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

APPLICANT: Mark & Suzanne Grande **ASSESSMENT DISTRICT**: 2nd

CASE NUMBER: 2023-0181-V COUNCILMANIC DISTRICT: 6th

HEARING DATE: January 4, 2024 PREPARED BY: Sara Anzelmo

Planner

REQUEST

The applicants are requesting a variance to perfect a dwelling addition (deck) with disturbance to slopes of 15% or greater on property located at 638 Maid Marion Hill in Annapolis.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of 30,721 square feet of land and is located with approximately 165 feet of frontage on the north side of Maid Marion Hill. It is identified as Lot 638R of Parcel 295 in Grid 19 on Tax Map 39 in the Sherwood Forest subdivision.

The property is zoned R2 – Residential District, as adopted by the comprehensive zoning for Council District 6, effective October 7, 2011. This lot is not waterfront, but it is located entirely within the Chesapeake Bay Critical Area and is designated as LDA – Limited Development Area. It is improved with two-story single-family detached dwelling with a basement and other associated facilities, including an attached deck that is the subject of this variance application.

PROPOSAL

The applicants seek after-the-fact approval for construction of an irregularly shaped rear deck, which exceeded the scope of the approved building permit for an in-kind replacement of the previously existing structure.

REQUESTED VARIANCES

§ 17-8-201(a) of the Subdivision and Development Code provides that development in the limited development area (LDA) 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 construction of the deck necessitates a variance to perfect the disturbance of an unspecified area of slopes of 15% or greater. If approved, the actual amount of slope disturbance will be determined at the time of permitting.

FINDINGS

The subject property easily exceeds the minimum 20,000 square foot area and 80-foot width required for lots not served by public sewer in an R2 District. A review of the County 2023 aerial

photograph shows an eclectic mix of dwellings in this older waterfront community. The homes occupy a wide variety of lot shapes and sizes, and the subject lot is one of the larger lots in the community. Like the subject property, many nearby lots are significantly encumbered by steep slopes. Many of the neighborhood dwellings were constructed prior to the enactment of critical area laws. However, the subject dwelling was recently reconstructed in 2023.

The applicants' letter explains that the prior residence was totally destroyed by a fire caused by a lightning strike on September 1, 2021. This application seeks to perfect the deck constructed on their residence in the course of the replacement in-kind of their home following the catastrophic fire. The deck and the removal of the associated brick pavers exceeded the scope of the building permit (B02415466). The modification included the removal of 370 square feet of decking and the addition of 383 square feet of deck area, for a net gain of 13 square feet of deck area. However, the change was made adjacent to the steep slopes along the back side of the residence and without the benefit of the approval of a revised plan. The applicants note that the proposed development constitutes a net decrease in lot coverage of 2,230 square feet. They also assert that, despite the after-the-fact nature of this request, the deck is reasonable and did not cause additional disturbance adjacent to the steep slopes during the course of the reconstruction project.

The **Health Department** reviewed the proposal and has no objection; the **Soil Conservation District** reviewed the proposal and provided no comment.

The **Critical Area Commission** commented that appropriate mitigation is required. This includes mitigation at a 4:1 ratio for the unpermitted improvements and at a 3:1 ratio should the variance request be approved. Additional mitigation is required at a 1:1 ratio for the square footage of tree canopy coverage removed. Further, the Commission notes that, if the areas noted for gravel/pavement removal on the plan are located within the Critical Area Buffer or expanded Buffer, then those areas should be stabilized and planted in natural vegetation.

The **Development Division** (Critical Area Team) commented that the reconstruction of a fire damaged dwelling is afforded certain relief from process requirements for an In Kind Replacement. This structure was originally approved under those standards. Provided that the applicant can sufficiently demonstrate that the reconfiguration of the prior deck can comply with the approval standards for a variance request, the Critical Area Team has no objection.

The Cultural Resources Section commented that this relates to a non-contributing structure within an historic district, Sherwood Forest (AA-941). As such, there are no associated special requirements, and the Cultural Resources Section has no objection.

For the granting of a critical area variance, a determination must be made as to whether, because of certain unique physical conditions peculiar to and inherent in the particular property, strict implementation of the County's Critical Area Program would result in an unwarranted hardship. In this case, steep slopes are present throughout the site. While this condition is not unique relative to other properties within the surrounding neighborhood, the redevelopment of the fire-damaged property would have resulted in slope disturbance, regardless of whether the deck was reconfigured or simply replaced in-kind as initially proposed.

A literal interpretation of the County's Critical Area Program would deprive the applicants of rights that are commonly enjoyed by other properties in similar areas. The granting of the variance would not confer on the applicants a special privilege that would be denied by COMAR, Title 27.

While the applicants did proceed with the deck construction without the benefit of the appropriate permit and variance approvals, the innate conditions of the property that lead to the need for the variance were not a result of those actions by the applicants. The variance did not arise from any condition relating to land or building use on any neighboring property. With proper mitigation, the variance would not adversely affect water quality or impact fish, wildlife, or plant habitat and would be in harmony with the general spirit and intent of the County's Critical Area Program. The applicants have overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law and have evaluated and implemented site planning alternatives by removing impervious coverage to offset the environmental impacts.

With regard to the requirements for all variances, approval would not alter the essential character of the neighborhood or substantially impair the appropriate use or development of adjacent property. The replacement deck has been constructed in the same general location as the previously existing deck and exceeds the minimum setbacks from all property lines. The variance would not reduce forest cover in the limited development area, would not be contrary to acceptable clearing and replanting practices, and would not be detrimental to the public welfare.

The reconfigured deck resulted in a only13 square feet of additional deck area, while the overall redevelopment resulted in a 2,330 square foot reduction in impervious surface. Therefore, this Office is satisfied that the proposed variance represents the minimum necessary to afford relief.

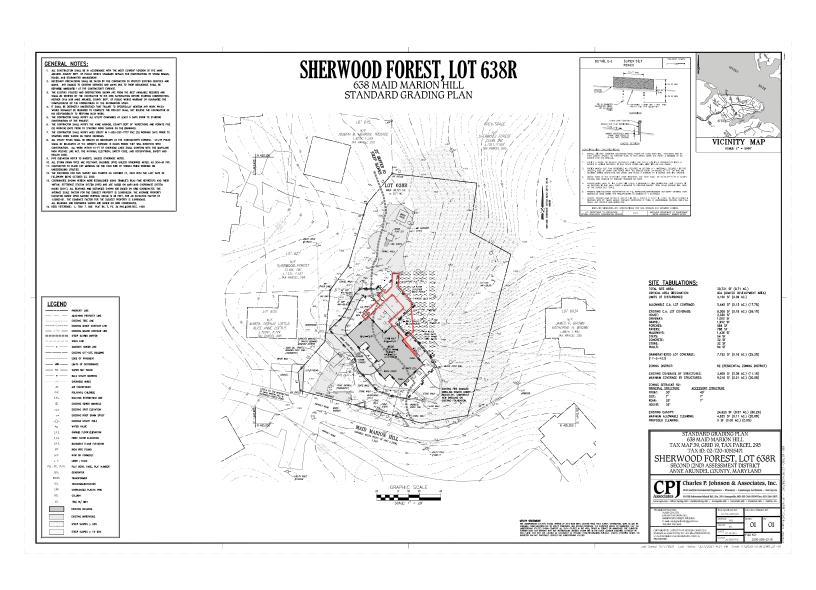
RECOMMENDATION

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends *conditional approval* of a variance to § 17-8-201(a) to perfect a dwelling addition (deck) with disturbance to slopes of 15% or greater, as shown on the applicants' site plan. Should the Administrative Hearing Officer determine that a variance is warranted, any approval must be conditioned on the conditions provided in §18-16-305(c) and (d) as follows:

(c) Conditions for granting a variance in the critical area.

- (1) For a property with an outstanding violation the granting of a variance in the critical area under subsection (b) 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.
- (2) Notwithstanding the requirements of subsection (c)(1), the Office of Planning and Zoning may extend the time for abatement to the next planting season because of adverse planting conditions. An applicant may also be granted a 180 day extension to satisfy the conditions of a variance upon timely application to the Planning and Zoning Officer and good cause shown.
- (d) **Lapse.** Any critical area variance granted for a property with an outstanding violation shall lapse by operation of law if the conditions of subsection (c)(1) are not satisfied within 90 days or as extended.

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.





BARBARA J. PALMER

e-mail: bpalmer@hwlaw.com

October 9, 2023

Via Electronic Submittal

Anne Arundel County Office of Planning and Zoning 2664 Riva Road – 3rd Floor Annapolis, Maryland 21401

Re: Mark and Suzanne Grande (the "Applicant")

Variance Application – 638 Maid Marion Hill

Annapolis, Maryland 21405 (the "Property")

Tax Acct. No. 02-720-10515471 Building Permit No. B02415466

To Whom It May Concern:

This office represents the Applicant, Mark and Suzanne Grande, regarding their application for a variance to perfect the deck constructed on their residence in the course of the replacement-in-kind of their home following a catastrophic fire in 2021. The deck was modified from the originally approved configuration during the course of construction. The modification included the removal of 370 square feet of decking, and the addition of 383 square feet of deck area, for a net gain of 13 square feet of deck area. This change, however, was made without the benefit of the approval of a revised plan and is adjacent to the steep slopes along the back side of the residence. At this time, the Applicant request this variance so as to correct the error and become fully complaint with the requirements of the County Code. The Applicant asserts that despite the fact that this is an after-the-fact request, the structure as built is reasonable and subject to approval, as the deck, as constructed, did not cause additional disturbance adjacent to the steep slopes, during the course of the reconstruction project.

The variance being requested is to Anne Arundel County Code, §17-8-201(a), for disturbance to steep slopes. As indicated in the Critical Area Report provided herewith, the required variance for the deck and the removal of the associated brick pavers exceeded the scope of the building permit—B02415466, however, the proposed development constitutes a *net decrease* of lot coverage of 2,230 square feet.

The Grande residence was totally destroyed by a fire, caused by a lightning strike on September 1, 2021. Trees adjacent to the residence were burned in the fire. No live trees were removed in the course of this construction or related to this variance request, however as a result of the disturbance, and in accordance with County requirements, the tree canopy clearing due to

the proposed activity is 1,200 square feet. A 3:1 replanting mitigation will be met upon approval of this request. As a result, the development will not reduce forest cover or be contrary to acceptable practices.

On behalf of the Applicant, we appreciate your time and attention reviewing this application. Please let me know if you require any additional information during your review, and I look forward to getting on the Administrative Hearing Officer's agenda in the near future.

Sincerely,

HYATT & WEBER, P.A.

Barbara J. Palmer

Barbara J. Palmer

cc: Mark and Suzanne Grande

September 13, 2023

Chesapeake Bay Critical Area Report Sherwood Forest, Lot 638R Tax Map 39, Grid 19, Parcel 295 Tax Account No. 02-720-10515471

Property Address: 638 Maid Marion Hill, Annapolis, MD 21405

Property Owner & Variance Applicant: Mark & Suzanne Grande

Critical Area Designation: LDA Zoning: R2 Lot Area: 0.7053 Ac.

Site Description

The subject property is known as Sherwood Forest at 638 Maid Marion Hill, which was created by deed (Book: 7851, Page: 566) on March 31st, 1997. A revised plat was recorded in the land records of Anne Arundel County (Book: 135, Page: 16, Plat #7039) circa 1991. The property is located on the north side of Maid Marion Hill and steep slopes and with their buffers exist on site. The property is currently improved with a single-family dwelling, driveway, wood deck, and brick patio. Vegetative stabilization consists mainly of mulch, trees, and ornamental shrubs. The dwelling was destroyed by fire when it was struck by lightning on September 1, 2021, and has been reconstructed on the same foundation circa 2023. The Maid Marion Hill right-of-way is variable. The property is zoned R2, and is entirely within the Chesapeake Bay Critical Area, with an LDA land use designation. The dwelling is served with community water and private septic system.

Proposed Use

The property owners wish to disturb steep slopes to construct a deck and remove gravel and brick pavers, exceeding the scope of permit B02415466. Therefore, a variance to **Article 17-8-201** of the Anne Arundel County Code is sought for disturbance to steep slopes.

Vegetative Coverage

Vegetative stabilization consists of trees, and ornamental shrubs. The area to be disturbed by the proposed work will be 4,909 S.F. (0.11 Ac.). The existing developed woodland area on-site is 24,623 S.F. (0.57 Ac.). The tree canopy clearing due to proposed activities is 1,200 S.F. (0.03 Ac.). During permit acquisition, a Buffer Management Plan will be submitted showing a robust planting schedule in accordance with COMAR's requirement for 3:1 mitigation; therefore, the development will not reduce forest cover or be contrary to acceptable clearing and replanting practices.

Lot Coverage

The site currently has 8,008 S.F. (0.18 Ac.) of existing lot coverage. The proposed lot coverage area for this property is 5,778 S.F. (0.13 Ac.). The total allowable lot coverage is 5,445 S.F. (0.13 Ac.). The total grandfathered lot coverage is 7,752 S.F. (0.18 Ac.). The proposed development constitutes a net decrease of lot coverage of 2,230 S.F. (0.05 Ac.).

Predominant Soils

The predominant soil types in the area are Annapolis Fine Sandy Loam (AsG), 40 to 80 percent slopes, and Collington and Annapolis Soils (CRD), 10 to 15 percent slopes. The soils have hydraulic classification C and B, respectively. The soils are considered hydric and non-hydric, respectively.

Drainage and Rainwater Control

Runoff from this property flows generally north towards private property. Proper sediment and erosion control devices, such as super silt fence, were implemented throughout the entire demolition and construction phases.

Conclusions

The applicant seeks a variance to the Chesapeake Bay Critical Area regulations to perfect the construction of the deck. We are requesting a variance to the Chesapeake Bay Critical Area regulations. Specifically, a variance to **Article 17-8-201** of the Anne Arundel County Code is sought for the disturbance to the buffer to sleep slopes.

The granting of the variance will not adversely affect water quality or deleteriously affect flora and fauna within the Critical Area. The proposed development will decrease lot coverage on-site.

This report is based on a site plan prepared by Charles P. Johnson & Associates dated September 13, 2023.

CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS 1804 WEST STREET, SUITE 100 ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction:	Anne Aruno	lel County	Date: October 9, 2023									
						FOR RESUBMITTAL ONLY						
Tax Map #	Parcel #	Block #	Lot #	Section		Corrections						
39	295	0019	638R			Redesign						
			Pl6			No Change						
						Non-Critical Area						
<u></u>						*Complete Only Page 1						
Tax ID:	02-720-10515	471	General Project Information									
Concrete Project Information												
Project Name (site name, subdivision name, or other) Mark & Suzanne Grande												
Project location/Address 638 Maid Marion Hill												
City Anna	polis , Marylaı	nd	Zip	21405								
Local case number												
Applicant:	Last name	Grande			First na	ame Mark & Suzanne						
Company N/A												
Application 7	Гуре (check al	l that apply):										
		_										
Building Pern				Variance	X							
Buffer Manag				Rezoning								
Conditional U				Site Plan	. 📙							
Consistency Report Special Exception												
Disturbance >	Disturbance > 5,000 sq ft Subdivision Grading Permit Other											
Grading Perm	it											
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Local Jurisdi	ction Contact	Information:										
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Last name _				First name								
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Phone #			Kespor	ise from Comm	ussion Ke	quired By						
E #				II a a nin - d-1								
Fax #				Hearing date								

SPECIFIC PROJECT INFORMATION

Describe Proposed use of							
After the fact variance	for modi	fication of d	eck near ste	ep slopes in the Critical Area du	ring the rec	onstruction	
of residence destroyed							
Intra-Family Transfer Grandfathered Lot			Yes Growth Allocation Buffer Exemption Area				
Project Type (check al	l that app	oly)					
Commercial Consistency Report Industrial Institutional Mixed Use Other			Recreational Redevelopment Residential Shore Erosion Control Water-Dependent Facility				
SITE INVENTORY (F	Enter acro	es or square	feet)		Acres	Sa Et	
Acr		es	Sq Ft	Total Disturbed Area	Actes	Sq Ft	
IDA Area			_	Total Distarboa Thou			
LDA Area 0.705		53					
RCA Area			# of Lots Created				
Total Area)53		,, 5			
Existing Forest/Woodland	Trees	Acres	Sq Ft	Existing Lot Coverage	Acres 0.18	Sq Ft	
Created Forest/Woodland		0.57		New Lot Coverage	0.13		
Removed Forest/Woodlan		0.02		Removed Lot Coverage	0.15	2,230	
Removed Polest/Woodlan	u/11ccs	0.03		Total Lot Coverage		2,230	
				Total Lot Coverage			
VARIANCE INFORM	IATION ((Check all the	11 07		Acres	Sa Et	
Buffer Disturbance		Actes	Sq Ft	Duffen Fenant Classins	Acres	Sq Ft	
Non-Buffer Disturbance				Buffer Forest Clearing Mitigation			
Variance Type Buffer Forest Clearing HPA Impact Lot Coverage Expanded Buffer Nontidal Wetlands Setback Steep Slopes Other			B D D G G P:	Structure cc. Structure Addition arn eck welling welling Addition arage azebo atio Pool			
				hed U			



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

Tonii Gedin, RN, DNP Health Officer

MEMORANDUM

TO:

Sadé Medina, Zoning Applications

Planning and Zoning Department, MS-6301

FROM:

Brian Chew, Program Manager

Bureau of Environmental Health

DATE:

October 26, 2023

RE:

Mark & Suzanne Grande

638 Maid Marion Hill Annapolis, MD 21405

NUMBER:

2023-0181-V

SUBJECT:

Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to perfect a dwelling (deck) with disturbance to slopes of 15% or greater.

The Health Department has reviewed the on-site sewage disposal for the above referenced property. The Health Department has determined that the proposed request does not adversely affect the on-site sewage disposal. The Health Department has no objection to the above referenced request.

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

cc:

Sterling Seay



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

CAC Comments: Zwirlein 2023-0165-V, Grande 2023-0181-V, Frandson 2023-0159-V, Galloway 2023-0177-V, Mazer 2023-0182-V

Jennifer Esposito <jennifer.esposito@maryland.gov> To: Sadé Medina <pzmedi22@aacounty.org>

Mon, Oct 23, 2023 at 4:18 PM

Good afternoon,

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

- 2023-165-V; Zwirlein (AA 339-23): The applicant is requesting an after-thefact variance to disturb the Critical Area Buffer to perfect a 336-square foot shed approximately 63-feet from the mean high water line. The property is located within the Intensely Developed Area (IDA) and is mapped as Buffer Modified. While the unpermitted replacement shed is in the same location as the original shed, this office opposes the variance request as this proposal does not meet each and every one of the Critical Area variance standards such as unwarranted hardship and that this proposal minimizes impacts to water quality and habitats. On the contrary, the unpermitted shed is more than double the size of the original shed. The applicant currently has reasonable and significant use of the lot with the existing improvements which include a dwelling, porch, patio, an accessory structure, riparian access, driveway, and walkways. If the unpermitted and larger shed were to be denied, the applicant would still have reasonable and significant use of the entire lot. Moreover, the applicant had the ability to replace the shed inkind without the need for a variance. Replacing the existing shed with a new shed of similar size would show minimization to water quality and habitat impact. However, if the Administrative Hearing Officer finds that the applicant satisfied the burden of proof and persuasion that each and every one of the Critical Area variance standards are met, then appropriate mitigation is required. This includes mitigation at a 4:1 ratio for the unpermitted Buffer impacts and at a 3:1 ratio for the square footage of Buffer impacts approved under this variance request. Additional mitigation is required at 1:1 ratio if canopy coverage was removed as a result of the shed replacement. Moreover, given that the property is located in the IDA, the Critical Area 10% pollutant removal requirements apply to this site.
- 2023-0181-V; Grande (AA 335-23): Appropriate mitigation is required. This includes mitigation at a 4:1 ratio for the unpermitted improvements, and at a 3:1 ratio should the variance request be approved. Additional mitigation is required at a 1:1 ratio for the square footage of tree canopy coverage removed. Further, we note that if the areas noted for gravel/pavement removal on the plan are located within the Critical Area Buffer or expanded

Buffer, then those areas should be stabilized and planted in natural vegetation.

Additionally, appropriate mitigation is required for the following variances:

- 2023-0159-V; Frandson (AA 338-23)
- 2023-0177-V; Galloway (AA 034-23)
- 2023-0182-V; Mazer (AA 336-23)

Thank you for the opportunity to provide comments. The above-comments have also been submitted through the County's online portal. Please feel free to contact me should you have any questions.



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

2023-0181-V

Menu Cancel Help Assigned Date 10/09/2023 Due Date Task OPZ Critical Area Team
Assigned to Department
OPZ Critical Area 10/30/2023 Assigned to Kelly Krinetz Status Complete w/ Comments **Action by Department** Action By Status Date 11/16/2023 OPZ Critical Area Start Time Kelly Krinetz End Time Hours Spent 0.0

Comments

The reconstruction of a fire damaged dwelling is afforded certain relief from process requirements for an In Kind Overtime No Billable The reconstruction of a fire damaged dwelling is afforded certain relief from process requirements for an In Kind Replacement.

This structure was originally approved under those standards.

Provided the applicant can sufficiently demonstrate that the reconfiguration of the prior deck can comply with the approval standards for a variance request, this Office has no objection.

Time Tracking Start Date

Display E-mail Address in ACA

Display Comment in ACA

Display Comment in ACA

Display Comment Display in ACA All ACA Users Record Creator Licensed Professional Contact Owner Estimated Hours 0.0 Action Updated Workflow Calendar

Task Specific Information

Review Notes Reviewer Email Reviewer Name

Reviewer Phone Number

2023-0181-V

Menu Cancel Help Assigned Date 10/09/2023 Task OPZ Cultural Resources Due Date 10/30/2023 Assigned to Stacy Poulos Action By Stacy Poulos End Time Status
Complete w/ Comments
Status Date
10/27/2023
Hours Spent Assigned to Department OPZ Cultural Resources Action by Department
OPZ Cultural Resources
Start Time All ACA Users Record Creator Licensed Professional Contact Owner
Workflow Calendar **Estimated Hours** Action Updated

Reviewer Phone Number

Task Specific Information

Review Notes Reviewer Name

Reviewer Email

