

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

APPLICANT: Patricia A. Accinelli Living Trust **ASSESSMENT DISTRICT:** 3rd
CASE NUMBER: 2023-0009-V **COUNCILMANIC DISTRICT:** 5th
HEARING DATE: April 4, 2024 **PREPARED BY:** Robert Konowal
Planner

REQUEST

The applicant is requesting variances to allow dwelling and accessory structure additions with less setbacks than required and with new lot coverage nearer to the shoreline than the closest façade of the existing principal structure on property located at 13 Cedar Point Road in the subdivision of Linstead on the Severn, Severna Park.

LOCATION AND DESCRIPTION OF SITE

The subject site is located with 20 feet of road frontage on the southwest side of Cedar Point Road, 625 feet southwest of Boone Trail. These lands have an area of 49,185 square feet and are shown as Lot 41 in Parcel 84, Grid 18, Tax Map 31. The subject property is zoned R2-Residential District. This zoning has been effective since the adoption of the zoning maps for the Fifth Council District on January 29, 2012.

The site is a waterfront lot located on the north shore of the Severn River in the Chesapeake Bay Critical Area. The lot is designated “LDA-Limited Development Area”. The shoreline is a mapped buffer modification property.

The subject property is currently developed with a one-story single-family detached dwelling with basement measuring some 31 feet in width and 97 feet in length. There is a 16-foot deep by 28-foot wide deck located off the south side of the dwelling, a 20-foot by 24-foot detached garage located approximately 25 feet south of the north shoreline and a 12-foot by 12-foot shed with wood platform located some 19 feet from the south shoreline. A large circular driveway is used for the parking of vehicles and access to the garage. Finally, a 30 foot long by 20 foot wide slate patio is located just south of the existing dwelling. The site is served by a public water and sewer.

APPLICANT’S PROPOSAL

The applicant is proposing to raise the roof of the existing dwelling and provide for a partial full second story addition and half story addition over the footprint of the existing dwelling. The footprint of the existing dwelling is also proposed to be expanded with a number of additions off the north and south sides of the dwelling. On the north side of the dwelling an existing 12 foot by

15 foot entry porch and stairs are proposed to be enclosed for living space. A new one-story, 227 square foot enclosed addition to the dwelling is to be constructed further to the west along with a 4 foot deep by 16 foot wide entrance portico. A set of stepping stones further to the west will replace a larger impervious walkway that is to be removed between the dwelling and the driveway.

On the south side of the dwelling the existing 16-foot deep by 28-foot wide (454 square feet) open deck that is located over a gravel area will be replaced with a slightly smaller one-story screened porch measuring approximately 16 feet in depth and 24 feet in width (approx. 345 square feet). The existing 666 square foot slate patio is to be replaced and reconfigured with a slightly smaller 538 square foot stone patio. Two new sets of stairs are proposed connecting the new screened porch, the existing dwelling and the new stone patio. An existing set of stairs to the west of the proposed screened porch that lead to the basement are to remain. An existing set of stairs between the dwelling and the patio are to remain and an impervious path replaced with a stepping stone path. A four-foot by six-foot living space bump out is proposed at the southeast corner of the dwelling.

The footprint of the existing 20-foot by 24-foot garage is to be expanded 12 feet by 20 feet providing for a garage measuring approximately 20 feet by 36 feet. A two-story addition is proposed over this expanded footprint.

The existing driveway is 4,030 square feet in area. It is proposed that approximately 1,509 square feet of two eastern portions of the driveway be removed. The driveway will, however, be expanded a total 946 square feet to the west. After this reconfiguration, the driveway will measure 3,467 square feet in area.

REQUESTED VARIANCES

Section 17-8-702(b) of the Anne Arundel County Code states that during the expansion or replacement of an existing structure no new lot coverage shall be placed nearer to the shoreline than the closest façade of the existing principal structure. The applicant is proposing approximately 2,160 square feet of new lot coverage to be located forward of the closest façade of the existing structure. This 2,160 square feet is approximate and includes the screened porch (345 sf), enclosed entry (180 sf), new living space addition (227 sf), living space bump out (24 sf), entry portico (64 sf), driveway reconfiguration (946 sf), access stairs (134 sf) and garage addition (240 sf). The exact amount of new lot coverage nearer to the shoreline will be determined at the time of building permit.

Section 18-4-601 of the Code requires that a principal structure in a R2 District be set back a minimum of 25 feet from a rear lot line whereas the second/half story addition will be located as close as 17 feet from the rear lot line requiring a variance of eight feet.

Section 18-4-601 requires that an accessory structure in a R2 District be located a minimum of 40 feet from a front lot line whereas the second floor accessory structure addition will be located as close as 18 feet from the front (north) lot line requiring a variance of 22 feet.

FINDINGS

Background

These lands were the subject of a previous variance application (2011-0297-V) to allow a dwelling addition and accessory structure (garage) with less setbacks than required and with new lot coverage nearer to the shoreline than the facade of the principal structure. That application was approved by the Administrative Hearing Officer as per an amended order. The proposed living space addition measured 24 feet by 28 feet and the garage 20 feet by 24 feet. Both these improvements were constructed. Certain impervious portions of the site were to be removed as per the amended order. It appears two impervious areas were not removed which include a 132 square foot stone patio located to the southwest of the dwelling and 98 square feet of pavers along the east property line. The applicant is now proposing to remove those impervious surfaces in this most recent application.

Review of Variance Criteria

This Office finds that the subject property at 1.07 acres and a lot width that is greater than 80 feet exceeds both the minimum lot width and minimum lot area requirements for a lot with public sewer in a R2 District. The lot is however unique in shape as it is essentially a peninsula with water on three sides of the lot making any expansion of the dwelling's footprint impossible without the need for a variance. Notwithstanding these conditions, the applicant has failed to provide any meaningful justification that they do not already have a reasonable use of the lot and that denial of a variance to the Critical Area program would cause hardship in the use of these lands. In this regard the applicant enjoys the use of a well developed property that exceeds the maximum lot coverage allowed by 2,335 square feet and a dwelling with a footprint of some 2,908 square feet. The dwelling has already been expanded once pursuant to a variance granted in 2011. The second floor addition would bring the total square footage of the dwelling to a very generous 5,400 square feet not counting the basement area.

The same lack of justification can also be said for the setback variances related to both the dwelling addition and the detached garage. The second floor dwelling addition could be stepped back to provide for the required rear yard setback and still provide for ample second floor space. The applicant already has the use of a two-car garage which was granted by variance. A two-story detached garage is not a right typically enjoyed by other residential properties. The need for a variance to accommodate a second floor office space in a detached structure where there is to be a dwelling containing as much as 5,000 square feet of floor area is not justified. While the applicant has indicated the second floor addition to the garage is for an office, the floor plan submitted for the garage shows a bedroom, bathroom and lounge area which for zoning purposes is a "guest house" which is prohibited under the Code.

The request to expand the circular drive in such close proximity to the water to better access the garage is not warranted. The applicant could simply relocate the garage doors to the south side of the structure. That is exactly what the Administrative Hearing Officer originally ordered in 2011 however the applicants requested that the garage doors face west as they could use the circular drive and the approval was amended as per their request. Any practical difficulty in regards to

garage access would now appear to be self-created. The extent of the proposed expansion of the circular drive closer to the shoreline is considered excessive and far exceeds the area necessary to access the garage. Furthermore such an expansive circular drive in the buffer is not a common feature or right of waterfront properties.

The granting of the requested variances to the Critical Area Program would confer on the applicant a special privilege that would normally be denied by COMAR, Title 27.

Since the variances have been found not to be warranted they cannot be the minimum necessary to afford relief. Furthermore, as previously indicated, these lands were the subject of a successful variance application in 2011 that provided for a generous dwelling addition and detached garage. That application, which was specifically to allow the owners to age in place, represents the minimum necessary to afford relief. Finally, the proposed screened porch at 16 feet in depth and 24 feet in width is considered to be excessive in size.

This request is not the result of actions by the applicant including commencement of development before obtaining required approvals nor do the variances arise from any condition relating to land or building use on any neighboring property.

The requested variances have not minimized potential adverse effects on water quality and would not be in harmony with the general spirit and intent of the County's Critical Area program. The applicant has not overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law. The applicant has not demonstrated they have adequately evaluated alternatives such as reconfiguring garage access and/or reducing the circular drive to minimize the impact on the buffer, reconfiguring the use of the main floor of the dwelling for additional living space and a screened porch in conjunction with the second floor addition.

Approval of the Critical Area variances will not alter the essential character of the neighborhood nor negatively impact the use of any adjacent property as the expanded footprint and second floor dwelling addition will not violate any established set back pattern and is located well enough away from dwellings on abutting lands so as to not negatively impact these properties. The same cannot be said for the second story garage addition which will be located forward of that dwelling located east of the subject property along the north shoreline.

The requested variances will not reduce forest cover in the Limited Development Area of the Critical Area, 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.

In conclusion, the variances are not considered to be warranted, are not the minimum necessary to afford relief and will, in the case of the second floor addition to the detached garage, alter the essential character of the neighborhood.

AGENCY COMMENTS

The **Development Division (Critical Area Team)** advised the proposal results in an overall reduction of 959 sq feet of coverage within the Modified Buffer. This Office has no objection to the proposal.

The **Critical Area Commission for the State of Maryland** advised their Office does not oppose the request to expand the dwelling vertically within the existing footprint. However, we question if the expansion of the footprint meets the unwarranted hardship standard as it appears that the applicant could further minimize the lot coverage on this lot by keeping the expansion within the existing footprint. It is noted that the lot coverage on this lot exceeds the 15% limit and the applicant is required to remove existing lot coverage on the site by 10%.

It appears that this site is located in an area that is vulnerable to sea level rise and storm surge. Moreover, it appears that the applicant has an opportunity to further minimize the lot coverage on this site by removing areas of the circular driveway located just feet from the mean high water line. That area could then be planted with conducive native species to help abate impacts from storm surge.

If the AdministrativeHearing Officer determines that this variance request meets all of the Critical Area variance standards then appropriate mitigation is required.

The **Anne Arundel County Department of Health** advised the property is served by public water and sewer and they have no objection to the request.

The **Cultural Resources Section** indicated this property contains a pre-contact period archaeology site, "Cedar Point" (18AN108), recorded in the Maryland State database in the 1960s. The property shall require archaeological evaluation prior to any new disturbance in compliance with Article 17-6-502. The Cultural Resources Section shall require a site visit by a County archaeologist to complete review of any development applications.

RECOMMENDATION

Based upon the standards set forth under Section 18-16-305 in the Anne Arundel County Code by which a variance may be granted, the Office of Planning and Zoning recommends that the requested variances be ***denied***.

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.