

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

APPLICANT: L. & D. Gandee

ASSESSMENT DISTRICT: 1st

CASE NUMBER: 2024-0014-V

COUNCILMANIC DISTRICT: 7th

HEARING DATE: April 18, 2024

PREPARED BY: Robert Konowal
Planner

REQUEST

The applicants are requesting variances to allow a dwelling addition with less setbacks and buffer than required at 359 Berkshire Drive in the subdivision of Stafford Estates, Riva.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of 22,161 square feet of land and is located with 76 feet of frontage on the north side of Berkshire Drive, approximately 675 feet southeast of Stratford Court. The property is identified as Lot 2, in Parcel 54, Grid 4, on Tax Map 55. These lands have been zoned R2-Residential District since the adoption of comprehensive zoning for the Seventh Council District, effective October 7, 2011.

The subject property is a waterfront lot located off the south shore of Beards Creek within the Chesapeake Bay Critical Area. The Critical Area designation for these lands is "LDA-Limited Development Area". The shoreline of the subject property is not buffer modified.

The site is currently developed with a two-story single family detached dwelling with front attached garage. There is a first floor deck system that is approximately 355 square feet in area along with a walkway located along the east side of the dwelling.

APPLICANTS' PROPOSAL

The applicants propose to construct a second floor deck that measures 16 feet by 20 feet over a portion of the existing first floor deck.

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 second floor deck will be located in the expanded buffer. Access required during construction of the second story deck will temporarily disturb a portion of the expanded buffer. The exact amount of disturbance will be determined during building permit review.

There is no identified need for a variance to the setback requirements of the Code.

FINDINGS

The subject property is an irregularly shaped lot that meets the minimum lot width requirement of 80 feet and exceeds the lot area requirement of 15,000 square feet for a lot in R2 District. More importantly, the subject property is encumbered by the expanded buffer which does serve to restrict the location of development on the site. However the applicants already have the use of a generous deck system from the first floor. Furthermore, it does appear from aerial photos that this first floor deck system was expanded without the benefit of a variance approval between 2018 and 2020. This application now seeks to mirror this expansion on the second floor.

The applicants are already considered to have reasonable use of the lot with the existing first floor system of decks and walkways. 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. Rather, approval of the request would grant the applicants a privilege others in the Critical Area would not be afforded.

Since the variance is not considered to be warranted, it cannot be the minimum necessary to afford relief. The proposed deck (described as a balcony by the applicants) at 16 feet in depth and 20 feet in width is also considered to be excessive in size.

The 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 overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law.

The granting of a variance as submitted will not necessarily adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area. However, the variance would not be in harmony with the general spirit and intent of the County's Critical Area program in regards to development in the expanded buffer.

Approval of the variance will not 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 and Resource Conservation Areas of the Critical Area, be contrary to acceptable clearing and replanting practices in the Critical Area, or be detrimental to the public welfare.

In summary, the applicants have not demonstrated that denial would cause hardship in the use of these lands nor is the request the minimum necessary if it was determined relief was warranted.

Agency Comments:

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

The **Critical Area Commission for the State of Maryland Critical Area** indicated they believe the applicant has not demonstrated unwarranted hardship. The applicant already has a deck built on steep slopes along the waterfront side of the property. This deck, as well as the other improvements on the property, demonstrate that the applicant has significant and reasonable use of the property without the addition of the upper deck.

It was also noted that the existing lower deck was “substantially expanded” between 2018 and 2020 without approval, as stated during the pre-file meeting of February 9, 2024, between Anne Arundel County Planning and Zoning and the applicant. The applicant should not benefit from an unpermitted expansion with the proposed additional (vertical) expansion of the deck. The addition of a second deck, that is larger than the deck previously expanded without approval, is also not considered the minimum necessary to afford relief, as specified in Anne Arundel County Code 18-16-305(c)(1). The applicant already has relief from the Code with the existing deck in the Buffer.

The granting of this variance would also confer a special privilege that would be denied to other, similar properties as the applicant has justified the proposed deck using the current extent of the bottom deck, which was previously expanded without proper approval from Anne Arundel County Planning and Zoning. Granting the request based on this justification would absolutely infer a special privilege on the applicant.

For the reasons stated above, the Commission believes this variance request should be denied. However, should the Administrative Hearing Officer find that this request, or a modified version of this request that reduces impacts to the Buffer and steep slopes, may be approved, the required mitigation ratio is 3:1 for permanent impacts.

The **Development Division (Critical Area Team)** indicated that the applicant has not demonstrated that the proposed 16 x 20 deck is the minimum necessary as this property already has an existing deck on the ground level as well as an additional hexagonal deck on the same ground level. A third deck area on the second story does not seem necessary and the size of the balcony deck seems excessive.

The new balcony deck should not exceed the size or footprint of the deck that existed prior to the unpermitted deck expansion between 2018 and 2020. If the variance is approved, Mitigation is required at 3:1 for the footprint of the new deck as this is permanent disturbance, and 1:1 for the remaining LOD as this is temporary disturbance. Planting must be maximized onsite and a forest conservation easement will be required to protect the plantings and the existing woodland in the buffer.

The proposed second story deck should be constructed to allow water to pass through the deck so as to not add additional lot coverage. Stormwater management plantings may be required if the

deck to be constructed is over 250 sq ft.

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 a variance to disturb the expanded buffer to accommodate a second story deck over a portion of an existing deck 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.