

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

APPLICANT: Raymond and Jeanne Roberts, Trustees

ASSESSMENT DISTRICT: 3

CASE NUMBER: 2023-0202-V

COUNCILMANIC DISTRICT: 5

HEARING DATE: February 1, 2024

PREPARED BY: Joan A. Jenkins 
Planner II

REQUEST

The applicants are requesting a variance to allow a dwelling addition (porch)¹ with less setbacks than required and an accessory structure (in-ground pool with concrete patio) with less setbacks than required and with new lot coverage nearer to the shoreline than the existing principal structure on property known as 1019 Magothy Avenue in Arnold.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of approximately 28,988 square feet of land and is located with 23 feet of frontage on the southeast side of a private easement, approximately 175 feet south of Magothy Avenue. The subject property is identified as Parcel 40 in Block 22 on Tax Map 33 in the Cedar Point subdivision. The subject property is zoned R1 - Residential District as adopted by the comprehensive zoning of the Fifth Council District zoning maps effective January 29, 2012. This waterfront property on Deep Creek, lies entirely within the Chesapeake Bay Critical Area designated as LDA - Limited Development Area and is in a mapped Buffer Modified Area (BMA). The site is currently improved with a two-story dwelling, a large shed (16.3' by 20.3' with a waterward concrete pad), a small shed, a detached garage, a kidney-shaped in-ground pool, a concrete pool deck, pool decking, brick area, and a pier. The site is encumbered by steep slopes near the shoreline and the 25-foot top of steep slopes buffer.

APPLICANT'S PROPOSAL

The applicants seek to redevelop the property by removing the existing kidney-shaped pool, concrete pool deck, pool decking, brick area, and a deck attached to the side of the house; and propose construction of a rectangular in-ground pool (18' by 36'), an irregularly shaped concrete patio, a small deck attached to the side of the house, a rectangular concrete patio², an HVAC pad, and a pond.

¹ This variance is no longer requested since the site plan has changed and this is now a patio.

² This rectangular patio was originally a porch when the application was submitted. The applicants have since changed the site plan to show the patio instead of the porch.

REQUESTED VARIANCES

§ 17-8-702 (b) of the Anne Arundel County Subdivision and Development Code prohibits the location of new lot coverage nearer to the shoreline than the closest façade of the existing principal structure in a buffer modification area. The proposed pool and a portion of the proposed concrete patio will be located forward of the existing dwelling façade necessitating a variance to allow new lot coverage nearer to the shoreline than the closest façade of the existing principal structure.

§18-4-601 requires that an accessory structure (in-ground pool) in the R1 District shall be set back a minimum of fifty feet from the front lot line. The in-ground pool is proposed to be located 38.05 feet from the front lot line requiring a variance of twelve feet.

FINDINGS

This Office finds that the subject property is a developed lot that meets the width, but does not meet the area requirement for a new lot in the R1 District. The location of the existing development could make redevelopment of the property difficult without a variance.

A review of the County 2023 aerial photograph shows that this property sits among a small cluster of large waterfront lots and near to a large open space area to the south. The waterfront property to the north also has a waterfront in-ground pool. That property was under redevelopment in 2000 and the pool can clearly be seen in 2002. The pool on the subject property can clearly be seen on aerial photos at least as far back as 1980 before the critical area laws were effective.

The existing critical area lot coverage is 9,556 square feet, which exceeds the maximum 5,445 square feet of coverage by 4,111 square feet. The post-construction coverage will be required to comply with the 10% reduction of the pre-existing coverage required under § 17-8-403 of the Code. The total proposed coverage after construction is 9,105 sq ft. If approved, the actual amount of coverage would be determined at permitting.

This Office did not find any variances nearby that pertained to accessory structures.

The **Health Department** commented that they do not have an approved plan for the property, however, have no objection as long as a plan is submitted and approved by the Health Department.

The **Critical Area Commission** commented that while this office recognizes that the overall proposal moves the proposed pool and associated pool decking further away from the top of steep slopes than the existing pool and pool deck, this proposal still impacts the Critical Area Buffer and steep slope buffer. The applicant may maintain existing legally nonconforming structures/improvements but when redevelopment is proposed, the applicant should develop in a manner that conforms to the Critical Area development standard. It appears that the applicant could relocate the pool and associated lot converge towards the south side of the house, outside

of the Buffer, and/or could minimize the size of the proposed patio and pool to move it further away from the steep slopes and steep slope buffer. As proposed, it appears that this request fails to meet each and every one of the Critical Area variance standards including unwarranted hardship.

The **Development Division (Critical Area Team)** commented that there is no objection to the reconfiguration of the existing lot coverage that will result in a reduction of coverage within the buffer. A Steep Slope Buffer Modification will be required.

While some relief may be warranted due to the longstanding nature of the pool and the location within the BMA, the granting of a variance in principle would confer on the applicant a special privilege that would be denied by COMAR, Title 27.

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. The granting of the variance as proposed will adversely affect water quality or impact fish, wildlife or plant habitat. The proposal is not in harmony with the general spirit and intent of the County's Critical Area Program.

The applicants have not overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law. The elimination of the decking around the water side of the pool is an attempt at minimizing the environmental impacts, however, the applicants should evaluate and implement site planning alternatives by considering a smaller pool or relocating the pool location. In addition, as suggested by the Critical Area Commission, the pool could potentially be located on the south side of the dwelling where it would be out of the steep slope buffer and could be located behind the facade of the dwelling.

While this Office does recognize that some relief may be warranted to redevelop the lot, the proposal for this size pool in this location is not considered to be the minimum necessary to afford relief. The County prefers the applicant to seek a setback variance over a variance to the critical area program. It appears that if the size of the pool were reduced and/or if the pool is relocated to the west and rotated parallel to the side lot line then the amount of lot coverage could be minimized and a front setback variance might be eliminated.

With regard to the requirements for all variances, approval of the variances will not alter the essential character of the neighborhood, as the pool is a redevelopment of an existing pool. Approval of the variances will not substantially impair the appropriate use or development of adjacent property, as the property to the north has already been developed with a dwelling. With proper mitigation, the variance will not reduce forest cover in the limited development area, will not be contrary to acceptable clearing and replanting practices, and will not be detrimental to the public welfare.

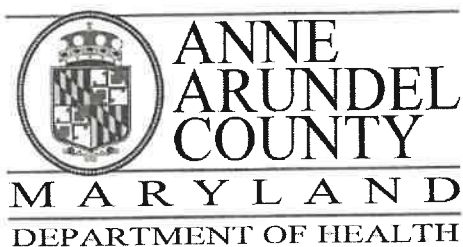
In summary, while a variance to the Critical Area program may be justified in principle, the request is not considered to be the minimum necessary to afford relief. In addition, the applicants have not adequately investigated alternate locations that will minimize the variance to the

Critical Area program.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 under which a variance may be granted, this Office recommends ***denial*** of the critical area variance to § 17-8-702 (b) to allow new lot coverage nearer to the shoreline than the closest facade of the existing principal structure and ***denial*** of the zoning variance to § 18-4-601 of twelve feet to allow an accessory structure (in-ground pool) to be setback 38.05 feet from the front lot line as shown on the site plan.

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.



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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

A handwritten signature in blue ink, appearing to be "BC", located to the right of the "FROM:" field.

DATE: January 16, 2024

RE: Jeanne K. Roberts
1019 Magothy Ave.
Arnold, MD 21012

NUMBER: 2023-0202-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow a dwelling addition (porch) with less setbacks than required and to allow an accessory structure (pool) with less setbacks than required and with new lot coverage nearer to the shoreline than the closet façade of the principal structure.

The Health Department does not have an approved plan for the property. The Health Department has no objection to the above referenced variance request as long as a plan is submitted and approved by the Health Department.

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

cc: Sterling Seay

Wes Moore
Governor

Aruna Miller
Lt. Governor



Erik Fisher
Chair

Katherine Charbonneau
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

December 21, 2023

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

Re: Roberts Variance (2023-0202-V)

Dear Ms. Seay:

Thank you for providing information on the above-referenced variance request to remove an existing pool and associated pool decking, walkways, and an attached deck to the dwelling all within the Critical Area Buffer; and then construct a new pool with pool deck, patio, a porch, and a deck attached to the dwelling. The property is a 28,988 square-foot lot located within the Limited Development Area (LDA) and is mapped as a Buffer Modified Area (BMA). The lot coverage limit for a lot of this size is 5,445 square feet. The existing lot coverage on the subject site totals 9,558 square feet which is 4,113 square feet over the maximum allowed. If this variance request were to be approved, the lot coverage on the site will total 9,136 square feet or 3,691 square feet over the lot coverage limit. This complies with the County's requirement to reduce the lot coverage overage by at least 10%.

While this office recognizes that the overall proposal moves the proposed pool and associated pool decking further away from the top of steep slopes than the existing pool and pool deck, this proposal still impacts the Critical Area Buffer and steep slope buffer. The applicant may maintain existing legally nonconforming structures/improvements but when redevelopment is proposed, the applicant should develop in a manner that conforms to the Critical Area development standards. It appears that the applicant could relocate the pool and associated lot coverage towards the south side of the house, outside of the Buffer, and/or could minimize the size of the proposed patio and pool to move it further away from the steep slopes and steep slope buffer. As proposed, it appears that this request fails to meet each and every one of the Critical Area variance standards including unwarranted hardship.

State law defines "unwarranted hardship" to mean that, without the requested variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot. It does not appear that this request can meet this variance standard as the applicant currently has reasonable and significant use of the entire property with the dwelling, screened porch, decks, pool and pool decks, garage, shed with concrete patio, and riparian access. If the request to reconstruct the pool with associated pool

decking, patio, and porch all within the Critical Area Buffer were to be denied, the applicant would still have reasonable and significant use of the entire lot or parcel.

Additionally, the County's Critical Area program and the State Critical Area regulations place strict limits on disturbance to the Critical Area Buffer, steep slopes, and the steep slope buffer in order to meet the goals of the Critical Area law. Approving a variance to allow steep slope disturbance for the reconstruction of a swimming pool with associated pool deck, patio, and porch when there is space to relocate and/or minimize the size of the accessory structures/improvements, is not a right commonly enjoyed by other, similar properties developed under the County's Critical Area program. No property owner has the right to disturb steep slopes and the Critical Area in order to construct a pool within the Critical Area Buffer.

Further, the cumulative impact of development in the Critical Area has a substantial and negative impact on the Chesapeake Bay. Given the lot is waterfront to Deep Creek, the lot coverage on this lot is already substantially over the lot coverage limit, and the proximity of the proposed pool and patio to steep slopes and the steep slope buffer, this request is not in harmony with the spirit and intent of the Critical Area law and regulations or the County's Critical Area program.

Lastly, the request to construct a swimming pool and associated lot coverage at the top of steep slopes and within the steep slope buffer can increase the volume and velocity of stormwater runoff flowing down the steep slopes. Especially when the applicant could further reduce habitat and water quality impacts by relocating the improvements (pool and patio) to the south side of the dwelling outside of the Buffer; and/or by further reducing the size of the proposed pool and patio. As proposed, this request will absolutely have an adverse effect on water quality and habitat within the Critical Area.

For the reasons explained above, this office opposes this variance and recommends denial of this request. Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, please contact me at (410) 260-3468 or jennifer.esposito@maryland.gov.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Esposito". The signature is written in a cursive, flowing style.

Jennifer Esposito
Natural Resources Planner

cc: Kelly Krinetz, Anne Arundel County
Charlotte Shearin, CAC

AA 377-23

Menu Cancel Help

Task Details OPZ Critical Area Team

Assigned Date

01/11/2024

Assigned to

Kelly Krinetz

Current Status

Complete w/ Comments

Action By

Kelly Krinetz

Comments

No objection to the reconfiguration of the existing lot coverage that will result in a reduction of coverage within the buffer.

A Steep Slope Buffer Modification will be required.

End Time

Due Date

01/18/2024

Assigned to Department

OPZ Critical Area

Status Date

01/18/2024

Overtime

No

Start Time

Hours Spent

0.0

Action by Department

OPZ Critical Area

Est. Completion Date

Display E-mail Address in ACA

Display Comment in ACA

Billable

No

Time Tracking Start Date

In Possession Time (hrs)

Estimated Hours

0.0

Comment Display in ACA

All ACA Users

Record Creator

Licensed Professional

Contact

Owner

Task Specific Information

Review Notes

Reviewer Email

Reviewer Name

Reviewer Phone Number



Legend

Foundation

Addressing




Parcels



Parcels - Annapolis City



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