

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

**APPLICANT:** Emily Nguyen

**ASSESSMENT DISTRICT:** 2nd

**CASE NUMBER:** 2023-0106-V

**COUNCILMANIC DISTRICT:** 6th

**HEARING DATE:** January 25, 2024

**PREPARED BY:** Robert Konowal  
Planner

**REQUEST**

The applicant is requesting variances to construct dwelling additions with less setbacks than required at 3325 Shore Drive in the subdivision of Oyster Harbor, Annapolis.

**LOCATION AND DESCRIPTION OF SITE**

The subject property has approximately 100 feet of road frontage on the east side of Shore Drive, 50 feet south of Howard Road. These lands have an area of approximately 6,968 square feet. The site is shown on Tax Map 57, Grid 21, in Parcel 8 as Lots 4 and 5 and is zoned “R2-Residential District”. The current zoning was adopted for the Sixth Council District on October 7, 2011.

The property is a waterfront lot on the Chesapeake Bay located in the Chesapeake Bay Critical Area and is designated “LDA-Limited Development Area”.

These lands are currently developed with a one-story single family detached dwelling having a footprint measuring approximately 32 feet in depth and 41 feet in width. A concrete driveway is located along the north side of the dwelling. There are two small attached at-grade decks located on the water side of the dwelling, two sheds on the south side of the dwelling and a freestanding deck with gazebo in the north side yard. There is a concrete walkway from the dwelling to the pier as well as a small concrete landing located on the water side of the dwelling.

**APPLICANT’S PROPOSAL**

The applicant wishes to construct a full second story addition over the existing dwelling. The second story addition measures 32 feet in depth and 56 feet in width and will overhang the driveway located on the north side of the dwelling thereby creating a carport. Two decks are proposed. A six foot deep by 33 foot wide deck is to be located off the proposed second floor on the east (water) side of the dwelling (front yard) along with a set of stairs 3.4 feet in width and 10 feet in length leading to grade. A second deck five feet deep by 14 feet wide will be located off the proposed second floor on the west (street side) of the dwelling (rear yard).

The deck and gazebo, the two small attached at-grade decks located on the water side of the dwelling and the two areas of concrete are to remain. The agent for the applicant indicated the two sheds (92 square feet) on the south side of the dwelling are to be removed.

## **REQUESTED VARIANCES**

Section 18-4-601 of the Anne Arundel County Zoning Ordinance requires that a principal structure in an R2 - Residential District be located a minimum distance of 30 feet from a front lot line. Section 18-2-301(f) of the Code however allows a single-family detached dwelling (i.e., principal structure) on a lot that does not meet the area or width requirements to be expanded if the expansion is set back at least 25 feet from the front and rear lot lines. The proposed six foot deep second floor deck will be located as close as 22 feet from the front lot line (mean high water line) necessitating a variance of three feet.

Section 18-4-601 of the Code requires that a principal structure be located a minimum distance of 25 feet from a rear lot line whereas the second floor addition, including the addition over the driveway to create a carport will be located as close a six feet from the rear lot line requiring a variance of 19 feet. A second floor deck located one foot from the rear lot line will require a variance of 24 feet.

Section 18-4-601 of the Code specifies the maximum coverage by structures in the R2 District to be 30% of the gross area of the lot (2,090 square feet) whereas the applicant has proposed 31.7% coverage (2210 square feet) by structures necessitating a variance allowing 1.7% or 120 square feet of additional coverage by structures.

## **FINDINGS**

This Office finds that the subject property at 6,968 square feet in area is severely undersized and does not meet the minimum lot area of 15,000 square feet for a lot served by public sewer in a R2 District. The provision establishing a maximum of 30% coverage by structures was predicated on a lot size of at least 15,000 square feet whereas the subject property is only 6,968 square feet in size. Denial of a variance to the maximum coverage by structures would cause hardship in the use of these lands.

The requested variances also relate to existing construction that does present a practical difficulty in complying with the Code. The proposed second story living space addition follows the line of existing construction. The second floor expansion of living space also minimizes expansion of Critical Area lot coverage.

In the case of the deck located on the water side of the house, denial of a variance to accommodate the second floor deck would cause hardship in the use of these lands as a deck on the water side of a waterfront dwelling is a common amenity of waterfront properties. The same cannot be said for the deck located on the street side of the dwelling. Denial of the variance for a second deck would not cause hardship in the use of these lands as a second amenity area is not necessarily a common right enjoyed by others.

The second floor addition will not be located any closer to either the rear lot line than the existing structure and does represent the minimum necessary to afford relief. The proposed second floor deck on the water side of the dwelling at 33.5 feet in width is considered to be the minimum necessary to afford relief as the applicant has opted for a long, narrow deck rather than a shorter, deeper deck that would project further into the required front lot line setback. Since the variance for the deck on the street side of the house is not considered to be warranted it cannot be the minimum necessary to afford relief.

Approval of the variance related to the deck on the street side of the dwelling is not consistent with the prevailing setbacks in the area and would alter the essential character of the neighborhood. The variances related to the remaining proposed improvements would not alter the essential character of the neighborhood.

The requested variances would not negatively impact any abutting property owner as the improvements are located well enough away from adjacent dwellings on neighboring properties. The requested variances will not be contrary to acceptable clearing and replanting practices required for development in the Critical Area, nor is there any evidence to suggest that the variance will be detrimental to the public welfare.

While the proposed second floor addition and waterfront deck do meet the criteria for granting a variance the proposed deck on the west side of the dwelling does not.

The **Anne Arundel County Department of Health** advised that the Health Department does not have an approved plan for this project but would have no objection to the request as long as a plan is submitted and approved by the Health Department.

### **RECOMMENDATION**

With regard to the standards by which a variance may be granted as set forth under Section 18-16-305. of the County Zoning Ordinance, the Office of Planning and Zoning recommends the following all as shown on the attached site plan:

1. That variances of three feet to the front lot line setback and 19 feet to the rear lot line setback to allow a second floor addition with second floor deck on the east (water) side of the dwelling be ***approved*** and,
2. a rear lot line setback variance of 24 feet to accommodate a second floor deck on the west (street) side of the dwelling be ***denied*** and,
3. a modified variance be ***approved*** allowing for 30.7% or an additional 76 square feet of lot coverage (maximum of 2142 square feet) by structures which requires that the proposed rear deck (68 square feet) on the west side of the house be removed.

**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.