

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

APPLICANT: Joseph Landsman Jr.

ASSESSMENT DISTRICT: 3

CASE NUMBER: 2024-0077-V

COUNCILMANIC DISTRICT: 5

HEARING DATE: July 23, 2024

PREPARED BY: Joan A. Jenkins 
Planner II

REQUEST

The applicant is requesting a variance to allow a dwelling addition with less setbacks and buffer than required on property known as 858 Imperial Road in Arnold.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of 45,932 square feet¹ (1.05 acres) of land and is located with approximately 306 feet of frontage on the northwest side of Imperial Road. The site is identified as Parcel 475 in Grid 18 on Tax Map 32.

The property is zoned R-5 Residential District as adopted by the comprehensive zoning of Councilmanic District 5 zoning maps, effective January 29, 2012.

The site is waterfront on Spriggs Cove and lies entirely within the Chesapeake Bay Critical Area overlay. The property is designated as IDA - Intensely Developed Area and the lot is split between a non-buffer modified area and a buffer modified area. Steep slopes encumber the property at the shoreline. The property is served by public water and private septic.

The property is currently improved with a one-story single-family dwelling, a storage shed, a paved driveway, a pier (not shown on the site plan) and associated features.

APPLICANT'S PROPOSAL

The applicant proposes to remove a concrete patio and construct a one-story bathroom addition 30 feet by 13 feet by 15 feet high attached to the northwestern side of the existing dwelling within the critical area 100-foot buffer.

REQUESTED VARIANCES

§ 18-13-104(a) of the Anne Arundel County Zoning Ordinance requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary

¹ The SDAT shows the site as 48,787 square feet of land area. The area is based on the site plan submitted.

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). Section 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.” Section 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 proposal shows 390 square feet of permanent buffer disturbance for the addition and an undetermined amount of temporary disturbance, shown on the site plan but not quantified, within the 100-foot buffer. Therefore, the proposed redevelopment necessitates a variance to disturb the 100-foot buffer. Actual disturbance to be determined at the time of permitting.

§ 18-4-701 sets forth the setback regulations for property in the R5 - Residential District. The proposal meets the requirements therefore a variance is not required for setbacks.

FINDINGS

The subject site far exceeds the minimum area and dimensional requirements of the Code for the R5 District. The property is encumbered by the 100-foot critical area buffer to tidal waters and there are steep slopes on the property at the shoreline. The location of the existing dwelling would require a critical area buffer disturbance variance for any addition.

The existing critical area lot coverage is 6,518 square feet (14.19%). The proposed coverage with the removal of the concrete patio and the construction of the proposed addition will be 6,686 square feet (14.55%), which is less than the 6,889 square feet maximum critical area lot coverage allowed by Code.

A review of the County 2024 aerial photograph shows an eclectic mix of dwellings in this waterfront community. This lot is the largest in the immediate area and the dwelling is the closest to the shoreline. The applicant purchased the property, along with three others, January 18, 2024.²

This property was the subject of a previous variance case 2009-0169-V which was denied by the Administrative Hearing Officer (AHO) and subsequently granted approval by the Board of Appeals (BOA) under case BA-55-09V for the construction of a replacement dwelling and deck with conditions regarding trees to remain. A second variance case 2010-0258-V for a screened porch with a balcony addition within the Critical Area Buffer was denied March 17, 2011 by the AHO who noted that the applicants were granted relief from the Critical Area development standards in 2010 with the appeal of the first variance that was granted by the BOA. The second variance was appealed to the BOA but was dismissed based on failure of the Petitioner to present testimony on the appeal request.

In the pre-file for this project the Critical Area Team noted that in 2009 the [previous] property owner was allowed, through appeal, to rebuild and expand the existing dwelling in the current

² The deed shows Joseph Landsman III, Christianna Landsman, Ronda Landsman, and Joseph Landsman Jr. as grantees.

location. In order for that request to have been approved, the Board would have had to find that the current footprint was the minimum necessary to afford the applicant relief. In addition, the decision to rebuild within the 100' buffer would also make the need for any future variance requests the result of an action by the owner.

The applicant's letter of explanation states that there is no way of expanding the dwelling without being within the 100' buffer. The letter indicates that the proposal is smaller than the relief from the previous BOA decision. The applicant states that the proposed addition is relatively small and will need to address stormwater management through the permitting process. The applicant opines that there is no way to improve or expand the existing dwelling without impacting the 100' buffer.

The **Department of Health** commented that they do not have an approved plan for this project and have no objection to the request so long as a plan is submitted and approved by the department.

The **Development Division (Critical Area Team)** commented that the fact that the development on this site is located within the 100' buffer is the result of a BOA decision roughly 15 years ago. This office initially opposed the request and remains opposed to development in the buffer still. The applicant argues that since the BOA approved a larger footprint, they determined what was in fact the minimum necessary to afford relief. While that may be true, the fact that the applicant did not build what was approved and proceeded to live in the home for an additional 15 years, proved that the so called "minimum" was in fact excessive and he and his family actually only needed the home that was ultimately constructed. The application contains no information on the actual need for the improvement or what, if any, alternatives were considered to avoid additional disturbance in the buffer. This request fails to meet the standards for approval and should be denied.

The **Critical Area Commission** provided a brief history of previous variance requests and commented that their stance on the request to expand the footprint of the reconstructed house as approved under BOA Case # BA 55-09V remains unchanged. The Commission staff opposes the current variance request as this request does not meet all of the Critical Area variance standards. They provided a detailed letter which concludes that there is no unwarranted hardship and that the applicants will not be deprived of a use that would be permitted to others as no property has the right to construct an addition in the Buffer. The granting of this variance would confer a special privilege upon the applicant and the cumulative impact of development in the Critical Area has substantial and negative impact on the Chesapeake Bay and construction of a dwelling addition can increase the volume and velocity of stormwater runoff into the Chesapeake Bay.

The **Cultural Resources Section** commented that a site visit is required to complete the review for any building permits for this property. The remnants of a historic house, constructed in 1800, are likely within the footprint of this existing structure. The historic sites planner requires a site visit to document the structure in advance of approval of any further alterations. This property is also under pre-file review for a proposed subdivision. The applicant is aware that the County would require a Phase I archaeological survey of the property for a subdivision per Article 17-6-502, which the applicant is currently in the process of procuring. The results of the survey

need to be reviewed by the Cultural Resources Section in order to inform design review and prior to any grading/building permit or subdivision approval, including with respect to any additional disturbance to the waterfront area or existing structure.

Critical Area Variance Standards

For the granting of a Critical Area variance, a determination must be made as to whether, because of unique physical conditions, strict implementation of the County's critical area program would result in an unwarranted hardship to the applicant. In this case, the location of the existing dwelling creates an unwarranted hardship, however, the dwelling was intentionally constructed within the buffer with an approved variance when there were other locations outside of the buffer that would have eliminated the critical area variance and would have allowed for future expansions. The granting of the variance based on the location proposed would confer on the applicant a special privilege that would be denied by COMAR, Title 27.

The variance request is based on conditions or circumstances that are the result of actions by the current owner. The property has changed ownership since the BOA decision, however, the decision remains with the land. While the approved footprint was much larger than the footprint of the current dwelling, the applicants of the prior variance chose to build a modified dwelling footprint on only a portion of the footprint that was approved by the BOA. A variance expires after 18 months if a building permit is not obtained for the approved variance. A building permit was not obtained for the entire footprint of the variance that was approved therefore, the process begins anew and the new variance request must stand on its own merit and meet the current criteria.

The variance request does not arise from any condition relating to land or building use on any neighboring property. The granting of the variance will adversely affect water quality or impact fish, wildlife or plant habitat and would not be in harmony with the general spirit and intent of the County's Critical Area Program.

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. Under the County Critical Area program, no property has the right to construct an addition in the Buffer. In order to minimize the environmental impacts, the applicants should evaluate and implement site planning alternatives.

General Variance Standards

With regard to the requirements for all variances, approval of the variance will not alter the essential character of the neighborhood, as this proposal would be a redevelopment by constructing an addition on an existing dwelling. Approval of the variance will not substantially impair the appropriate use or development of the adjacent properties as the proposed dwelling will meet the minimum side setback requirements. The variance will not reduce forest cover in the limited development area or resource conservation area, will not be contrary to acceptable clearing and replanting practices, and will not be detrimental to the public welfare.

The site plan indicates that this is a 13' x 30' bathroom addition. The applicant has not provided

information regarding the floor plan of the house or the addition to justify the need for a 390 square foot bathroom addition within the buffer. A lack of justification and the fact that the addition is approximately one-third the size of the existing dwelling makes the request excessive and not deemed to be the minimum necessary to afford relief in this case.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends ***denial*** of the proposed critical area variances to disturb the buffer.

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

M.A.F. & Associates, LLC
Matthew A. Forgen
55 Jones Station Road, W.
Severna Park, MD 21146
(443)864-8589

M.A.F. & Associates, LLC

April 17, 2024

Planner
Department of Planning & Zoning
2664 Riva Road
Annapolis MD 21401

RE: 858 Imperial Road
Arnold, MD. 21012

Dear Planner:

Please accept this submittal of a variance on the above referenced project. We are proposing to construct a single-family dwelling addition on the 1.0545 -acre, R5 legal lot. This property consists of an improved legal lot that is entirely within the IDA portion of the critical area. Please see below for the variance being requested.

The comments from the pre-file were:

The Critical Area Team reviewed the current proposal and noted that in 2009 the property owner was allowed, through appeal, to rebuild and expand the existing dwelling in the current location. In order for that request to have been approved, the Board would have had to find that the current footprint was the minimum necessary to afford the applicant relief. In addition, the decision to rebuild within the 100' buffer would also make the need for any future variance requests the result of an action by the owner. This request cannot be supported.

The Zoning Administration Section concurs with the comments provided by the Critical Area Team. The existing dwelling was constructed under a variance approved by the Board of Appeals. The dwelling was intentionally constructed within the buffer when there were other locations outside of the buffer that would have eliminated the critical area variance and would have allowed for future expansions. The applicant will need to demonstrate why the existing improvements constructed via the previously approved variance do not already provide the minimum relief necessary to afford reasonable use of the property. In order for a Critical Area variance to be approved, the applicant must demonstrate and the Hearing Officer must find that the proposal complies with each and every variance standard provided under Section 18-16-305 (b) & (c) of the Anne Arundel County Zoning Ordinance.

Our response:

I would agree that that previous variance established minimum relief as well. The issue I have and why I feel we should have county support is that the previously approved variance approved the construction of a much larger footprint than what was constructed.

I have attached the BOA approval (BA-55-09V (2009-0169-V)). The last page of this approval is the exhibit of the approved footprint. As you can see the footprint is much larger than what was built, including the small addition being proposed.

Since this proposal is much smaller than the footprint that established minimum relief in the BOA approval (BA-55-09V (2009-0169-V)), I feel that this application falls within the boundaries of minimum relief as set by the BOA approval.

The following are the variance requested for this site.

We request a variance to Article 18-8-301 to allow disturbance (1,650 square feet) and construction of an addition (390 square feet) within the 100' buffer to the tidal waters within Chesapeake Bay Critical Area. We request this variance to allow for the construction of a single-family dwelling addition.

We feel this variance request meets the requirements of Article 18-16-305 (b) and (c) and therefore the variance should be granted. Below is the justification for granting the above noted variances.

18-16-305(b)(1): This is a legal lot that was recorded prior to the critical area laws. The existing dwelling sits entirely within the 100' buffer. The house sits within the non-buffer modified portion of the property. There is no way of expanding the dwelling without being within the 100' buffer.

18-16-305(b)(2)(i): A literal interpretation of COMAR, Title 27, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County. There is no way of expanding the dwelling without being within the 100' buffer. If the variance were denied, the owner would not be able to expand to the existing house in any way.

18-16-305(b)(2)(ii): This property does not lie within the bog or any upland bog buffers.

18-16-305(b)(3): The granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, Title 27, the County's critical area program to other lands or structures within the County critical area, or the County's bog protection program to other lands or structures within a bog protection area. The entire house sits within the 100' buffer. The previous BOA decision set minimum relief and this proposal is smaller than that approval.

18-16-305 (b)(4): The variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property. The existing house has been in the 100' buffer prior to critical area law.

18-16-305(b)(5): The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program or bog protection program. The proposed addition is relatively small and will need to address storm water management through the permitting process.

18-16-305(b)(6): This proposed development does not fall within the 100-foot upland buffer to the bog and therefore does not need to meet the requirements of § 17-9-208 of the County Code.

18-16-305(b)(7): We feel that the applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808, of the State Code. There is no way to improve/expand the existing dwelling without impacting the 100' buffer.

18-16-305(b)(8): There is no other option for the applicant to add to the existing dwelling to not be within the 100' buffer. This proposal is minimal. There are no other planning alternatives that are available to not require a variance to the 100' buffer.

18-16-305(c)(1): This proposal is the minimum variance to allow for the construction of the dwelling addition. This is a legal lot that was recorded prior to the critical area laws. The existing dwelling sits within the 100' buffer. The house sits within the non-buffer modified portion of the property. There is no way of expanding the dwelling without being within the 100' buffer. We pushed the house addition back from the water as much as possible to minimize the buffer disturbance.

18-16-305(c)(2)(i): The approval of the variance will not alter the essential character of the neighborhood. The proposed dwelling addition will be similar in size to the other waterfront homes in the community and smaller than what was deemed minimum relief in the BOA approval (BA-55-09V (2009-0169-V)).

18-16-305(c)(1)(ii): The adjacent lots are currently improved with single-family dwellings. This proposed development would not impair the appropriate use or development of these properties.

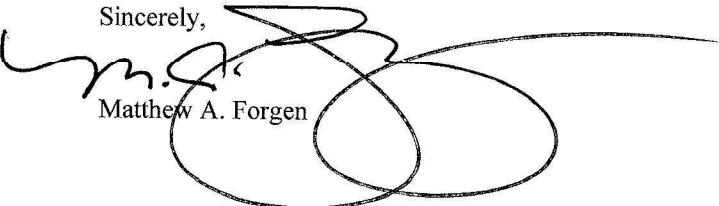
18-16-305(c)(1)(iii): The property is located in the IDA classification of the critical area. We will meet the IDA critical area requirement.

18-16-305(c)(1)(iv): This proposed development is in compliance with all critical area requirements for the IDA portion of the critical area.

18-16-305(c)(1)(v): This development is not detrimental to the health and welfare of the community in that we are proposing to build a new dwelling addition will be required to provide stormwater management for the proposed increase in total lot coverage.

If you should have any questions regarding this submittal, please feel free to contact me at the number above.

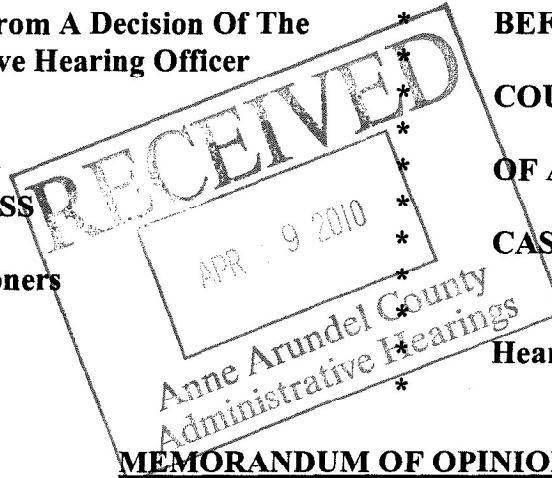
Sincerely,


Matthew A. Forgen

**RE: An Appeal From A Decision Of The
Administrative Hearing Officer**

**BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY**

**GARY & JEAN ROSS
Petitioners**



**CASE NO.: BA 55-09V
(2009-0169-V)**

Hearing Date: February 18, 2010

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to permit construction of a dwelling and front deck with fewer setbacks and buffer than required, on property known as 838 Imperial Road, Arnold.

Summary of Evidence

Mr. Timothy Martin, a professional registered surveyor, prepared the plats utilized in this matter. Mr. Martin testified that the property is in the Critical Area, and currently there is a fuel tank buried on the property, as well as a septic system 20 feet from the waterline, and an asbestos shingled roof on the building. If the variance were granted in this matter, the fuel tank, the septic system and the roof would all be eliminated from the property. Petitioner's Exhibit 1A shows that two lots comprise the property. The northern lot is located in the Buffer Modification Area ("BMA"); however, the existing home is located on the southern portion of the property and is not within the BMA. Mr. Martin testified that the BMA's purpose is to cover existing homes located in the Critical Area. Approximately one-third of the proposed new home would be located in the BMA. The Petitioners' Exhibit 1B demonstrates how a home larger than the proposed home could be built without the need for a variance and be located outside of the Buffer Modification Area. Exhibit 1C demonstrates the property subdivided into three lots

without the need for a variance. Exhibit 1D compares how granting the requested variance would be more beneficial to the environment than allowing the Petitioners to either build a larger home further back on the property or subdivide it into three building sites. The total requested square footage, the increased percentage over the existing impervious square feet, the disturbed area, the woods clearing and clearing percentage would all be substantially higher if the variance is not granted and the Petitioners move forward with other options pertaining to the subject property. The Petitioners' Exhibit 1E shows locations of similar properties on Spriggs Cove where homes were newly constructed or are in the process of construction; demonstrating that the variance would not impair adjacent properties.

Mr. Eric E. See, an environmental consultant, prepared the Critical Area Report and Habitat Assessment. Mr. See testified that the environment would be less impacted if the variance were granted than if the other development options occurred. The existing home is on the bank of Spriggs Cove, whereas the proposed home would be moved back from the bank. He feels that there is plenty of flat ground area to add storm water management to the property, that the septic system would be removed, as well as the underground oil tank. Mr. See testified that the proposed home would enhance the water quality, and only 3 trees would be removed to effectuate construction. Furthermore, there is plenty of room on the property for reforestation. Mr. See believes there would be a 10 percent reduction of pollutants if the variance is granted and it is environmentally preferable.

Mr. Gary Ross, the Petitioner, testified that the property has been in his family for three generations, the majority of the land was completely acquired in the 1950s. There is a small cottage on the property that comprises less than 1,000 square feet. It was originally a shack built in the 1800s. Later, plumbing and a furnace were installed to modify the home. Mr. Ross believes that the home no longer fits in with the surrounding housing environment in his

neighborhood. By building the proposed home, the two lots on the property would be merged and would destroy the ability to subdivide the property. Allowing the construction of the new home would improve real estate value for adjacent properties. Recently four homes were constructed on or near Spriggs Cove; not allowing the variance would deny Mr. Ross the ability to do what others have done in his neighborhood. Approximately 45 other homes sit within the BMA on the Cove. Photos were submitted showing the surrounding homes that were recently built and portraying the current home on the subject property.

Ms. Lori Rhodes, a planner with the Office of Planning and Zoning, recommended approval of the variance. This site is zoned R5 – Residential District since the adoption of the Broadneck Small Area Plan effective May 26, 2002. This is a waterfront lot that fronts on Spriggs Cove within the Critical Area. Approximately one-half of the northernmost portion of the lot is mapped as BMA. The subject property is the only grandfathered, developed property along Spriggs Cove that is not completely within the BMA. The current dwelling was constructed in 1800 and was expanded around 1950. The proposed dwelling will be constructed over a portion of the land disturbed by the existing dwelling and concrete patio. The new dwelling will also be located further away from the waterline compared to the existing dwelling, and minimal environmental impact will occur; only 3 trees will be eliminated and they will be replaced elsewhere on the property with native plants. The new dwelling will eliminate the current septic system and will hook up to the County's sewage system, eliminating a drain field; an underground heating oil tank; and the asbestos shingles on the current dwelling. The lot is designated on the Critical Area Map as IDA – Intensely Developed Area; the lot will be subject to water quality requirements and will result in a 10 percent reduction of pollutants if the variance were granted. A literal interpretation of the County's Critical Area Program would deny the applicant rights commonly enjoyed by others in similar areas of the County, and that

compared to the other options for development on this lot, it is the most environmentally preferred choice. The County requested that the variance be granted with conditions including that the applicant shall provide mitigation inside the Buffer to the extent possible and shall comply with any instructions and necessary approvals from the Permit Application Center, and the existing stand of trees in and out of the 100 foot buffer may not be disturbed unless deemed necessary for the proposed development and shall not exceed three trees proposed on the site plan for removal.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusion

The subject waterfront property is zoned R5-Residential since the adoption of the Broadneck Small Area Plan, effective May 26, 2002, and classified as IDA-Intensely Developed Area within the Critical Area, as well as a portion of the lot mapped as BMA-Buffer Modification Area. The Petitioners have requested variances to construct a dwelling and front deck with less setbacks and buffer than required within the Critical Area Buffer. The requested variances would allow the Petitioners to reconstruct a house and associated facilities on the property.

In order for this Board to grant the requested variances, the Petitioners must satisfy a rigorous set of requirements set forth in Section 3-1-207 of the Anne Arundel County Code (Code). Each and every requirement must be satisfied; thus, failure to meet even one Code requirement requires this Board to deny the requested variances. The first requires the applicant to show that "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.” *Id.* § 3-1-207(b)(1). The property is oddly shaped and is surrounded by water on two sides constituting a unique physical condition inherent to the property. Furthermore, only a portion of the property is within the BMA, which does not include the existing cottage. Ms. Rhodes, the Petitioner and Mr. Martin were confused by this aspect since the BMA is supposed to extend protection to homes that existed prior to the implementation of the Critical Area Program; clearly, this cottage meets that standard. Therefore, we find that the property has unique physical conditions that would cause the Petitioners to suffer an unwarranted hardship if the Code is strictly applied.

The Petitioners next must show that “[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County’s critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County.” *Id.* § 3-1-207(b)(2)(i). The community on Spriggs Cove is entirely developed; there are homes of various sizes throughout the community, three of which are recently constructed and one is under construction. Indeed, this property is currently developed, but the home is inefficient to meet the needs of the owners, and poses several environmental concerns, including the underground oil tank, its proximity to the waterline, the asbestos shingles, and the septic system. Like other property owners in the community, the Petitioners would like a habitable and environmentally sound house on their property. As Mr. Ross stated, the home does not fit within the character of the surrounding neighborhood, and he would like to do what those around him have done to their properties. We also note all of the surrounding, developed properties are within the BMA, except for the undeveloped lot to the south of the Petitioners’ property. Thus, we find that strict application of the Critical Area law would deprive the Petitioners of the same rights enjoyed by others in the community.

Next, the Petitioners must prove that “the granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County’s critical area program to other lands or structures within the County critical area” *Id.* § 3-1-207(b)(3). As we previously addressed, the surrounding community is completely developed. The variances would permit the lot owner to reconstruct a home on the site, which development would decrease the environmental impact of pollutants by 10 percent; the asbestos shingles, the underground oil tank and the septic system would be eliminated. Furthermore, the proposed home would be constructed farther from the waterline than where the current home sits. If the BMA was correctly applied to the current home as it should have been, the Petitioners would not have a need to request any of these variances. The requested variances would not confer any special privilege on the Petitioners beyond that enjoyed throughout this neighborhood and what is currently enjoyed on this property.

The Petitioners must establish that “[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property.” *Id.* § 3-1-207(b)(4). The variance requests are based on the physical conditions on the property that render development of the lot in accordance with the Code nearly impossible. No redevelopment has taken place on the property and there are no conditions on neighboring properties that affect the Petitioners’ property. Accordingly, we find that the need for the requested variances was not created by the Petitioners, but by a mishap in the application of the BMA.

The Petitioners must also show that “[t]he granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County’s critical area or a bog protection area and will be in harmony with the general spirit and intent of the County’s

critical area program or bog protection program.” *Id.* § 3-1-207(b)(5). Ms. Rhodes and Mr. See testified that there would be no adverse impact from the proposed redevelopment on the Critical Area ecosystems. The site plan was revised to reduce the disturbance within and impact to the Critical Area. As previously stated, the construction would result in a 10 percent reduction of pollutants on the property. The septic system, the asbestos shingles, and the underground oil tank will all be eliminated. Modern storm water management systems shall be implemented to control runoff, a public sewer hookup will be implemented, and only three trees will be removed, with on site options for reforestation. We find that the Petitioners’ proposal is “in harmony with the general spirit and intent” of the County’s Critical Area program. *Id.*

The subject property is not within the 100-foot upland buffer of a bog. Therefore, Section 3-1-207(b)(6) does not apply and merits no further discussion.

Next, the Petitioners must establish that “by competent and substantial evidence [it] has overcome the presumption contained in the Natural Resources Article, Section 8-1808(d)(2), of the State Code.” *Id.* § 3-1-207(b)(7). Under Section 8-1808(d)(2) of the Natural Resources Article it is presumed “that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction’s program.” Md. Code Ann., Natural Resources §8-1808(d)(2)(i). As we previously addressed, there would be less adverse impact on the Critical Area ecosystems from the grant of the requested variances than from the existing developed condition. A house is a permitted use on this property and this application seeks only to reconstruct what currently exists on site—but with lesser impact. We find that the Petitioners have overcome the presumption of the Natural Resources Article.

The Petitioners also must show that "the variance is the minimum variance necessary to afford relief." Code, § 3-1-207(c)(1). The proposed house is comparable to other homes in the community. The area on the lot outside of the buffer is the location available for the Petitioners to construct this home. The Petitioners have suggested that a home several times larger could be built without a variance further back on the lot, however, the environmental impacts would be far greater than what is currently being proposed. Furthermore, the Petitioners also have the option of selling the property for subdivision, which could result in an even greater environmental impact. The Petitioners are opting and requesting to build a home that is not fiscally reasonable for them when they have the options of earning money from building and selling a larger home or subdividing the property. Accordingly, we find that the requested variances are the minimum necessary, and the most environmentally sound.

The Petitioners next must show that "the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located [or] substantially impair the appropriate use or development of adjacent property." *Id.* § 3-1-207(c)(2)(i) and (ii). The houses in the surrounding community are similar in size to the house that the Petitioners propose to construct. Therefore, we find that granting the requested variances will not have any effect on the character of the neighborhood or impair the use of adjacent property; we believe it will improve the character of the neighborhood, as it will fit in more, and may improve the property value of the surrounding properties.

Next, the Petitioners must show that "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area and will not be contrary to acceptable clearing and replanting practices required for development in the critical area." *Id.* § 3-1-207(c)(2)(iii). The site plan shows a significant amount of area for

reforestation and revegetation on the site. Only three trees will be removed for the construction of this home. Thus, we find that grant of the requested variances would not reduce forest cover.

Lastly, the Petitioners must also show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(2)(v). The Petitioners simply want to rebuild a house on the property. They have taken numerous steps to ensure that the development would have the least impact on the Critical Area while also improving the environment. We do not believe that allowing the Petitioners to reconstruct the house on this site will be detrimental to the public.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 6th day of APRIL, 2010, by the County Board of Appeals of Anne Arundel County, ORDERED, that a variance of 68 feet from the required 100 foot minimum Critical Area Buffer to permit the construction of a dwelling and front deck is hereby **GRANTED**, on condition that the existing stand of trees in and outside the 100 foot Buffer may not be disturbed unless deemed necessary for the proposed development and no more than three (3) trees shall be removed, as shown on the site plan.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.


If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.


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COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



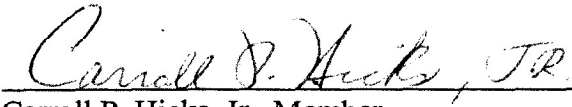
William C. Knight, III, Chairman



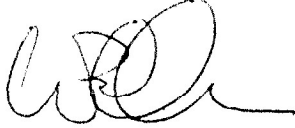
Arnold W. McKechnie, Vice Chairman



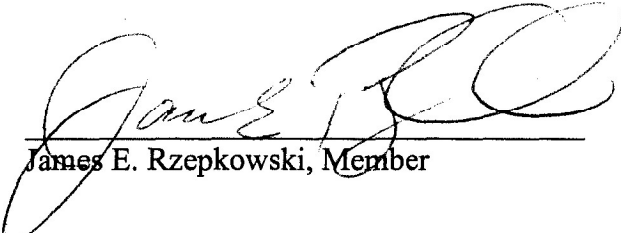
John W. Boring, Member



Carroll P. Hicks, Jr., Member



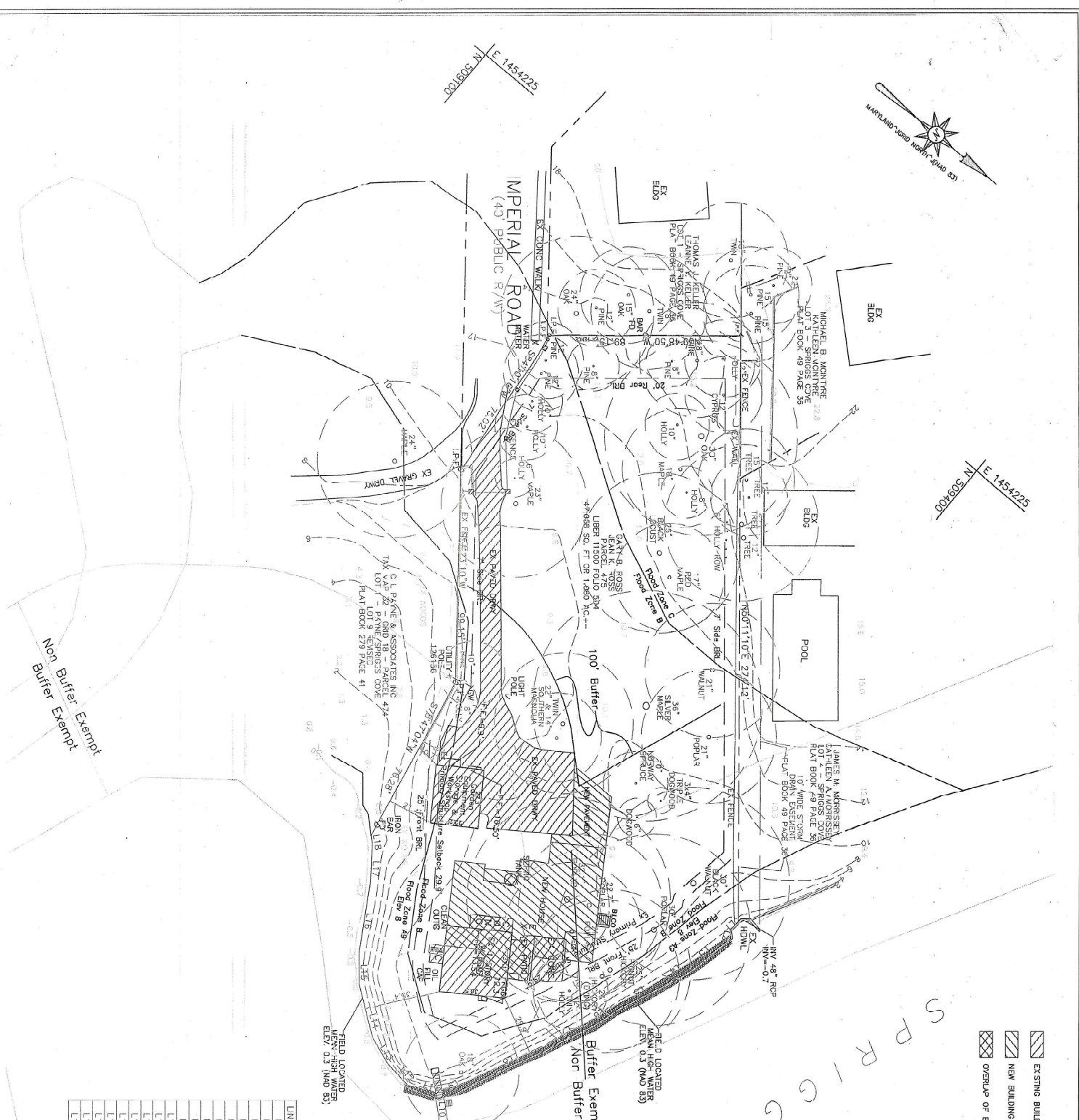
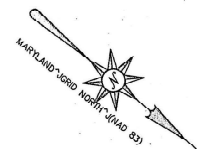
William Moulden, Member



James E. Rzepkowski, Member



Doreen Strothman, Member



E 1454225
N 509400

E 1454225
N 509400

E 1454650
N 509400

Non Buffer Exempt
Buffer Exempt

- EXISTING BUILDING AREA
- NEW BUILDING AREA
- OVERLAP OF EXISTING & NEW BUILDING AREA

RECEIVED
AUG 14 2009
Anne Arundel County
Administrative Hearings

Header = 8/25/09 2009.0169.V

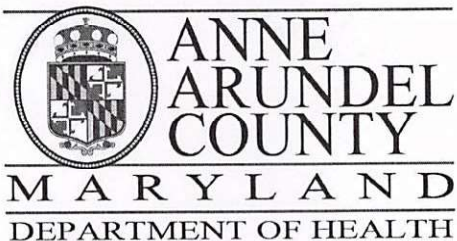
LINE	BEARING	DISTANCE
L1	S81.02.48"E	4.23
L2	N63.47.09"E	4.06
L3	S76.43.44"E	21.93
L4	S72.03.04"E	10.40
L5	S68.3.08"E	30.40
L6	S74.52.56"E	11.73
L7	S66.09.52"E	24.04
L8	S65.04.00"E	38.84
L9	S65.03.03"E	13.37
L10	S51.22.08"E	7.03
L11	S13.32.59"E	14.17
L12	S06.04.34"W	13.52
L13	S19.34.30"W	14.56
L14	S35.12.53"W	25.96
L15	S49.22.31"W	14.37
L16	S59.00.13"W	33.81
L17	S52.15.10"W	18.29
L18	S42.32.51"W	3.79

Authorization/Limitations for Use of Plans
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CREATIVE OUTLOOKS, LLC
PHILIP F. GUGLIUZZA
CUSTOM HOME PLANNING & DESIGN
HOME ADDITION-REMODELING DESIGN
COMPLETE CONSTRUCTION PLANS
PHONE: 410-239-0261 FAX NO. 410-239-6017

SITE PLAN
PROJECT FOR:
GARY & JEAN ROSS
858 IMPERIAL ROAD
ARNOLD, MARYLAND 21012
DATE: AUGUST 3, 2009 SCALE: 1" = 30'-0" FILE NAME: ROSSFFP DRAWN BY: P. GUGLIUZZA

1 OF 1
SHEET No.



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

Handwritten initials "BC" in blue ink, positioned to the right of the "FROM:" line.

DATE: April 26, 2024

CASE
NUMBER: 2024-0077-V
Joseph Landsman Jr.
858 Imperial Road
Arnold, MD 21012

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to allow a dwelling addition with less setbacks and buffer than required. The Health Department offers the following comments:

The Health Department does not have an approved plan for this project. The Health Department has no objection to the above reference variance request as long as a plan is submitted and approved by the Health Department.

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

cc: Sterling Seay

2024-0077-V

Menu Cancel Help

Task Details OPZ Critical Area Team

Assigned Date

04/19/2024

Assigned to

Kelly Krinetz

Current Status

Complete w/ Comments

Action By

Kelly Krinetz

Comments

The fact that the development on this site is located within the 100' buffer is the result of a BOA decision roughly 15 years ago. This office initially opposed the request and remains opposed to development in the buffer still. The applicant argues that since the BOA approved a larger footprint, they determined what was in fact the minimum necessary to afford relief. While that may be true, the fact that the applicant did not build what was approved and proceeded to live in the home for an additional 15 years, proved that the so called "minimum" was in fact excessive and he and his family actually only needed the home that was ultimately constructed.

The application contains no information on the actual need for the improvement or what, if any, alternatives were considered to avoid additional disturbance in the buffer.

This request fails to meet the standards for approval and should be denied.

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

05/10/2024

Assigned to Department

OPZ Critical Area

Status Date

05/16/2024

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 21, 2024

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

Re: Landsman Variance (2024-0077-V)

Dear Ms. Seay:

Thank you for providing information on the above-referenced variance request to construct a 390-square foot addition onto an existing dwelling within the 100-foot Critical Area Buffer. The property is a 1.05-acre waterfront lot located entirely within the Critical Area on lands designated as an Intensely Developed Area (IDA) and is partially mapped as a Buffer Modified Area (BMA). However, the portion of the property where the addition is proposed is not within the BMA.

Site History

Previous property owners submitted a variance request to raze the existing dwelling to construct a new, larger dwelling approximately 30 feet landward of the mean high water line. Commission staff submitted a letter in opposition on August 7, 2009, noting that the request did not meet all of the Critical Area variance standards, including unwarranted hardship, as there was ample room outside of the Critical Area Buffer to construct the dwelling. Under Case # 2009-0169-V, on September 2, 2009, the Anne Arundel County Administrative Hearing Officer (AHO) denied the applicant's request as they could have constructed a dwelling outside of the Buffer. On April 16, 2010, the Anne Arundel County Board of Appeals (BOA) under Case # BA 55-09V granted the applicant's appeal for the construction of a replacement dwelling and deck with the condition that the existing stand of trees outside of the 100-foot Buffer remain and that no more than three trees be removed to construct the proposed improvements. In March of 2011, an additional variance was requested under Case # 2010-0248-V to allow for a screened porch with balcony addition within the Critical Area Buffer. On March 17, 2011, the AHO denied that request noting that the applicants were granted relief from the Critical Area development standards in 2010 when the BOA granted the appeal and allowed them to construct a dwelling with deck approximately 30-feet from MHW. The applicant appealed that denial under BA 16-11V, and that appeal was dismissed on August 26, 2011, based on the failure of the Petitioner to present testimony on the appeal request.

Current Variance Request and Standards

Our stance on the request to expand the footprint of the reconstructed house as approved under BOA Case # BA 55-09V remains unchanged. As such, Commission staff opposes the current variance request as this request does not meet all of the Critical Area variance standards as discussed below.

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. It does not appear that this request can meet this variance standard as the applicant currently has reasonable and significant use of the entire property with the existing improvements such as the dwelling, patios, accessory building, walkways, driveway with parking area, and riparian access. It was determined by the Anne Arundel County Board of Appeals in 2010, that the applicants could redevelop the property per the granted approval, given that certain conditions were met. Since that approval, the property was developed per the granted request and presumably under the explicit conditions. Thus, the granted variance provided the applicant’s reasonable and significant use of the property, and if this request were to be denied they would still enjoy reasonable and significant use of their property. Therefore, the applicant cannot meet this variance standard.

Additionally, the County’s Critical Area program and the State Critical Area regulations place strict limits on disturbance to the Critical Area Buffer in order to meet the goals of the Critical Area law. Approving a variance to allow Critical Area Buffer disturbance for the construction of approximately 390 square feet of additional improvements when the current dwelling was intentionally constructed within the Critical Area Buffer, and when there were other locations outside of the Buffer that would have allowed future expansion without the need for a Critical Area variance, is not a right commonly enjoyed by other, similar properties developed under the County’s Critical Area program. Denying the request to construct the 390-square foot addition in the Critical Area Buffer is not depriving the applicant of a use that would be permitted to others under the local Critical Area program, as no property has the right to construct an addition in the Buffer.

Conversely, 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 addition within 40-feet of the shoreline when the property was already granted the right to build a dwelling within the Critical Area Buffer under explicit conditions.

Further, the cumulative impact of development in the Critical Area has a substantial and negative impact on the Chesapeake Bay. Given that the lot is waterfront to Spriggs Cove, a tributary of the Magothy River, and the request is for additional lot coverage within the Critical Area Buffer, this request is not in harmony with the spirit and intent of the Critical Area law and regulations or the County’s Critical Area program.

Lastly, the request to construct the dwelling addition within the Critical Area buffer can increase the volume and velocity of stormwater runoff flowing into Spriggs Cove, the Magothy River, and into the Chesapeake Bay. Especially given that the applicant already enjoys habitable and

Ms. Sterling
Landsman Variance
May 21, 2024
Page 3

outdoor amenities within the Critical Area Buffer, this request will absolutely have an adverse effect on water quality and habitat within the Critical Area.

For the reasons explained above, this office opposes this variance and recommends denial of this request. Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record. Also, please notify the Commission in writing of the decision made in this case. If you have any questions, 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
Charlotte Shearin, CAC

AA 98-24

2024-0077-V

Menu Cancel Help

Task Details OPZ Cultural Resources

Assigned Date

04/19/2024

Assigned to

Stacy Poulos

Current Status

Complete w/ Comments

Action By

Stacy Poulos

Comments

The Cultural Resources Section's Historic Sites Planner requires a site visit to complete the review for any building permits for this property. The remnants of a historic house, constructed in 1800, are likely within the footprint of this existing structure. The historic sites planner requires a site visit to document the structure in advance of approval of any further alterations.

This property is also under pre-file review for a proposed subdivision. The applicant is aware that the County would require a Phase I archaeological survey of the property for a subdivision per Article 17-6-502, which the applicant is currently in the process of procuring. The results of the survey need to be reviewed by the Cultural Resources Section in order to inform design review and prior to any grading/building permit or subdivision approval, including with respect to any additional disturbance to the waterfront area or existing structure.

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

05/10/2024

Assigned to Department

OPZ Cultural Resources

Status Date

05/06/2024

Overtime

No

Start Time

Hours Spent

0.0

Action by Department

OPZ Cultural Resources

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



OFFICE OF PLANNING AND ZONING

CONFIRMATION OF PRE-FILE (2024-0023-P)

DATE OF MEETING: 3/13/2024

P&Z STAFF: Sara Anzelmo, Kelly Krinetz

APPLICANT/REPRESENTATIVE: Gary Ross/Matt Forgen EMAIL: mforgen@aol.com

SITE LOCATION: 858 Imperial Road, Arnold LOT SIZE: 1.05 acres ZONING: R5

CA DESIGNATION: IDA BMA: Partial or BUFFER: Partial APPLICATION TYPE: Critical Area Variance

The applicant is proposing to construct a 13' by 30' one-story addition onto the northwest side of the existing dwelling. The entire addition would be located within the 100-foot buffer to Spriggs Cove, necessitating a variance for the associated disturbance within the buffer.

From the applicant:

"This proposal is the minimum variance to allow for the construction of the dwelling addition. This is a legal lot that was recorded prior to the critical area laws. The existing dwelling sits within the 100-foot buffer. The house sits within the non-modified portion of the property. There is no way of expanding the dwelling without being within the 100-foot buffer. We pushed the house addition back from the water as much as possible to minimize the buffer disturbance."

COMMENTS

The **Critical Area Team** reviewed the current proposal and noted that in 2009 the property owner was allowed, through appeal, to rebuild and expand the existing dwelling in the current location. In order for that request to have been approved, the Board would have had to find that the current footprint was the minimum necessary to afford the applicant relief. In addition, the decision to rebuild within the 100' buffer would also make the need for any future variance requests the result of an action by the owner. This request cannot be supported.

The **Zoning Administration Section** concurs with the comments provided by the Critical Area Team. The existing dwelling was constructed under a variance approved by the Board of Appeals. The dwelling was intentionally constructed within the buffer when there were other locations outside of the buffer that would have eliminated the critical area variance and would have allowed for future expansions. The applicant will need to demonstrate why the existing improvements constructed via the previously approved variance do not already provide the minimum relief necessary to afford reasonable use of the property. In order for a Critical Area variance to be approved, the applicant must demonstrate and the Hearing Officer must find that the proposal complies with each and every variance standard provided under Section 18-16-305 (b) & (c) of the Anne Arundel County Zoning Ordinance.

INFORMATION FOR THE APPLICANT

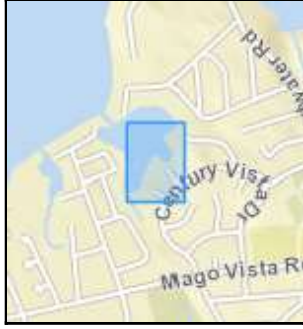
Section 18-16-201 (b) Pre-filing meeting required. Before filing an application for a variance, special exception, or to change a zoning district, to change or remove a critical area classification, or for a variance in the critical area or bog protection area, an applicant shall meet with the Office of Planning and Zoning to review a pre-file concept plan or an administrative site plan. For single lot properties, the owner shall prepare a simple site plan as a basis for determining what can be done under the provisions of this Code to avoid the need for a variance.

*** A preliminary plan checklist is required for development impacting environmentally sensitive areas and for all new single-family dwellings. A stormwater management plan that satisfies the requirements of the County Procedures Manual is required for development impacting environmentally sensitive areas OR disturbing 5,000 square feet or more. State mandates require a developer of land provide SWM to control new development runoff from the start of the development process.

Section 18-16-301 (c) Burden of Proof. The applicant has the burden of proof, including the burden of going forward with the production of evidence and the burden of persuasion, on all questions of fact. The burden of persuasion is by a preponderance of the evidence.

A variance to the requirements of the County's Critical Area Program may only be granted if the Administrative Hearing Officer makes affirmative findings that the applicant has addressed all the requirements outlined in Article 18-16-305. Comments made on this form are intended to provide guidance and are not intended to represent support or approval of the variance request.

858 Imperial Rd



Legend

- Foundation
- Addressing
- Parcels
- Parcels - Annapolis City
- Planning
- County Planning

Notes

none

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.



THIS MAP IS NOT TO BE USED FOR NAVIGATION