

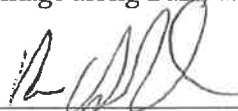
APP. EXHIBIT# 1
CASE: 2024-0023-V
DATE: 4/10/24

AFFIDAVIT OF POSTING

I, Brian Darnell, hereby attest that I have posted the signs for the Variance Case No. 2024-0023-V. The signs were posted on April 1, 2024 at approximately 1:15 pm.

One (1) sign was posted along the property's frontage abutting Bay Drive and


One (1) sign was posted along the property's frontage along Barry Avenue.



Brian Darnell, Owner

Date: 4-1-2024

Posted & Monitored under
my Supervision



Wayne A. Newton, President
Messick Group Inc.
T/A Messick and Associates



NOTICE

NOTICE TO THE PUBLIC
REGARDING THE CONSTRUCTION OF THE
NEW BRIDGE OVER THE RIVER AT
THE INTERSECTION OF THE BRIDGE AND
THE HIGHWAY. THE BRIDGE IS
BEING CONSTRUCTED BY
THE STATE OF MICHIGAN.
THE BRIDGE IS BEING
CONSTRUCTED BY THE
STATE OF MICHIGAN.
THE BRIDGE IS BEING
CONSTRUCTED BY THE
STATE OF MICHIGAN.
THE BRIDGE IS BEING
CONSTRUCTED BY THE
STATE OF MICHIGAN.

NOTICE

DEVELOPER HAS BEEN FILED FOR ZONING IN
MAY 2014. ALL INFORMATION IS SUBJECT TO THE
REQUIREMENTS AND CONDITIONS OF A
ZONING VARIATION PERMITS.

LOCATION: 100 W. 10TH ST. JENNIFER, W.
STATE ST. 02781, MASS.
OWNER: J. KANDER, JENNIFER, MASS.
PLANNING & PUBLIC HEARING. FOR INFO CONTACT THE
ZONING DEPARTMENT AT 408.222.7427 OR VISIT WEBSITE
WWW.BACONVILLE.ORG/ADMINISTRATIVE/INDEX.PHP

APP. EXHIBIT# 2
CASE: 2024-0023-V
DATE: 4/16/24

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER: 2022-0104-V

BRIAN L. DARNELL AND KENDRA S. DARNELL

SECOND ASSESSMENT DISTRICT

DATE HEARD: AUGUST 18, 2022

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: ROBERT KONOWAL

DATE FILED: SEPTEMBER 1, 2022

PLEADINGS

Brian L. Darnell and Kendra S. Darnell, the applicants, seek a variance (2022-0104-V) to allow an accessory structure (pool) in the front yard of a nonwaterfront lot with less setbacks than required on property with a street address of 107 Bay Drive, Annapolis, MD 21403.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 300 feet of the subject property was notified by mail, sent to the address furnished with the application. Brian Darnell testified that the property was posted for more than 14 days prior to the hearing and submitted an affidavit to that effect that was admitted into evidence as Applicants' Exhibit 1. Therefore, I find and conclude that there has been compliance with the notice requirements.

FINDINGS

A hearing was held on August 18, 2022, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicants.

The Property

The applicants own the subject property which has 70 feet of frontage on the northwest side of Bay Drive, 361 feet northeast of Lawrence Avenue,

Annapolis. It is identified as part of Lot 7, half of Lot 8 of Parcel 30 in Block 10 on Tax Map 57 in the Bay Ridge subdivision. The property comprises 16,923 square feet and is zoned R2 - Residential District. This lot is designated in the Chesapeake Bay Critical Area as limited development area (LDA).

The site is currently developed with a single-family dwelling and detached garage. These lands are served by private water and public sewer.

The Proposed Work

The proposal calls to install a pool between the detached garage and the dwelling as shown on the site plan admitted into evidence at the hearing as County Exhibit 2.

The Anne Arundel County Code

§ 18-2-204 prohibits the location of an accessory structure in the front yard of a non-waterfront lot. According to the Code in the case of a non-waterfront lot, a front lot line means the boundary of a lot that abuts the road right-of-way. The subject property has two lot lines that abut a road right-of-way and therefore has two front lot lines according to the Code.

The Variance Requested

The proposed work requires a zoning variance to the requirement of § 18-2-204 to allow the proposed accessory structure (pool) to be constructed in the front yard of a nonwaterfront lot as shown on County Exhibit 2.

The Evidence Submitted At The Hearing

Findings and Recommendations of the Office of Planning and Zoning (OPZ)

Robert Konowal, a zoning analyst with OPZ, presented the following:

- The property was the subject of a previous variance (Case No. 2021-0023-V) to locate an accessory structure (detached garage) in the front yard of a nonwaterfront lot which was approved by the Administrative Hearing Officer.
- The subject property is an irregular-shaped lot that does meet both the minimum lot width and lot area requirements of the Code for a lot in a R2 district. However, more importantly this application relates to a “through lot” that has frontage on two roads which creates a practical difficulty in meeting the Code requirements. In such case, no rear yard exists to provide for the location of an accessory structure typical of a single-family dwelling except through a variance. Denial of the request would cause hardship in the use of these lands as it would preclude the use of the northwest yard as an outdoor amenity area which is a common feature of many residential properties.
- The applicants have located the proposed pool between the detached garage and the dwelling some 121 feet from the Barry Avenue front lot line thereby minimizing the variance. The proposed location of the pool is considered to result in the minimum variance necessary to afford relief.
- Approval of the variance would not alter the essential character (i.e. streetscape) of the immediate neighborhood as the proposed pool will not disrupt any established setback pattern. The location of the pool complies with

the required front lot line setback of 40 feet from the Barry Avenue frontage for an accessory structure and is located well behind the front façade of that dwelling facing Barry Avenue and located to the northeast of the subject property as well as the detached garage located on the subject property. It appears the lot that abuts the subject property to the southwest is also a “through lot”. There is no evidence that the location of the pool would impair the appropriate use or development of any abutting property, reduce forest cover in the LDA of the critical area, be contrary to acceptable clearing and replanting practices required for development in the critical area or be detrimental to the public welfare.

- According to the site plan, the proposed pool will result in the property reaching its maximum allowed critical area lot coverage. There is a discrepancy between the site plan and the most recent aerial photograph for this site. The aerial photo shows what appears to be a hard surface walkway between the garage and the dwelling whereas the site plan does not. The extent of critical area lot coverage will be confirmed at the time of permitting.
- The applicants are cautioned that there can be no additional lot coverage added to the subject property (e.g. impervious area around pool or walkway to the pool which includes at-grade decking) than what is currently shown on the site plan without the need for a variance. Based on the development history of the subject property and the criteria for granting a variance it is unlikely OPZ

would support a variance for any additional lot coverage that exceeds the maximum allowed by critical area law.

- The Department of Health indicated they do not have an approved plan for this project but would have no objection to the request provided a plan is submitted to and approved by the Department.
- Based upon the standards set forth under § 18-16-305 in the County Code by which a variance may be granted, OPZ recommends the variance be approved.

Other Testimony and Exhibits

Brian Darnell was represented at the hearing by Steven D. Hyatt, Esquire of the law firm of Hyatt & Weber, P.A. Evidence was presented through Mr. Darnell and the applicants' engineer, Roy Little of Terrain, Inc. that the applicants want to add the proposed pool and need the requested variance because their property is bordered by two streets and everything is in the front yard where accessory structures, including pools, are prohibited. The requested variance will meet the other requirements necessary for the granting of a variance to allow the applicants to build the proposed pool.

Edward Ervin testified he lives nearby and thought the lot coverage calculations were not accurate and that the applicants should not be allowed to build the pool until it was made clear that they would not be exceeding permissible lot coverage (impervious surface) limitations for a property in the critical area.

Jane Clark and Jenifer Bouchard testified that they live in the neighborhood and wanted to know what the applicants were planning and what would be presented at the hearing.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

DECISION

Requirements for Zoning Variances

§ 18-16-305 sets forth the requirements for granting a zoning variance. Subsection (a) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of law is observed, public safety secured, and substantial justice done. A variance may be granted only if the Administrative Hearing Officer makes the following affirmative findings:

- (1) Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or
- (2) Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.

The variance process for subsection (1) above is a two-step process. The first step requires a finding that special conditions or circumstances exist that are peculiar to the land or structure at issue which requires a finding that the property whereupon the structures are to be placed or use conducted is unique and unusual in a manner different from the nature of the surrounding properties. The second part of the test is whether the uniqueness and peculiarity of the property causes the zoning provisions to have a disproportionate impact upon the subject property causing the owner a practical difficulty or unnecessary hardship. "Uniqueness" requires that the subject property have an inherent characteristic not shared by other properties in the area. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County*, 178 Md. App. 232, 941 A.2d 560 (2008); *Umerley v. People's Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173 (1996); *North v. St. Mary's County*, 99 Md. App. 502, 638 A.2d 1175 (1994), cert. denied, 336 Md. 224, 647 A.2d 444 (1994).

The variance process for subsection (2) - practical difficulties or unnecessary hardship - is simpler. A determination must be made that, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot.

Furthermore, whether a finding is made pursuant to subsection (1) or (2) above, a variance may not be granted unless the hearing officer also finds that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of

the variance will not alter the essential character of the neighborhood or district in which the lot is located, (3) substantially impair the appropriate use or development of adjacent property, (4) reduce forest cover in the limited development and resource conservation areas of the critical area, (5) be contrary to acceptable clearing and replanting practices required for development in the critical area, or (6) be detrimental to the public welfare.

Findings - Zoning Variance

I cannot find, based upon the evidence, that there is no reasonable possibility of developing the lot in strict conformance with the Code because of any unique physical conditions peculiar to and inherent in the subject property. The pickle the applicants find themselves in is caused by the application of the zoning code to properties that have two fronts. As in this case, everything is in the front yard.

However, I can find, based upon the evidence, that because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicants to develop the lot because the applicants' property is bordered by two streets and the prohibition against accessory structures, such as a pool, would unnecessarily limit what the applicants can do with their property. The answer to whether the requested variance should be granted was given in Case No. 2021-0023-V when the prior owner's request to build the existing garage needed a variance to the same provision the applicants need to build the proposed pool.

The only question is whether the ‘minimum relief’ granted in the 2021 case prohibits the granting of the variance requested in this case because it would exceed the relief given in the earlier case. The answer is no because the applicants in this case seek permission to build a pool, not a detached garage. Provided that the applicants’ plans do not exceed the lot coverage limitations for the site, the variance will be granted.

I further find that the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located. A larger in ground pool is directly across Barry Avenue. The variance will also not substantially impair the appropriate use or development of adjacent property, will not reduce forest cover in the limited development and resource conservation areas of the critical area, will not be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

ORDER

PURSUANT to the application of Brian L. Darnell and Kendra S. Darnell, petitioning for a variance to allow an accessory structure (pool) in the front yard of a nonwaterfront lot with less setbacks than required on property with a street address of 107 Bay Drive, Annapolis;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **1st day of September, 2022,**

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a zoning variance to the requirement of § 18-2-204 to allow the proposed accessory structure (pool) to be constructed in the front yard of a nonwaterfront lot as shown on County Exhibit 2.

The foregoing variance is subject to the condition that the applicants shall comply with any instructions and necessary approvals from the Office of Planning and Zoning, the Department of Inspections and Permits, the Department of Health, and/or the Critical Area Commission.

This Order does not constitute a building permit. In order for the applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Furthermore, County Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein. The decision and order shall not prohibit the applicants from making minor changes to the facilities as presently shown on County Exhibit 2 to adjust for changes made necessary by comments or requirements that arise during plan review or construction, including the need to reduce lot coverage, provided such minor changes do not exceed the variance granted herein. The reasonableness of any such change shall be determined by the

Office of Planning and Zoning and the Department of Inspection and Permits and the Department of Inspection and Permits.



Douglas Clark Hollmann
Administrative Hearing Officer

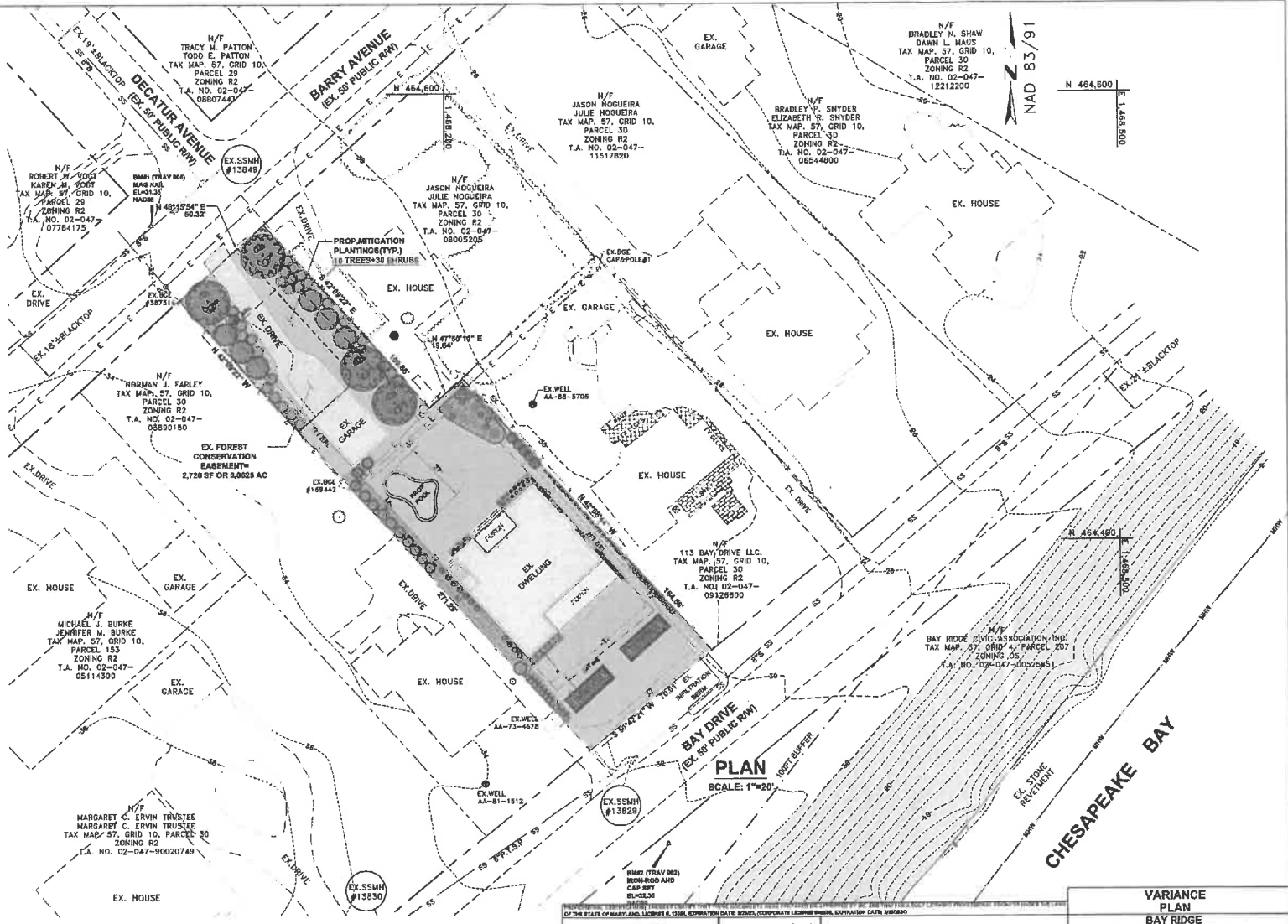
NOTICE TO APPLICANTS

This Order does not constitute a building permit. In order for the applicants to perform the work permitted in this decision, the applicants must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Any person, firm, corporation, or governmental agency having an interest in this Decision and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals within thirty (30) days from the date of this Decision. **If the variance or variances granted in this case relate to work in the critical area, a permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further, § 18-16-405(a) provides that a variance or special exception that is not extended or tolled **expires by operation of law** unless the applicants **within 18 months** of the granting of the variance or special exception (1) obtain a building permit or (2) files an application for subdivision. Thereafter, the variance or special exception shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded among the land records pursuant to the application for subdivision, the applicants obtain a building permit within one year after recordation of the plat, and construction proceeds in accordance with the permit.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, or they may be discarded.



LEGEND

EXISTING CONTOUR	---
PROPOSED CONTOUR	---
25%+ STEEP SLOPES	▭
EXISTING SPOT ELEVATION	43.00
PROPOSED SPOT ELEVATION	45.00
EXISTING TREE LINE	~~~~~
STABILIZED CONSTRUCTION ENTRANCE	---
REINFORCED SAT FENCE	BSF
TEMPORARY STOCKPILE AREA	---
LIMIT OF DISTURBANCE	---
SOIL BORING	+
EXISTING BUILDING	▭
PROPOSED BUILDING	▭
EXISTING SEWER	---
EXISTING ELECTRIC	---
EXISTING FENCE	X
BUILDING RESTRICTION LINE	---
EX. MEAN HIGH WATER	---

REVISION BLOCK

NO.	DATE	DESCRIPTION	BY

OWNER
 Brian Dama
 107 BAY DR
 ANNAPOLIS MD 21403
 (410) 222-0300
 EMAIL: brian.dama@esg.com



TERRAIN, INC.
 LAND ENGINEERING & DEVELOPMENT SERVICES
 105 OLD SOLORON'S ISLAND ROAD
 ANNAPOLIS, MARYLAND 21401
 410-260-1160 FAX (410) 266-6120
 E-MAIL: TERRAIN@COMCAST.NET

VARIANCE PLAN

BAY RIDGE
 HW OF LOT 8 & P/O LOT 7 SECTION 5
 P.B. 8, P.G. 18, PLAT NO. 433
 107 BAY DRIVE
 ANNAPOLIS, MD 21403

TAX MAP #1, GRID 10, PARCEL 30 TAX DISTRICT 04-04-000000 ZONING R2	ANNAPOLIS, MARYLAND COUNTY, MARYLAND
DATE: MAY 2022	DRAWN BY: D.J.B.
SCALE: AS SHOWN	CHECKED BY: H.C.L.
SHEET: 2	TERRAIN JOB NO. 2797

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