

PRO. EXHIBIT# 2
CASE: 2024-0126-V
DATE: 9/17/24

Jeff Colburn
981 Diggs Rd.
Crownsville, MD 21032

September 15, 2024

Reference: Variance Application Case #2024-0126-V

I oppose the variance requested in this application. I own the adjacent property. I am a member of the Civic Association of the Palisades (CAP). Below, I offer a discussion as to why I oppose it. With Exhibit A, I enumerate the specifics of the variance request and offer my protest.

The variance in question is to build a house on a pristine parcel within the Expanded Critical Area Buffer. The parcel was deeded to the applicant, The Civic Association of the Palisades (CAP), for community access to the water as shown in Attachment B of the application. The applicant recently had that restriction lifted so as to be able to sell the parcel for residential development. The applicant asserts that denying the variance would create an *unwarranted hardship* because without the variance it would be *deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program rights afforded to other property owners within the Critical Area*. However, the rights afforded to other property owners predate the 1984 Critical Area law. I have not been able to identify a case whereby a variance to clear an entire previously undisturbed expanded buffer and build in it has been granted. It seems that this property is exactly the kind of property that the law was designed to protect.

CAP states (Application Exhibit A) that the variances are needed to accomplish the "goal of selling the property." In fact, the property can be sold without any variances and CAP has already received an offer for such purchase. This application is not about hardship, but about generating a financial windfall, most of which would not accrue to CAP, but to the developer that has contracted to purchase the lot subject to the variances being granted.

CAP claims *what makes this situation unique is that the sale of the lot by the civic association will provide needed revenue for the community to upgrade their public facilities*. The Civic Association of the Palisades Inc. (CAP) is a private organization. It does not offer public facilities. CAP membership draws from a pool of approximately 175 households. Many of which are upscale with property valuations exceeding a million dollars. If CAP needs revenue to upgrade its facilities, and its membership desires to do so, it should raise the revenue from its membership.

Furthermore, it should be noted that the parcel has been designated for community use since 1959. Of the approximately 175 households eligible for membership in CAP, Approximately 75 pay their dues and belong. The *community-endorsed initiative* cited in Attachment A of the application, was endorsed by only 16 members. It is not clear that the community supports the parcel's development. Historically community members have rejected developing the parcel.

Sincerely,

Jeff Colburn

EXHIBIT A: PROTEST TO SPECIFIC VARIANCE REQUEST

SPECIFIC VARIANCE REQUEST:

The following addresses the conditions for granting a variance per section 18-16-305 (b):

1. *Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity.* The presence of the expanded buffer are inherent topographical feature of the site.

Protest

The text of 18-16-305 (b) (1) is as follows:

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 or bog protection program would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808, of the State Code, to the applicant;

The applicant asserts that unique physical conditions apply to this property. There is nothing unique about the property as defined in 18-16-305 (b) (1). Steep slopes and expanded buffer are shared by neighboring properties and many others along the Severn River. What is unique about this property is that it is pristine, undisturbed, and has been green space available to the community for decades.

2. *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; A 48' by 30' house (1440 square foot livable footprint) is consistent with or smaller than other waterfront houses on the Severn River in this area.*

Protest

The rights commonly enjoyed by other properties are because the properties were developed before the Critical Area Program. COMAR, Title 27, MD Code Reg 27.01.12.04

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 surrounding Severn Rive waterfront homes in this area are either consistent with this size or substantially larger, such that granting of the variance does not confer any special privilege; and the buffer provided 150' to 157' is similar to

that occurring on the waterfront houses in the area. See site plan for set back from shoreline (buffer) for two adjacent houses.

Protest

The parcel was deeded to CAP in 1959 for community use as follows: "to be used only for the purposes of a bathing beach and as a means of egress and ingress to and from the waters of the Severn River..." Allowing the parcel to be used for the construction of a house is a special privilege. Furthermore, it would deny access to the property currently enjoyed by members of CAP.

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; See site plan that indicates the site is undeveloped and there have been no physical activities on the site that caused the need for the variance.

No Protest

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; See the attached site plan and stormwater management computations, which indicates that stormwater management is being provided; total infiltration of the entire 10 year runoff volume from impervious areas (not the standard increase) which will protect the water quality, wildlife and plant habitats and all other requirements of development in the critical area will be met.

Protest

The *general spirit and intent* of the County's critical area program include preserving wooded areas in the expanded buffer. Therefore, the variance request is not within the general spirit of the program.

6. The applicant for a variance to allow development in the 100-foot upland buffer has maximized the distance between the bog and each structure, taking into account natural features and the replacement of utilities, and has met the requirements of § 17-9-208 of this Code; See the attached site plan. There is no development proposed within the regular 100 foot shoreline buffer or buffer to a bog. The need for the variance arises from the expanded buffer which is an area approximately 150 TO 157' removed from the shoreline.

Protest

If the variance is granted, the right to build a pier and stairs to access it would follow. That would disturb the steep sloop and the 100' buffer.

7 The applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808, of the State Code; (5) A variance to a local jurisdiction's critical area program may not be granted unless:

(i) Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the critical area program would result in unwarranted hardship to the applicant; (ii) The local jurisdiction finds that the applicant has satisfied each one of the variance provisions; and (iii) Without the variance, the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.

These are the conditions contained in the County criteria and are met. See the attached site plan,

Protest

Without the variance, the applicant would not be deprived of use of land or structure. CAP could sell the land without a variance and in fact, an offer has been made to purchase it and put it in conservation.

8 The applicant has evaluated and implemented site planning alternatives in accordance with § 18-16- 201 (c). See the attached site plan. It utilizes micro drywells that return the water to the ground and require the least disturbance such as surface practices.

(c) **Requirements for all variances.** A variance may not be granted unless it is found that:

(1) the variance is the minimum variance necessary to afford relief; and See the attached site plan indicating that the development scope and size is consistent with the neighboring properties.

Protest

A smaller house could be built and that would reduce clearing in the expanded buffer.

(2) the granting of the variance will not:

(i) alter the essential character of the neighborhood or district in which the lot is located; The surrounding properties in Herald Harbor and Palisades located on the water are mostly larger, this being similar in size will not alter the character of the immediate neighborhood in which the lot is located.

(ii) substantially impair the appropriate use or development of adjacent property: See the attached site plan that indicates there is no impact on adjacent properties.

(iii) reduce forest cover in the limited development and resource conservation areas of the critical area;

See the attached site plan that indicates the forest removal that is consistent with the neighborhood and reforestation will be provided at offsite (Shady Side Bank) or fees will be paid.

Protest

The wooded expanded buffer within the RCA will be cleared. That reduces forest cover.

(iv) be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area; nor See the attached site plan, which has been prepared to meet the acceptable clearing and replanting practices.

(v) be detrimental to the public welfare. See the attached site plan, which indicates that stormwater management is being provided which will protect the water quality, wildlife and plant habitat.