



Kinley R. Bray ✦ 443-569-5974 ✦ kbray@yvslaw.com

December 6, 2024

Ms. Sterling Seay
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, Third Floor
Annapolis, MD 21401

Re: Applicants: Marguerite and Marc Laurent
Property: 1208 Griner Lane, Shady Side, MD 20764
Tax ID: 07-850-05063800
Tax Map 69, Grid 3, Parcels 607
Letter of Explanation in Support of a Time Extension for Variance 2023-0055-V

Dear Ms. Seay:

We represent Marguerite and Marc Laurent (“Applicants”), the owner of the property known as 1208 Griner Lane, Shady Side, MD, identified as Parcel 607 in Grid 3 on Tax Map 69 (the “Property”). We are filing the enclosed variance application pursuant to § 18-16-405(c) of the Anne Arundel County Code (the “Code”) for the purpose of requesting an extension of time of six (6) months to obtain a building permit for the pier approved in Case No. 2023-0055-V.

In 2023, the Applicants submitted an application for a permit to construct a private residential pier. In reviewing that permit, Anne Arundel County advised that a variance was required. Accordingly, the Applicants sought a variance to allow a private residential pier that is not accessory to a dwelling unit on the property. On June 8, 2023 the Administrative Hearing Officer granted the variance, which was conditioned on complying with any instructions and necessary approvals from the Office of Planning and Zoning, the Department of Inspections and Permits, the Department of Health, the Critical Area Commission, the Maryland Department of the Environment, and/or the United States Army Corps of Engineers. The pending pier permit, B02416246 (the “Pier Permit”), proceeded to review.

While the Applicant initially expected to obtain the Pier Permit prior to the expiration of the variance by operation of law pursuant to § 18-16-405(a), the Pier Permit is currently subject to a hold at the Department of Inspections and Permits. This hold relates to a notice of violation for unauthorized work on a shed on the Subject Property. It is the position of the Department of Inspections and Permits that the Pier Permit cannot be issued until these violations are resolved, and while the Applicants are in the process of doing so, final resolution is not expected until February of 2025. As background, we offer the following history:

In 2022, the Applicants replaced an existing shed with a larger shed, only to realize after two notices of violation (B-2022-363 and Z-2022-988) and a stop work order that they needed a permit to do so. The Applicants then submitted an application for an Accessory Structure Permit (Permit B02416255) to replace the existing shed (the “Shed Permit”), but were instructed shortly

thereafter that they needed a variance to complete the project. That variance, in case 2024-0021-V, was ultimately denied on July 2, 2024. The Applicants timely appealed to the Board of Appeals.

Following that denial, the Applicants resolved the outstanding violation by revising the application for the Shed Permit to reduce the size and relocate the shed outside of the buffer. The revised Shed Permit was approved and issued on November 22, 2024, and therefore the Applicants are preparing to withdraw their appeal. In the meantime, however, a hold on the property—and the Pier Permit—still exists pending a final inspection on the work under the Shed Permit. A minimum of 60 days is necessary to prepare the new shed location, move the shed, and conduct the final inspection. When that final inspection is complete, the County will release the hold on the Pier Permit and the Applicant will have “obtained” the permit as required to vest the variance granted in 2023-0055-V.

The hold on the Property and Pier Permit has severely impacted the Applicants’ ability to obtain a building permit for the pier and begin construction within 18 months from the granting of the variance. Without a time extension, the variance approval will expire on December 8, 2024. Despite good faith efforts by the Applicants to obtain necessary approvals, the inability to obtain a building permit for the pier before the completion of the relocation of the shed on the same parcel necessitates an extension of time pursuant to § 18-16-405(c). While we expect this work to be completed within 60 days, we are respectfully requesting an additional 6-month extension of time to obtain a building permit to ensure all work by the Applicants and inspections by the County can be completed prior to expiration.

Despite the challenges and delays, the Applicants have shown good faith effort to move this project forward. If the time extension of 6 months (from 18 to 24 months) is granted, the Applicants will be able to secure the necessary building permit to construct the pier within such extension.

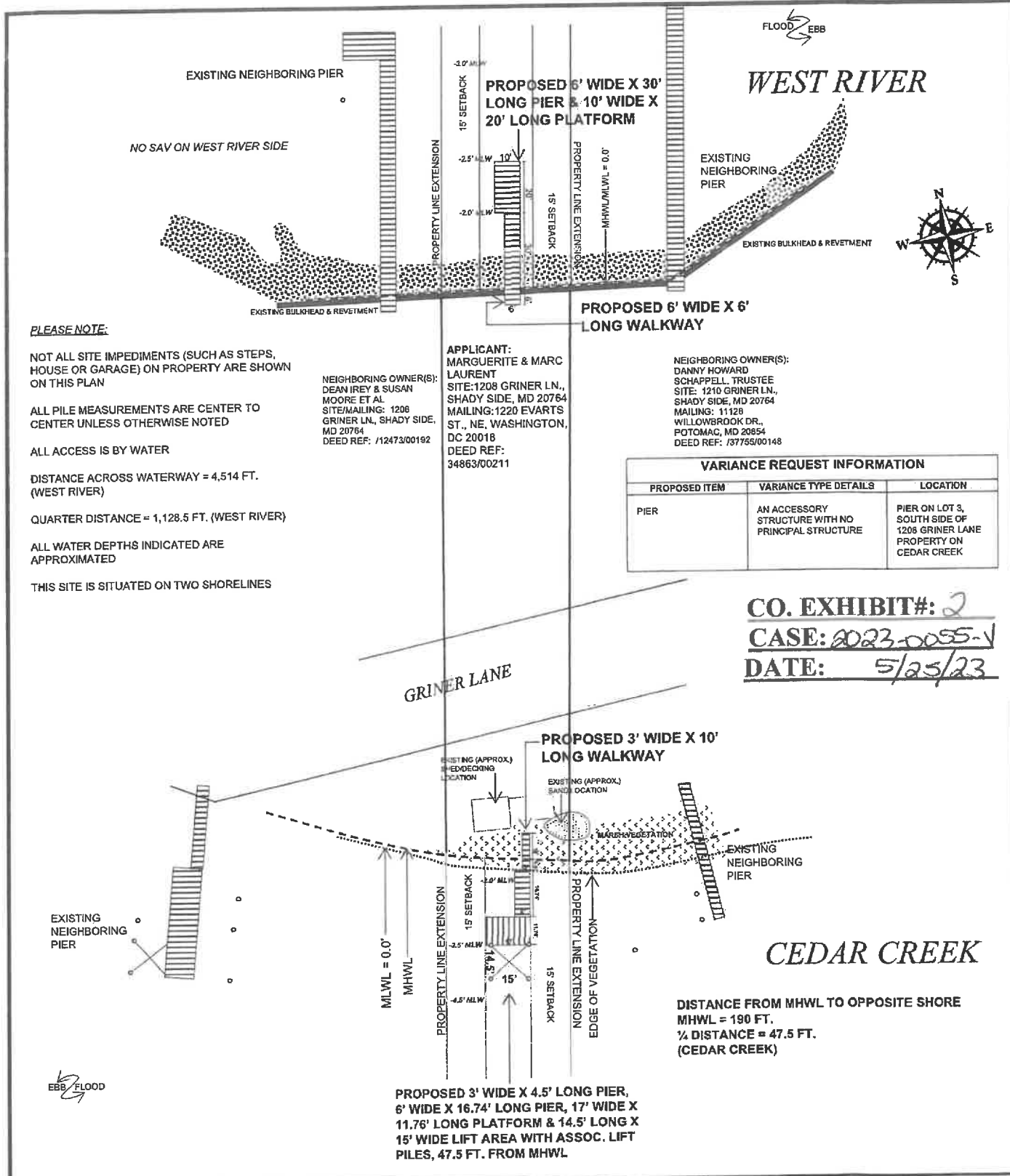
Thank you for your consideration of this matter. I look forward to receiving your response and may be reached via telephone at 443-569-5974, should you have any questions.

Very truly yours,

YVS LAW, LLC

A handwritten signature in black ink, appearing to read 'Kinley R. Bray', with a long horizontal flourish extending to the right.

Kinley R. Bray



PLEASE NOTE:

NOT ALL SITE IMPEDIMENTS (SUCH AS STEPS, HOUSE OR GARAGE) ON PROPERTY ARE SHOWN ON THIS PLAN

ALL PILE MEASUREMENTS ARE CENTER TO CENTER UNLESS OTHERWISE NOTED

ALL ACCESS IS BY WATER

DISTANCE ACROSS WATERWAY = 4,514 FT. (WEST RIVER)

QUARTER DISTANCE = 1,128.5 FT. (WEST RIVER)

ALL WATER DEPTHS INDICATED ARE APPROXIMATED

THIS SITE IS SITUATED ON TWO SHORELINES

NEIGHBORING OWNER(S):
DEAN IREY & SUSAN
MOORE ET AL
SITE/MAILING: 1208
GRINER LN., SHADY SIDE,
MD 20764
DEED REF: /12473/00192

APPLICANT:
MARGUERITE & MARC
LAURENT
SITE: 1208 GRINER LN.,
SHADY SIDE, MD 20764
MAILING: 1220 EVARTS
ST., NE, WASHINGTON,
DC 20018
DEED REF:
34863/00211

NEIGHBORING OWNER(S):
DANNY HOWARD
SCHAPPELL, TRUSTEE
SITE: 1210 GRINER LN.,
SHADY SIDE, MD 20764
MAILING: 11128
WILLOWBROOK DR.,
POTOMAC, MD 20854
DEED REF: /37755/00148

VARIANCE REQUEST INFORMATION		
PROPOSED ITEM	VARIANCE TYPE DETAILS	LOCATION
PIER	AN ACCESSORY STRUCTURE WITH NO PRINCIPAL STRUCTURE	PIER ON LOT 3, SOUTH SIDE OF 1208 GRINER LANE PROPERTY ON CEDAR CREEK

CO. EXHIBIT#: 2
CASE: 2023-0055-1
DATE: 5/25/23

Proposed Condition Plan
SCALE
1" = 50'

FETCH, LLC
574-E RITCHIE HWY., #273
SEVERNA PARK, MD 21146
410-766-0885

APPLICANT/OWNER:
MARGUERITE & MARC LAURENT

SITE ADDRESS:
1208 GRINER LANE
SHADY SIDE, MD 20764

MAILING ADDRESS:
1220 EVARTS ST., NE
WASHINGTON, DC 20018

PROPERTY DETAILS:
DISTRICT: 07
SUBDIVISION: 850
ACCT. NUMBER: 05063800
LOT(S): 3 MAP: 69
GRID: 3 PARCEL: 607
DEED REF: /34863/00211
PLAT REF.: —
PROPERTY LAND AREA: 6,534 SF
DATE: 5-17-23
PAGE 3 OF 6

PROPOSED WORK:
PIERS
ALL OF THE INFORMATION INCLUDED IN THIS PLAN IS FROM FIELD NOTES, AVAILABLE PLANS, AND PUBLIC PLATS. DIMENSIONS ABOVE APPROXIMATE. THIS PLAN IS NOT TO BE CONSIDERED A BOUNDARY SURVEY, AND DOES NOT INCLUDE EXISTING IMPEDIMENTS ON SITE OR NEIGHBORING PROPERTIES. OWNER SHOULD PERFORM PROPERTY BOUNDARY SURVEY FOR CORRECT DELINEATIONS. PROPERTY LINE EXTENSIONS AND SETBACKS ARE APPROXIMATED.
COPYRIGHT © FETCH, LLC 2023
THIS PLAN IS THE SOLE PROPERTY OF FETCH, LLC, WHICH OWNS THE COPYRIGHT TO THE USE OF THE PLAN. NO PERSON OR ENTITY MAY USE ALL OR ANY PART OF THE PLAN, INCLUDING THE OWNER OF THE PROPERTY SHOWN ON THE PLAN, OR ANY THIRD PARTY, EXCEPT FOR THE EXPRESS PURPOSE OF APPLYING FOR PERMITS TO PERFORM THE WORK DESCRIBED IN THE PLAN



Maryland
Department of
the Environment

Wes Moore, Governor
Aruna Miller, Lt. Governor

Serena McIlwain, Secretary
Suzanne E. Dorsey, Deputy Secretary

June 26, 2023

Marc M Laurent
c/o Lauren Heinsch
Fetch Consulting Group
574-E Ritchie Highway, Ste #273
Severna Park, MD 21146

Via email: marc.m.laurent@gmail.com
lauren@fetchconsultinggroup.com

Re: Agency Interest Number: 111194
Tracking Number: 202360409
Tidal Authorization Number: 23-PR-0257

Dear Marc Laurent:

Your application to alter tidal wetlands has been evaluated by the Tidal Wetlands Division. Your State wetlands license or permit authorizing work in tidal wetlands is attached. Please take a moment to read and review your authorization to ensure that you understand the limits of the authorized work and all of the general and special conditions.

Your project qualifies for federal approval under the Maryland State Programmatic General Permit (MDSPGP) under the Category A limits. The federal permit is not attached. The MDSPGP permit, general conditions, and activity specific special conditions must be downloaded from the Department's website at https://mde.maryland.gov/programs/Water/WetlandsandWaterway/Pages/MDSPGP6_conditions.aspx. You will need to download the following: Cover Letter, MDSPGP General Conditions, and the following MDSPGP-6 Activity-Specific Conditions (GP6) A3. You should not begin any work until you have obtained all necessary State, local, and federal authorizations.

Please find enclosed a copy of the State wetlands license or permit authorizing work in tidal wetlands. In order to activate your authorization, you must sign both the original and copy of the authorization in the space provided and return the signed copy to the Maryland Department of the Environment, Tidal Wetlands Division. Failure to comply with this requirement may result in an enforcement action by the Department.

This State authorization is a final agency decision; there is no further opportunity for administrative review. Any person with standing, who is either the applicant or who participated in the public participation process through the submission of written or oral comments, may petition for judicial review in the circuit court in the county where the authorized activity will occur. The petition for judicial review must be filed with the court within 30 days of receipt of this decision. Please contact Melissa McCanna at melissa.mccanna@maryland.gov or 410-537-4053 with any questions.

Sincerely,

Heather Hepburn, Chief
Western Region
Tidal Wetlands Division



STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION
GENERAL TIDAL WETLANDS LICENSE



Pier, Piling and Boat Lift Construction

LICENSE NUMBER: **23-PR-0257**
EFFECTIVE DATE: **June 26, 2023**
EXPIRATION DATE: **June 25, 2026**
LICENSEE: **Marc M. Laurent**
ADDRESS: **1220 Evarts St, NE**
Washington, DC 20018
PROJECT LOCATION: **1208 Griner Lane**
Shady Side, MD 20764
West River in Anne Arundel County

PURSUANT TO THE AUTHORITY OF THE BOARD OF PUBLIC WORKS, TITLE 16 OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND, AND CODE OF MARYLAND REGULATIONS 26.24 AND 23.02.04, **Marc M. Laurent** ("LICENSEE") IS AUTHORIZED BY THE WATER AND SCIENCE ADMINISTRATION ("ADMINISTRATION") TO CONDUCT THE FOLLOWING REGULATED ACTIVITY IN STATE TIDAL WETLANDS, IN ACCORDANCE WITH THE CONDITIONS OF THIS LICENSE AND THE ATTACHED PLANS DATED **June 26, 2023**, PREPARED BY **Fetch Consulting Group**, AND APPROVED BY THE ADMINISTRATION'S TIDAL WETLANDS DIVISION ON **June 26, 2023**, AND INCORPORATED HEREIN:

Cedar Creek

1. Remove an existing pier and associated structures; and
2. Construct a 4.5-foot long by 3-foot wide walkway over existing marsh vegetation, a 16.74-foot long by 6-foot wide pier with a 17-foot by 11.76-foot platform, one boat lift with two support piles, all extending a maximum of 47.5 feet channelward of the mean high water line.

West River

1. Construct a 30-foot long by 6-foot wide pier with a 20-foot by 10-foot platform, extending a maximum of 50 feet channelward of the mean high water line at an existing bulkhead.

SPECIAL CONDITIONS

- A. The Licensee shall remove an existing pier and associated structures prior to the commencement of the construction of a new pier.
- B. Each of the authorized piers shall not comprise more than a maximum of 6 slips, lifts, or hoist inclusive of a maximum of six mooring piles with no greater than 4 boat slips, lifts, or hoists.
- C. The total platform area of each pier shall not exceed 200 square feet.
- D. The Licensee shall not attach accessory platforms to any existing or proposed boatlifts.

- E. The Licensee shall have all work proposed above the mean high water line reviewed and authorized by the Anne Arundel County Department of Inspections and Permits.

GENERAL CONDITIONS

- A. The Maryland Department of the Environment has determined that the proposed activities comply with, and will be conducted in a manner consistent with the State's Coastal Zone Management Program, as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended.
- B. The Licensee shall comply with all Critical Area requirements and obtain all necessary authorizations from local jurisdiction. This License does not constitute authorization for disturbance in the 100-foot Critical Area Buffer. "Disturbance" in the Buffer means clearing, grading, construction activities, or removal of any size of tree or vegetation. Any anticipated Buffer disturbance requires prior written approval, before commencement of land disturbing activity, from local jurisdiction in the form of a Buffer Management Plan.
- C. If the authorized work is not performed by the property owner, all work performed under this Tidal Wetlands License shall be conducted by a marine contractor licensed by the Marine Contractors Licensing Board (MCLB) in accordance with Title 17 of the Environment Article of Annotated Code of Maryland. A list of licensed marine contractors may be obtained by contacting the MCLB at 410-537-3249, by e-mail at MDE.MCLB@maryland.gov or by accessing the Maryland Department of the Environment, Environmental Boards webpage.
- D. The Licensee certifies real property interest in the contiguous upland.
- E. The issuance of this permit is not a validation or authorization by the Department for any of the existing structures depicted on the plan sheets on the subject property that is not part of the authorized work description, nor does it relieve the Licensee of the obligation to resolve any existing noncompliant structures and activities within tidal wetlands.
- F. The Licensee acknowledges that this authorization is based on current water depths that are existing and indicated on the attached plan sheet. This License proposes no dredging and this license provides no justification or assurances for future dredging. All dredging projects will be evaluated on the biological and physical characteristics of the site at the time an application is made.
- G. The Licensee shall obtain an approved sediment and erosion control plan from the local soil conservation district when the area disturbed is greater than 5000 square feet or 100 cubic yards of fill.
- H. The Licensee shall ensure that a copy of this License, including the approved plans, is available at the site until the authorized work is complete.

- I. The Licensee shall make every reasonable effort to design and construct the structure or perform the activity authorized in this License in a manner which minimizes adverse impacts on natural resource values, including water quality, plants, wildlife, plant and wildlife habitat, and on historic property values.
- J. The Secretary of the Environment may suspend or revoke a License if the Secretary finds that the Licensee has not complied with any condition or limitation in the License or has exceeded the scope of the authorized activities.
- K. The Licensee shall indemnify, defend and hold harmless the State of Maryland, its officials, officers, and employees from and against any and all liability, suits, claims and actions of whatever kind, caused by or arising from the work authorized by the License.
- L. The Licensee acknowledges that this License does not transfer any property interest in State tidal wetlands. This License allows the Licensee to use State tidal wetlands only for the structure or activity authorized herein and in no way limits the use of waters of the State by the public.
- M. This License is valid only for use by the Licensee. Permission for transfer of the License shall be obtained from the Water and Science Administration, Tidal Wetland Division. The terms and conditions of this License shall be binding on any assignee or successor in interest of the License.
- N. The Licensee shall allow representatives of the Maryland Department of the Environment to inspect the authorized activities.
- O. The Licensee shall notify the Maryland Department of the Environment, Water and Science Administration, Compliance Program at least 10 days before starting the authorized activities at (410) 537-3510.
- P. The Licensee shall complete construction of the activity authorized under this License by the expiration date, otherwise a new General License shall be obtained.
- Q. Upon completion of the authorized activities, the Licensee shall notify the Maryland Department of the Environment, Water and Science Administration, Compliance Program at (410) 537-3510.

By authority of the Secretary of the Environment:

David Seaborn

 Heather L. Nelson, Program Manager
 Wetlands and Waterways Protection Program

Jul 3, 2023

Date

Tidal Wetland Reviewer: *MM*

Supervisor Concurrence: *AA*

Tracking Number: 202360409

Agency Interest Number: 111194

Enclosure: Plans dated June 26, 2023

cc: WSA, Inspection & Compliance Program

ACCEPTANCE OF LICENSE


By applying for and receiving this General License the licensee shall be considered to have knowledge of and to have accepted the special and general conditions of this license. Licensee agrees that all work shall be performed in compliance with these conditions. **PRIOR TO THE COMMENCEMENT OF ANY WORK AUTHORIZED BY THIS LICENSE, THE LICENSEE SHALL SIGN THE ACKNOWLEDGEMENT AND RETURN TO THE DEPARTMENT OF THE ENVIRONMENT.**

I have read and accept the terms and conditions of this license.



signature of Licensee

Date: 8/14/23



Printed Name of Licensee

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER: 2023-0055-V

MARGUERITE LAURENT AND MARC LAURENT

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: MAY 25, 2023

ORDERED BY:

**DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER**

PLANNER: JOAN JENKINS

DATE FILED: JUNE 8, 2023

PLEADINGS

Marguerite Laurent and Marc Laurent, the applicants, seek a variance (2023-0055-V) to allow a private residential pier that is not accessory to a dwelling unit on property with a street address of 1208 Griner Lane, Shady Side, MD 20764.

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. Marc Laurent 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 May 25, 2023, in which witnesses were sworn and the following evidence was presented regarding the proposed variance requested by the applicants.

The Property

The applicants own the subject property which has 50 feet of frontage on the south side of Griner Lane, 225 feet west of West Shady Side Road, Shady Side. It is identified as Lot 3 and Lot 3A of Parcel 607 in Block 3 on Tax Map 69

in the Wagners Point subdivision.¹ Lots 3 and 3A are separated by Griner Lane and Lot 3A is the subject of the variance. The property comprises 6,534 square feet and is zoned R2-Residential District. This waterfront property is on a peninsula with shoreline on the West River to the north and shoreline on Cedar Creek to the south. It is also designated in the Chesapeake Bay Critical Area as limited development area (LDA) with a small area of resource conservation area (RCA). The property is also mapped in a buffer modification area (BMA).

The subject property is currently improved on the northern section with a dwelling and associated features and on the southern section there is an existing shed that has recently been expanded, a newly constructed deck, and a pier.

The Proposed Work

The proposal calls to replace the existing pier (4' by 40' including a 4' by 3' walkway) with a new pier (a 3' by 10' walkway, a 3' by 4.5' pier section, a 6' by 16.74' pier section, a 17' by 11.76' platform and 4 lift piles, two of which are attached to the platform) extended from the south side (Lot 3A) as shown on the site plan admitted into evidence at the hearing as County Exhibit 2. The site plan also shows a proposed pier extending from Lot 3 on the northern side of the property. That pier is not under consideration for this application and will be evaluated on its own merit at the building permit application.

¹ SDAT describes the entire property as Lot 3.

The Anne Arundel County Code

§ 18-2-204(c) states that an accessory structure or use may not be located on a lot other than the lot on which a principal structure is located.² This portion of the property south of Griner Lane does not have a principal structure (dwelling unit) therefore a variance to the provision is required.

The Variance Requested

The proposed work will require a zoning variance to the requirement of § 18-2-204(c) to allow the applicant to construct the proposed pier and associated facilities on a lot without a principal structure (Lot 3A) as shown on County Exhibit 2.

The Evidence Submitted At The Hearing

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

Joan A. Jenkins, a zoning analyst with OPZ, presented the following findings:

- The subject property is nearly rectangular-shaped, however, is divided into two portions by a roadway and has two waterfronts. The deed describes the property as one piece of land and does not call out the individual lots as separate parcels or lots although it does mention metes and bounds along adjoining Lots 4A and 2A. OPZ finds that the overall property, comprising of

² § 18-2-204 (c)(3) is an exception that states an accessory structure may be located on an unimproved lot abutting a lot improved by a principal structure, provided the lots are under common identical ownership and the accessory structure serves the lot with the principal structure for the exclusive use of the owner or the principal structure on the abutting lot. This exception does not apply because the lots do not abut each other.

both Lots 3 and 3A, does not meet the minimum lot size requirement (15,000 square feet required for a lot with sewer in the R2 district, 6,534 square feet provided); and being 50 feet wide does not meet the minimum width requirement of 80 feet for a lot in the R2 district and therefore the southern portion of the property known as Lot 3A that is the subject of this variance is undersized as well. Lot 3A is shown on the “Amended Plat Wagners Point”, recorded in plat book 30 page 92, July 1, 1959. The plat indicates that the properties south of the private road are non-buildable and therefore a dwelling would never be constructed on Lot 3A.

- OPZ found that the applicants have owned the property since July 2020. The northern piece, Lot 3, contains a dwelling, built according to state tax assessment records in 1934, but does not currently have a pier or other waterfront amenities. The southern portion, Lot 3A, contains a 4' by 40' pier that does not meet current setbacks. The pier first appears in aerial photos taken between 1990-1995. Permit records are not available prior to 1995 to substantiate if a building permit was issued. Recently an existing shed was expanded and a deck was constructed on Lot 3A. OPZ surmises that a pier was never constructed into the West River from Lot 3, the northern section of the property because the pier on Lot 3A was used for the residence on Lot 3. In addition, a pier can be seen on the neighboring property to the west in aerial photos as recent as 2007. This T-shaped pier on the neighboring northern section encroached into the water area of the subject property and had pilings

remaining from when the platform to the eastern side extended even farther into the subject water way making construction of a pier on the north side difficult for the subject property. For a long time this was the only pier on the north side. In the 2010 aerial this pier became the pier as seen today with an L-shape platform to the west and no encroachment on the subject property.

- A review of the County aerial photograph from 2021 reveals that it is typical for waterfront properties along this shoreline to have piers. OPZ found no other variances along this peninsula relating to piers.
- The property is the subject of a building violation (B-2022-363 opened 8/12/2022) for a shed and deck without a permit and the subject of a zoning violation (Z-2022-988 opened 12/13/2022) for chickens and a coop.
- The Development Division (Critical Area Team) commented that they have no objection.
- The Health Department commented that it has evaluated the well water supply system and determined that the proposed request does not adversely affect this system and therefore has no objection to the request.
- Approval of the variance will not alter the essential character of the neighborhood, as most waterfront properties in the immediate area have piers. Approval of the variance will not negatively impact the use of the adjacent properties and in fact will be an improvement as the new pier will comply with setbacks whereas the existing pier does not. Approval of the variance will not be detrimental to the public welfare. The applicants note that the existing pier

requires replacement due to its age and that the new pier will meet industry and safety standards and setback requirements.

- The variance is considered to be the minimum necessary to afford relief as the proposed work is essentially reconstruction of a structure that has existed for quite some time on a lot that cannot be built with a dwelling that is directly across a road from the lot with a principal structure and located to comply with setbacks. The applicants write that the addition of the lift will provide a safer place to keep a vessel in the creek than on the river.
- Based upon the standards set forth in Article 18-16-305, under which a variance may be granted, OPZ recommends approval of the variance.

Other Testimony and Exhibits

The applicants were assisted at the hearing by Lauren Heinsohn of Fetch, LLC. Evidence was presented that the applicants wish to rebuild an existing pier and maritime facilities on Lot 3A. Lot 3A is separated by Griner Lane from Lot 3, which is also owned by the applicants. No other variances are required.

Neighbors (Elle Bassett, Dan Schappell, and Marc Thomas) raised concerns about other development that has happened on the property. Thought this matter should be delayed until the open violation was resolved.

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

DECISION

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 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 applicants 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 applicants to develop the lot.

Furthermore, whether a finding is made pursuant to subsection (1) or (2) above, a variance may not be granted unless the hearing officer also finds that: (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) substantially impair the appropriate use or development of adjacent property, (4) reduce forest cover in the limited development and resource conservation areas of the critical area, (5) be contrary to

acceptable clearing and replanting practices required for development in the critical area, or (6) be detrimental to the public welfare.

Findings - Zoning Variance

The need for the variance in this case is caused by the applicants' property consisting of two lots – Lot 3 and Lot 3A – such that Griner Lane divides Lot 3 to the north from Lot 3A to the south, as shown by the following aerial photograph:



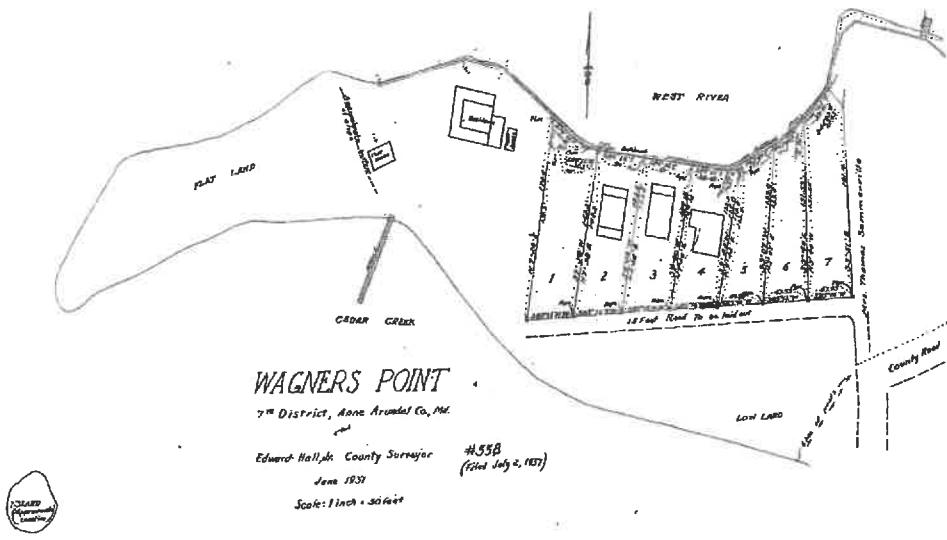
If Griner Lane did not divide the applicants' property, the applicants would not need a variance to rebuild their existing pier and associated facilities on Lot 3A. But do the applicants own Griner Lane, as well as Lot 3 and Lot 3A? If so, no variance is necessary because the proposed pier and associated facilities *would not be* on a lot separate from the lot on which a principal structure is located.

The assumption in this case is that Griner Lane is a separate parcel. I am inclined to think this assumption is incorrect but, because the issue is clouded, I will grant the variance to allow the pier and associated facilities to be built as proposed. Even if Griner Lane is a separate lot, the existence of Griner Lane between Lot 3 and Lot 3A should not prevent the applicants from constructing a structure on Lot 3A. The supposed rationale for prohibiting an accessory structure on a lot without a principal structure has no application on the facts in this case.

The opposition at the hearing was directed at other development undertaken by the applicants on Lot 3A. Any violations of the Code will be dealt with by Code enforcement. This Office has jurisdiction only over the application before it which is to build a pier and associated facilities into Cedar Creek *on the assumption that Lot 3A is not part of Lot 3.*

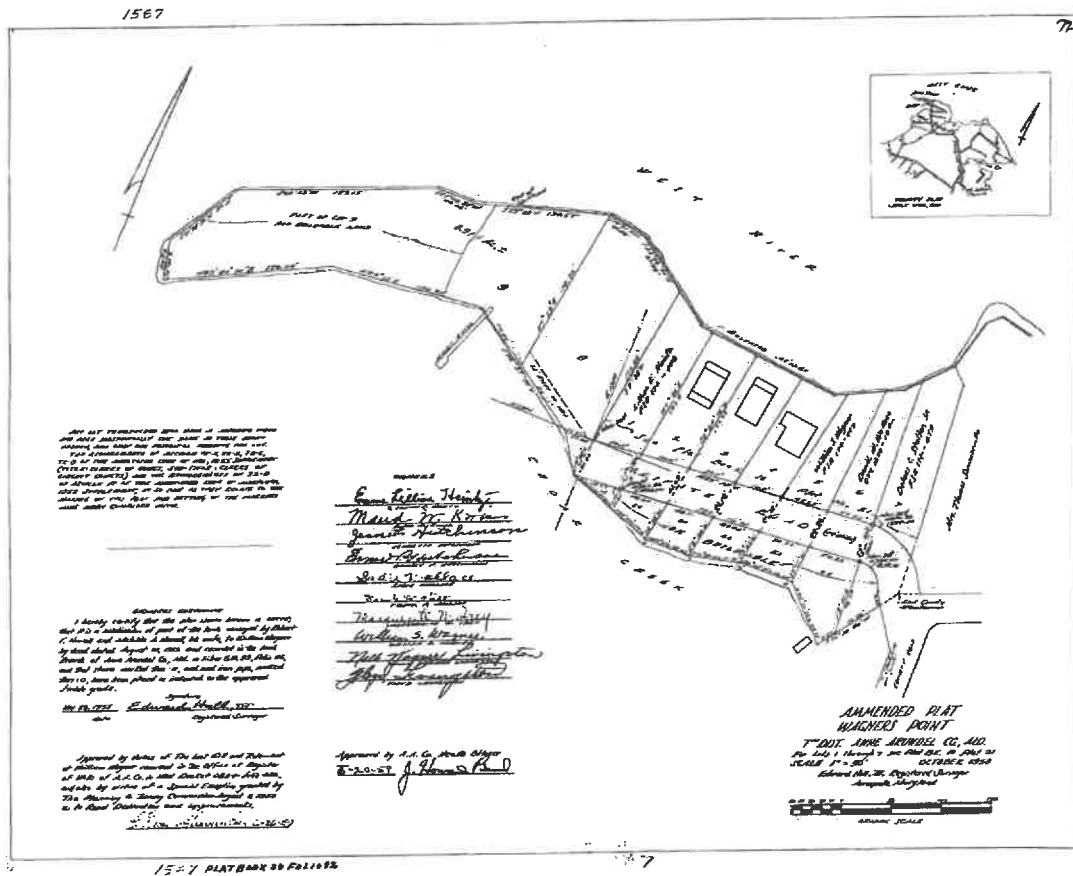
The plat creating Lot 3 is shown on the Plat of Wagner's Point dated June 1937 (County Exhibit 8):

43
18
21



The land that now includes Griner Lane and Lot 3A had not been subdivided as of 1937. Wagner's Point to the west is shown with a dwelling and pier. A dotted line marked "15-foot Road to be laid out" is shown on the 1937 plat but the land to the south of the lots Platted 1-7 was in 1937 part of the lot that included Wagner's Point and not a part of the lots shown along West River.

The Wagner's Point Plat was amended in October 1958 (County Exhibit 9):



The 1958 Plat showed new lots along Cedar Creek and a 40-foot wide “private road” separating the lots marked 1A – 7A from the seven lots that appear along the West River on the 1937 plat. The 40-foot wide private road is not yet named Griner Lane.

There are a few curious pieces of information to be gleaned from the 1958 Plat. First, Wagner’s Point has now been subdivided into two lots – Lot 8 and Lot 9 (which includes a portion marked “non buildable land.”) Access to Lots 8 and 9 is to be over a 40-foot-wide “private road,” with a 10-foot extension across Lot 8 to get to Lot 9.

Second, the side lot lines for each of the seven lots on the north side of the private road appear to extend straight across the private road and continue to Cedar Creek, except the lot lines from Lots 1 and 2. They appear to have slightly different courses when they emerge from the private road. Why the surveyors would 'bend' the lot line that crosses the private road from Lots 1 and 2 is a mystery. In any event, straight or not, the lot lines that extend across the private road do not determine whether the private road and the lots labeled Lot 1A to 7A, were considered new lots or were so labeled on the 1958 plat to show the area that would be usable as a private road by (presumably) the owners of lots along the road.

Third, Lots 5, 6, and 7 have apparently been sold by 1958. Lot 5 has a matching Lot 5A across the private road, as does Lot 6, but Lot 6A is marked as including what would have been Lot 7A.

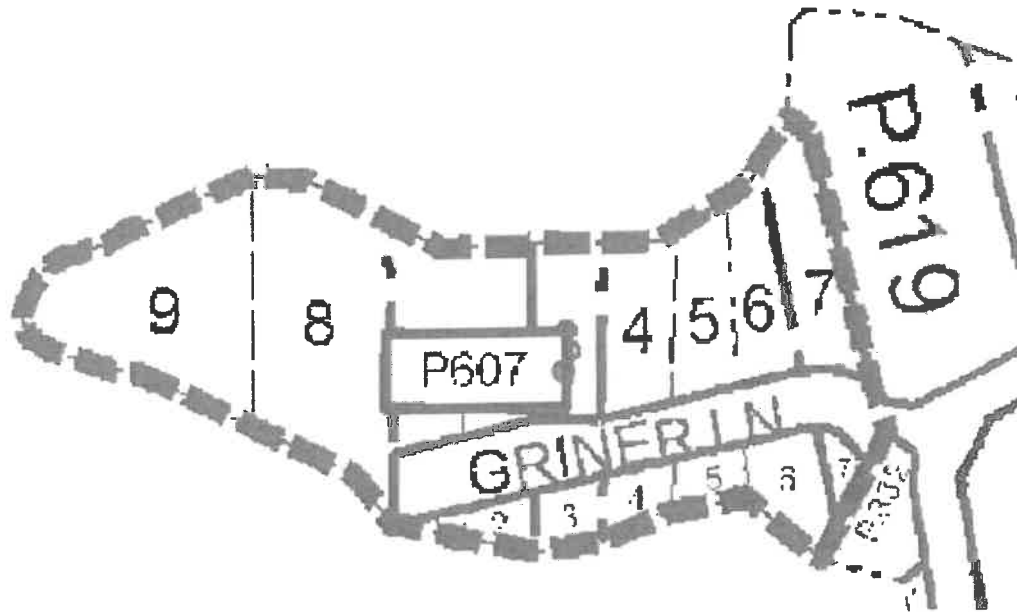
The current aerial photograph of Wagner's Point (County Exhibit 10) now shows that Lots 6 and 7 appear to have been combined into one lot (1214 Griner Lane) as there is one dwelling that spans Lots 6 and 7. The same consolidation seems to have taken place with Lots 8 and 9 at the end of Wagner's Point.



There was no evidence presented as to who paid taxes on the lots marked Lot 1A etc. or who was responsible for maintaining the private road, as the 1958 plat marks where County maintenance ends at the beginning of the private road. There is reference to a road maintenance agreement in later deeds but that does not determine who owns the road now known as Griner Lane.

The SDAT lists Lot 3 as owned by the applicants. There is no reference to Lot 3A. The applicants to the west (1206 Griner Lane) are listed as the owners of Lots 1 and 2, not 1A and 2A. The same is true for the Schappells, the applicants' neighbors to the east (1210 Griner Lane). They are listed as the owners of Lots 4, 5, and 6, not 4A, 5A, and 6A.

The SDAT map for Griner Lane and Wagners Point seems to confirm this conclusion:



The SDAT does not appear to recognize the existence of Lots 1A through 7A. The SDAT records are not always correct, but what is recorded in their records leads to a conclusion that Lots 1A through Lot 7A are not separate parcels.

Matters are further confused when the deeds are examined. The applicants' deed (Book 34863 Page 211) has a lengthy metes and bounds description that starts "at the southwest corner of Lot 3 ... being on the northern side of a "15-Foot Road to be laid out" [as shown on the 1937 plat] and on the northern side of a "Private Road", 40 feet wide [as shown on the 1958 plat]" continuing on in what created confusion as to what owners had the right to do with their property, the private road, and the lots supposedly created by the 1958 plat.

In 2010, the owners of the lots on Griner Lane entered into a First Amendment to Declaration of Access Easement, Common Use, and Maintenance Agreement, the first page of which is shown below:

10/22/2010 11:48 AM Cash 0001 Reg 0003
 T/Ref 0003022298
 01 - Recordation Tax Division
 #0.00
 Validation Number: 0003-024375910
 Type: Easement

OR 22766 PG 02861

PLEASE RETURN TO:
 Montgomery Title Company, LLC
 8401 Connecticut Avenue, Suite 800 1100
 Chevy Chase, Maryland 20815

FIRST AMENDMENT TO DECLARATION OF ACCESS EASEMENT, COMMON USE, AND MAINTENANCE AGREEMENT

THIS FIRST AMENDMENT TO DECLARATION OF ACCESS EASEMENT, COMMON USE, AND MAINTENANCE AGREEMENT (this "First Amendment") is made as of the 20th day of October, 2010 (the "Effective Date"), by and among Dean W. Irey, Susan S. Moore, Linda Irey, Carol L. Gridley, Frank H. Wallace, Carol S. Wallace, the Estate of Jill Irey (as successor in interest to Jill Irey), Jennifer I. Taylor, Robert E. Gittings, and Catherine D. Gittings (hereinafter collectively referred to as the "Owners").

RECITALS

WHEREAS, the Owners all own lots in the subdivision known as Wagner's Point, Shadyside, Anne Arundel County, Maryland, as set forth in that certain Declaration of Access Easement, Common Use and Maintenance Agreement dated March 4, 2010 (the "Declaration"), and recorded in the Land Records of Anne Arundel County ("Land Records") in Record Book page 0129, and that certain Confirmatory Deed dated March 4, 2010, and recorded in the Land Records in Book 22164, page 0101, as follows:

- A. Lots 1R and 2R are owned by Dean W. Irey, Susan S. Moore, Linda Irey and Carol L. Gridley; and
- B. Lot 3R is owned by Frank H. Wallace and Carol S. Wallace; and
- C. Lots 4R, 5R, 6R and 7R are owned by the Estate of Jill Irey and Jennifer I. Taylor; and
- D. Lots 8 and 9 are owned by Robert E. Gittings and Catherine D. Gittings; and

WHEREAS, the Owners entered into the Declaration in order to, among other things: (i) establish an ingress/egress easement over portions of the Lots (collectively, the "Lots") for the mutual benefit of the Owners and to provide ingress and egress to and from the Lots and the public road; (ii) to establish an area of common use for the use of all Owners for governmental or private agencies to collect trash and/or recycling materials; and (iii) to provide for maintenance of the aforementioned easement areas; and

WHEREAS, the Owners of Lot 7 now desire to sell Lot 7 to a third party (the "Lot 7 Purchaser"); and

WHEREAS, in connection with the proposed sale of Lot 7, the Owners of Lot 7 and the other Owners have agreed to modify the Declaration in some respects; and

RECEIVED FOR RECORD
 CIRCUIT COURT FOR A.A. COUNTY
 2010 OCT 22 P 12:42

28.00
 75.00
 35.00
 Recd A416 Rpt # 26359
 RFD CS Blk # 2822
 Oct 22, 2010 12:17 PM

{FDALAW 00125708w21701W1 10/6/2010 03:27 PM}

NO TAXES NECESSARY
 10-22-10 DV
 CONTROLLER
 TAX DIVISION

The 2010 First Amendment makes reference to two earlier agreements also filed in 2010: a Declaration of Access Easement, Common Use, and Maintenance Agreement dated March 4, 2010 (the Declaration) and a Confirmatory Deed dated March 4, 2010 (The Confirmatory Deed). The deed references to the Declaration and the Confirmatory Deed in the 2010 First Amendment appear to be erroneous. The numbers do not locate either the Declaration or the Confirmatory Deed. In other words, of the three documents filed in 2010, only the third one is available.

The terms and conditions of the first two deeds in 2010 - the Declaration and the Confirmatory Deed – are unknown as of the writing of this decision. The 2010 First Amendment, the first page of which is shown above, is of little use since it was apparently entered into as part of the sale of Lot 7. See the last Whereas clause above.

In any event, it does not seem that the 2010 First Amendment changed little of whatever was agreed to in the first two filings. But new lots must have been created at some point somewhere because the 2010 First Amendment makes reference Lot 1R, etc., not Lot 1A, etc. This means that there was a document somewhere between 1958 and 2010 that created new lots labeled with an “R”. What those “R” lots were is unknown at this point. It is common to refer to lots in an amended plat to refer to them with an “R” attached to the lot number to distinguish them from the original lots.

Without the intervening documents and the “R” plat, it cannot be determined at this point whether the applicants who own Lot 3 own all of the

ground underneath Griner Lane as well as what has been referred to in this case as Lot 3A. The title to Lot 3, Lot 3A, and the road between them being unresolved, the assumption must be that they are separate lots and the requested variance is necessary for the applicants to redevelop their pier and associated facilities.

I further find that the requested variance is the minimum variance necessary to afford relief, that the granting of the variance 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 Marguerite Laurent and Marc Laurent, petitioning for a variance to allow a private residential pier that is not accessory to a dwelling unit on property with a street address of 1208 Griner Lane, Shady Side, MD 20764;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **8th day of June, 2023**, ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a zoning variance to the requirement of § 18-2-204(c) to allow the applicant to construct the proposed pier and associated facilities on a lot without a principal structure (Lot 3A) as shown on County Exhibit 2.

The foregoing variance is subject to the following conditions:

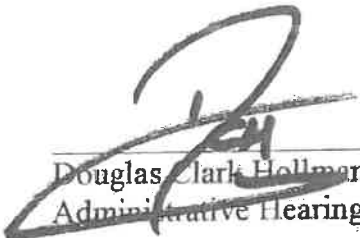
- A. The applicants shall comply with any instructions and necessary approvals from the Office of Planning and Zoning, the Department of Inspections and Permits, the Department of Health, and/or the Critical Area Commission.
- B. The applicants shall comply with any instructions and necessary approvals from the Maryland Department of the Environment and the United States Army Corps of Engineers.

The foregoing variance is subject to the applicants 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 applicants to construct the structures permitted in this decision, they 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 applicants 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 variance 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 APPLICANTS

This Order does not constitute a building permit. In order for the applicants to perform the work permitted in this decision, the applicants 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 applicants **within 18 months** of the granting of the variance or special exception (1) obtain 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 applicants obtain 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.

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

CO. EXHIBIT#: 1
CASE: 2023-0055-V
DATE: 5/25/23

APPLICANTS: Marguerite & Marc Laurent

ASSESSMENT DISTRICT: 7th

CASE NUMBER: 2023-0055-V

COUNCIL DISTRICT: 7th

HEARING DATE: May 25, 2023

PREPARED BY: Joan A. Jenkins 
Planner II

REQUEST

The applicants are requesting a variance to allow a private residential pier that is not accessory to a dwelling unit on property located at 1208 Griner Lane in Shady Side.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of a total of 6,534 square feet of land, more or less separated by Griner Lane into two parts known as Lot 3 and Lot 3A. Lot 3A is the subject of the variance and is located with 50 feet of frontage on the south side of Griner Lane, 225 feet west of W Shady Side Road. The site is known as Lot 3A of Parcel 607 in Block 3 on Tax Map 69 in the Wagners Point subdivision.¹

The property has been zoned R2 – Residential District since the adoption of comprehensive rezoning for the Seventh Councilmanic District effective October 7, 2011.

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

The property is developed on the northern section with a dwelling and associated features and on the southern section there is an existing shed that has recently been expanded, a newly constructed deck, and a pier.

PROPOSAL

The applicant proposes to replace the existing pier (4' x 40' including a 4' x 3' walkway) with a new pier (a 3' x 10' walkway, a 3' x 4.5' pier section, a 6' x 16.74' pier section, a 17' x 11.76' platform and 4 lift piles, two of which are attached to the platform). The site plan shows a proposed pier extending from Lot 3 on the northern side of the property. That pier is not under consideration for this application and will be evaluated on its own merit at the building permit application.

¹ SDAT describes the entire property as Lot 3

REQUESTED VARIANCE

§ 18-2-204 (c) of the Anne Arundel County Zoning Ordinance states that an accessory structure or use may not be located on a lot other than the lot on which a principal structure is located.² This portion of the property south of Griner Lane does not have a principal structure (dwelling unit) therefore a variance to the provision is required.

FINDINGS

The subject property is nearly rectangular-shaped, however, is divided into two portions by a roadway and has two waterfronts. The deed describes the property as one piece of land and does not call out the individual lots as separate parcels or lots although it does mention metes and bounds along adjoining lots 4A and 2A. This Office finds that the overall property, comprising of both lots 3 and 3A, does not meet the minimum lot size requirement (15,000 square feet required for a lot with sewer in the R2 District, 6,534 square feet provided); and being 50 feet wide does not meet the minimum width requirement of 80 feet for a lot in the R2 District and therefore the southern portion of the property known as Lot 3A that is the subject of this variance is undersized as well. Lot 3A is shown on the "Amended Plat Wagners Point", recorded in plat book 30 page 92, July 1, 1959. The plat indicates that the properties south of the private road are non-buildable and therefore a dwelling would never be constructed on Lot 3A.

This Office found that the applicant has owned the property since July 2020. The northern piece, Lot 3, contains a dwelling, built according to state tax assessment records in 1934, but does not currently have a pier or other waterfront amenities. The southern portion, Lot 3A, contains a 4' by 40' pier that does not meet current setbacks. The pier first appears in aerial photos between 1990-1995. Permit records are not available prior to 1995 to substantiate if a building permit was issued. Recently an existing shed was expanded and a deck was constructed on Lot 3A. This Office surmises that a pier was never constructed into the West River from Lot 3, the northern section of the property because the pier on Lot 3A was used for the residence on Lot 3. In addition, a pier can be seen on the neighboring property to the west in aerial photos as recent as 2007. This T-shaped pier on the neighboring northern section encroached into the water area of the subject property and had pilings remaining from when the platform to the eastern side extended even farther into the subject water way making construction of a pier on the north side difficult for the subject property. For a long time this was the only pier on the north side. In the 2010 aerial this pier became the pier as seen today with an L-shape platform to the west and no encroachment on the subject property.

A review of the County aerial photograph from 2021 reveals that it is typical for waterfront properties along this shoreline to have piers. This Office found no other variances along this peninsula relating to piers.

² § 18-2-204 (c)(3) is an exception that states an accessory structure may be located on an unimproved lot abutting a lot improved by a principal structure, provided the lots are under common identical ownership and the accessory structure serves the lot with the principal structure for the exclusive use of the owner or the principal structure on the abutting lot. Lots separated by a road cannot be considered abutting.

The property is the subject of a building violation (B-2022-363 opened 8/12/2022) for a shed and deck without a permit and the subject of a zoning violation (Z-2022-988 opened 12/13/2022) for chickens and a coop.

The **Development Division (Critical Area Team)** commented that they have no objection.

The **Health Department** commented that it has evaluated the well water supply system and determined that the proposed request does not adversely affect this system and therefore has no objection to the request.

Approval of the variance will not alter the essential character of the neighborhood, as most waterfront properties in the immediate area have piers. Approval of the variance will not negatively impact the use of the adjacent properties and in fact will be an improvement as the new pier will comply with setbacks whereas the existing pier does not. Approval of the variance will not be detrimental to the public welfare. The applicant notes that the existing pier requires replacement due to its age and that the new pier will meet industry and safety standards and setback requirements.

The variance is considered to be the minimum necessary to afford relief as the proposed work is essentially reconstruction of a structure that has existed for quite some time on a lot that cannot be built with a dwelling that is directly across a road from the lot with a principal structure and located to comply with setbacks. The applicants write that the addition of the lift will provide a safer place to keep a vessel in the creek than on the river.

RECOMMENDATION

Based upon the standards set forth in Article 18-16-305, under which a variance may be granted, the Office of Planning and Zoning recommends *approval* of a variance to § 18-2-204 (c) to allow reconstruction of an accessory structure (pier with boat lift piles and a walkway) on a lot without a principal structure as shown on the site plan.

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 legal lot status, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.

For Office Use Only
CASE # 2023-0055-V
FEE PAID _____
DATE _____



For Office Use Only
ZONE R2
CRITICAL AREA: IDA _____ LDA RCA
BMA: Yes No _____
NO. OF SIGNS 2

VARIANCE APPLICATION

NOTE: This form can be downloaded to your computer and filled out utilizing Adobe Reader (or similar product). It can also be printed and filled out by hand.

Applicant(s): Marguerite & Marc Laurent
(Applicant must have a financial, contractual, or proprietary interest in the property)

Property Address: 1208 Griner Lane, Shady Side, MD 20764

Property Location: 50 feet of frontage on the (S) side of Griner Lane ;
(Enter Street Name)
_____ feet (N, S, E, W) of (Nearest intersecting street) _____
(Enter Street Name)

12-digit Tax Account Number 785005063800 Tax District (7) Council District 87

Waterfront Lot: Y N Corner Lot: Y N Deed Title Reference /34863/00211

Zoning District R2 Lot # 3 Tax Map 69 Block/Grid ---/3 Parcel 607

Area 6,534 (Sq Ft.) Subdivision Name Wagners Point

Description of Proposed Project and Variance Requested (Brief, detail fully in letter of explanation)
Request for and accessory structure (pier) with no principal structure.

The applicant hereby certifies that he or she has a financial, contractual, or proprietary interest in the property; that he or she is authorized to make this application; that the information shown on this application is correct; and that he or she will comply with all applicable regulations of Anne Arundel County, Maryland.

Owner/ Applicant/
Applicant's Signature [Signature] Owner's Signature [Signature]

Print Name Marguerite Laurent Print Name Marc Laurent

Mailing Address 1220 Evarts St., NE Mailing Address 1220 Evarts St., NE

City, State, Zip Washington, DC 20018 City, State, Zip Washington, DC 20018

Work Phone _____ Work Phone _____

Home Phone _____ Home Phone _____

Cell Phone 202-868-0713 Cell Phone 202-868-0713

Email Address marguerite.w.laurent@gmail.com Email Address marc.m.laurent@gmail.com

*** Below For Office Use Only ***

Application accepted by Anne Arundel County Office of Planning and Zoning: JAG 3/24/23
Initials Date

Variance to use allow a private residential pier that is not accessory to a dwelling unit

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER: 2024-0021-V

MARGUERITE LAURENT AND MARC LAURENT

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: JUNE 25, 2024

ORDERED BY:

**DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER**

PLANNER: ROBERT KONOWAL

DATE FILED: JULY 2, 2024

PLEADINGS

Marguerite Laurent and Marc Laurent, the applicants, seek a variance (2024-0021-V) to perfect an accessory structure (shed) on a lot (Lot 3A) without a principal structure and with less setbacks and buffer than required on property with a street address of 1208 Griner Lane, Shady Side, MD 20764.

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. Marc Laurent 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 June 25, 2024, in which the witnesses were sworn and the following was presented regarding the proposed variance requested by the applicants.

The Property

The applicants own the subject property – Lot 3A - which is located on the south side of Griner Lane, 225 feet west of W. Shady Side Road, Shady Side (Tax

ID: 7850-0506-3800). It is known as Lot 3A of Parcel 607 on Tax Map 69¹ in the Wagners Point subdivision. Lot 3A comprises 2,130 square feet and is zoned R2-Residential District. This waterfront lot is located on a peninsula with shoreline on Cedar Creek and is designated in the Chesapeake Bay Critical Area as limited development area (LDA) and resource conservation area (RCA). It is also mapped in a buffer modification area (BMA).

The site is currently improved with a 12' by 12' structure and attached deck. There is also a pier projecting from the shoreline.

The Proposed Work

The proposal calls to perfect the existing 12' by 12' structure. The letter of explanation indicates the structure is to be used for storage as shown on the site plan admitted into evidence at the hearing as County Exhibit 2. The attached deck is to be removed.

The Anne Arundel County Code

§ 18-13-104 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. § 17-8-301(b) of the Code prohibits disturbance in the 100-foot stream buffer. The shed has been constructed in the buffer and is disturbing 144 square

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

feet of the buffer not including any disturbance that was required during construction.²

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

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

The Variances Requested

The proposed work will require the following variances:

1. A critical area variance to the requirement of § 17-8-301 to allow disturbance to the buffer to perfect the construction of the shed as shown on County Exhibit 2 (the actual disturbance to be determined at the time of permitting); and

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

2. A zoning variance to the prohibition in § 18-2-204(c) to perfect the construction of the shed on a lot without a principal structure as shown on County Exhibit 2; and
3. A zoning variance of thirty (30) feet to the 40-foot front lot line setback requirement of § 18-4-601 to perfect the construction of the shed as close as 10 feet from the front lot line as shown on County Exhibit 2.

The Evidence Submitted At The Hearing

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

Robert Konowal, a zoning analyst with the OPZ, presented the following findings:

- A previous application (Case No. 2023-0055-V) to allow a private pier on a lot without a principal structure was approved by the Administrative Hearing Officer June 8, 2023.
- There is an open Building Permit violation (B-2022-363) pertaining to the construction of the subject shed, and deck, plumbing, electrical panels and outlets. A zoning violation (Z-2022-0988) is open for Lot 3 adjacent to the subject property and also owned by the applicants for having chickens on a lot of less than 10,000 square feet.
- OPZ finds that the subject property is significantly undersized being only approximately 2,133 square feet in size. However, these lands are under the same ownership as Lot 3 directly to the north. If the applicants are in need of additional storage space then that storage could be accommodated on those

lands to the north outside the critical area buffer without the need for any of the three variances requested. An examination of aerial photos indicates that the shed that has been constructed may be being used for recreational purposes (tiki bar?) rather than storage.

- Based on the above, the applicants have not demonstrated any unique physical condition or practical difficulty in complying with the Code. A literal interpretation of the County's Critical Area Program in this case would not deprive the applicants of rights that are commonly enjoyed by other properties in similar areas. Rather approval of the requested variance for a shed/recreational building in the buffer would confer on the applicants a privilege others would not be granted. There are a number of structures that have been located on other waterfront "outlots" in the immediate area but it appears those structures predate critical area law. The subdivision plat pertaining to the creation of these lots in 1959 identified these lots as "non-buildable" lots.
- Since the variances are not warranted they cannot be the minimum necessary to afford relief.
- The critical area variance is the result of actions by the applicants where development has commenced before obtaining the required approvals. However, the requested variance to the Critical Area Program does not arise from any condition relating to land or building use on any neighboring property.

- The applicants have not overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law. The applicants have not demonstrated they have adequately evaluated and implemented site planning alternatives that minimize the impact on the buffer. In such case, the shed could simply be moved to an area outside the buffer on Lot 3 which is also owned by the applicants.
- The granting of a variance would adversely affect water quality, fish, wildlife, and plant habitat within the County's critical area and would not be in harmony with the general spirit and intent of the County's Critical Area Program.
- Approval of the variances would not necessarily alter the essential character of the neighborhood as there are a number of structures on these "outlots" in the neighborhood however those structures appear to predate critical area law. The variances if granted would not substantially impair the appropriate use or development of any adjacent property.
- Finally, the request would not reduce forest cover in the limited development and resource conservation areas of the critical area, be contrary to acceptable clearing and replanting practices in the critical area nor be detrimental to the public welfare.
- In summary, the applicants have not identified any physical condition or practical difficulty in complying with the Code and the variances are not therefore considered to be warranted. Since the variances are not warranted they cannot be the minimum necessary for relief.

- The Development Division (Critical Area Team) advised that the previous structure was approximately 7x12 (89 sq ft). The applicants replaced this structure with a 12x12 Tiki Bar with an attached 16x17 deck for a total square footage of 416 sq ft. The new structure is not only significantly larger, but it is also closer to the water than the original structure.
- The site was issued a Stop Work Order for the construction of the structure in August 2022. The applicant indicated that he thought that he didn't need a permit for the Tiki Bar; however, there is no exemption for an attached deck. In addition, there are other examples of work done on site without the benefit of a permit. This request does not meet the requirements for the findings necessary to approve this variance request.
- The Critical Area Commission advised that Maryland's critical area law provides that variances to a local jurisdiction's Critical Area Program may be granted only if the County's Administrative Hearing Officer (AHO) finds that an applicant has satisfied that the request meets each and every one of the variance standards under COMAR 27.01.12, including the standard of unwarranted hardship.
- In requesting a variance, the applicants bear the burden of demonstrating that each and every one of the variance standards have been met, including the standard of unwarranted hardship. The Commission advised that in their opinion the applicants have failed to meet six of the seven variance standards

and oppose this variance request. The Commission's detailed submission has been attached to this report.

- The Department of Health reviewed the well water supply system for the subject property and determined that the request does not adversely affect the well water supply system. The Health Department has no objection to the request.
- Based upon the standards set forth in § 18-16-305, of the Anne Arundel County Code under which a variance may be granted, OPZ recommends that the variances to perfect an accessory structure without a principal structure and with less setbacks and buffer than required at 1208 Griner Lane as shown on the attached site plan be denied.

Other Testimony and Exhibits

The applicants testified that they replaced the existing shed with a slightly larger shed with an open deck to the east. They thought they did not need a variance because of the size of the shed. They would like to keep it for storing personal property but are willing to remove the deck. The small size of the lot on which the shed and pier are located prevent them from finding a location out of the buffer and setbacks.

Neighbors testified in opposition, claiming that the applicants have been using their property as an Airbnb, bringing noise and traffic to Griner Lane.

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.

...

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 applicants are entitled to the variance requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicants 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].”³ Furthermore, the applicants carry the burden of convincing the Hearing Officer “that the applicant has satisfied each one of the variance provisions.”⁴ (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

³ § 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.

⁴ § 8-1808(d) (4) (ii).

original.) In other words, if the applicants fail 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 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 [which was the then-existing standard], 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.)

The variances sought in this application are variances from the critical area law the (the buffer) and from the zoning law (setback and other 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 variance must be considered separately from the general zoning or setback variances.⁵ I will first analyze the facts in light of the requested critical area variance, and then analyze the facts in light of the zoning variance requested.

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 applicants of rights commonly enjoyed by other property owners, (3) whether granting the variance would confer a special privilege on the applicants, (4) whether the application arises from actions of the applicants, 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 applicants have overcome the presumption in Natural

⁵ “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.

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

Provided that the applicants 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.

Findings – Critical Area Variance

Background

The applicants were granted a zoning variance in Case No. 2023-0055-V to develop Lot 3A with a pier and associated facilities. The discussion in that case as to the creation and ownership of the lots along Griner Lane is incorporated herein as if fully set forth. This application is different because the applicants seek to perfect the construction of a shed on the same property – Lot 3A – which is in the buffer. This requires a critical area variance. In addition, the shed is 10 feet from mean high-water and on a lot without a principal structure, necessitating two zoning variances.

The following aerial photographs laid side by side show the condition of the property in 2023 (on the left, or “Before”) and in 2021 (on the right, or “Now”):



The Critical Area Variance

A critical area variance can only be granted if it meets all six requirements in § 18-16-305(b).

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.” A shed within a reasonable distance from the shoreline, when it is developed with a pier, as is the

case here, can be considered a “significant and reasonable” use of the applicants’ property. Denying the requested variance would deny the applicants a shed on Lot 3A since Lot 3A is substandard in area and width, preventing the applicants from building the shed on Lot 3A. Building a new shed on Lot 3 would be impracticable, given the area available on Lot 3. Therefore, I find that, the applicants **have met** the requirements of subsection (b)(1).

Subsection (b)(2) - Deprive Applicants of Rights

I find that the applicants 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, on these facts, to have a shed in the buffer. Therefore, I find that the applicants **have met** the requirements of subsection (b)(2).

Subsection (b)(3) - Special Privilege

I further find that the granting of the requested critical area variance would not confer on the applicants 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. The neighborhood has many sheds near the shoreline. Therefore, I find that the applicants **have met** the requirements of subsection (b)(3).

Subsection (b)(4) - Actions By Applicants Or Neighboring Property

I find that the requested critical area variance is based on conditions or circumstances that are the result of actions by the applicants, including the

commencement of development before an application for a variance was filed.

Therefore, I find that the applicants **have not met** the requirements of subsection (b)(4).

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

The granting of the requested critical area 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. The shed has been there for many years. It will be in harmony with the general spirit and intent of the County's Critical Area Program. Therefore, I find that the applicants **have met** the requirements of subsection (b)(5).⁶

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 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 applicants have overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State law (which is incorporated

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

into § 18-16-305 subsection (b)(7)) for the reasons set forth above. Therefore, I find that the applicants **have met** the requirements of subsection (b)(7).⁷

However, the existing shed is not the minimum relief needed for the applicants to have a shed on their property. Structures on waterfront properties are disfavored, particularly where the waterfront property is as small as Lot 3A. Moreover, the applicants had a shed which may have been in existence since the 1970s. As such, it was a grandfathered shed which the applicants could have rebuilt in-kind. Had the applicants filed for a permit, they probably would have been told they could rebuild the grandfathered shed as it was then constituted. Instead, the applicants went ahead without permits and replaced the shed with a larger one. (They also added a deck, which they have agreed to remove).

Accordingly, the critical area variance to perfect the construction of the larger shed will be denied. Since the critical area variance is being denied, there is no need to address the zoning variances requested by the applicants.

ORDER

PURSUANT to the application of Marguerite Laurent and Marc Laurent, petitioning for a variance to perfect an accessory structure (shed) on a lot (Lot 3A) without a principal structure and with less setbacks and buffer than required on property with a street address of 1208 Griner Lane, Shady Side, MD 20764;

⁷ 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.

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **2nd day of July, 2024**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the application is **denied**. The shed and deck shall be removed from Lot 3A within ninety (90) days of the date of this Order.



Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

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

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

CO. EXHIBIT#: 1
CASE: 2024-0021-V
DATE: 6/25/24

APPLICANT: Marc & Marguerite Laurent

ASSESSMENT DISTRICT: 7th

CASE NUMBER: 2024-0021-V

COUNCIL DISTRICT: 7th

HEARING DATE: June 25, 2024

PREPARED BY: Robert Konowal
Planner

REQUEST

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

LOCATION AND DESCRIPTION OF SITE

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

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

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

APPLICANT'S PROPOSAL

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

REQUESTED VARIANCES

Section 18-13-104. of the Anne Arundel County Code requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams and tidal wetlands. Section 17-8-301 (b) of the Code prohibits disturbance in the 100-foot stream buffer. The

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

2024-0021-V

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

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

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

FINDINGS

Background

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

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

Variance Criteria

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

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

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

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

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

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

The applicants have not overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law. The applicants have not demonstrated they have adequately evaluated and implemented site planning alternatives that minimize the impact on the buffer. In such case, the shed could simply be moved to an area outside the buffer on Lot 3 which is also owned by the applicant.

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

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

Finally, the request would not reduce forest cover in the Limited Development and Resource Conservation Areas of the Critical Area, be contrary to acceptable clearing and replanting practices in the Critical Area nor be detrimental to the public welfare.

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

The **Development Division (Critical Area Team)** advised that the previous structure was approximately 7x12 (89 sq ft). The applicant replaced this structure with a 12x12 Tiki Bar with an attached 16x17 deck for a total square footage of 416 sq ft. The new structure is not only significantly larger, but it is also closer to the water than the original structure.

The site was issued a Stop Work Order for the construction of the structure in August 2022. The applicant indicated that he thought that he didn't need a permit for the Tiki Bar; however, there is no exemption for an attached deck. In addition, there are other examples of work done on site without the benefit of a permit. This request does not meet the requirements for the findings necessary to approve this variance request.

The **Critical Area Commission for the State of Maryland** advised that Maryland's Critical Area law provides that variances to a local jurisdiction's Critical Area program may be granted only if the County's Administrative Hearing Officer (AHO) finds that an applicant has satisfied that the

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

In requesting a variance, the applicant bears the burden of demonstrating that each and every one of the variance standards have been met, including the standard of unwarranted hardship. The Commission advised that in their opinion the applicants have failed to meet six of the seven variance standards and oppose this variance request. The Commission's detailed submission has been attached to this report.

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

RECOMMENDATIONS

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

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.

Wes Moore
Governor

Aruna Miller
Lt. Governor



Erik Fisher
Chair

Katherine Charbonneau
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

May 6, 2024

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

CO. EXHIBIT#: 6
CASE: 2024-0021-V
DATE: 6/25/24

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

Dear Ms. Seay:

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

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

Variance

Maryland's Critical Area law provides that variances to a local jurisdiction's Critical Area program may be granted only if the County's Administrative Hearing Officer (AHO) finds that an applicant has satisfied the burden to prove that the request meets each and every one of the variance standards under COMAR 27.01.12, including the standard of unwarranted hardship. Furthermore, State law establishes the presumption that a proposed activity for which a Critical Area variance is requested does not conform to the purpose and intent of the Critical Area law and County's Critical Area Program. The AHO must make an affirmative finding that the applicant has overcome this presumption, based on the competent and substantial evidence presented from the applicant.

This office finds that the variance request fails to meet the variance standards, as described below.

Variance Standards

1. *Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;*

State law defines "unwarranted hardship" to mean that, without the requested variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot. The property is currently developed with a house with an attached deck and porch, a driveway/parking area, walkways, and riparian access. The property is located on a peninsula and the parcel is transected by a County road. While the Critical Area Buffer surrounds the lot from both sides, the property owners currently have reasonable and significant use of their property without the unpermitted bar and deck. Allowing the applicant to retain an unpermitted accessory structure in the Buffer when the applicant already enjoys reasonable and significant use of the entire property with the existing house and associated development, does not meet the standard of unwarranted hardship. In fact, this office does not consider, and has not previously considered, accessory structures such as a bar with attached deck in the Buffer to meet the standard of unwarranted hardship, as it is not within the limits of reasonable and significant use of the lot. Therefore, denying this variance request would not result in an unwarranted hardship.

2. *A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;*

Denying the request to retain the unpermitted accessory structure with deck in the Critical Area Buffer when it appears that the accessory structure could be relocated to an area on the lot that meets the County's BMA provisions is not depriving the applicant of a use that would be permitted to others under the local Critical Area program as no individual has the right to construct an accessory structure and deck within the Buffer closer to the shoreline than the primary structure in the BMA. Therefore, denial of this variance would not deprive the applicant of a right commonly enjoyed by other properties in similar areas within the Critical Area in Anne Arundel County.

3. *The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of any local Critical Area program;*

The granting of this variance would absolutely confer a special privilege upon the applicant. The Anne Arundel County Code and the Critical Area regulations place strict limits on disturbance to the Critical Area Buffer in order to meet the goals of the Critical Area law. Approval of this variance would grant the applicant a special privilege that would be denied others within the Critical Area, as no individual is permitted to construct an accessory structure with deck within the Buffer, especially when the structure could be relocated on the property in a manner that meets the County's BMA provisions. This office has previously

opposed similar variance requests from others; therefore, granting this applicant's request would confer upon the applicant a special privilege denied to others.

4. *The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;*

This request is unequivocally the result of actions caused by the applicant, including the commencement of unpermitted development that resulted in lot coverage located in the Buffer. The County's Inspections and Permits Division cited this property for the unpermitted construction of the accessory structure (an enclosed bar with attached deck). While the documentation materials noted the County's website on determining if a permit was required for a shed, the applicant removed an existing smaller shed in the same location and constructed an enclosed bar with attached deck. The applicant willfully proceeded of their own accord without proper permits and constructed the accessory structure in the Buffer, showing complete disregard for the requirements and Critical Area law.

5. *The variance request does not arise from any conforming or nonconforming condition on any neighboring property;*

Based on the information provided, it appears that this variance request is not the result of any conforming or nonconforming condition on any neighboring property.

6. *The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area; and*

The Critical Area law and regulations are designed to foster more sensitive development for shoreline areas to minimize damage to water quality and habitat. The unpermitted accessory structure with deck within the Buffer and potentially within the limits of a tidal wetland results in increased runoff, which carries with it pollutants that will negatively impact the water quality of Cedar Creek, a tributary to the Magothy River and Chesapeake Bay. The unpermitted lot coverage hinders the ability for vegetation to grow in the Buffer which adversely impacts habitat and water quality benefits as the unpermitted accessory structure will exacerbate runoff and stormwater pollutants into the creek.

7. *The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.*

Ecologically sensitive areas such as the Critical Area Buffer are purposefully protected within the Critical Area regulations and the County's Critical Area program because of their importance in meeting the goals of the Critical Area law. The goals of the Critical Area law are to (1) minimize adverse impacts on water quality that result from development, (2) conserve fish, wildlife, and plant habitat, and (3) establish land use policies that accommodate development while recognizing that development adversely affects the first two goals. Granting a variance to allow for the retention of an unpermitted accessory structure within the Critical Area Buffer that results in increased runoff into Cedar Creek when there is an opportunity to relocate the unpermitted structure in a manner that complies

Ms. Sterling
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with the County's BMA provisions, would not be in harmony with the spirit and intent of the Critical Area law and would be contrary to the goals of the Critical Area law. In requesting a variance, the applicant bears the burden of demonstrating that each and every one of the variance standards have been met, including the standard of unwarranted hardship. The applicant has failed to meet six of the seven variance standards as described above; therefore, we oppose this variance.

Thank you for the opportunity to provide comments. Please include this letter of opposition in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions about these comments, please contact me at (410) 260-3468 or jennifer.esposito@maryland.gov.

Sincerely,

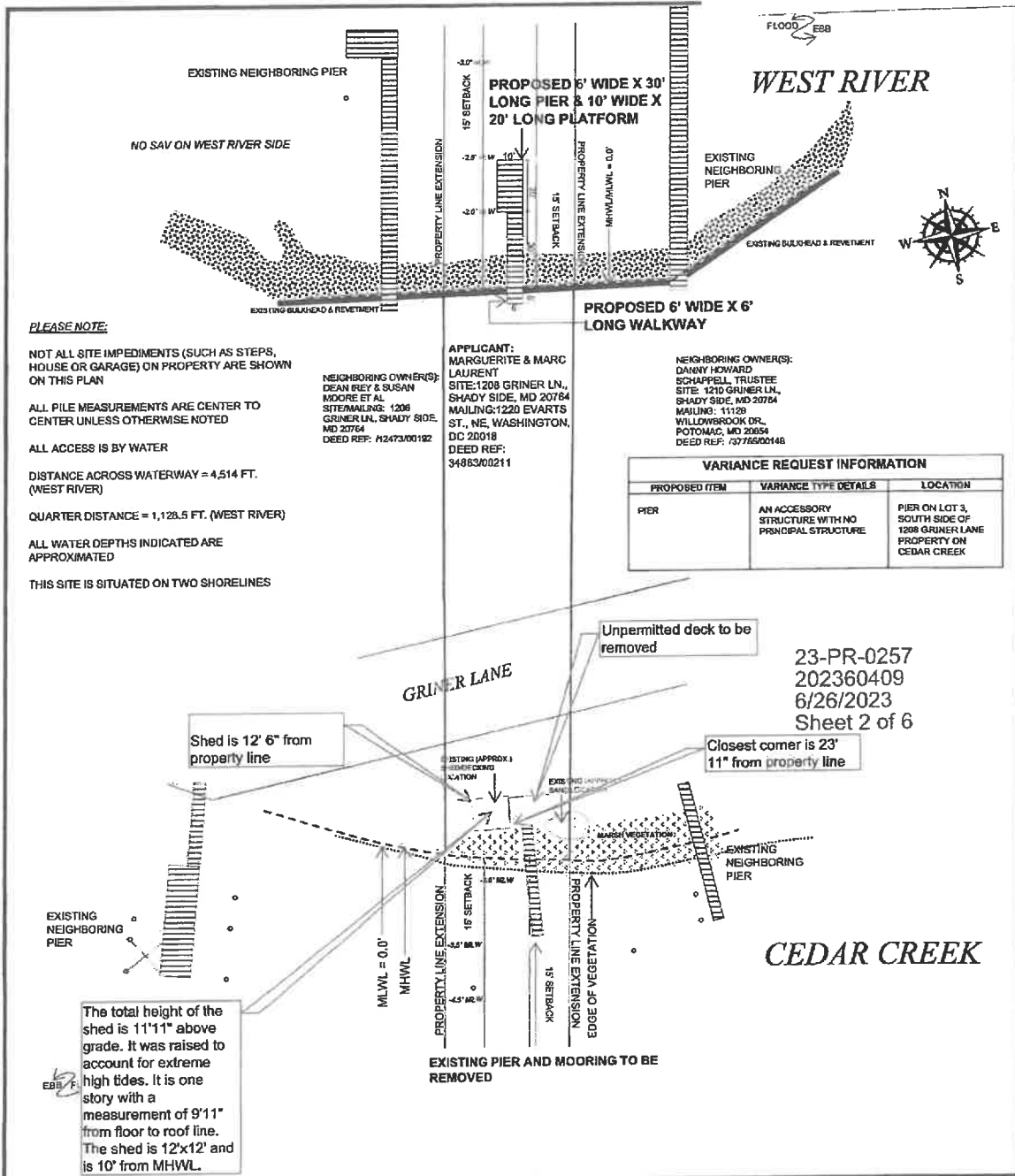


Jennifer Esposito
Natural Resources Planner

cc: Kelly Krinetz, Anne Arundel County
James Haupt, Anne Arundel County
Charlotte Shearin, CAC
Katherine Charbonneau, CAC
Emily Vainieri, Office of the Attorney General

AA 80-24

CO. EXHIBIT#: 2
CASE: 2024-0021-V
DATE: 6/25/24



<p>Existing Condition Plan SCALE 1" = 40'</p> <p>FETCH, LLC 674-E RITCHIE HWY., #273 SEVERNA PARK, MD 21146 410-750-0585</p>	<p>APPLICANT/OWNER: MARGUERITE & MARC LAURENT</p> <p>SITE ADDRESS: 1208 GRINER LANE SHADY SIDE, MD 20784</p> <p>MAILING ADDRESS: 1220 EVARTS ST., NE WASHINGTON, DC 20018</p>	<p>PROPERTY DETAILS: DISTRICT: 07 SUBDIVISION: 850 ACCT. NUMBER: 05063800 LOT(S): 3 MAP: 69 GRID: 3 PARCEL: 607 DEED REF.: #3486300211 PLAT REF.: - PROPERTY LAND AREA: 6,534 SF DATE: 5-15-23 PAGE: 2 OF 6</p>	<p>PROPOSED WORK: PIERS</p> <p>ALL OF THE INFORMATION PROVIDED IN THIS PLAN IS FROM FIELD NOTES, AVAILABLE PLANS, AND PUBLIC PLATS, AS SHOWN ABOVE. APPROXIMATE. THIS PLAN IS NOT TO BE CONSIDERED A BOUNDARY SURVEY, AND DOES NOT INDICATE EXISTING IMPROVEMENTS ON SITE OR NEIGHBORING PROPERTIES. OWNERS SHOULD VERIFY PROPERTY BOUNDARY SURVEY FOR CORRECT BOUNDARIES, PROPERTY LINE EXTENSIONS AND SETBACKS ARE APPROXIMATED.</p> <p>COPYRIGHT © 2024 FETCH, LLC 220</p> <p>THIS PLAN IS THE SOLE PROPERTY OF FETCH, LLC, WHICH OWNS THE COPYRIGHT TO THE USE OF THE PLAN AND PORTION OR WHOLE OR PART OF THE PLAN, INCLUDING THE OWNERS OF THE PROPERTY SHOWN ON THE PLAN OR ANY THIRD PARTY, EXCEPT FOR THE EXPRESS PURPOSE OF APPLYING FOR PERMITS TO PERFORM THE WORK DESCRIBED IN THE PLAN.</p>
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