

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

APPLICANT(S): Chessie Homes LLC.

ASSESSMENT DISTRICT: 3rd

CASE NUMBER: 2024-0040-V/2024-0049-V

COUNCILMANIC DISTRICT: 5th

HEARING DATE: June 6, 2024

PREPARED BY: Robert Konowal
Planner

REQUEST

The applicant is requesting variances to allow dwellings with less setbacks than required and with disturbance to slopes 15% or greater on properties located at 126 and 128 Cresston Road in the subdivision of Cresston Park, Arnold.

LOCATION AND DESCRIPTION OF SITE

126 Cresston Road

The subject property is a through lot having approximately 72 feet of road frontage on the south side of Shore Road and 82 feet on the north side of Cresston Road, approximately 225 feet west of Hilltop Road. These lands have an area of 11,780 square feet. The site is shown on Tax Map 32H, Grid 11 in Parcel 134 as Lots 86, 87 and 88.

128 Cresston Road

The subject property is a through lot having 50 feet of road frontage on the south side of Shore Road and the north side of Cresston Road, approximately 200 feet west of Hilltop Road. These lands have an area of 5,902 square feet. The site is shown on Tax Map 32H, Grid 11, in Parcel 134 as Lots 84 and 85.

Both of these properties are zoned “R2-Residential District”. The current zoning was adopted by the Comprehensive zoning for the Fifth Council District enacted on January 29, 2012.

The two sites are not waterfront lots but are located in the Chesapeake Bay Critical Area and designated “LDA-Limited Development Area”. The two sites are undeveloped.

APPLICANTS' PROPOSAL

126 Cresston Road

The applicant is proposing to construct on the subject property, a 36-foot wide by 38-foot deep, two-story single family detached dwelling with walkout basement having a peak roof height of

35 feet. Also proposed is a two story covered balcony/front porch measuring eight feet in depth and 20 feet in width and rear attached covered porch measuring 12 feet in depth and 16 feet in width. Vehicular access to the site will be from Shore Road.

128 Cresston Road

The applicant is proposing to construct on the subject property, a 36-foot wide by 40-foot deep, two-story single family detached dwelling having a maximum peak roof height of 40 feet. Also proposed are a covered front porch measuring four feet in depth and 16 feet in width and rear attached deck measuring eight feet in depth and 36 feet in width. Vehicular access to the site will be from Cresston Road.

REQUESTED VARIANCES

126 Cresston Road (2024-0049-V)

Section 17-8-201. of the Anne Arundel Subdivision Code states that development in LDA or RCA designated areas may not occur on land with a slope of 15% or greater. According to the applicant, the proposed improvements will disturb a total of 2,946 square feet of land with a slope of 15% or greater.

A review of the site plan indicates no variance is required to the setbacks of the Code.

128 Cresston Road (2024-0040-V)

Section 17-8-201. of the Anne Arundel Subdivision Code states that development in LDA or RCA designated areas may not occur on land with a slope of 15% or greater. According to the applicant, the proposed improvements will disturb a total of 1,371 square feet of land with a slope of 15% or greater.

A review of the site plan indicates no variance is required to the setbacks of the Code.

FINDINGS

Background

A previous variance (2022-010-V) for a portion of 126 Cresston Road (Lot 86) to allow a dwelling with less setbacks and to disturb slopes greater than 15% was denied by both the Administrative Hearing Officer and Board of Appeals (BA 14-22).

Variance Criteria

126 Cresston Road

126 Cresston Road at approximately 93 feet in width does meet the minimum lot width requirement of 80 feet for a lot in a R2 District. The site at 11,780 square feet in area however,

does not meet the minimum lot area of 15,000 square feet for a lot served by public sewer.

These lands comprise only three lots out of a total of five contiguous lots (Lots 84 thru 88) that are currently owned by the applicant. The five lots owned by the applicant were purchased in January 2021 by the applicant for \$35,000 which reflects their limited development potential and the challenges associated with development. A purchase price can be an indicator of a purchaser's reasonable expectations of future uses of a property.

All five lots are encumbered by slopes ranging from 18% to 35%. There is one area of approximately 1800 sq. ft., located in the south east corner of Lots 84 and 85 (128 Cresston Road) that is located outside of the steep slopes that is suitable for development. While all 5 lots are legal lots, the subject lots, Lots 86, 87 and 88 are not considered to be suitable or appropriate for development given the prevalence of steep slopes.

If all five lots were to be combined into a single development site they would total some 17,682 square feet; just 2,682 square feet above the minimum normally required for a lot in a R2 District. While single family detached dwellings on the south side of Cresston have been developed on smaller sites than the five subject lots combined, those lots are not as significantly encumbered by steep slopes and were in fact developed (c.1963) prior to the introduction of the Critical Area overlay. Consequently denial of the variance and the combining of the five lots into a single development site would not cause hardship in the use of these lands.

The combining of lots will create a single development site that is close to the lot area requirements for a lot in a R2 District and at a density normally afforded new subdivisions on those lands designated LDA-Limited Development Area in the Critical Area. Consequently a literal interpretation of the Critical Area Laws would not deprive the applicant of rights commonly enjoyed by other properties in similarly zoned areas. Approval of the variance in this case would confer a special privilege to the applicant that would normally be denied to others.

Since the variance is not considered to be warranted it cannot be the minimum necessary to afford relief.

The variance is based on conditions or circumstances that are the result of actions by the applicant as the applicant has chosen to develop the subject property as a separate site rather than combine these lands with adjacent lands into a single development site. The variance does not however arise from any condition relating to land or building use on any neighboring property.

There is a concern that the development of these lands will require the removal of a forested area which would have an impact to water quality in an already degraded sub-watershed in need of preservation. Runoff currently passes through the 5 undeveloped lots to Shore Road and then travels down Shore Road directly into Dividing Creek.

The applicant has not overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area Law and has not adequately evaluated and implemented site planning alternatives that might be available which includes the combining of

the subject site with adjacent lands into a single development site. This alternative was proffered during the pre-file for this application.

The request will reduce forest cover in the Limited Development Area. The variance will not be in harmony with the general spirit and intent of the County's Critical Area program.

There is no evidence that the variance to disturb steep slopes will result in development that alters the essential character of the neighborhood. However, the stormwater management plan as submitted to accommodate the proposed development is deficient and could impair the use of abutting properties and be detrimental to the public welfare

128 Cresston Road

128 Cresston Road at 60 feet in width and 5,906 square feet in area does not meet both the minimum lot width and lot area requirements of the Code for a lot in a R2 District. The subject property is encumbered by steep slopes that cover the back half and west side of the site making development of the site difficult without a variance.

This site comprises two lots out of a total of five lots owned by the applicant. 1,974 square feet of lot coverage is proposed on this site whereas 1,976 square feet is allowed under the Critical Area Overlay based on the current size of the site. This Office questions the practicality of this amount of lot coverage.¹ The prevalence of steep slopes on Lots 86, 87 and 88 (126 Cresston Road) rendering those lots unsuitable for development combined with the excessive lot coverage proposed for the undersized R2 lot supports the combining of all five lots into a single development site. If developed in this manner approval of the request would not confer a special privilege to the applicant that would normally be denied to others.

The variance to steep slopes is the minimum necessary to afford relief as the dwelling has been located to minimize disturbance to steep slopes and is not excessive in size.

The variance is not based on conditions or circumstances that are the result of actions by the applicant. The variance does not arise from any condition relating to land or building use on any neighboring property.

The development of the subject site with an acceptable stormwater management plan would not impact water quality. The subject lands if developed with adjacent lands into a single development site would further ensure there is minimal impact to water quality in this already degraded sub-watershed that is in need of preservation.

The applicant has overcome the presumption that the specific development on the subject two lots does not conform to the general purpose and intent of the Critical Area Law and has adequately evaluated and implemented site planning alternatives that minimize disturbance to

¹ Section 17-8-402 of the Code requires for new subdivisions created after November 19, 2012, the proposed overall lot coverage limit shall be no more than 14% for the subdivision to allow additional coverage to be designated on each lot and shown in a chart on the record plat in accordance with § 17-3-302(21)(ii) for future lot owners that will not result in a violation of the maximum limit of 15%.

steep slopes. The development of the subject lands with adjacent lands owned by the applicant into a single development site would further minimize disturbance to steep slopes in this area of the Critical Area.

The variance and subsequent development of the subject property if combined with adjacent lands will not reduce forest cover in the Limited Development Area and is considered to be in harmony with the general spirit and intent of the County's Critical Area program.

There is no evidence that the variance to disturb steep slopes will result in development that alters the essential character of the neighborhood. However, the stormwater management plan as submitted to accommodate the proposed development is deficient and must be revised to the satisfaction of Inspection and Permits to ensure the variance does not impair the use of any abutting property and is not detrimental to the public welfare

The **Anne Arundel County Department of Health** noted the properties are served by public water and sewer and had no objection to the application.

The **Engineering Division of the Department of Inspection and Permits** noted several stormwater management deficiencies in their review of both site plans and advised that they do not support both variance requests. The comments detailing those deficiencies are attached to this report.

The **Development Division, Critical Area Team** advised these lands consist of five contiguous lots that were originally transferred to Cresston Park Realty Company in 1923. The company dissolved in 1958 and all five lots were purchased in January 2021 by Chessie Homes for \$35,000. All five lots are encumbered by slopes ranging from 18% to 35% with a single area of approximately 1800 sq. ft., located in the corner of Lots 84 and 85 that is located outside of the steep slopes and could be suitable for development. It should be noted that all 5 lots are legal lots but not necessarily buildable. As mentioned before, only approximately 1800 sq. ft. of the 5 lots appears to be suitable for development.

When characterizing the development pattern of the neighborhood, the applicant references the number of lots that have been combined as a single site when it would be more appropriate to reference the square footage of the sites that serve a single dwelling as there are sites that are comparable to the merging of all 5 lots.

The five lots should be developed as a single site and any variances or modifications should be to facilitate development in that location, not create developable lots where they do not exist.

The **State of Maryland Critical Area Commission** advised that for this variance to be approved, the Administrative Hearing Officer must determine that each and everyone of the Critical Area variance standards have been met, including unwarranted hardship and that the request would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area. Should it be determined that this request meets all of the Critical Area variance standards, appropriate mitigation is required. Please also note the applicant must provide additional mitigation at a ratio of 1:1 for the area of forest to be cleared.

The Commission recognized the pre-file comments from the Engineering Division indicating that the proposed micro bioretention at 126 Cresston Road may not be feasible due to the steep slopes, and the proposed gravel driveway may impact water quality. Alternative designs should be explored in order to provide adequate stormwater management for the site.

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 the following:

- 1) That the variance (2024-0049-V) to allow a dwelling with disturbance to slopes greater than 15% at 126 Cresston Road be **denied**,
- 2) That the variance (2024-0040-V) to allow a dwelling with disturbance to slopes greater than 15% at 128 Cresston Road be **approved** subject to the following conditions:
 - a) that the lands of 128 Cresston Road be combined/merged with the lands of 126 Cresston Road into a single development site and,
 - b) the applicant provide a stormwater management plan for the development of the combined lots (126 and 128 Cresston Road) for one single family dwelling to the satisfaction of the Engineering Division in the Department of Inspection and Permits.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) 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.