. The hardship was not the result of the applicant's own actions.

The hardship is not the result of actions by the applicant.

For all the above reasons, the use variance to allow the well to be installed in the OS portion of the property as indicated on County Exhibit 2 will be granted.

The Setback Variance

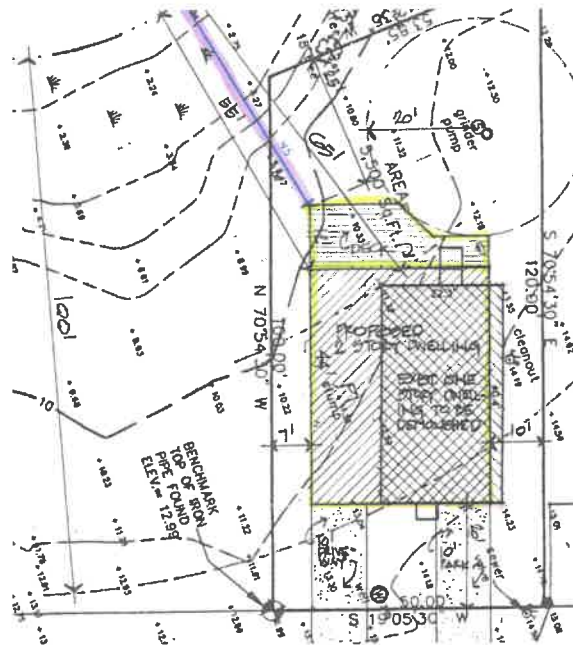
OPZ concluded the property is not waterfront. This determination means that the front of the property is on Bayside Drive. This determines the setbacks (front, side, rear) that apply to a structure that is built on it. The applicant wants to build a dwelling with a front porch that extends 5 feet into the 25-foot front setback from Bayside Drive. While the applicant could build a dwelling without a front porch, a front porch is a common amenity in the neighborhood. The proposed dwelling will be approximately the same distance from Bayside Drive as the property to the south and, with the porch, will be approximately the same distance from Bayside Drive as the property to the north.



Many variances have been granted and/or denied in this pre-1952 community, as shown by the following. (Properties that have applied for variances are shown in green):



1. The subject property.
2. In Case No. 1999-0418-V, the owner of the adjacent property to the north was granted variances to replace an existing home with a larger one:



3. In Case No. 1978-0050-N, the community association was apparently granted nonconforming status for the property shown between the subject property and the shoreline. The paper record of the case could not be found.
4. In Case No. 1998-0053-V and Case No. 1998-0367-V, the owners were granted and denied variances related to a pier extending into the waters of Ramsay Lake.
5. In Case No. 2005-0340-V, the owners were granted a variance to a corner side lot line setback requirement to construct a porch along the Ramsey Drive portion of their property.
6. In Case No. 2001-0042-V, the owner was granted variances to allow the construction of various additions to the existing dwelling.
7. In Case No. 2019-0120-V, the owner was granted variances to allow the construction of various additions to the rear of the existing dwelling.

No variances were found for the property immediately adjacent to the subject property to the south, but variances may not have been necessary to build the structure on that property.

No variances to the critical area law were found.

The above exercise shows that lots in the immediate neighborhood have been granted or denied variances to allow development that did not meet the restrictions imposed by the zoning code.

The proposed dwelling is smaller than the surrounding single-family dwellings. The adjacent property to the north is two-stories in height and listed as

containing 2,634 square feet of living space. The property to the south is listed as containing 1,524 of living space. The proposed dwelling will contain approximately 1,225 square feet of living space. Accordingly, the proposed dwelling is not excessive when compared to its neighbors.

For all the above reasons, the requested variances will be granted.

I further find that the granting of the zoning variances are the minimum needed for relief, the requested variances will not alter the essential character of the neighborhood or district in which the lot is located, will not substantially impair the appropriate use or development of adjacent property, will not reduce forest cover in the limited development and resource conservation areas of the critical area, will not be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

ORDER

PURSUANT to the application of Wilma J. Kluh, petitioning for a use variance to allow a dwelling and associated facilities with less setbacks and buffer than required and with disturbance to slopes of 15% or greater (steep slopes) on property with a street address of 3934 Bayside Drive, Edgewater; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **12th day of August, 2021**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted**:

1. A zoning variance of five (5) to the 25-foot front lot line setback requirement of § 18-4-701 to construct the proposed single-family dwelling as close as 20 feet from the front lot line as shown on County Exhibit 2; and
2. A use variance to the provisions of § 18-9-202 to allow the applicant to install the proposed well in the OS district portion of the property as shown on County Exhibit 2.

The foregoing variances are subject to the following conditions:

- A. The applicant shall comply with any instructions and necessary approvals from the Office of Planning and Zoning, the Department of Inspections and Permits, the Department of Health, and/or the Critical Area Commission.
- B. The height of the dwelling shall not exceed thirty (30) feet.

This Order does not constitute a building permit. In order for the applicant to construct the structures permitted in this decision, the applicant must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Furthermore, County Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein. The decision and order shall not prohibit the applicant from making minor changes to the facilities as presently shown on

County Exhibit 2 to adjust for changes made necessary by comments or requirements that arise during plan review or construction, provided those minor changes do not exceed the variances granted herein. The reasonableness of any such change shall be determined by the Office of Planning and Zoning.



Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

This Order does not constitute a building permit. In order for the applicant to perform the work permitted in this decision, the applicant must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Any person, firm, corporation, or governmental agency having an interest in this Decision and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals within thirty (30) days from the date of this Decision. **If the variance or variances granted in this case relate to work in the critical area, a permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further, § 18-16-405(a) provides that a variance or special exception that is not extended or tolled **expires by operation of law** unless the applicant **within 18 months** of the granting of the variance or special exception (1) obtains a building permit or (2) files an application for subdivision. Thereafter, the variance or special exception shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded among the land records pursuant to the application for subdivision, the applicant obtains a building permit within one year after recordation of the plat, and construction proceeds in accordance with the permit.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, or they may be discarded.



CALL BEFORE YOU DIG!
 MARYLAND LAW REQUIRES 48 HOURS NOTICE
 BEFORE PLANNED WORK TO MARK
 UNDERGROUND UTILITIES PRIOR TO EXCAVATION
 MISS UTILITY: 1-800-257-1777

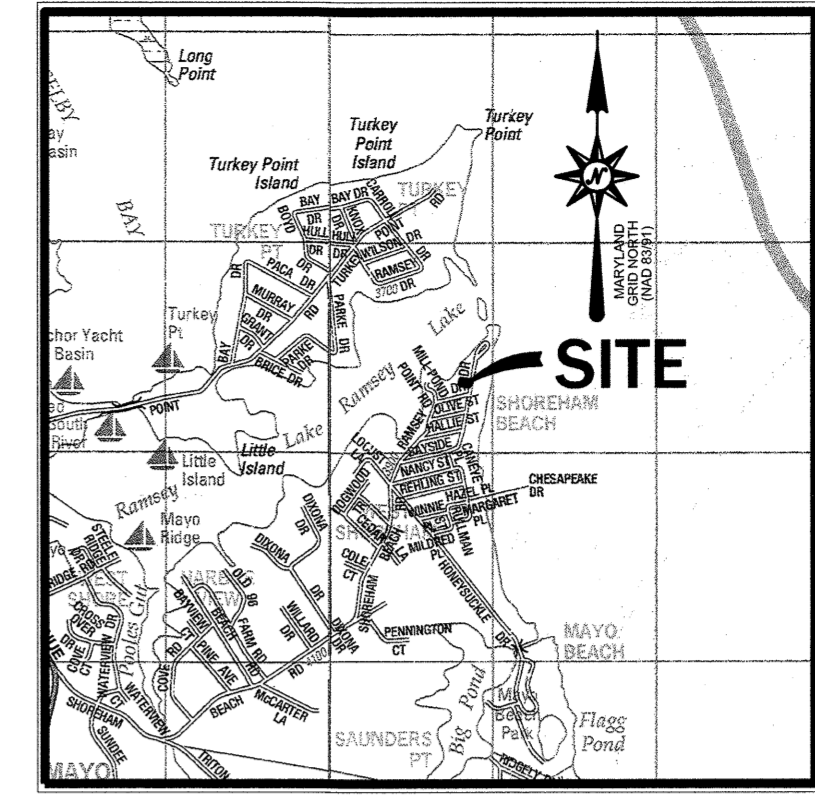


VARIANCE REQUEST

§ 17-8-201. DEVELOPMENT ON SLOPES OF 15% OR GREATER.
 (B) DEVELOPMENT IN THE IDA. DEVELOPMENT IN THE INTENSELY DEVELOPED AREA (IDA) MAY NOT OCCUR WITHIN SLOPES OF 15% OR GREATER UNLESS DEVELOPMENT WILL FACILITATE STABILIZATION OF THE SLOPE OR THE DISTURBANCE IS NECESSARY TO ALLOW CONNECTION TO A PUBLIC UTILITY. THE PLANNING AND ZONING OFFICER MAY GRANT MODIFICATION TO THE PROHIBITION OF THIS SUBSECTION FOR SLOPES OUTSIDE OF THE BUFFER AND BUFFER MODIFICATION AREA.
 § 18-13-104. BUFFERS, EXPANDED BUFFERS, AND BUFFER MODIFICATION AREAS.
 BUFFER. THERE SHALL BE A MINIMUM 100-FOOT BUFFER LANDWARD FROM THE MEAN HIGH-WATER LINE OF TIDAL WATERS, TRIBUTARY STREAMS, AND TIDAL WETLANDS. SPECIFIC DEVELOPMENT CRITERIA APPLY AS SET FORTH IN ARTICLE 17 OF THIS CODE AND COMAR.
 EXPANDED BUFFER. 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:
 IF THERE ARE CONTIGUOUS SLOPES OF 15% OR GREATER, THE BUFFER SHALL 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 SLOPE.
 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.

VARIANCE SITE PLAN
 SCALE: 1" = 10'

DESCRIPTION	AREA
EXISTING LOT AREA	5,000 SQ. FT. ± OR 0.114 AC.
PROPOSED LOD	4,200 SQ. FT. ± OR 0.096 AC.
PROPOSED STEEP SLOPE DISTURBANCE	140 SQ. FT. ± OR 0.003 AC.
PROP. STEEP SLOPE BUFFER DISTURBANCE	402 SQ. FT. ± OR 0.009 AC.
PROP. NON-TIDAL WETLAND DISTURBANCE	0.0 SQ. FT. ± OR 0.000 AC.
PROP. 25' NON-TIDAL BUFFER DISTURBANCE	92 SQ. FT. ± OR 0.002 AC.



VICINITY MAP
 SCALE: 1" = 2,000'
 COPYRIGHT ADC THE MAP PEOPLE
 PERMITTED USE NO. 06301200

GENERAL NOTES

- PROPERTY OWNERS: WILMA KLUH 1239 K ST SE WASHINGTON, DC 20003
- SITE ADDRESS: 3934 BAYSIDE DRIVE EDGEWATER, MD 21037
- THE PROPERTY IS LOCATED ON TAX MAP 60, GRID 18, PARCEL 92 LOT 4-5, BLOCK 3 OF SHOREHAM BEACH
- TAX ACCOUNT NUMBER: 1-749-02051901
- THIS PLAN DOES NOT REFLECT A BOUNDARY SURVEY.
- THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT, WHICH MAY SHOW ADDITIONAL CONVEYANCES, EASEMENTS, COVENANTS, RIGHTS-OF-WAYS OR MORE STRINGENT BUILDING RESTRICTION LINES NOT SHOWN HEREON.
- ZONING: R-5 SETBACKS PRINCIPAL STRUCTURE: FRONT: 25' SIDE: 7' CORNER SIDE: 20' REAR: 20'
- SITE IS SERVED BY PUBLIC WATER AND SEWER
- TOPOGRAPHICAL INFORMATION PROVIDED BY OTHERS. BOUNDARY AND LOCATIONS PER SAME SURVEY
- SITE IS LOCATED IN THE IDA DESIGNATION OF THE CHESAPEAKE BAY CRITICAL AREA. SITE IS NON BMA.
- SITE IS LOCATED PARTIALLY IN FLOOD ZONE VE ELEV=7' AND ZONE X PER FEMA MAP AACO 24003C0158F EFFECTIVE DATE 2/18/2015
- DISTURBED AREA = 3,785 SQ. FT.

PROPOSED IMPERVIOUS COVERAGE SUMMARY

DESCRIPTION	AREA
EXISTING LOT AREA	5,000 SQ. FT. ± OR 0.114 AC.
EXISTING LOT COVERAGE	20.0 SQ. FT. ± OR 0.000 AC.
PROPOSED IMPERVIOUS LOT COVERAGE	1,785 SQ. FT. OR 0.041 AC.
EXISTING WOODLANDS ON SITE	0.0 SQ. FT. ± OR 0.000 AC.

PROPOSED LOT COVERAGE INCLUDES:	AREA
PROP. HOUSE/PORCHES	1,325 SQ. FT.
PROP. DRIVEWAY	400 SQ. FT.
PROP. CONCRETE	60 SQ. FT.

TOTAL PROPOSED LOT COVERAGE 1,785 SQ. FT.

LEGEND

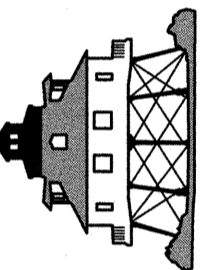
PROPERTY LINE / RIGHT-OF-WAY	---
EXISTING CONTOUR	-142
EXISTING WOODS	~~~~~
EXISTING FENCE	x x x x
EXISTING UTILITY POLE W/ OVHD WIRE	-o- -o- -o-
EXISTING WATER	~~~~~
EXISTING SOILS DESIGNATION	AsC
EXISTING SPOT ELEVATION	+42.00
EXISTING ZONING	R1
EXISTING PERC/SOIL BORING	⊕
EXISTING WOODLANDS	
PROPOSED CONTOUR	12
PROPOSED SPOT ELEVATION	+42.00
PROPOSED LIMIT OF DISTURBANCE	---
PROPOSED REINFORCED SILT FENCE	RSF
PROPOSED TOP OF WALL	TW
PROPOSED BOTTOM OF WALL	BW
PROPOSED STABILIZED CONSTRUCTION ENTRANCE	SCE
STORMWATER MANAGEMENT DRAINAGE AREA	---

Revisions

Rev. #	Date	Description

Rev. #	Date	Description

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Date: OCTOBER, 2020

Job Number: 18-6766

Scale: AS SHOWN

Drawn By: J. SLENKER

Approved By: M. GILLESPIE

Folder Reference: KLUH PROPERTY SHOREHAM BEACH

VARIANCE SITE PLAN

GRADING PERMIT PLANS

FOR THE

KLUH PROPERTY

A SINGLE FAMILY RESIDENCE

TAX MAP 60, GRID 18, PARCEL 92, LOT 4

3934 BAYSIDE DRIVE

EDGEWATER, MARYLAND 21037

ZONED: R-5

FIRST ELECTION DISTRICT - ANNE ARUNDEL COUNTY

F:\18-6766 Kluh Property Shoreham Beach\Drawing Files\Grading Permit Plans\18-6766 Grading Permit Plans.dwg

Sheet No. 3 OF 6

12/26/2021

1 of 71

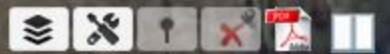
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BAYSIDE DR

RAMSEY DR

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