

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

APPLICANTS: Richard & Nancy Morgan

ASSESSMENT DISTRICT: 3

CASE NUMBER: 2023-0240-V

COUNCIL DISTRICT: 5

HEARING DATE: March 12, 2024

PREPARED BY: Jennifer Lechner
Planner II



REQUEST

The applicants are requesting variances to allow retaining walls, access stairs and to perfect a platform with less setbacks and buffer than required and with disturbance to slopes of 15% or greater on property located at 608 Tower Bank Road in Severna Park.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of 59,265 square feet of land and is located with 150 feet of frontage on Tower Bank Road. The property is identified as Parcel 266 in Grid 11 on Tax Map 31 in the On Forked Creek subdivision.

The property is zoned R1 – Residential District, as adopted by the comprehensive zoning for Council District 5, effective January 29, 2012. The waterfront site lies entirely within the Chesapeake Bay Critical Area LDA – Limited Development Area, and the Buffer on the property is not modified. The site is currently improved with a split foyer dwelling, patios, water access steps, a tram, pier and associated facilities.

PROPOSAL

The applicants are proposing to perfect the replacement of an aging retaining wall in-kind and the repair or replacement of existing stairs and landings in order to provide safe access to the waterfront.

REQUESTED VARIANCES

§ 17-8-201(a) of the Anne Arundel County 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; and, all disturbance shall be limited to the minimum necessary.

The already performed and proposed construction, associated with the removal and replacement of the retaining wall, water access steps and the construction of the new platform greater than 6ft x 6ft, disturbed an unreported area of slopes of 15% or greater,

necessitating a variance. If approved, the actual slope disturbance would be determined during permit review.

§ 17-8-402 provides, for lots 36,301 square feet or more created before December 1, 1985, that the lot coverage¹ in the critical area shall be limited to 15% of the parcel, and that all new lot coverage added to those lots shall be minimized.

The maximum lot coverage for the subject property is 8,889.75 square feet (or 15% of 59,265 square feet). The total new lot coverage created by the addition of the new platform greater than 6ft x 6ft will be 9,329 square feet (as noted on the Critical Area Project Notification Form), which exceeds the allowable lot coverage by 439.25 square feet, necessitating a variance. If approved, the actual new lot coverage would be determined during permit review.

§ 18-13-104 of the Anne Arundel 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; and, that the 100-foot buffer shall be expanded beyond 100 feet to include slopes of 15% or greater. § 17-8-301 of the Subdivision and Development Code states that development on properties containing buffers shall meet the requirements of Title 27 of the State Code of Maryland (COMAR). § 27.01.01(B)(8)(ii) of COMAR states a buffer exists “to protect a stream, tidal wetland, tidal waters or terrestrial environment from human disturbance.” §27.01.09E.(1)(a)(ii) of COMAR authorizes disturbance to the buffer for a new development activity or redevelopment activity by variance.

The already performed and proposed construction, associated with the removal and replacement of the retaining wall, water access steps and the construction of the new platform greater than 6ft x 6ft, disturbed an unreported area of the 100-foot buffer and the expanded buffer, necessitating a variance. If approved, the actual buffer disturbance would be determined during permit review.

§ 18-2-403 states that an accessory structure to provide access to the waterfront shall be limited to the minimum disturbance necessary to provide access in accordance with ESD design criteria, and shall be in compliance with the requirements of COMAR, Title 27 for access to residential piers.

The already performed and proposed construction, associated with the new platform², is greater than the 6ft x 6ft landing permitted for access to the waterfront, necessitating a variance.

A review of the bulk regulations for development within the R1 District reveals that a setback variance is not required.

¹ Although the platform decking allows water to pass freely, it is not attached to a dwelling and is therefore considered lot coverage.

² Construction details were not provided for the retaining wall, water access stairs, small watercraft storage deck or tram landing. As measured from the Administrative Site Plan, the storage deck is approximately 7.5' x 11.5' and the tram landing is 3' x 6' (approximate total 104 sqft); however, as measured from aerial photography, the storage deck is an irregular 10' x 11' and the landing is 3.5' x 5' (approximate total 122 sqft).

FINDINGS

The subject property is generally rectangular in shape and oversized with regards to the minimum lot area requirement of 40,000 square feet and the minimum lot width requirement of 125 feet for a lot in the R1 District. The property is encumbered by steep slopes and the expanded buffer. A review of the County's aerial photography shows an eclectic mix of dwellings and lots in this waterfront community.

As noted on the Critical Area Project Notification Form, the pre-construction critical area lot coverage of the site was 9,311 square feet. The proposed post-construction lot coverage is 9,329 square feet, which is greater than the lot coverage allowed under § 17-8-402 (15% or 8,889.75 square feet).

Building complaint case B-2023-188, for the construction of a retaining wall without prior approvals, was opened on April 25, 2023. On May 3, 2023, the Code Compliance inspector confirmed the reconstruction of a retaining wall along the upper portion of the slope, which replaced a failing wall and is 4 ft in height. The inspector also noted that portions of the steps going down the slope were under repair/replacement, and the deck landing about 2/3 of the way down the slope had been completely replaced and expanded to incorporate a stopping point for the tram. In addition, the inspector noted that the stairs and deck were damaged by a tree that had fallen down the slope.

Building permit B02418296, to replace the existing retaining walls, deck and stairs, was submitted on May 31, 2023, prior to submission of the variance application. Variance approval must be obtained prior to the building permit being issued.

The applicants' letter explains that they were unaware that a variance or building permit would be required to address safety issues and protect the slope due to the retaining wall failure, and request that the 3 'x 6' landing be allowed to remain for small craft conveyance from the exiting tram to the landing. They believe that due to the topographical conditions of the lot, implementation of the County's critical area program would cause unwarranted hardship as there is not an area on the site where access could be made to the waterfront without disturbing steep slopes. Their letter states that literal interpretation will deprive them of rights commonly enjoyed by other properties in similar areas, and will not confer a special privilege as adjacent residences have also disturbed the buffer and steep slopes in order to safely access the waterfront. The letter further explains that this request will not adversely affect water quality and fish as the flow characteristics and the lot coverage remain unchanged and all disturbance will be restored to natural conditions. The applicants believe that the request to replace or repair the existing retaining wall, stairs, and landings in-kind minimizes any new clearing of trees and disturbance to wildlife habitat.

Agency Comments

The **Health Department** has no objection to the above referenced request.

The **Critical Area Team** has no objection to the in kind replacement of the existing steps and landings. However, aerial photos indicate that the platform has been expanded beyond what

originally existed and beyond the 3' x 6' platform shown on the plan. Aerial and enforcement photos also show significant clearing of mature trees on the slope. The platform expansion cannot be supported and should be removed. Storage of watercraft can occur at the top of the slope and be transported to the pier by tram or at the base of the slope, but their Office cannot support clearing on and disturbance of steep slopes for that purpose.

The **Critical Area Commission** does not oppose the in-kind replacement of the steps for riparian access. However, their office opposes the expansion of the unpermitted transfer platform and recommends the Administrative Hearing Officer deny this portion of the request.

Based on County-provided information, it appears that the unpermitted platform is being utilized for small watercraft storage. State law and regulations allow Buffer disturbance for direct riparian access. However, impacts to the Buffer and steep slopes for storage is not a permissible activity. Additionally, unless the applicant can demonstrate that the retaining wall was necessary and is structurally sound, we oppose that request as well. If the retaining wall cannot be certified as structurally sound in its current state and construction methods, then the applicant should be required to seek all necessary permits to ensure the correct reconstruction methods are employed.

Maryland's Critical Area law provides that variances to a local jurisdiction's Critical Area program may be granted only if the County's Administrative Hearing Officer (AHO) finds that an applicant has satisfied the burden to prove that the request meets each and every one of the variance standards under COMAR 27.01.12, including the standard of unwarranted hardship. Furthermore, State law establishes the presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law and County's Critical Area Program. The AHO must make an affirmative finding that the applicant has overcome this presumption, based on the competent and substantial evidence presented from the applicant.

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. The property is currently developed with a house with porches, patios, a driveway, walkways, [tram,] and riparian access. Allowing the applicant to retain an unpermitted platform in the Buffer and on steep slopes for the purposes of small watercraft storage when there is clear opportunity to store such watercrafts outside of the Buffer does not meet the standard of unwarranted hardship, as the applicant already has reasonable and significant use of the lot with the existing house and associated development. Therefore, denying this variance request would not result in an unwarranted hardship.

Denying the request to retain the unpermitted storage platform in the Critical Area Buffer when there is opportunity to store the watercraft outside of the Buffer is not depriving the applicant of a use that would be permitted to others under the local Critical Area program as no individual has the right to impact the Critical Area Buffer for storage purposes or for a platform area that could be located outside of the Buffer. Therefore, denial of this variance would not deprive the applicant of a right commonly enjoyed by other properties in similar areas within the Critical Area of Anne Arundel County.

The granting of this variance would absolutely confer a special privilege upon the applicant. The Anne Arundel County Code and the Critical Area regulations place strict limits on disturbance to the Critical Area Buffer in order to meet the goals of the Critical Area law. Approval of this variance would grant the applicant a special privilege that would be denied others within the Critical Area, as no individual is permitted to impact the Critical Area Buffer for storage purposes, especially when there is room outside of the Buffer to store small watercrafts. This office has previously opposed similar variance requests from others; therefore, granting this applicant's request would confer upon the applicant a special privilege denied to others.

This request is unequivocally the result of actions caused by the applicant, including the commencement of the unpermitted platform and retaining wall in the Buffer. The County's Inspections and Permits Division cited this property for the unpermitted construction of the platform, noting that it appears that it is being used as a storage space for small watercraft. The applicant willfully proceeded of their own accord without proper permits and constructed the platform area and retaining wall in the Buffer, showing complete disregard for the requirements and Critical Area law.

The Critical Area law and regulations are designed to foster more sensitive development for shoreline areas to minimize damage to water quality and habitat. The unpermitted platform within the Buffer (and on steep slopes) increases runoff and erosion capacity, which carries with it pollutants that will negatively impact the water quality of Forked Creek, a tributary to the Severn River and Chesapeake Bay.

Ecologically sensitive areas such as the Critical Area Buffer and steep slopes within the LDA are purposefully protected within the Critical Area regulations and the County's Critical Area program because of their importance in meeting the goals of the Critical Area law. The goals of the Critical Area law are to (1) minimize adverse impacts on water quality that result from development, (2) conserve fish, wildlife, and plant habitat, and (3) establish land use policies that accommodate development while recognizing that development adversely affects the first two goals. Granting a variance to allow the retention of an unpermitted platform used for storage within the Critical Area Buffer that results in increased runoff into Forked Creek, when there is an opportunity to relocate the storage area outside of the Buffer, would not be in harmony with the spirit and intent of the Critical Area law and would be contrary to the goals of the Critical Area law.

Because the applicant has failed to meet six of the seven variance standards, their Office opposes this variance.

Variance Criteria

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, and the lot is subject to the 100-foot buffer and expanded buffer provisions. While these conditions are not necessarily unique to this site, and the Code allows access to the waterfront and retaining walls for the prevention of an erosive

condition without a variance, the after-the-fact nature of this application does not preclude the applicants from meeting their burden of responsibility as it relates to the variance standards.

While some relief may be warranted, the granting of the variance as proposed would confer on the applicants a special privilege that would be denied by COMAR, Title 27. With regards to the water access steps, the Code provides that steep slopes and the buffer may be disturbed for their installation if the disturbance is the minimum necessary. The large platform to store watercraft and the additional landing to access the tram are not structures that would be considered the minimum necessary for access. For water access stairs, if a switchback is needed, a 6 foot by 6 foot landing is considered the minimum necessary to safely make the change in direction. Since a landing to access the tram exists at the top and the bottom of the slope, a stop in the middle is unnecessary. A platform larger than 6 foot by 6 foot, for any purpose, but particularly for storage, within steep slopes cannot be supported.

The variance request is based on conditions or circumstances that are the result of actions by the applicant as the retaining wall, steps and landing have already been constructed, and without proper permits. The variance request does not arise from any condition relating to land or building use on any neighboring property.

The granting of a variance which will permanently disturb the buffer will adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area, and will not be 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, and have not evaluated and implemented site planning alternatives.

Summary

The standard for granting a variance is whether strict compliance of the zoning ordinance regulations would result in "practical difficulty or unnecessary hardship". Variances should only be granted if in strict harmony with the spirit and intent of the zoning regulations and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare. The need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the applicant.

This Office finds that the applicants already have access to the waterfront by way of the tram and/or the stairs, and have opportunities to store their small watercraft at either the top or the bottom of the slope, therefore denial of the variance to allow the platform larger than 6ft x 6ft would not result in any practical difficulty or unnecessary hardship. Since the variance is not justified, the request cannot be considered the minimum necessary to afford relief.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 of the County Code under which a variance may be granted this Office recommends

- ***approval*** of a Critical Area variance to § 17-8-201 to perfect the disturbance to slopes of

15% or greater in the LDA for an in kind replacement of the retaining wall and water access steps;

- ***denial*** of a Critical Area variance to § 17-8-201 to perfect disturbance to slopes of 15% or greater in the LDA for the platform greater than 6ft x 6ft;
- ***denial*** of a Critical Area variance to § 17-8-402 to exceed the maximum critical area lot coverage to perfect the platform greater than 6ft x 6ft;
- ***approval*** of a zoning variance to § 18-13-104 to perfect the disturbance to the 100 foot buffer and the expanded buffer for an in kind replacement of the retaining wall and water access steps;
- ***denial*** of a zoning variance to § 18-13-104 to perfect the disturbance to the 100 foot buffer and the expanded buffer for the platform greater than 6ft x 6ft; and,
- ***denial*** of a zoning variance to § 18-2-403 to perfect a platform greater than the 6ft x 6ft minimum necessary to provide access to the waterfront.

If granted, the final amount of disturbances and lot coverage will be determined during the permit review process.

Should the Administrative Hearing Officer determine that a variance is warranted, any approval must be conditioned on the additional conditions provided in § 18-16-305(d) & (e) as follows:

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

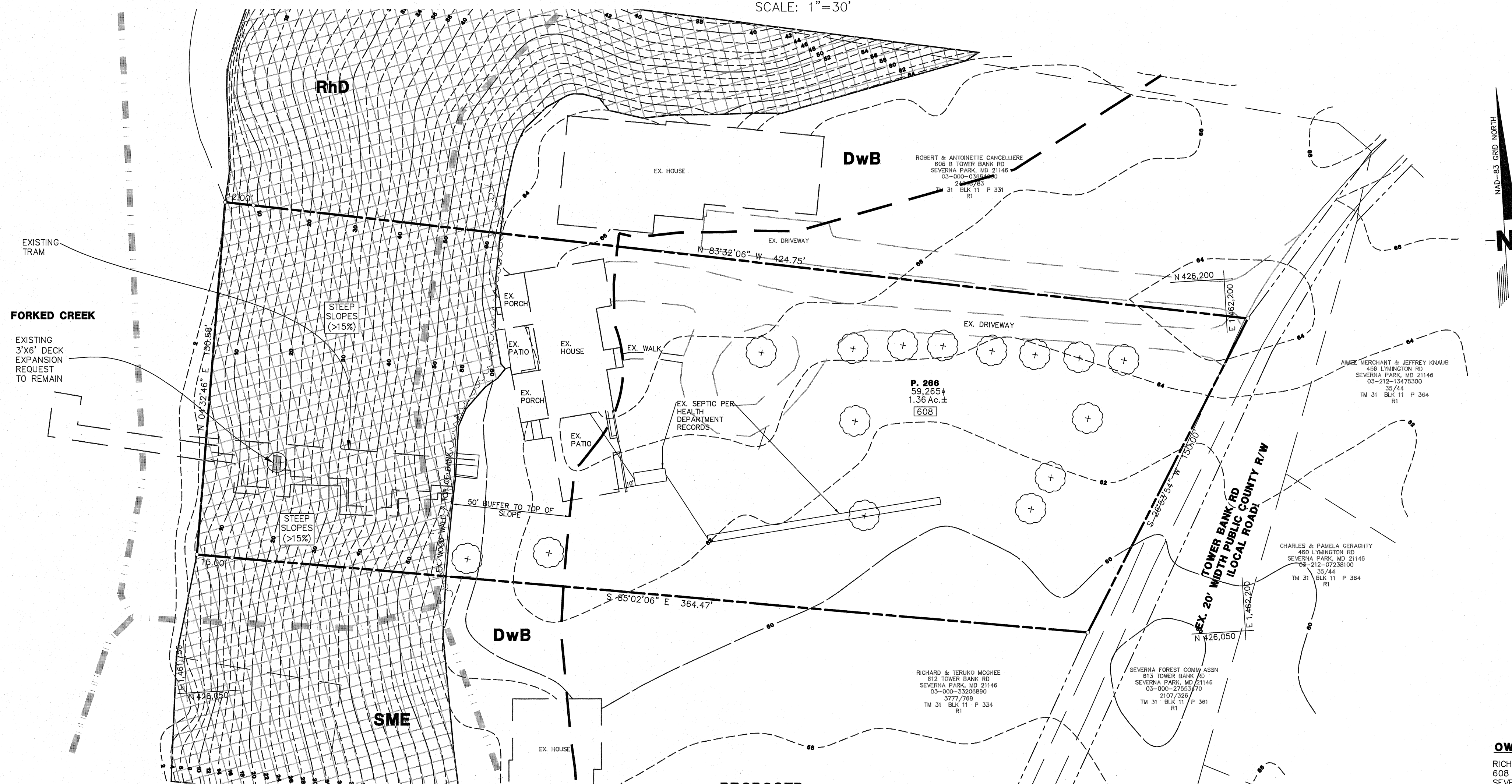
- (1) For a property with an outstanding violation, the granting of a variance under this subsection shall be conditioned on the applicant completing the following within 90 days of the date of decision, as applicable: (i) obtaining an approved mitigation or restoration plan; (ii) completing the abatement measures in accordance with the County critical area program; and (iii) paying any civil fines assessed and finally adjudicated.
- (2) Notwithstanding the provisions of subsection (d)(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.

(e) Lapse. Any critical area variance granted shall lapse by operation of law if the conditions are not satisfied within 90 days or as extended.

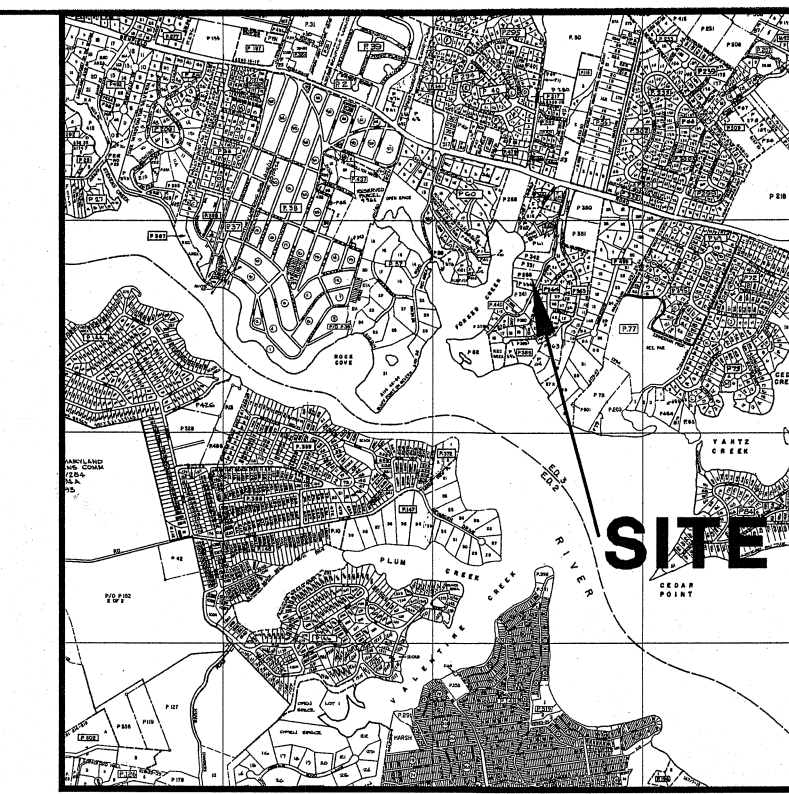
DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant to construct the structure(s) as proposed, the applicant shall apply for and obtain the necessary building permits, and obtain any other approvals required to perform the work described herein. This includes 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.



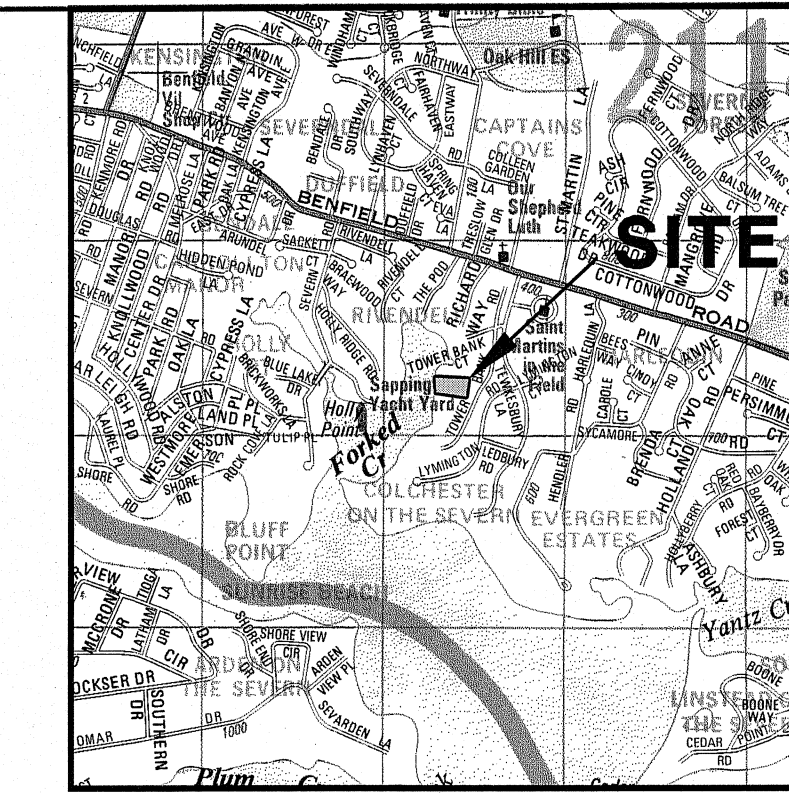
EXISTING
SCALE: 1"=30'



PROPOSED
SCALE: 1"=30'



TAX MAP
SCALE: NTS



VICINITY MAP
SCALE: 1" = 2,000'
Copyright ADC The Map People
Permitted Use Number 20403131

NOTES

1. THE LOCATIONS OF THE FEATURES SHOWN ON THE RESOURCE MAP HAVE BEEN VERIFIED.
2. THE ENVIRONMENTAL FEATURES WERE ASSESSED AND FIELD LOCATED BY A MARYLAND DEPARTMENT OF NATURAL RESOURCES "QUALIFIED PROFESSIONAL" WITH RESPECT TO THE VEGETATION AND FOREST COVER; AND BY A MARYLAND DEPARTMENT OF ENVIRONMENT "LISTED PROFESSIONAL" WITH RESPECT TO POSSIBLE WETLANDS AND STREAM DETERMINATION.
3. OFF SITE BEARING AND DISTANCES HAVE NOT BEEN VERIFIED.
4. THERE IS NO NON-TIDAL WETLANDS ON SITE.
5. THIS SITE IS NOT LOCATED IN A BOG OR CONTRIBUTING AREA TO A BOG.
6. THERE ARE SLOPES GREATER THAN 15%.
7. THIS SITE IS WITHIN THE LDA CRITICAL AREA.

NATURE OF VARIANCE

1. A VARIANCE TO ARTICLE 17-8-201 TO DISTURB STEEP SLOPES AND THEIR EXPANDED BUFFER. THE VARIANCE REQUEST IS TO ABATE COMPLAINT CASE# 8-2023-188.

SITE ANALYSIS

1. EXISTING ZONING: R1
2. TOTAL SITE AREA: 59,265 s.f.
3. PROPOSED USE: 1 SINGLE FAMILY LOT

LEGEND

- - - - -152- Existing Contours
- ~ ~ ~ ~ ~ Existing Tree Line
- — — — — Soil Line
- — — — — Drainage Area
- → → → → Time of Concentration

SOIL CLASSIFICATION CHART

SYMBOL	NAME	HYDROLOGIC SOIL GROUP
DwB	Downer-Hampton-Urban land complex	A
RhD	Russell-Christiana-Hambrook complex	C

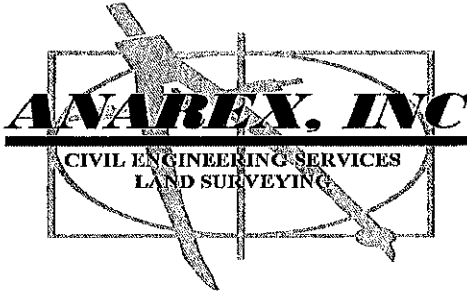
ANAREX, INC
CIVIL ENGINEERING SERVICES
LAND SURVEYING
303 Najoles Road - Suite 114
Millsville, MD 21108-2512
Phone: 410-987-6901
www.anarex.com

OWNER/DEVELOPER:
RICHARD & NANCY MORGAN
608 TOWER BANK ROAD
SEVERNA PARK, MD
(T): 3777-789
(E): rmorgan@higdoninc.com

SHEET 1 OF 1
VARIANCE PLAN
EXISTING AND PROPOSED DRAINAGE AREA MAPS
608 TOWER BANK ROAD

608 TOWER BANK RD
SEVERNA PARK, MD 21146
TAX ACCOUNT # 3-000-17202800

TAX MAP 31 BLOCK 11 PARCEL 236 DATE: AUGUST, 2023 ZONING: R1
THIRD ASSESSMENT DISTRICT ANNE ARUNDEL COUNTY, MARYLAND ZIP CODE: 21146



303 Najoles Road - Suite 114
Millersville, MD 21108

Phone: 410-987-6901
Fax: 410-987-0589

December 20, 2023

Ms. Sterling Seay
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis MD 21401

Re: **Richard and Nancy Morgan**
608 Tower Bank Road
Severna Park, MD 21409
T.M. 50 B. 24 P. 72
Complaint case# B-2023-188

Dear Ms. Seay,

Please accept this as our formal variance request to the Subdivision and Development Regulations in Article 17 on behalf of our client regarding critical area law. The variance requests are to Article 17, Section 8-201 to disturb steep slopes in the critical area.

We are requesting this variance to allow for the retaining wall, stairs, and landings leading to the water to be repaired or replaced in-kind. The entirety of the retaining wall, stairs, and landings are within slopes greater than 15% or within the buffer. The landings and stairs stagger down the slope to provide safe access to the pier for the property. We are also requesting that a 3'x 6' landing addition be allowed to remain. This landing was constructed without permit in order to allow safe conveyance of small water craft from an existing tram to newly constructed landing. The landing was constructed without requiring the removal of any trees and minimal ground disturbance.

Explanation as required by Article 18, Section 16-305(b)

The topographical conditions of this lot cause implementation of the County's critical area program to cause unwarranted hardship on the property. A variance is necessary to replace an aging retaining wall in-kind and to repair or replace existing stairs and landings in order to provide safe access to the waterfront. There is not an area on the site where access could be made to the waterfront without disturbing steep slopes. Literal interpretation of COMAR, Title 27, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas and will not confer special privilege onto the applicant as adjacent residences have also disturbed the buffer and steep slopes in order to safely access their waterfront. These variance requests are the results of actions by the applicant. The applicant was unaware that a variance/building permits would be required to address safety issues and protect the slope

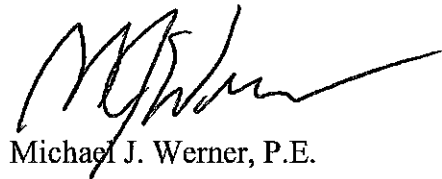
of his property due to retaining wall failure. This request does not have any bearing or connection to building on neighboring properties. The granting of this variance will not adversely affect water quality and fish as the flow characteristics of the site remain unchanged in the proposed condition as the lot coverage will not be changed and all disturbance will be restored to natural condition. Wildlife or plant habitat will not be adversely affected as the granting of the variances will allow the disturbance to be proposed in-kind of an existing retaining wall, stairs, and landings minimizing any new clearing of trees and disturbance to wildlife habitat. There are no other site planning alternatives for this site as the request is to replace or repair the existing retaining wall, stairs, and landings in-kind which reduces the amount of disturbance as much as possible.

Explanation as required by Article 18, Section 16-305(c)

We believe the granting of this variance is warranted because the requested variance is the minimal necessary to afford relief because the proposed plan is the least intrusive way to restore the failing retaining wall and provide safe access to the waterfront. The granting of this variance will not alter the character of the neighborhood as the proposal aims to only replace in-kind an existing retaining wall, stairs and landing and only request that the 3'x 6' landing constructed be allowed to remain for small craft conveyance from the exiting tram to the landing. This variance will not impair the appropriate use or development of the surrounding property as it will not deny access or the possibility to build on neighboring lots. The granting of this variance will not be detrimental to the welfare of the public.

If you have any questions or need any additional information, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Werner", with a long horizontal flourish extending to the right.

Michael J. Werner, P.E.

Chesapeake Bay Critical Area Report

**608 Tower Bank Rd
Tax Map: 31 Grid: 11 Parcel: 236
Severna Park, Md**

November 2023

Prepared for:

Richard Morgan
608 Tower Bank Road
Severna Park, MD 21146

Prepared by:

Holly Oak Consulting, LLC
303 Sycamore Rd
Severna Park, MD 21146
khaines@hollyoakconsulting.com



1.0 - INTRODUCTION

The subject property is located at 608 Tower Bank Road in Severna Park, Maryland. The property is identified on Tax Map 31, Grid 11, as Parcel 236. The site is zoned R1 per the Anne Arundel County Zoning Map. Field work for this report was completed on November 10, 2023 by Kevin C. Haines of Holly Oak Consulting, LLC.

2.0 – EXISTING CONDITIONS

The site contains 1.33 acres all of which is within the Chesapeake Bay Critical Area. The site is specifically mapped within the Limited Development Area (LDA). The site falls from west to east towards the Severn River. A large portion of the site is encumbered by developed woodland (20,036 sq. ft.). The remainder of the site comprises a residence, driveway, yard and associated amenities.

The site is bordered by residentially developed properties to the north and south, the Severn River to the west, and Tower Bank Road to the east. The site is accessed by Tower Bank Road.

The United States Department of Agriculture Natural Resources Conservation Service has mapped the soils throughout Anne Arundel County and makes the mapped soils and descriptions available online through the Web Soil Survey. The data that was retrieved on November 9, 2023, and showed two (2) soil types exist in the study area. The soil type and description can be found below. A copy of the soil mapping can be found in [Appendix A](#).

<i>Map Unit Symbol</i>	<i>Map Unit Name</i>	<i>Hydric (%)</i>	<i>K-Factor (Whole Soil)</i>
DwB	Downer-Hammonton-Urban Land Complex	0	-
RhD	Russett-Christiana-Hambrook Complex	5	0.28

3.0 – AERIAL IMAGERY REVIEW & SITE HISTORY

This site is located within Severna Park, MD a suburb of the greater Baltimore and Annapolis areas. The surrounding area was largely used as a summering location from the 1920s through the 1950s, when the surrounding areas began to become developed with residential subdivisions. Several farms were also located nearby, some utilized the waters of the Severn River to send goods to market in Annapolis and Baltimore. A copy of the USGS Topographical map can be found in [Appendix A](#).

Per aerial photos from 1970-2023, the site has remained in a similar vegetative state. Aerial images are available upon request.

4.0 – PROPOSED CONDITIONS

The purpose of the application associated with this report is to remedy a violation case. Specifically the violation case involves the expansion of a deck area within a steep slope.

Forest clearing was not required for the expansion of the deck. Buffer disturbance was required, equaling the area of the deck, or 18 square feet.

Stormwater management is not required for this project as the proposal does not include disturbance above 5,000 square feet and forest clearing is not required.

5.0 – HABITAT PROTECTION AREAS

State and County Critical Area Law identifies certain areas of high environmental value as Habitat Protection Areas (HPA's). Below is a discussion of HPA's existing within the subject site.

5.1 - Steep Slopes

Anne Arundel County designates steep slopes within the Critical Area as slopes of 15% that are at least 6' high. The site does contain steep slopes and as previously mentioned the disturbance occurred within the steep slope area.

5.2 - Rare, Threatened & Endangered Species

A request for Environmental Review was submitted to the Maryland Department of Natural Resources Wildlife and Heritage Services on November 15, 2023 and a response is forthcoming. Per initial research of DNR records there does not appear to be records of RTEs within or adjacent to the boundary of this site. RTEs were not noted during the field visits to this site. The site is not within mapped FIDS habitat per MDDNR's MERLIN Online GIS Database. The on site forest is mapped as FIDS habitat.

5.3 - Wetlands, Streams, & 100-Year Floodplain

The site does not contain tidal wetlands, non-tidal wetlands, or streams per the field observations. Furthermore, both the USFWS National Wetland Inventory ([Appendix A](#)) and MD DNR Wetland Inventory do not indicate the presence of wetlands or streams within the boundary of the site.

The site is located within the Severn River Watershed (MD 02131002 8-digit).

The site lies within Zone X (areas of minimal flood hazard) per FEMA Flood Insurance Rate Maps # 24003C0154F (eff. 2/18/15) as shown in [Appendix A](#).

5.4 – Buffer and Expanded Buffer

The site does not contain the buffer or expanded buffer.

5.5 – Other HPAs Not Contained within Study Area

Several HPAs are not mapped within or adjacent to the study area. MDDNR's MERLIN online mapping database was reviewed and showed that the following HPA's are not located within or near the study area: Submerged aquatic vegetation, shellfish beds, historical waterfowl staging and concentration areas, sensitive species project review areas, and natural heritage areas.

6.0 – EXISTING VEGETATION & WILDLIFE

Much of the vegetation on-site is common for the shores of the Severn River. The vegetation comprises a southern red oak (*Quercus falcata*), chestnut oak (*Quercus montana*), and black gum (*Nyssa sylvatica*) canopy. The understory is dominated by American holly.

The unforested portions of the site are vegetated with lawn and landscape beds typical of a residential use.

References

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- Maryland DNR (Department of Natural Resources). 1997. *State Forest Conservation Technical Manual*. Third Edition, Ginger Page Howell and Todd Ericson, Editors.

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

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: Anne Arundel County

Date: November 14, 2023

Tax Map	Parcel	Block	Lot	Section
0031	0331	11	2	A

FOR RESUBMITTAL ONLY

Corrections

Redesign

Go Change

Non-Critical Area

**Complete Only Page 1
 General Project Information*

Tax ID: 03-000-03664900

Project Name (site name, subdivision name, or other) | Glenwood on Severn

Project location (Address) | 608 Tower Lane Road

City | Severna Park | Zip | 21146

Local case number |

Applicant: Last name | Morgan | First name | Richard

Company | A

Application Type (check all that apply):

- | | | | |
|--|--------------------------|--|-------------------------------------|
| <input type="checkbox"/> Building Permit | <input type="checkbox"/> | <input type="checkbox"/> Variance | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Buffer Management Plan | <input type="checkbox"/> | <input type="checkbox"/> Rezoning | <input type="checkbox"/> |
| <input type="checkbox"/> Conditional Use | <input type="checkbox"/> | <input type="checkbox"/> Site Plan | <input type="checkbox"/> |
| <input type="checkbox"/> Consistency Report | <input type="checkbox"/> | <input type="checkbox"/> Special Exception | <input type="checkbox"/> |
| <input type="checkbox"/> Disturbance > 5,000 sq ft | <input type="checkbox"/> | <input type="checkbox"/> Subdivision | <input type="checkbox"/> |
| <input type="checkbox"/> Grading Permit | <input type="checkbox"/> | <input type="checkbox"/> Other | <input type="checkbox"/> |

Local Jurisdiction Contact Information:

Last name _____ First name _____

Phone # _____ Response from Commission Required _____

Fax # _____ Hearing date _____

SPECIFIC PROJECT INFORMATION

Describe Proposed use of Project site:

To correct an outstanding violation for the expansion of a dec 18 sq. ft.

Intra-family Transfer
 Grandfathered Lot

Growth Allocation
 Buffer Exemption Area

Project Type (check all that apply)

Commercial
 Consistency Report
 Industrial
 Institutional
 Mixed Use
 Other

Recreational
 Redevelopment
 Residential
 Shore Erosion Control
 Water-Dependent Facility

SITE INVENTORY (Enter acres or square feet)

	Acres	Sq ft
LDA Area		
LDA Area	1.36	59,265
RCA Area		
Total Area	1.36	59,265

Total Disturbed Area

Acres	-
Sq ft	18

Number of Lots Created 0

	Acres	Sq ft		Acres	Sq ft
Existing Forest/Woodland/Trees	0.46	20,036	Existing Lot Coverage	0.21	9,311
Created Forest/Woodland/Trees	0	0	New Lot Coverage	-	18
Removed Forest/Woodland/Trees	0	0	Removed Lot Coverage	0	0
			Total Lot Coverage	0.21	9,329

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq ft		Acres	Sq ft
Buffer Disturbance	0.00	18	Buffer Forest Clearing	0	0
Non-Buffer Disturbance	-	-	Mitigation	TBD	TBD

Variance Type

Buffer
 Forest Clearing
 HPA Impact
 Lot Coverage
 Expanded Buffer
 Wetlands
 Setback
 Steep Slopes
 Other

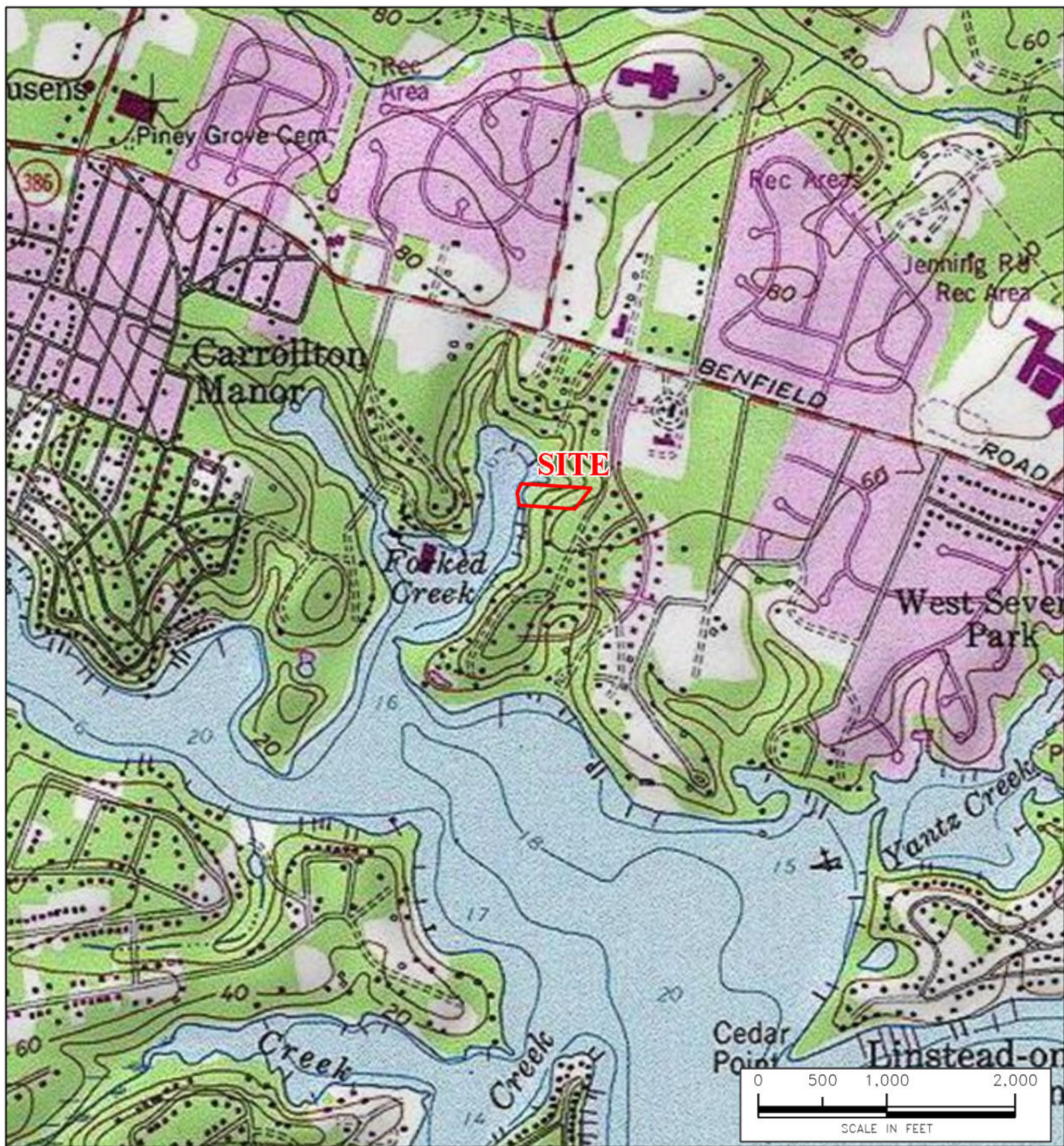
Structure

Acc. Structure Addition
 Barn
 Deciduous
 Dwelling
 Dwelling Addition
 Garage
 Gazebo
 Patio
 Pool
 Shed
 Other



MAP REFERENCES: County of Anne Arundel, VITA, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA

 303 Sycamore Rd Severna Park, MD 21146 P: (443) 906-3419 Email: info@hollyoakconsulting.com	PROJECT	DRAWING TITLE	PROJ. NO. 23-85	FIGURE 1
	608 TOWER BANK ROAD	VICINITY MAP	DRAWN BY KCH	
			SCALE 1" = 1,000'	
	SEVERNA PARK, MD 21146 ANNE ARUNDEL CO., MD	DATE 11/15/2023		



MAP REFERENCES: Copyright © 2013 National Geographic Society, i-cubed

 303 Sycamore Rd Severna Park, MD 21146 P: (413) 906-3419 Email: info@hollyoakconsulting.com	PROJECT	DRAWING TITLE	PROJ. NO. 23-85	FIGURE 2
	608 TOWER BANK ROAD	USGS 24K TOPOGRAPHICAL MAP	DRAWN BY KCH	
			SCALE 1"=1,000'	
	SEVERNA PARK, MD 21146 ANNE ARUNDEL CO., MD		DATE 11/15/2023	




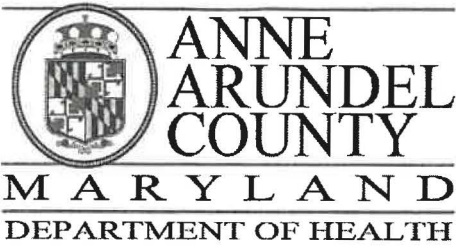
MAP REFERENCES: County of Anne Arundel, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA

 303 Sycamore Rd Severna Park, MD 21146 P: (443) 906-3419 Email: info@hollyoakconsulting.com	PROJECT	DRAWING TITLE	PROJ. NO.	FIGURE
	608 TOWER BANK ROAD	USFWS NATIONAL WETLAND INVENTORY	23-85	3
	SEVERNA PARK, MD 21146 ANNE ARUNDEL CO., MD		DRAWN BY	
				KCH
			SCALE	
			1" = 1,000'	
			DATE	
			11/15/2023	



MAP REFERENCES: County of Anne Arundel, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA

 303 Sycamore Rd Severna Park, MD 21146 P: (443) 906-3419 Email: info@hollyoakconsulting.com	PROJECT	DRAWING TITLE	PROJ. NO. 23-85	FIGURE 4
	608 TOWER BANK ROAD	USDA NRCS SOIL SURVEY	DRAWN BY KCH	
			SCALE 1"=1,000'	
	SEVERNA PARK, MD 21146 ANNE ARUNDEL CO., MD		DATE 11/15/2023	




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: January 5, 2024

RE: Richard Morgan
608 Tower Bank Road
Severna Park, MD 21146

NUMBER: 2023-0240-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow retaining walls, access to stairs and to perfect a platform with less setbacks and buffer than required and with disturbance to slopes of 15% or greater.

The Health Department has reviewed the on-site sewage disposal and well water supply system for the above referenced property. The Health Department has determined that the proposed request does not adversely affect the on-site sewage disposal and well water supply systems. 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

2023-0240-V

Menu Cancel Help

Task
OPZ Critical Area Team
Assigned to Department
OPZ Critical Area
Action by Department
OPZ Critical Area
Start Time

Billable
No

Time Tracking Start Date
Display E-mail Address in ACA
No

Estimated Hours
0.0

Due Date
01/17/2024
Assigned to
Kelly Krinetz
Action By
Kelly Krinetz
End Time

Overtime
No

Est. Completion Date
 Display Comment in ACA

Action
Updated

Assigned Date
12/27/2023
Status
Complete w/ Comments
Status Date
01/12/2024
Hours Spent
0.0

Comments
This Office has no objection to the in kind replacement of the existing steps and landings. Aerial Photos however indicate that the platform are has been expanded beyond what originally existed and beyond the 3' x 6' platform shown on the plan. Aerial and enforcement photos also show significant clearing of mature trees on the slope. The platform expansion cannot be supported and should be removed. Storage of watercraft can occur at the top of the slope and be transported to the pier by tram or at the base of the slope but this Office cannot support clearing on and disturbance of steep slopes for that purpose.

In Possession Time (hrs)
Comment Display in ACA
 All ACA Users
 Record Creator
 Licensed Professional
 Contact
 Owner

Workflow Calendar

Task Specific Information

Review Notes
Reviewer Email

Reviewer Name

Reviewer Phone Number

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**

January 24, 2024

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

Re: Morgan After-The-Fact Variance (2023-0240-V)

Dear Ms. Seay:

Thank you for providing information on the above-referenced variance request to perfect an unpermitted replacement retaining wall, riparian access steps, and platform within the Critical Area Buffer and expanded Buffer for steep slopes. The property is a 1.33-acre lot located within the Limited Development Area (LDA). Based on the information provided, it is unclear the existing and proposed lot coverage for this site.

This office does not oppose the in-kind replacement of the steps for riparian access. However, this office opposes the expansion of the unpermitted transfer platform and recommends the Administrative Hearing Officer deny this portion of the request. Based on County-provided information, it appears that the unpermitted platform is being utilized for small watercraft storage. State law and regulations allow Buffer disturbance for direct riparian access. However, impacts to the Buffer and steep slopes for storage is not a permissible activity. Additionally, unless the applicant can demonstrate that the retaining wall was necessary and is structurally sound, we oppose that request as well. If the retaining wall cannot be certified as structurally sound in its current state and construction methods, then the applicant should be required to seek all necessary permits to ensure the correct reconstruction methods are employed.

Variance

Maryland's Critical Area law provides that variances to a local jurisdiction's Critical Area program may be granted only if the County's Administrative Hearing Officer (AHO) finds that an applicant has satisfied the burden to prove that the request meets each and every one of the variance standards under COMAR 27.01.12, including the standard of unwarranted hardship. Furthermore, State law establishes the presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law and County's Critical Area Program. The AHO must make an affirmative finding that the applicant has overcome this presumption, based on the competent and substantial evidence presented from the applicant.

This office finds that the variance request to retain the unpermitted platform fails to meet the variance standards, as described below.

Variance Standards

1. *Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;*

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. The property is currently developed with a house with porches, patios, a driveway, walkways, and riparian access. Allowing the applicant to retain an unpermitted platform in the Buffer and on steep slopes for the purposes of small watercraft storage when there is clear opportunity to store such watercrafts outside of the Buffer does not meet the standard of unwarranted hardship, as the applicant already has reasonable and significant use of the lot with the existing house and associated development. Therefore, denying this variance request would not result in an unwarranted hardship.

2. *A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;*

Denying the request to retain the unpermitted storage platform in the Critical Area Buffer when there is opportunity to store the watercraft outside of the Buffer is not depriving the applicant of a use that would be permitted to others under the local Critical Area program as no individual has the right to impact the Critical Area Buffer for storage purposes or for a platform area that could be located outside of the Buffer. Therefore, denial of this variance would not deprive the applicant of a right commonly enjoyed by other properties in similar areas within the Critical Area in Anne Arundel County.

3. *The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of any local Critical Area program;*

The granting of this variance would absolutely confer a special privilege upon the applicant. The Anne Arundel County Code and the Critical Area regulations place strict limits on disturbance to the Critical Area Buffer in order to meet the goals of the Critical Area law. Approval of this variance would grant the applicant a special privilege that would be denied others within the Critical Area, as no individual is permitted to impact the Critical Area Buffer for storage purposes, especially when there is room outside of the Buffer to store small watercrafts. This office has previously opposed similar variance requests from others; therefore, granting this applicant's request would confer upon the applicant a special privilege denied to others.

4. *The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;*

This request is unequivocally the result of actions caused by the applicant, including the commencement of the unpermitted platform and retaining wall in the Buffer. The County's Inspections and Permits Division cited this property for the unpermitted construction of the platform, noting that it appears that it is being used as a storage space from small watercrafts. The applicant willfully proceeded of their own accord without proper permits and constructed the platform area and retaining wall in the Buffer, showing complete disregard for the requirements and Critical Area law.

5. *The variance request does not arise from any conforming or nonconforming condition on any neighboring property;*

Based on the information provided, it appears that this variance request is not the result of any conforming or nonconforming condition on any neighboring property.

6. *The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area; and*

The Critical Area law and regulations are designed to foster more sensitive development for shoreline areas to minimize damage to water quality and habitat. The unpermitted platform within the Buffer (and on steep slopes) increases runoff and erosion capacity, which carries with it pollutants that will negatively impact the water quality of Forked Creek, a tributary to the Severn River and Chesapeake Bay.

7. *The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.*

Ecologically sensitive areas such as the Critical Area Buffer and steep slopes within the LDA are purposefully protected within the Critical Area regulations and the County's Critical Area program because of their importance in meeting the goals of the Critical Area law. The goals of the Critical Area law are to (1) minimize adverse impacts on water quality that result from development, (2) conserve fish, wildlife, and plant habitat, and (3) establish land use policies that accommodate development while recognizing that development adversely affects the first two goals. Granting a variance to allow for the retention of an unpermitted platform used for storage within the Critical Area Buffer that results in increased runoff into Forked Creek, when there is an opportunity to relocate the storage area outside of the Buffer, would not be in harmony with the spirit and intent of the Critical Area law and would be contrary to the goals of the Critical Area law.

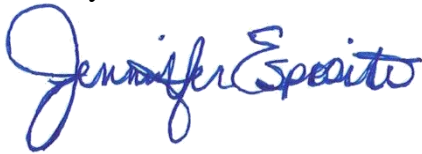
In requesting a variance, the applicant bears the burden of demonstrating that each and every one of the variance standards have been met, including the standard of unwarranted hardship. The

Ms. Sterling
Morgan ATF Variance
January 24, 2024
Page 4

applicant has failed to meet six of the seven variance standards as described above; therefore, we oppose this variance.

Thank you for the opportunity to provide comments. Please include this letter of opposition in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions about these comments, 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 style with a large initial "J".

Jennifer Esposito
Natural Resources Planner

cc: Kelly Krinetz, Anne Arundel County
James Haupt, Anne Arundel County
Charlotte Shearin, CAC
Katherine Charbonneau, CAC
Emily Vainieri, Office of the Attorney General



OFFICE OF PLANNING AND ZONING
CONFIRMATION OF PRE-FILE

PRE-FILE #: 2023-0043-P
DATE: 10/05/2023
OPZ STAFF: Jennifer Lechner
Kelly Krinetz

APPLICANT/REPRESENTATIVE: Richard & Nancy Morgan / Anarex, Inc.

EMAIL: matt@anarex.com

SITE LOCATION: 608 Tower Bank Road, Severna Park, 21146

LOT SIZE: 1.33 acres

ZONING: R1 **CA DESIGNATION:** LDA **BMA:** NO or **BUFFER:** YES **APPLICATION TYPE:** Variance

The applicants are requesting the following variances to perfect the replacement of a retaining wall and water access steps with a tram platform greater than 36sqft (B02418296 to abate B-2023-188):

1. A variance to 17-8-301, to allow development in the buffer and expanded buffer.
2. A variance to 18-2-403, to allow a water access landing greater than 36sqft.

COMMENTS

Critical Area Team:

No objection to the replacement/repair of the steps and retaining walls.

Retaining wall locations should be clearly shown/labeled on the site plan.

Additional explanation/photos should be provided to justify the 3x6 platform.

Zoning Administration Section:

The Letter of Explanation for the variance submission should reference the correct Code sections.

The Administrative Site Plan should clearly show the footprint of the retaining wall, water access steps and landings.

The applicants are reminded that, in order for the Administrative Hearing Officer to grant approval of the variances, the proposal must meet all of the Critical Area variance standards provided under Section 18-16-305, which includes the requirement that the variance must be the minimum necessary to afford relief.

INFORMATION FOR THE APPLICANT

Section 18-16-301 (c) Burden of Proof. The applicant has the burden of proof, including the burden of going forward with the production of evidence and the burden of persuasion, on all questions of fact. The burden of persuasion is by a preponderance of the evidence.

A variance to the requirements of the County's Critical Area Program may only be granted if the Administrative Hearing Officer makes affirmative findings that the applicant has addressed all the requirements outlined in Article 18-16-305. Comments made on this form are intended to provide guidance and are not intended to represent support or approval of the variance request.



2664 Riva Road, 2nd Floor
Annapolis, MD 21401
www.aacounty.org
(410) 222-7790

Site Inspection Report

To contact Inspector please call: Daniel Smith

ipsmit22@aacounty.org

Inspection Date: 05/03/2023 **Time:** 02:54 PM **Case FN#:** B-2023-188

Owner/Permitee Name: RICHARD MORGAN

Mailing Address: 608 TOWER BANK RD **City:** SEVERNA PARK **State:** MD **Zip:** 21146

Location: 608 TOWER BANK RD SEVERNA PARK 21146

Tax Id: 300017202800

Violator: RICHARD MORGAN

Action Type: Inspection - Complaint

Action Results: Not In Compliance

Corrective Action Taken: Issue Stop Work Order

Initial Inspection - confirms reconstruction of the retaining wall along the upper portion of the slope. This wall replaced a previous failing wall. Wall is 4 ft in height. Additionally portions of the stairs going down the slope are under repair/replacement and the deck landing about 2/3 the way down the slope has been completely replaced and expanded to incorporate a stopping point for the tram. The stairs and deck were damaged by a tree that had fallen down the slope. Informed owner of permitting requirements and photographed site conditions. Issued SWO and FCN to owner on site. Set 30 day tickler to monitor permit status. A variance is likely, particularly for the expanded deck platform.

Received By: _____

Date Received: 04/19/2023

I hereby acknowledge receipt of this report, by my signature; which does not imply agreement or disagreement with its content.

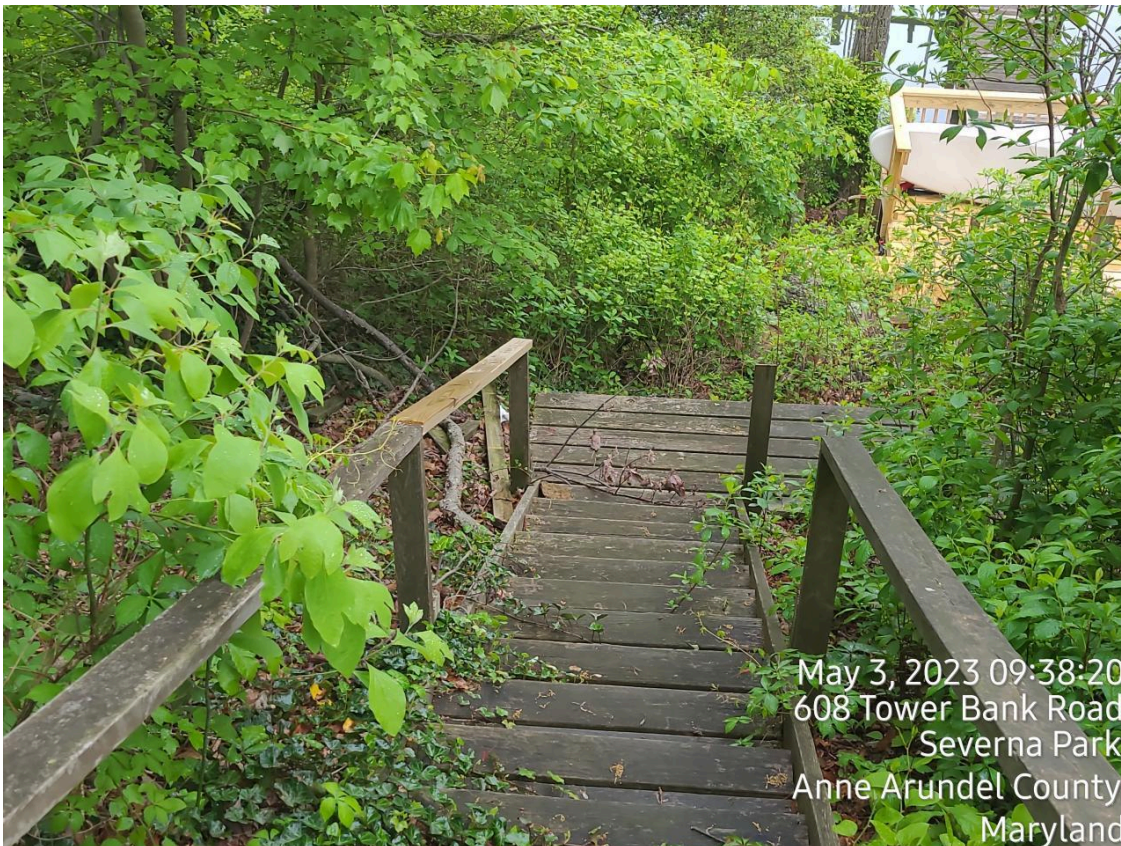
Inspector: Daniel Smith

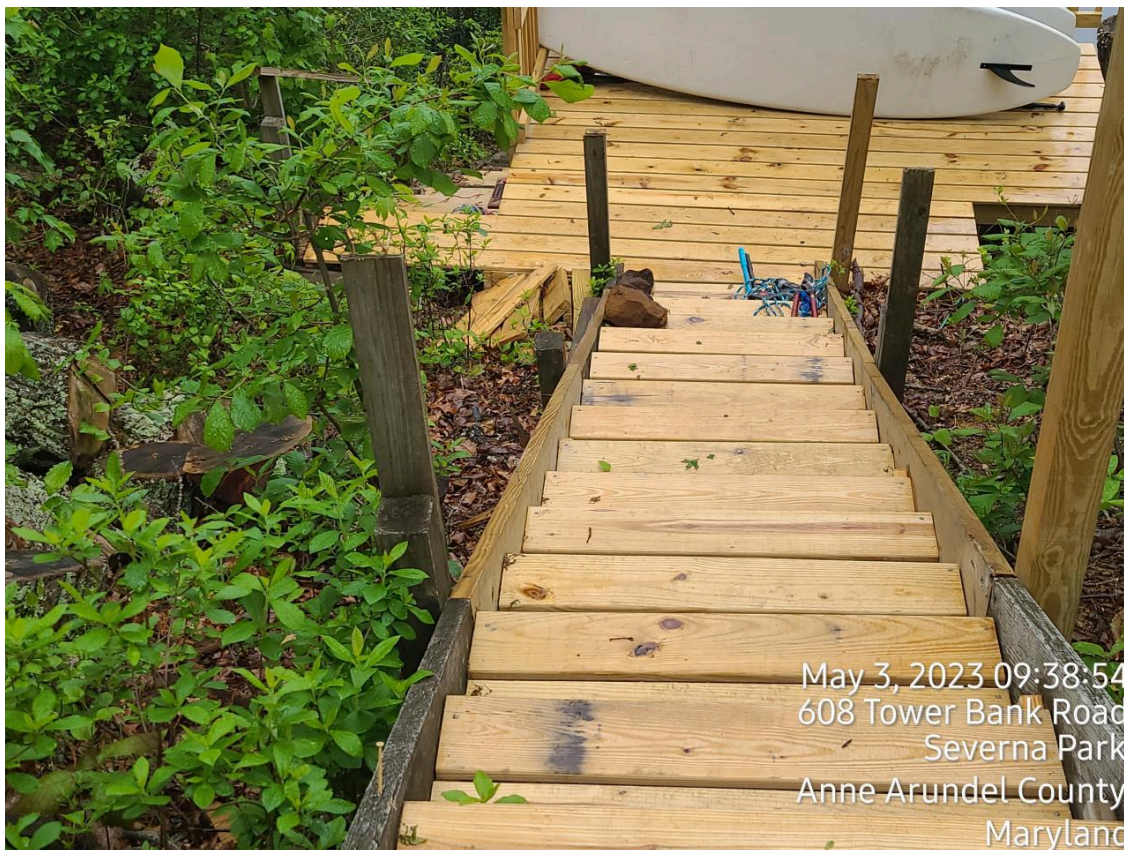
Signature: _____

















May 3, 2023 09:40:05
608 Tower Bank Road
Severna Park
Anne Arundel County
Maryland

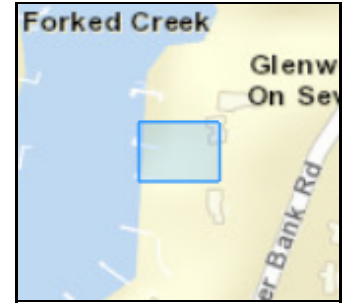
01/12/2020 view of tram/water access steps - platform not visible on the slope



12/23/2021 view of tram/water access steps - platform not visible on the slope



2023-0240-V (Feb 2022 aerial)



Legend

Foundation

Parcels



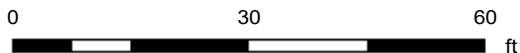
Parcels - Annapolis City



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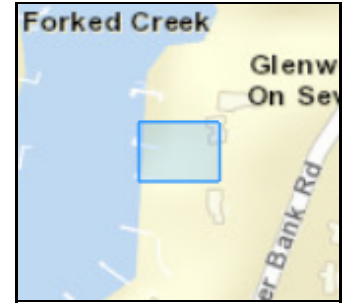
Nearmap

Notes



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2023-0240-V (Feb 2023 aerial)



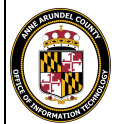
Legend

Foundation

Parcels

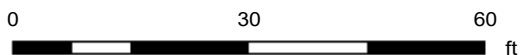


Parcels - Annapolis City



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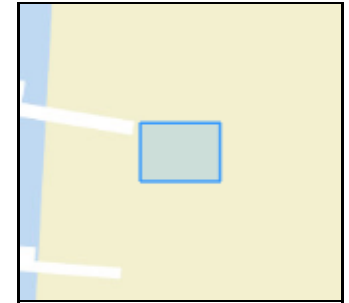
Nearmap



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Notes

2023-0240-V (Feb 2023 detail - in progress)



Legend

Foundation

Parcels



Parcels - Annapolis City



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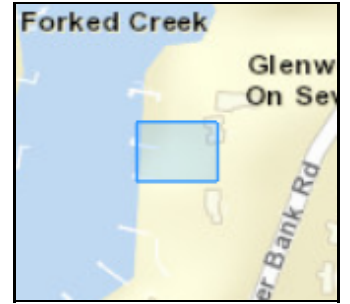
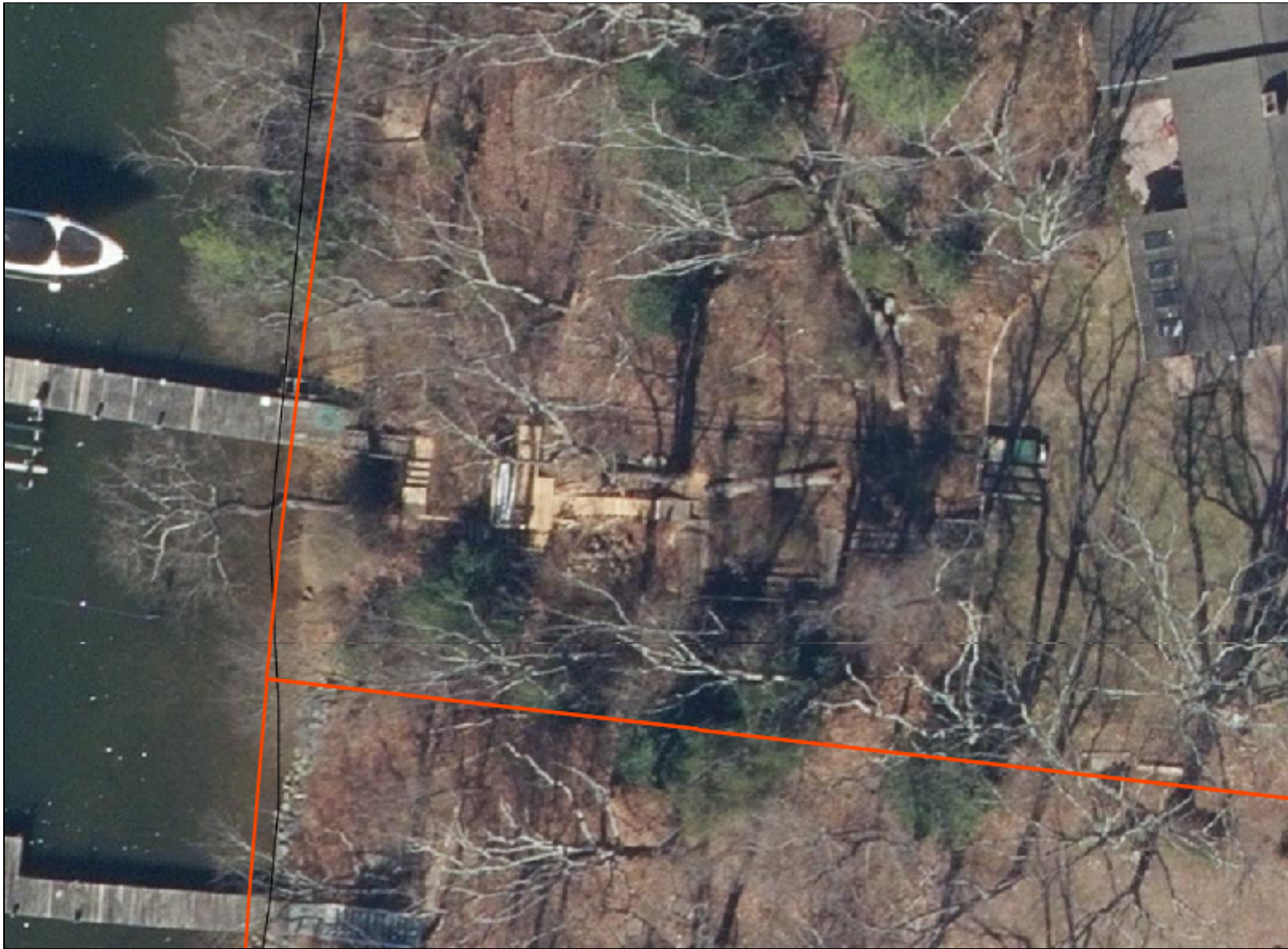
Nearmap



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Notes

2023-0240-V (State Capture 2023 aerial)



Legend

Foundation

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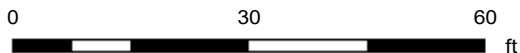


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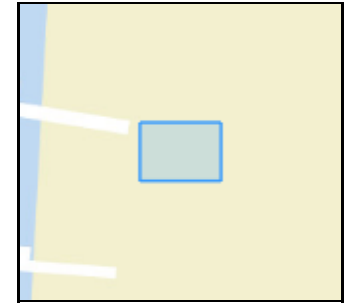
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Notes

2023-0240-V (detail w/ approx measurements)



Legend

Foundation

Parcels

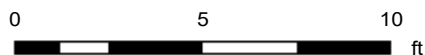


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Notes