

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

**APPLICANT:** R. Peter & Marta Bosworth

**ASSESSMENT DISTRICT:** 3rd

**CASE NUMBER:** 2023-0238-V

**COUNCILMANIC DISTRICT:** 3rd

**HEARING DATE:** March 19, 2024

**PREPARED BY:** Robert Konowal  
Planner

**REQUEST**

The applicants are requesting variances to allow a dwelling addition with less setbacks and buffer than required and disturbance to slopes of 15% or greater at 724 Skywater Road in the subdivision of Gibson Island.

**LOCATION AND DESCRIPTION OF SITE**

The subject property consists of 54,936 square feet of land and is located with approximately 150 feet of frontage on the southwest side of Skywater Road, 235 feet southwest of Yerbury Road. The property is identified as Lot 237, in Parcel 141, Grid 12, on Tax Map 33. These lands have been zoned R1-Residential District since the adoption of comprehensive zoning for the Third Council District, effective January 29, 2012.

The subject property is a waterfront lot located on the east shore of the Magothy River within the Chesapeake Bay Critical Area. The Critical Area designation for these lands is “LDA-Limited Development Area”. The property is not located in a buffer modification area.

The site is currently developed with a two-story single family detached dwelling with attached multi-story decks and porches. Parking is provided via a side garage and driveway. An inground pool is located in the front yard of the dwelling.

**APPLICANTS’ PROPOSAL**

The applicants wish to construct a two-story, 15-foot by 34.7-foot addition on the south side of the existing dwelling. The addition will be 18.9 feet in height which matches the height of the existing dwelling.

**REQUESTED VARIANCES**

Section 18-13-104. 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. The buffer is expanded where there are contiguous steep slopes of 15% or more and the buffer is expanded to include the contiguous slopes and land within 50 feet

of the top of slopes. Section 17-8-301 (b) prohibits disturbance in the 100-Ft. Buffer and the expanded buffer. The proposed 15-foot by 34.7-foot addition will permanently disturb 521 square feet of the expanded buffer. Required access during construction expands the limits of disturbance and variance to 2,547 square feet. A variance is required for this disturbance in the buffer.

Section 17-8-201. of the Anne Arundel Subdivision Code states that development in LDA or RCA designated areas may not occur on slopes of 15% or greater. Approximately 1,009 square of land with a slope of 15% or greater will be disturbed (includes both temporary and permanent disturbance). A variance is required for the disturbances of these lands.

Section 18-2-301 (f) of the Code states that a single-family detached dwelling on a lot that does not meet the area or width requirements of this article may be expanded if the expansion is set back at least 25 feet from the front and rear lot lines and seven feet from side lot lines and does not exceed 35 feet in height. The subject property does not meet the minimum lot width of 150 feet. The proposed addition is located some 30 feet from the rear lot line and exceeds the 25 feet required. No variance to the rear lot line setback is required.

## **FINDINGS**

### *Background*

There have been three previous variances related to the subject property. Case 2010-0250-V pertained to a dwelling addition and accessory structure (pool and retaining walls) with less setbacks and buffer than required and with disturbance to slopes 15% or greater. That application was partially granted by the Hearing Officer. The Board of Appeals subsequently approved those improvements denied by the Hearing Officer. Case Number 2012-0127-V provided for an extension in time of the Board of Appeals approval.

Case 2021-0210-V pertained to a dwelling addition on the waterside of the dwelling consisting of a 13-foot by 20-foot second floor dining area supported by a single post. That application was denied by the Hearing Officer and not appealed.

### *Review of Variance Criteria*

The subject property does not meet the minimum lot width but does meet the area requirements of the Code for a lot in a R2 District. More importantly, the lot is almost entirely encumbered by the expanded buffer due to steep slopes onsite. Any new development of these lands cannot be undertaken without the need for a variance to the expanded buffer. The proposed addition is located in the driveway which is an already disturbed area of the buffer and which is highly unlikely to return to its natural state barring redevelopment of the subject property.

Notwithstanding the above, the applicants have failed to justify the variance for an additional 1,000 square feet of enclosed space. The existing dwelling has an enclosed area of approximately 5,500 square feet. Upon further inquiry, the agent for the applicant advised the purpose of the addition is to create a dedicated dining room in the house. The dining room would replace a

kitchen and den in the existing structure and the proposed addition would house the new kitchen and den. Despite being requested, the applicants have not submitted any evidence such as a floor plan that might demonstrate the alleged constrained living conditions. Consequently, there is no evidence that a literal interpretation of the County's Critical Area program in this case would deprive the applicants of rights that are commonly enjoyed by other properties in similar areas.

Since the applicants have failed to justify the variances they cannot be the minimum necessary to afford relief. There is also a concern that the addition is reducing the available driveway area and will hamper the ability for vehicles to enter and leave the site in a forward direction. This could necessitate the need for additional variances in the future to allow for the expansion of the driveway to correct this condition.

This request is not the result of actions by the applicants, including commencement of development before obtaining required approvals. Neither does the variance arise from any condition relating to land or building use on any neighboring property. However, the applicants have not by evidence, overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law. The applicants have not demonstrated they have adequately evaluated and implemented site planning alternatives or interior alterations to the home that minimize the impact on the expanded buffer.

The granting of a variance will adversely affect water quality within the County's Critical Area as it increases the area occupied by structures in the expanded buffer and will not be in harmony with the general spirit and intent of the County's Critical Area program.

Approval of the variances would not necessarily alter the essential character of the neighborhood nor substantially impair the appropriate use or development of any adjacent property. Finally, the request will not reduce forest cover in the Limited Development Area of the Critical Area nor be contrary to acceptable clearing and replanting practices in the Critical Area. The loss of being able to enter and leave the site in a forward direction could be detrimental to the public welfare.

In summary, the applicant has failed to justify the variance.

*Agency Comments:*

The **Anne Arundel County Department of Health** advised they do not have an approved plan for this project but would have no objection provided a plan is submitted and approved by the Health Department.

The **Critical Area Commission for the State of Maryland Critical Area** advised the applicant will need to provide justification for the requested addition. A variance may not be granted unless it is found that it meets the minimum necessary to afford relief, as specified in Anne Arundel Code 18-16-305(c)(1). The primary dwelling on the property is 2,754 square feet and already includes a pool, and multi-level deck/porch. The applicant will need to explain how the addition meets the minimum necessary.

The **Development Division (Critical Area Team)** indicated the revised location for the addition does in fact provide additional distance between the proposed development and the water and significantly reduces the amount of steep slope disturbance. The prefile comments however required the applicant to provide adequate justification for the additional 1000 square feet of living space. While the applicant's cover letter compares the home to the size and lot coverage of homes on other lots, it does not address the need for the expansion of the home and why this expansion is the minimum necessary to afford the applicant relief. The applicant has already been granted relief to the impacts of the environmental features on this site for the pool and outdoor amenities. The applicant has not demonstrated compliance with all of the requirements necessary to grant approval of a variance request.

### **RECOMMENDATION**

Based upon the standards set forth in Section 18-16-305 of the Anne Arundel County Code under which a variance may be granted, the Office of Planning and Zoning recommends ***denial*** of the variances to accommodate a dwelling addition as shown on the attached 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.