

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

APPLICANT: Jeanne Halpin

ASSESSMENT DISTRICT: 3

CASE NUMBER: 2024-0035-V

COUNCILMANIC DISTRICT: 5

HEARING DATE: April 23, 2024

PREPARED BY: Joan A. Jenkins 
Planner

REQUEST

The applicant is requesting a variance to allow a dwelling addition (deck with stairs) with less setbacks and buffer than required and with disturbance to slopes of 15% or greater on property located at 812 MacSherry Drive in Arnold.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of 9,407 square feet of land and is located with 60 feet of road frontage on the west side of Macsherry Drive, south of Brechin Garth. The subject property is identified as Lot 83 on Parcel 863 in Grid 23 on Tax Map 32 in the Wexford subdivision. The majority of the subject property has been zoned R5 - Residential District with a portion zoned OS - Open Space due to a nearby stream, since the adoption of comprehensive zoning of the Fifth Council District zoning maps effective January 29, 2012.

This is a nonwaterfront property which lies within the Chesapeake Bay Critical Area and is designated primarily IDA - Intensely Developed Area with a small area of RCA - Resource Conservation Area. The site is encumbered by a stream buffer, steep slopes and the expanded stream buffer. The site is currently improved with a two-story single-family dwelling.

APPLICANT'S PROPOSAL

The applicant proposes to construct an in-kind deck ten feet wide by six feet deep by 32 inches high with stairs 6 feet wide by 5 feet long located in an area that was previously a deck.

REQUESTED VARIANCES

§ 18-13-104(a) of the Code 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. § 17-8-301 of the Subdivision 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." § 27.01.09 E. (1) (a) (ii) of COMAR authorizes disturbance to the buffer for a new development activity or redevelopment activity by variance. The stream buffer

for the stream just off the property to the west expands due to the steep slopes. The limit of disturbance associated with the proposed replacement will include temporary disturbance for the limit of disturbance area and permanent disturbance of 90 square feet, necessitating a variance to this provision as shown on the site plan. Exact buffer disturbance will be determined at the time of permit.

§ 17-8-201(a) of the Anne Arundel Subdivision and Development Code states that development in the LDA and RCA designated areas may not occur on slopes of 15% or greater unless development will facilitate stabilization of the slope, is necessary to allow connection to a public utility, or is to provide direct access to the shoreline. All disturbance shall be limited to the minimum necessary. The limit of disturbance will create temporary disturbance on the steep slopes of 15% or greater. Actual disturbance to be determined at permitting.

This application does not require a variance to setbacks.¹

FINDINGS

The property is nearly rectangular, with an angled rear lot line. The site meets the R5 District area and width requirements. The applicant's agent has explained via a phone conversation that the applicant removed a prior deck for some home maintenance and this is a replacement deck that will be smaller than the previous deck.

The **Health Department** commented that the property is served by public water and sewer facilities and has no objection to the request.

The **Development Division (Critical Area Team)** commented that it appears that this will replace a prior deck. There is no objection provided the deck is smaller than the prior deck.

The **Critical Area Commission** commented that appropriate mitigation must be provided.

The **Department of Recreation and Parks** commented that a portion of this site lies within the Anne Arundel County Green Infrastructure Network, a proposed preservation area considered in the Anne Arundel County Green Infrastructure Master Plan. The proposed development is consistent with the spirit of the Green Infrastructure Master Plan.

For the granting of a critical area variance, a determination must be made on the following:

Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program would result in an unwarranted hardship or practical difficulty. In this case the presence of the expanded stream buffer and the steep slopes combine to make in-kind replacement or reconfiguration impossible without variance relief. As such some relief is warranted to allow the applicants to replace a longstanding amenity area.

¹ While the site plan does not show a distance for the side setback, the applicant's agent confirmed that it is 10'.

A literal interpretation of the County's critical area program will deprive the applicants of rights that are commonly enjoyed by other properties in similar areas by denying the applicant the right to replace their deck. The granting of the variance will not confer on the applicants a special privilege that would be denied by COMAR, Title 27. This request is not a result of actions by the applicants and does not arise from any condition relating to land or building use on any neighboring property. There is no evidence that the granting of the variances will adversely affect water quality or impact fish, wildlife or plant habitat and the proposal is in harmony with the general spirit and intent of the County's critical area program. The applicants have overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law and have evaluated site planning alternatives.

With regard to the requirements for all variances:

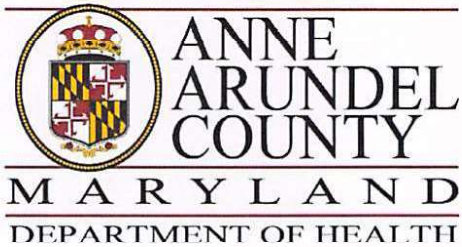
There is no evidence that the replacement of the existing structures will alter the essential character of the neighborhood, impair the use or development of adjacent property or be detrimental to the public welfare. The proposal will not reduce forest cover in the RCA and will not be contrary to acceptable clearing and replanting practices.

The variances as proposed are considered the minimum necessary to afford relief by this Office. The proposal consists of replacing a prior improvement with a smaller footprint. The proposed replacement will result in no clearing, keep the lot coverage unchanged and actually result in the least amount of disturbance possible. Finally, the County Critical Area team and the State Critical Area Commission have offered no objection to the proposal and as such, the replacement is considered to represent the minimum variance necessary by OPZ.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 under which a variance may be granted, this Office recommends **approval** of variances to construct the deck and stairs with less setbacks and buffer than required and with disturbance to slopes of 15% or greater as shown on the 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.




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: February 27, 2024

RE: Jeanne A. Halpin
812 Macsherry Drive
Arnold, MD 21012

NUMBER: 2024-0035-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow a dwelling addition (deck with stairs) with less setbacks and buffer than required and with disturbance to slopes of 15% or greater.

The Health Department has reviewed the above-referenced request. The property is served by public water and sewer facilities. 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

2024-0035-V

Menu Cancel Help

Task Details OPZ Critical Area Team

Assigned Date

02/21/2024

Assigned to

Kelly Krinetz

Current Status

Complete w/ Comments

Action By

Kelly Krinetz

Comments

It appears that this will replace an prior deck. Provided it is smaller than the prior deck, I have no objection.

End Time

Billable

No

Time Tracking Start Date

In Possession Time (hrs)

Estimated Hours

0.0

Comment Display in ACA

- All ACA Users
- Record Creator
- Licensed Professional
- Contact
- Owner

Due Date

03/13/2024

Assigned to Department

OPZ Critical Area

Status Date

02/22/2024

Overtime

No

Start Time

Hours Spent

0.0

Action by Department

OPZ Critical Area

Est. Completion Date

Display E-mail Address in ACA

Display Comment in ACA

Task Specific Information

Expiration Date

Reviewer Phone Number

Review Notes

Reviewer Email

Reviewer Name



Jennifer Esposito -DNR- <jennifer.esposito@maryland.gov>

CAC Comments_2024-0020-V Thornton, 2024-0035-V Halpin

1 message

Jennifer Esposito <jennifer.esposito@maryland.gov>
To: Sadé Medina <pzmedi22@aacounty.org>
Cc: Charlotte Shearin -DNR- <charlotte.shearin@maryland.gov>

Fri, Mar 1, 2024 at 4:23 PM

Good afternoon,

The Critical Area Commission has reviewed the following variances and appropriate mitigation is required:

- 2024-0020-V: Thornton (AA 46-24);
- 2024-0035-V; Haplin (AA 50-24)

Thank you for the opportunity to provide comments. If you have any questions or concerns, please let me know.

The above comments have been uploaded to the County's online portal.



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 twitter_logo.jpg

dnr.maryland.gov/criticalarea

Jennifer Esposito

Critical Area Commission for the
Chesapeake & Atlantic Coastal Bays
1804 West Street, Suite 100

Annapolis, MD 21401

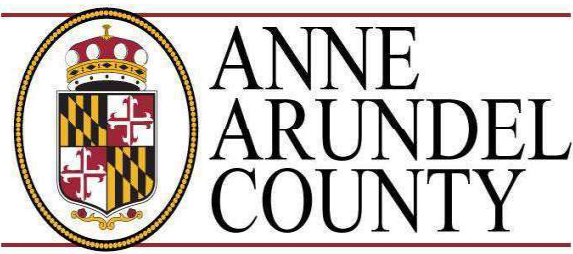
Office: 410-260-3468

(In office: Mon., Wed., Friday)

Cell: 443-569-1361

(Teleworking: Tues., Thurs.)

jennifer.esposito@maryland.gov



STUART PITTMAN, COUNTY EXECUTIVE
JESSICA LEYS, DIRECTOR
RECREATION AND PARKS
1 HARRY S. TRUMAN PKWY
ANNAPOLIS, MD 21401
AACOUNTY.ORG/RECPARKS



MEMORANDUM

TO: Sadé Medina, Zoning Division
Office of Planning and Zoning

FROM: Pat Slayton
Capital Projects Division

SUBJECT: Variance Case 2024-0035-V

DATE: February 28, 2024

The Department of Recreation and Parks has reviewed the above plans to determine if there may be impacts to the Anne Arundel County Green Infrastructure Network, parks, and trails. Please note our recommendations according to those findings below.

- A portion of this site lies within the Anne Arundel County Green Infrastructure Network, a proposed preservation area considered in the Anne Arundel County Green Infrastructure Master Plan. The proposed development is consistent with the spirit of the Green Infrastructure Master Plan.

The Department of Recreation and Parks has no further comments.

cc: File

2024-0035-V



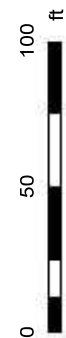
Legend

- Foundation
- Addressing
- Parcels
- Parcels - Annapolis City
- Environment
- County Environment
- Perennial Streams
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Notes

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 GeoTechnologies, Inc, METI/NASA,



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