

November 4, 2024

Anne Arundel County, Office of Planning and Zoning  
2664 Riva Road, 3rd Floor  
Annapolis, MD 21401

**RE: Bywater Estates ~ Lot 8  
850 Childs Point Road  
Annapolis, MD 21401  
Variance Extension Request**

Sir/Madam:

On behalf of our client, enclosed is an application package for a variance extension for the above referenced property. Specifically, a variance is requested to **Article 18, Section 16-405(a)** for a time extension to the variance expiration.

On May 9, 2023, the property owner received variance approval (2023-0040-V) for the construction of an attached addition, breezeway, and garage, the Order of which is included as Attachment 1. The decision approved critical area variances to allow the disturbance of the buffer and expanded buffer, disturbance of steep slopes, and a zoning variance to the 50-ft planting buffer requirement.

Due to unforeseen delays related to coordination on forest conservation easement, stormwater management requirements, and other permit conditions, the applicant has been unable to obtain the necessary approvals to proceed with construction. The requested extension will provide the property owner with the necessary time to meet project requirements and secure the permits.

Thank you for your attention to this matter. Please contact us if we may be of further service during your review of this variance request.

Sincerely,  
Drum, Loyka & Associates, LLC

  
Katie Yetman

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER: 2023-0040-V**

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**CAREN DUNNE REVOCABLE TRUST**

**SECOND ASSESSMENT DISTRICT**

**DATE HEARD: APRIL 25, 2023**

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**ORDERED BY:**

**DOUGLAS CLARK HOLLMANN  
ADMINISTRATIVE HEARING OFFICER**

**PLANNER: SUMNER HANDY**

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**DATE FILED: MAY 9, 2023**

## **PLEADINGS**

Caren Dunne Revocable Trust, the applicant, seeks a variance (2023-0040-V) to allow dwelling additions with less setbacks, buffer and planted buffer than required and with disturbance to slopes of 15% or greater on property with a street address of 850 Childs Point Road, Annapolis, MD 21401.

## **PUBLIC NOTIFICATION**

The hearing notice was posted on the County's website in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 300 feet of the subject property was notified by mail, sent to the address furnished with the application. Caren Dunne testified that the property was posted for more than 14 days prior to the hearing. Therefore, I find and conclude that there has been compliance with the notice requirements.

## **FINDINGS**

A hearing was held on April 25, 2023, in which the witnesses were sworn and the following was presented regarding the proposed variance requested by the applicant.

### **The Property**

The applicant owns the subject property which has 400 feet of frontage on the west side of Childs Point Road, 1,090 feet southwest of Woods Road, Annapolis. It is known as Lot 8 of Parcel 169 in Grid 21 of Tax Map 51 in the Bywater Estates subdivision. The property comprises 8.48 acres and is zoned RLD

- Residential Low Density District. This waterfront lot on Church Creek is designated in the Chesapeake Bay Critical Area as resource conservation area (RCA) and is mapped in a buffer modification area (BMA) and part non-modified.

The site is currently developed by a single-family dwelling, pier, tennis court, and other associated facilities, and is served by well water and a private septic system.

### **The Proposed Work**

The proposal calls to construct dwelling additions comprising a porch and revised entryway foyer; living space; a balcony; steps to an existing deck; and a breezeway and connecting garage as shown on the site plan admitted into evidence at the hearing as County Exhibit 2.

### **The Anne Arundel County Code**

§ 17-8-201(a) stipulates that development in the RCA may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope; is to allow connection to a public utility; or is to provide direct access to the shoreline. The proposed development requires a variance to allow disturbance to slopes of 15% or greater, the exact amount of which will be determined at the time of permitting.

§ 18-13-104(a) 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. § 18-13-104(b) provides for an expanded buffer in cases where there are steep slopes. 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. In the case of the subject property, there are steep slopes present, and the buffer to Church Creek expands from the west to encompass much of the property. The proposal requires a variance to allow disturbance within the expanded buffer, the exact amount of which will be determined at the time of permitting.

§ 18-4-401(b) requires that a 50-foot planted buffer be located and maintained between the principal structure and the crest of steep slopes. The proposal would not maintain this buffer, and so a variance is required to this provision.

### **The Variances Requested**

The proposed work will require the following variances:

1. A critical area variance of an unknown amount from the prohibition in § 17-8-301 against disturbing the buffer and expanded buffer to allow the applicant to construct the proposed dwelling additions and associated facilities as shown on County Exhibit 2, with the actual disturbance to be determined at the time of permitting; and
2. A critical area variance of an unknown amount from the prohibition in § 17-8-201(a) against disturbing steep slopes to allow the applicant to construct the proposed dwelling additions and associated facilities as shown on County

Exhibit 2, with the actual disturbance to be determined at the time of permitting; and

3. A zoning variance to the requirement of § 18-4-401(b) that a 50-foot planted buffer be located and maintained between the principal structure and the crest of steep slopes to allow the proposed dwelling additions and associated facilities to be constructed within the 50-foot planted buffer as shown on County Exhibit 2.

#### **The Evidence Submitted At The Hearing**

#### **Findings and Recommendations of the Office of Planning and Zoning (OPZ)**

Sumner Handy, a zoning analyst with the OPZ, presented the following findings:

- The subject property is of sufficient area and width for lots located in the RLD district. Existing lot coverage is well below the allowable lot coverage at this site, and is proposed to be reduced even further as part of this project. The dwelling, which the applicant proposes to renovate and to add onto, was originally constructed in 1960, according to State tax records.
- The applicant notes that the dwelling is over 60 years old and is in need of renovation. The proposed improvements have been directed away from the shoreline, in the spirit of the Code's intent; despite this, the shape of the shoreline means the buffer wraps around the existing dwelling, and the sloping topography causes the buffer to expand to encumber much of the site,

restricting the areas available for additional development.<sup>1</sup>

- The Critical Area Commission noted that the majority of the lot appears to be located within the expanded critical area buffer and that GIS analysis of the property indicates that the forested area on the site may contain Forest Interior Dwelling Species habitat. The Commission opined that it appears the applicant could reduce impacts to the expanded buffer by reducing the size of the garage, and or eliminating the proposed decks and balconies as the applicant currently enjoys reasonable and significant use of the entire lot. If the Administrative Hearing Officer determines that each and every one of the critical area variance standards have been met, appropriate mitigation shall be provided, including mitigation for impacting FIDS habitat.
- Comments from the Critical Area Team, Development Division, were not available at the time this staff report was drafted.
- The Health Department commented that it does not have an approved plan for this project, but that that department has no objection so long as a plan is submitted and approved by the Health Department.
- The Soil Conservation District deferred to OPZ and will provide comments during sediment control review.
- The Recreation and Parks department noted that the site lies within the Anne

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<sup>1</sup> There was some dispute at the pre-file stage regarding the accuracy of the drawing of the expanded buffer. OPZ interprets the BMA to reach its limit at the 100-foot buffer; the BMA does not expand. When the (non-modified) buffer expands, it may expand up to and around the 100-foot BMA.

Arundel County Green Infrastructure Network, a proposed preservation area considered in the Anne Arundel County Green Infrastructure Master Plan, and opined that the proposed development is consistent with the spirit of the Green Infrastructure Master Plan.

- The Department of Inspections and Permits, Engineering Division, commented that ESD practices are proposed in steep slopes and/or the buffers thereto, but they are not permitted to be located in these areas; urban planter box rain gardens shall not be located beneath balconies, as they are currently proposed.
- 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 subject dwelling is aging and in need of renovation, and the applicant proposes some augmentations to this 60-plus-year-old home. OPZ agrees that modest improvements to a dwelling of this age are reasonable and potentially in harmony with the purpose and intent of the Critical Area Program, and therefore that some relief from the Code is warranted. The applicant has made an effort to direct proposed improvements away from the shoreline as only a balcony and a staircase to an existing deck are proposed on the water side of the existing improvement (in addition to the second story to be added to the existing dwelling structure). OPZ judges that denial of variances to permit construction of the balcony, deck staircase, revised entryway, and two-story living space proposals would constitute an



unwarranted hardship in the development of the lot; these improvements will be immediately adjacent to the existing development and are considered to be the minimum necessary to achieve redevelopment of this dwelling.

- On the other hand, the detached garage, which is proposed to measure about 40' by 25', is oversized; and the breezeway connecting the garage to the dwelling addition is a convenience. The one-story addition, drafted to connect to the breezeway, can also be reduced once the breezeway is eliminated.

Variances to allow disturbance for these improvements are not considered to be the minimum necessary.

- With respect to the proposed balcony, deck staircase, entryway, and two-story living space, OPZ finds that a literal interpretation of the County's Critical Area Program would cause an unwarranted hardship in the redevelopment of this dwelling site and deprive the applicant of rights that are commonly enjoyed by other properties in similar areas. However, OPZ finds that a literal interpretation of the Critical Area Program would not cause an unwarranted hardship with respect to the breezeway; detached garage; the southern one-story addition. The granting of these variances for the remaining portions of the proposal, after revision, would not confer on the applicant a special privilege that would be denied by COMAR, Title 27, and with proper stormwater management and mitigation, granting of these variance requests will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.

- The variances requested are not based on conditions or circumstances that are the result of actions by the applicant and do not arise from any condition relating to land or building use on any neighboring property. OPZ finds that the applicant, having modified the proposal as described, have overcome the presumption that the proposal is not in harmony with the spirit and intent of the Critical Area Program.
- For the granting of a zoning variance, a determination must be made that, because of unique physical conditions, there is no reasonable possibility of developing the lot in strict conformance with the Code, or, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship in the development of the lot. OPZ's analysis regarding the critical area variance criteria applies to the zoning variance sought to the requirement that there be a 50-foot planted buffer located and maintained between the principal structure and the crest of steep slopes. Construction of the proposed improvements will not alter the essential character of the neighborhood; substantially impair the appropriate use or development of adjacent property; reduce forest cover in the resource conservation area; be contrary to acceptable clearing and replanting practices; or be detrimental to the public welfare.
- However, as this zoning variance relief would be reduced with the proposed reductions discussed in this staff report, OPZ cannot find that this proposal is the minimum necessary. Specifically, elimination of the breezeway would

eliminate the relief needed from this provision associated with the breezeway particularly; elimination of the breezeway would render the garage *detached*, and this provision would cease to apply to that structure; and any reduction to the one-story addition that is proposed to connect to the breezeway would likewise reduce the relief requested from this provision as each of these improvements is located within 50 feet of the crest of steep slopes (the garage and breezeway are proposed within *25 feet* of the top of steep slopes).

- Based upon the standards set forth under § 18-16-305 under which a variance may be granted, OPZ recommends partial approval of critical area variances to § 17-8-201(a) and § 18-13-104(a) to allow disturbance to slopes of 15% or greater and to the buffer as expanded, and partial approval of a zoning variance to § 18-4-401(b) to allow less planted buffer than required, to allow the proposed balcony, deck staircase, revised entryway, and two-story living space, and a reduced one-story addition on the southeastern corner of the dwelling; and denial of variances to these same provisions to allow a breezeway and attached garage, as shown on the site plan.

#### **Other Testimony and Exhibits**

The applicant was represented at the hearing by Caren Dunne who was assisted by the applicant's engineer, Michael Drum of Drum Loyka & Associates, LLC. Evidence was presented through Ms. Dunne, Mr. Drum, and Ted Sheils of Hammond Wilson, the applicant's architect, that the existing dwelling built in the 1960s needs to be rebuilt. The applicant plans a second floor addition and bump

outs toward the Childs Point Road side of the existing dwelling. There is no garage at the present time. Environmental restrictions on the property prevent placing a new garage either side of the existing dwelling. The proposed garage has been placed outside the 100-foot BMA buffer. The breezeway is needed to provide safe access between the dwelling and the proposed garage which has been positioned to move it outside the BMA buffer.

Ms. Dunne testified that she and her husband have four children, two of whom are already driving, and needed space to house her family and possibly in-laws and parents.

Ginger Graham-Lewis and Janel Sacclaris testified that they are neighbors who live across the street and are in favor of granting the variances requested by the applicant.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

## **DECISION**

### **State Requirements for Critical Area Variances**

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements

of the jurisdiction's program." (Emphasis added.) "Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high." *Becker v. Anne Arundel County*, 174 Md. App. 114, 124; 920 A.2d 1118, 1124 (2007).

In *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 131; 920 A.2d at 1128, the Court of Special Appeals discussed the history of the critical area law in reviewing a decision from this County. The court's discussion of the recent amendments to the critical area law in 2002 and 2004, and the elements that must be satisfied in order for an applicant to be granted a variance to the critical area, is worth quoting at length:

In 2002, the General Assembly amended the [critical area] law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a

variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

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In 2003, the Court of Appeals decided *Lewis v. Dept. of Natural Res.*, 377 Md. 382, 833 A.2d 563 (2003). *Lewis* was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia*, that (1) with respect to variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the buffer, and (2) that the unwarranted hardship factor was the determinative consideration and the other factors merely provided the board with guidance. *Id.* at 419-23, 833 A.2d 563.

Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being "weakened by the Court of Appeals." In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] to mean that, "without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested." (Emphasis added.)

The question of whether the applicant is entitled to the variance requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicant must overcome the presumption, “that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”<sup>2</sup> Furthermore, the applicant carries the burden of convincing the Hearing Officer “that the applicant has satisfied each one of the variance provisions.”<sup>3</sup> (Emphasis added.) “*Anne Arundel County’s local critical area variance program contains ... separate criteria. ...Each of these individual criteria must be met.*” *Becker v. Anne Arundel County, supra*, 174 Md. App. at 124; 920 A.2d at 1124. (Emphasis in original.) In other words, if the applicant fails to meet just *one* of these criteria, the variance is *required* to be denied.

In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach, et al.*, 448 Md. 112, 2016, the Court of Appeals considered an appeal claiming that a variance granted by the Worcester County Board of Appeals to allow a property owner to extend a pier across state-owned marshland from his property should not have been granted. The pier would be 80 feet longer than allowed by the Worcester County ordinance. The variance was granted. The Court of Appeals visited the

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<sup>2</sup> § 8-1808(d) (2) (ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. *See*, discussion on this subject in *Becker v. Anne Arundel County, supra*, 174 Md. App. at 135; 920 A.2d at 1131.

<sup>3</sup> § 8-1808(d) (4) (ii).

history of the critical area law and efforts by the Legislature to amend and clarify the law. The Court grappled with the phrase “unwarranted hardship,” and asked if “an applicant [must] demonstrate a denial of *all* reasonable and significant use of the entire property, or must the applicant show a denial of *a* reasonable and significant use of the entire property?” (At page 14.) The Court concluded, on page 28, that:

In summary, in order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance. (Emphasis added.)

#### **County Requirements for Critical Area Variances**

§ 18-16-305(b) sets forth six separate requirements (in this case) that must be met for a variance to be issued for property in the critical area. They are (1) whether a denial of the requested variance would constitute an unwarranted hardship, (2) whether a denial of the requested variance would deprive the applicant of rights commonly enjoyed by other property owners, (3) whether granting the variance would confer a special privilege on the applicant, (4) whether the application arises from actions of the applicant, or from conditions or use on neighboring properties, (5) whether granting the application would not adversely affect the environment and be in harmony with the critical area program, and (6) whether the applicant have overcome the presumption in Natural



Resources Article, § 8-1808(d)(2)(ii), of the State law that the variance request should be denied.

Provided that the applicant meet the above requirements, a variance may not be granted unless six additional factors are found: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located; (3) the variance will not substantially impair the appropriate use or development of adjacent property; (4) the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

The variances sought are variances from the critical area law (steep slopes and expanded buffer) and from the zoning law (setback requirements). “[A number of requests in the *Becker* decision] were for variances from the stringent critical area law. The request for a variance from the setback, however, is a request under the more lenient general zoning requirements. As indicated above, the criteria for a general zoning variance and the criteria for a critical area variance are not the same.” *Becker v. Anne Arundel County, supra*, 174 Md. App. at 141: 920 A.2d at 1134.

Therefore, the critical area variances must be considered separately from the general zoning or setback variance.<sup>4</sup> I will first analyze the facts in light of the critical area variances requested, and then analyze the facts in light of the zoning variance requested.

### **Findings – Critical Area Variances**

#### **The Applicant’s Property**

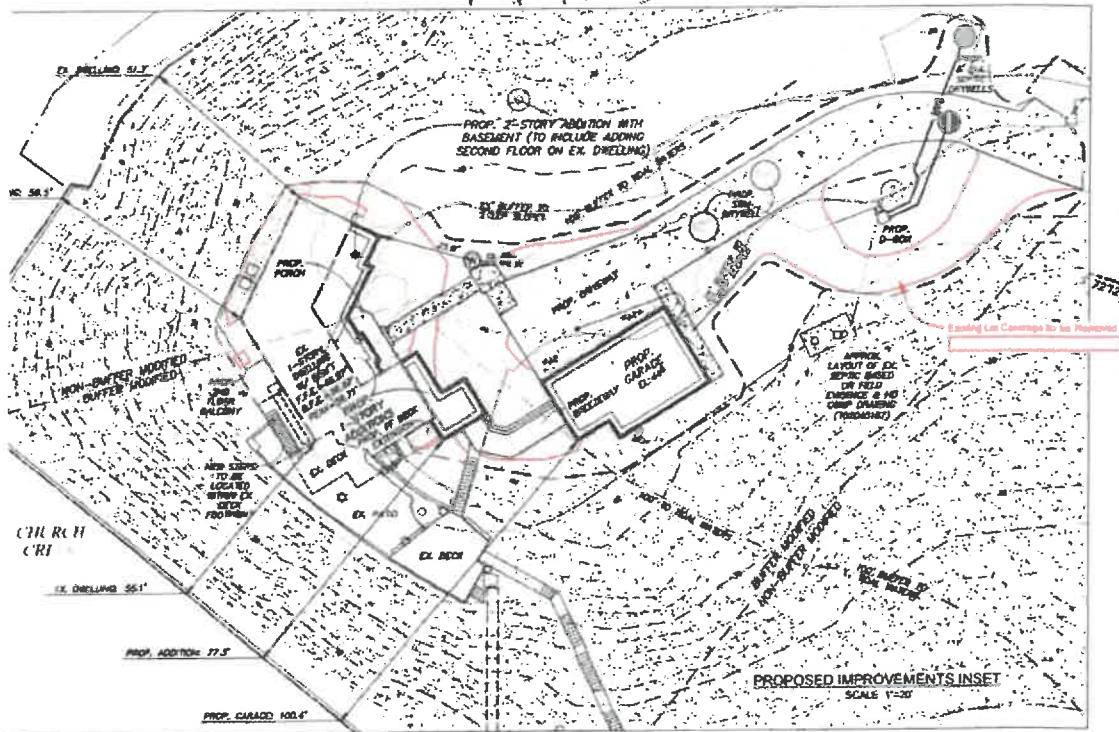
The applicant’s property consists of 8.48 acres between Childs Point Road and Church Creek. The existing home is located at the westerly end of the applicant’s property, as shown by the following aerial photograph:



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<sup>4</sup> “We agree that the Board should have distinguished between the critical area variance and the setback variance.” *Becker v. Anne Arundel County*, *supra*, page 174 Md. App. at 141; 920 A.2d at 1134.

The applicant wishes to replace the 1960-era dwelling with a new home and garage, as shown by the following excerpt from the applicant's site plan admitted into evidence as County Exhibit 2:

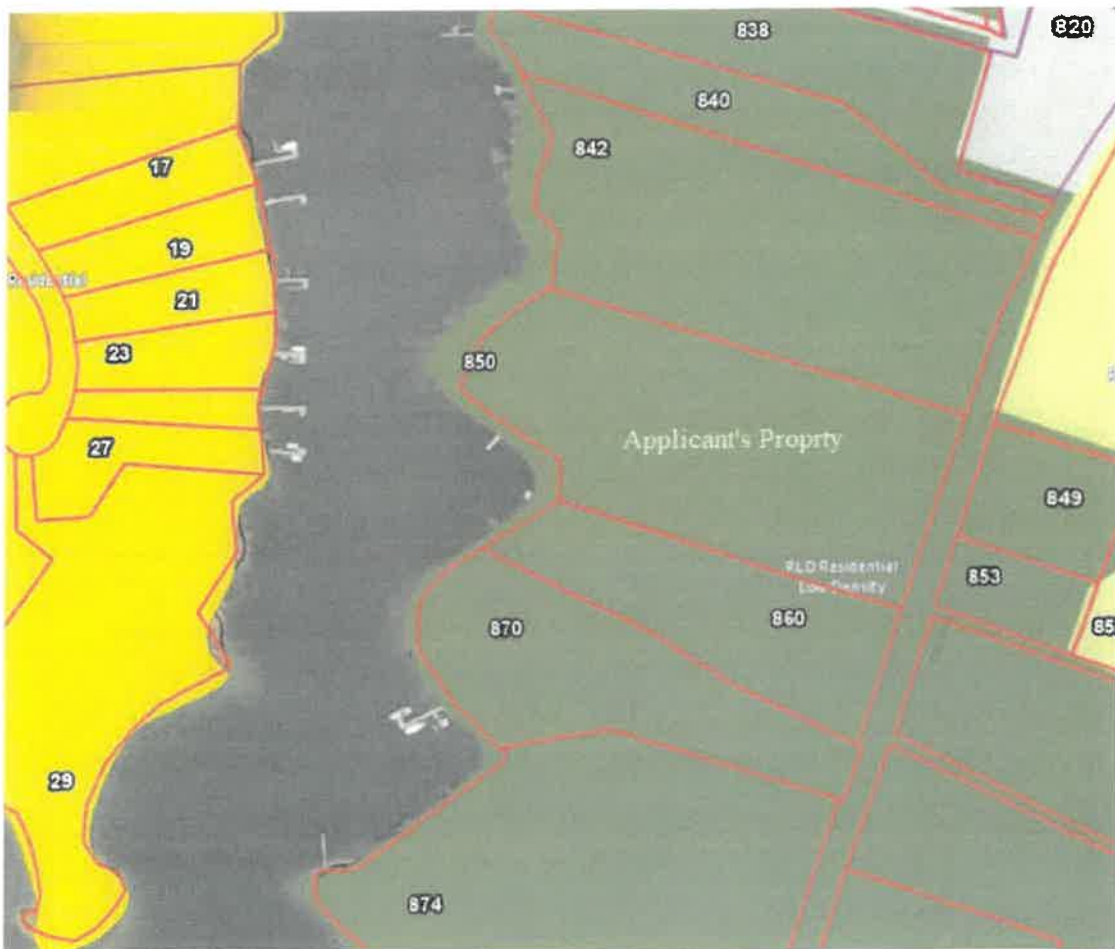


The portion of the applicant's property shown above has been classified as being half in the buffer area of the critical area (the northern portion) and half in the buffer modified area (BMA) (the southern portion). Steep slopes in the non-BMA area that continue beyond the 100-foot buffer create an expanded buffer. The critical area law prohibits disturbance in the buffer and in an expanded buffer.<sup>5</sup>

<sup>5</sup> This portion of the decision focuses on the critical area overlays. Because the applicant's property is zoned RLD, there is a zoning overlay that requires a property owner to maintain a 50-foot planted buffer between the principal structure and the crest of steep slopes. This requirement

In this case, while the proposed garage will be outside the BMA in the southern portion of the applicant's property, the expanded buffer from the northern portion wraps around the dwelling and overlaps the location of the proposed garage.

The applicant's property and the surrounding neighborhood is zoned RLD district and classified in the critical area as Resource Conservation Area (RCA) as shown by the green overlay in the following aerial photograph:



is discussed below. The applicant may also need a zoning modification to disturb the 25-foot buffer to steep slopes which will be the subject of a separate proceeding in OPZ.

Because the proposed work will disturb different portions of the applicant's property, each improvement must be considered separately. The following discussion makes clear that the variances the applicant needs, although granted in gross at the end of this decision, encompass the following specific work.

### **The Work That Requires Critical Area Variances**

#### **The Second Floor Addition**

A second floor will be built over the existing first floor. Although the footprint will not be expanded, the second floor needs critical area variances because the work to build the second floor (as well as the first floor) will disturb the buffer and steep slopes (the limits of disturbance, or LOD).

#### **The Expansion of the Childs Point Road Side of the Dwelling**

The applicant wishes to expand the footprint of the existing dwelling to add the space shown on the side of the dwelling facing Childs Point Road. Good cause was shown for the need for this expansion. Although this part of the applicant's renovation plans will be on the 'back' side of the dwelling, i.e., not in the steep slopes facing Church Creek, the area to be permanently disturbed by the proposed addition (and temporarily disturbed during construction) is within the expanded buffer from the northern portion along Church Creek. As such, a critical area buffer is required. For reasons stated below, this portion of the applicant's request will be granted.

### The Proposed Garage

Under other circumstances, the location of the proposed garage outside the BMA would not require a critical area variance but, as noted above, the expanded buffer from Church Creek wraps around the dwelling and includes the area where the applicant wishes to build her new garage. Given the limited area for the applicant to have a garage within a reasonable distance of the dwelling, the variances needed to build the garage where proposed will be granted. Alternate locations would not be practical. The garage cannot be added to either side of the rebuilt dwelling without causing greater disturbance to the buffers on this property.

The size of the garage is not out of character for the neighborhood. Given the large size of the applicant's property and the large reduction in lot coverage that will occur, the size of the garage will not have to be reduced.

### The Breezeway

The breezeway connecting the garage with the dwelling will not have to be reduced. Absent the unusual aspect of the expanded buffer wrapping around the BMA portion of the property to require a variance to build the garage and breezeway in the BMA portion of the applicant's property, no variance would be required. Given that the breezeway will be built over existing lot coverage, and taking into consideration that denying the breezeway would do little to help protect the property since foot traffic will undoubtedly reduce the benefit from having the area covered by the breezeway returned to pervious coverage, the

breezeway will be allowed as a reasonable and significant use of the property by the applicant and her family, guests, and visitors.

The following discussion of the elements of § 18-16-304 show that the critical area variances should be granted.

**Subsection (b)(1) - Unwarranted Hardship.**

As explained in the *Assateague Coastal Trust* case discussed above, an unwarranted hardship is something that would deny a property owner a use of his or her property “that is both significant and reasonable” and “which cannot be accomplished elsewhere on the property without a variance.” The applicant has shown that their proposed dwelling additions and associated facilities satisfy the requirements of unwarranted hardship. Therefore, I find that the applicant **has met** the requirements of subsection (b)(1).

**Subsection (b)(2) - Deprive Applicant of Rights**

I find that the applicant would be deprived of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the Critical Area Program, i.e., the right to build the proposed dwelling additions and associated facilities in the buffer and steep slopes. Therefore, I find that the applicant **has met** the requirements of subsection (b)(2).

**Subsection (b)(3) - Special Privilege**

I further find that the granting of the requested critical area variances would confer on the applicant a special privilege that would be denied by COMAR, 27.01, the County’s Critical Area Program, to other lands or structures within the

County's critical area. Therefore, I find that the applicant **has met** the requirements of subsection (b)(3).

**Subsection (b)(4) - Actions By Applicant Or Neighboring Property**

I find that the requested critical area variances are 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. Therefore, I find that the applicant **has met** the requirements of subsection (b)(4).

**Subsection (b)(5) - Water Quality, Intent of Critical Area Program**

The granting of the requested critical area variances 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. Therefore, I find that the applicant **has met** the requirements of subsection (b)(5).<sup>6</sup>

**Subsection (b)(7) - § 8-1808(d)(2)(ii) Presumption**

In *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 133; 920 A.2d at 1129, the Court of Special Appeals discussed the presumption found in § 8-1808(d)(2)(ii) of the Natural Resources Article: "The amendment also created a

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<sup>6</sup> Subsection (b)(6) relates to bogs which are not a factor in this decision.



presumption that the use for which the variance was being requested was not in conformity with the purpose and intent of the Critical Area Program.”

I find that the applicant has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State law (which is incorporated into § 18-16-305 subsection (b)(7)) for the reasons set forth above. Therefore, I find that the applicant has met the requirements of subsection (b)(7).<sup>7</sup>

Therefore, the requested critical area variances will be granted.

### **The Zoning Variance**

#### **Requirements for Zoning Variances**

§ 18-16-305 sets forth the requirements for granting a zoning variance. Subsection (a) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that practical difficulties or unnecessary hardships prevent conformance with the strict letter of this article, provided the spirit of law is observed, public safety secured, and substantial justice done. A variance may be granted only if the Administrative Hearing Officer makes the following affirmative findings:

- (1) Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape or exceptional topographical conditions peculiar to and inherent in the particular lot, there

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<sup>7</sup> Subsection (b)(8) relates to § 18-16-201 which sets out requirements for a pre-filing plan and administrative site plan, and other things not relevant here.

is no reasonable possibility of developing the lot in strict conformance with this article; or

- (2) Because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot.

The variance process for subsection (1) above is a two-step process. The first step requires a finding that special conditions or circumstances exist that are peculiar to the land or structure at issue which requires a finding that the property whereupon the structures are to be placed or use conducted is unique and unusual in a manner different from the nature of the surrounding properties. The second part of the test is whether the uniqueness and peculiarity of the property causes the zoning provisions to have a disproportionate impact upon the subject property causing the owner a practical difficulty or unnecessary hardship. "Uniqueness" requires that the subject property have an inherent characteristic not shared by other properties in the area. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County*, 178 Md. App. 232, 941 A.2d 560 (2008); *Umerley v. People's Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173 (1996); *North v. St. Mary's County*, 99 Md. App. 502, 638 A.2d 1175 (1994), cert. denied, 336 Md. 224, 647 A.2d 444 (1994).

The variance process for subsection (2) - practical difficulties or unnecessary hardship - is simpler. A determination must be made that, because of exceptional circumstances other than financial considerations, the grant of a

variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot.

§ 18-16-305 provides that a zoning variance must meet the same conditions set forth above as to critical area variances.

### **Findings - Zoning Variance**

I find, based upon the evidence, that because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot. Denial of the variance to allow the existing dwelling to be rebuilt as proposed and to allow the associated facilities, such as the garage and breezeway, would cause the applicant practical difficulties or unnecessary hardship.

I further find that the granting of the critical area and zoning variances are the minimum needed for relief. As explained above, the proposed garage is not out of proportion for the property or the neighborhood. On the other hand, it should be noted that the variances being granted herein are not based on the size of the family that will live in the proposed dwelling if the applicant obtains the necessary modifications and permits. Critical area and zoning permits cannot be granted or denied based on the number of inhabitants of the proposed dwelling and associated facilities, such as a garage. Such a provision is not found in the law. This is understandable because otherwise large families would get variances and small families would not.

I also find that granting the requested critical area and zoning variances will not alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

### **ORDER**

PURSUANT to the application of Caren Dunne Revocable Trust, petitioning for a variance to allow dwelling additions with less setbacks, buffer and planted buffer than required and with disturbance to slopes of 15% or greater on property with a street address of 850 Childs Point Road, Annapolis;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **9<sup>th</sup> day of May, 2023**,

**ORDERED**, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted**:

1. A critical area variance of an unknown amount from the prohibition in § 17-8-301 against disturbing the buffer and expanded buffer to allow the applicant to construct the proposed dwelling additions and associated facilities as shown on County Exhibit 2, with the actual disturbance to be determined at the time of permitting; and

2. A critical area variance of an unknown amount from the prohibition in § 17-8-201(a) against disturbing steep slopes to allow the applicant to construct the proposed dwelling additions and associated facilities as shown on County Exhibit 2, with the actual disturbance to be determined at the time of permitting; and
3. A zoning variance to the requirement of § 18-4-401(b) that a 50-foot planted buffer be located and maintained between the principal structure and the crest of steep slopes to allow the proposed dwelling additions and associated facilities to be constructed within the 50-foot planted buffer as shown on County Exhibit 2.

The foregoing variances are subject to the applicant complying with any instructions and necessary approvals from the Office of Planning and Zoning and/or the Department of Inspections and Permits, the Department of Inspections and Permits, the Department of Health, and/or the Critical Area Commission.

This Order does not constitute a building permit. In order for the applicant to construct the structures permitted in this decision, the applicant must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Furthermore, County Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein. The decision and order shall not prohibit

the applicant from making minor changes to the facilities as presently shown on County Exhibit 2 to adjust for changes made necessary by comments or requirements that arise during plan review or construction, provided those minor changes do not exceed the variances granted herein. The reasonableness of any such change shall be determined by the Office of Planning and Zoning and/or the Department of Inspections and Permits.



Douglas Clark Hollmann  
Administrative Hearing Officer

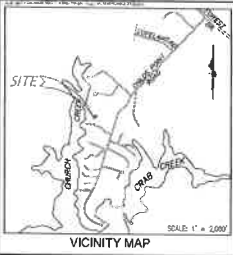
### NOTICE TO APPLICANT

**This Order does not constitute a building permit. In order for the applicant to perform the work permitted in this decision, the applicant must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.**

Any person, firm, corporation, or governmental agency having an interest in this Decision and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals within thirty (30) days from the date of this Decision. **If the variance or variances granted in this case relate to work in the critical area, a permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further, § 18-16-405(a) provides that a variance or special exception that is not extended or tolled **expires by operation of law unless the applicant within 18 months** of the granting of the variance or special exception (1) obtains a building permit or (2) files an application for subdivision. Thereafter, the variance or special exception shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded among the land records pursuant to the application for subdivision, the applicant obtains a building permit within one year after recordation of the plat, and construction proceeds in accordance with the permit.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, or they may be discarded.



**LEGEND**

- Existing Contour
- Existing Woods Line
- Existing Power Pole
- Existing Overhead Electric Line
- Existing Well
- 100' Buffer to Fidal Waters
- Expanded Buffer
- 25' Buffer to Top of Steep Slopes
- Limit of Disturbance
- Soil Disturbance
- Existing Improvements
- Steep Slopes 15% or Greater

**SITE TABULATIONS**

Total Site Area:	369,422 S.F. (8.48 Ac.)
Site Zoning:	RLD
Critical Area Designation:	PCA
Lot Coverage:	
- Existing Lot Coverage:	27,172 S.F. (0.62 Ac.)
- Allowable Lot Coverage:	55,410 S.F. (1.27 Ac.)
- Proposed Lot Coverage:	24,614 S.F. (0.57 Ac.)
RLD Zoning Setbacks for Principal Structure:	
- Front:	50'
- Rear:	40'
- Side:	20/50'
Buffer and Expanded Buffer:	
- Total Buffer Site Area:	103,323 S.F. (2.44 Ac.)
- Total Buffer Disturbance:	11,805 S.F. (0.27 Ac.)
Steep Slopes:	
- Total Steep Slope Area:	65,982 S.F. (1.50 Ac.)
- Total Steep Slope Disturbance:	751 S.F. (0.02 Ac.)

DESIGNED: RLF  
 DRAWN: JMS  
 ORIG. DATE: 15 MARCH 2022  
 REVISIONS TO APPROVED PLANS  
 NO. DATE BY DESCRIPTION  
 PLANNING # 00112121-5  
 PROJECT # 0011222  
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No.	DATE	BY	DESCRIPTION

**Drum, Loyka & Associates, LLC**  
 CIVIL ENGINEERS - LAND SURVEYORS  
 1410 Forest Drive, Suite 35  
 Annapolis, Maryland 21403  
 Phone: 410-290-3152 Fax: 410-290-1652  
 www.drumloyka.com

CLIENT:  
 MS. CAREN DUNNE  
 5607 CLERMONT DRIVE  
 ALEXANDRIA, VA. 22310

VARIANCE PLAN  
**BYWATER ESTATES ~ LOT 8**  
 850 CHILDS POINT ROAD, ANNAPOLIS, MD 21401  
 TAX ACCT. NO. 02-145-0887000  
 TAX MAP 0051 GRID 0021 PARCEL 0169 DISTRICT 2ND  
 ANNE ARUNDEL COUNTY MARYLAND  
 SCALE: 1"=40'  
 DATE: FEB. 15, 2023 PROJ. NO: 0001522 SHEET 1 OF 1