

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

APPLICANT: Marc & Marguerite Laurent

ASSESSMENT DISTRICT: 7th

CASE NUMBER: 2024-0021-V

COUNCIL DISTRICT: 7th

HEARING DATE: June 25, 2024

PREPARED BY: Robert Konowal
Planner

REQUEST

The applicants are requesting variances to perfect an accessory structure (shed) without a principal structure and with less setbacks and buffer than required at 1208 Griner Lane in the subdivision of Wagners Point, Shady Side.

LOCATION AND DESCRIPTION OF SITE

The subject property, estimated to be approximately 2,130 square feet in area, is located on the south side of Griner Lane, 225 feet west of W. Shady Side Road. The site is known as Lot 3A of Parcel 607 on Tax Map 69.¹ The property has been zoned R2 – Residential District since the adoption of comprehensive rezoning for the Seventh Council District effective October 7, 2011.

This waterfront property is on a peninsula with shoreline on Cedar Creek and is located in the Chesapeake Bay Critical Area, classified as primarily LDA – Limited Development Area with a small area of RCA - Resource Conservation Area in the southeast corner. It is located in a mapped Buffer Modification Area.

The property has been developed with a 12-foot by 12-foot structure and attached deck. There is also a pier projecting from the shoreline.

APPLICANT’S PROPOSAL

The applicants are proposing to perfect the existing 12 foot by 12 foot structure. The letter of explanation indicates the structure is to be used for storage. The attached deck is to be removed.

REQUESTED VARIANCES

Section 18-13-104. of the Anne Arundel County 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. Section 17-8-301 (b) of the Code prohibits disturbance in the 100-foot stream buffer. The

¹ The subject property is under the same ownership as Lot 3 located directly to the north, across the private road.

shed has been constructed in the buffer and is disturbing 144 square feet of the buffer not including any disturbance that was required during construction.²

Section 18-2-204 (c) of the Anne Arundel County Zoning Ordinance states an accessory structure or use may not be located on a lot other than the lot on which a principal structure (i.e., use) is located. There is no dwelling on the subject property; rather, the proposed shed on the subject lands will be accessory to a principal structure or use that is not located on the subject lands. A variance is required to allow an accessory structure where the principal use is not located on the subject property.

Section 18-4-601 of the Code requires that an accessory structure be located a minimum of 40 feet from a front lot line. In the case of the subject property which is a water front property, the front lot line is the mean high water. The shed has been located 10 feet from the mean high water (front lot line) requiring a variance of 30 feet to the Code requirement.

FINDINGS

Background

A previous application (2023-0055-V) to allow a private pier on a lot without a principal structure was approved by the Administrative Hearing Officer June 8, 2023.

There is an open Building Permit violation (B-2022-363) pertaining to the construction of the subject shed, and deck, plumbing, electrical panels and outlets. A Zoning violation (Z-2022-0988) is open for Lot 3 adjacent to the subject property and also owned by the applicant for having chickens on a lot of less than 10,000 square feet.

Variance Criteria

This Office finds that the subject property is significantly undersized being only approximately 2,133 square feet in size. However, these lands are under the same ownership as Lot 3 directly to the north. If the applicant is in need of additional storage space then that storage could be accommodated on those lands to the north outside the Critical Area buffer without the need for any of the three variances requested. An examination of aerial photos indicates that the shed that has been constructed may be being used for recreational purposes (tiki bar?) rather than storage.

Based on the above, the applicants have not demonstrated any unique physical condition or practical difficulty in complying with the Code. A literal interpretation of the County's Critical Area program in this case would not deprive the applicants of rights that are commonly enjoyed by other properties in similar areas. Rather approval of the requested variance for a shed/recreational building in the buffer would confer on the applicant a privilege others would not be granted. There are a number of structures that have been located on other waterfront "outlots" in the immediate

² Section 17-8-702 of the Code allows in-kind replacement of existing lot coverage when reconstruction occurs on the same foundation or within the same footprint as previously existing development. As the replacement shed is larger, in a different location and possibly being used for a different purpose (tiki bar) than the previous structure a variance to the 100-foot buffer is required. Previous structure was approximately 7 feet by 11 feet.

area but it appears those structures predate Critical Area law. The subdivision plat pertaining to the creation of these lots in 1959 identified these lots as “non-buildable” lots.

Since the variances are not warranted they cannot be the minimum necessary to afford relief.

The Critical Area variance is the result of actions by the applicants where development has commenced before obtaining the required approvals. However the requested variance to the Critical Area program does not arise from any condition relating to land or building use on any neighboring property.

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 applicants have not demonstrated they have adequately evaluated and implemented site planning alternatives that minimize the impact on the buffer. In such case, the shed could simply be moved to an area outside the buffer on Lot 3 which is also owned by the applicant.

The granting of a variance would adversely affect water quality, fish, wildlife, and plant habitat within the County's Critical Area and would not be in harmony with the general spirit and intent of the County's Critical Area program.

Approval of the variances would not necessarily alter the essential character of the neighborhood as there are a number of structures on these “outlots” in the neighborhood however those structures appear to predate Critical Area law. The variances if granted would not substantially impair the appropriate use or development of any adjacent property.

Finally, the request would 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 nor be detrimental to the public welfare.

In summary, the applicant has not identified any physical condition or practical difficulty in complying with the Code and the variances are not therefore considered to be warranted. Since the variances are not warranted they cannot be the minimum necessary for relief.

The **Development Division (Critical Area Team)** advised that 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 Stop Work Order for the construction of the structure in 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.

The **Critical Area Commission for the State of Maryland** advised that 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 that the

request meets each and every one of the variance standards under COMAR 27.01.12, including the standard of unwarranted hardship.

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 Commission advised that in their opinion the applicants have failed to meet six of the seven variance standards and oppose this variance request. The Commission's detailed submission has been attached to this report.

The **Anne Arundel County Department of Health** reviewed the well water supply system for the subject property and determined that the request does not adversely affect the well water supply system. The Health Department has no objection to the request.

RECOMMENDATIONS

Based upon the standards set forth in Section 18-16-305, of the Anne Arundel County Code under which a variance may be granted, this Office recommends that the variances to perfect an accessory structure without a principal structure and with less setbacks and buffer than required at 1208 Griner Lane as shown on the attached site plan be ***denied***.

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.