

2024-0021-V

Menu Cancel Help

Task Details OPZ Critical Area Team

Assigned Date

04/02/2024

Assigned to

Kelly Krinetz

Current Status

Complete w/ Comments

Action By

Kelly Krinetz

Comments

The previous structure was approximately 7x12 (89 sq ft). The applicant replaced this structure with a 12x12 Tiki Bar with an attached 16x17 deck for a total square footage of 416 sq ft. The new structure is not only significantly larger, but it is also closer to the water than the original structure. The site was issued a SWO for the construction of the structure on August 2022. The applicant indicated that he thought that he didn't need a permit for the Tiki Bar however there is no exemption for an attached deck. In addition, there are other examples of work done on site without the benefit of a permit. This request does not meet the requirements for the findings necessary to approve this variance request.

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

04/23/2024

Assigned to Department

OPZ Critical Area

Status Date

04/08/2024

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

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**

May 6, 2024

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

Re: Laurent After-The-Fact Variance (2024-0021-V)

Dear Ms. Seay:

Thank you for providing information on the above-referenced variance request to perfect an unpermitted 144-square-foot accessory structure with a deck potentially within the limits of tidal wetlands and within the Critical Area Buffer. The property is a 6,534 square-foot lot located within the Limited Development Area (LDA) and is mapped as a Buffer Modified Area (BMA). Based on the information provided, it is currently unclear the total amount of lot coverage on the site, or if the site complies with the lot coverage limits. Additionally, it is unclear if the unpermitted improvements impact tidal wetlands on the property. The Maryland Department of the Environment should be notified of a potential wetland violation.

It appears that the applicants replaced an existing shed with a larger structure and deck within the Critical Area Buffer and potentially within the limits of tidal wetlands without permits. Based on the images provided to Commission staff by County staff, it appears that the use of the structure is an enclosed bar with service window.

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 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 an attached deck and porch, a driveway/parking area, walkways, and riparian access. The property is located on a peninsula and the parcel is transected by a County road. While the Critical Area Buffer surrounds the lot from both sides, the property owners currently have reasonable and significant use of their property without the unpermitted bar and deck. Allowing the applicant to retain an unpermitted accessory structure in the Buffer when the applicant already enjoys reasonable and significant use of the entire property with the existing house and associated development, does not meet the standard of unwarranted hardship. In fact, this office does not consider, and has not previously considered, accessory structures such as a bar with attached deck in the Buffer to meet the standard of unwarranted hardship, as it is not within the limits of reasonable and significant use of the lot. 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 accessory structure with deck in the Critical Area Buffer when it appears that the accessory structure could be relocated to an area on the lot that meets the County's BMA provisions 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 construct an accessory structure and deck within the Buffer closer to the shoreline than the primary structure in the BMA. 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 construct an accessory structure with deck within the Buffer, especially when the structure could be relocated on the property in a manner that meets the County's BMA provisions. 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 unpermitted development that resulted in lot coverage located in the Buffer. The County's Inspections and Permits Division cited this property for the unpermitted construction of the accessory structure (an enclosed bar with attached deck). While the documentation materials noted the County's website on determining if a permit was required for a shed, the applicant removed an existing smaller shed in the same location and constructed an enclosed bar with attached deck. The applicant willfully proceeded of their own accord without proper permits and constructed the accessory structure 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 accessory structure with deck within the Buffer and potentially within the limits of a tidal wetland results in increased runoff, which carries with it pollutants that will negatively impact the water quality of Cedar Creek, a tributary to the Magothy River and Chesapeake Bay. The unpermitted lot coverage hinders the ability for vegetation to grow in the Buffer which adversely impacts habitat and water quality benefits as the unpermitted accessory structure will exacerbate runoff and stormwater pollutants into the creek.

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.*

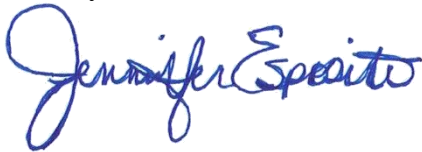
Ecologically sensitive areas such as the Critical Area Buffer are purposefully protected within the Critical Area regulations and the County's Critical Area program because of their importance in meeting the goals of the Critical Area law. The goals of the Critical Area law are to (1) minimize adverse 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 accessory structure within the Critical Area Buffer that results in increased runoff into Cedar Creek when there is an opportunity to relocate the unpermitted structure in a manner that complies

Ms. Sterling
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with the County's BMA provisions, 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 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.

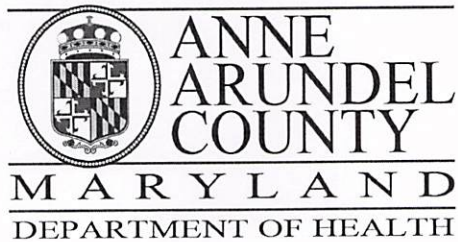
Sincerely,

A handwritten signature in blue ink that reads "Jennifer Esposito". The signature is written in a cursive, flowing style.

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

AA 80-24



J. Howard Beard Health Services Building
3 Harry S. Truman Parkway
Annapolis, Maryland 21401
Phone: 410-222-7193 Fax: 410-222-7479
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
Sanitary Engineering Program *BC*

DATE: April 5, 2024

CASE
NUMBER: 2024-0021-V
Marguerite Laurent
1208 Griner Lane
Shady Side, MD 20764

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance request to perfect an accessory structure (shed) without a principal structure and with less setbacks and buffer than required. The Health Department offers the following comments:

The Health Department has reviewed the well water supply system for the above referenced property. The Health Department has determined that the proposed request does not adversely affect the well water supply system. The Health Department has no objection to the above reference request.

If you have further questions or comments, please contact Brian Chew at 410-222-7024.

cc: Sterling Seay





1200

1206

20

Address Points: 1208 GRINER LN, 20764

1210

1214

GRINER LN