

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

APPLICANT: Dawn McWilliams

ASSESSMENT DISTRICT: 2nd

CASE NUMBER: 2022-144-V

COUNCILMANIC DISTRICT: 6th

HEARING DATE: November 15, 2022

PREPARED BY: Robert Konowal
Planner

REQUEST

The applicant is requesting variances to allow a dwelling with less setbacks than required and disturbance to lands with a slope of 15% or greater at 922 Waterview Drive in the subdivision of Sunrise Beach, Crownsville.

LOCATION AND DESCRIPTION OF SITE

The subject property has 23 feet of road frontage on the north side of Waterview Drive, 520 feet west of McCrone Drive. These lands have an area of 0.35 acres or 15,180 square feet. The site is described as Lot 11 in Parcel 389, Block 16, on Tax Map 31 and is zoned "R2-Residential District". The current zoning of the site was adopted by the Comprehensive rezoning for the Sixth Council District, October 7, 2011.

These lands are a waterfront lot located on the Severn River in the Chesapeake Bay Critical Area with a modified buffer shoreline and are designated "LDA-Limited Development Area". A water well is to be provided off-site on an adjacent lot to the west via an easement. Septic facilities will be provided both on-site and off-site, also on an adjacent lot to the west via an easement.

The site is currently an undeveloped lot.

APPLICANT'S PROPOSAL

The applicant wishes to construct a two-story, single family detached dwelling with a front attached deck, a rear covered porch, and associated facilities (driveway and septic) on the subject property.

REQUESTED VARIANCES

Section 17-8-201.(a) of the Anne Arundel Subdivision and Development Code states that development in LDA or RCA designated areas may not occur on slopes of 15% or greater. A portion of the new dwelling and front attached deck will disturb some 543 square feet of lands with a slope of 15% or greater. Approval of a variance is required to undertake this disturbance.

A review of the site plan indicates no variances are required for setbacks.

FINDINGS

This Office finds that the subject property does not meet both the minimum lot width and area requirements of the Code for a lot without public sewer in a R2 District. More importantly, the site is significantly encumbered by lands with a slope of 15% or greater that comprise almost half of the lot. Notwithstanding the above, it does appear the proposed dwelling, which has a footprint of 2,288 square feet and measures 44 feet in width and 52 feet in length including the deck and covered porch, could be reduced in size so as to eliminate the need for a variance to disturb lands with a slope of 15% or greater. Consequently the variance is not considered to be warranted and denial of the variance would not cause hardship in the use of these lands.

Since the variance is not deemed to be warranted it cannot be the minimum necessary to afford relief.

A literal interpretation of the County's Critical Area program in this case would not deprive the applicant of rights that are commonly enjoyed by other properties in similar areas. The granting of the variances would confer on the applicant a special privilege that would normally be denied by COMAR, Title 27. This request is not the result of actions by the applicant including commencement of development before obtaining required approvals. The variances do not arise from any condition relating to land or building use on any neighboring property.

This Office does not believe the variance minimizes potential adverse effect on water quality, and it would not be in harmony with the general spirit and intent of the County's Critical Area program. The applicant has not overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law. The applicant has not adequately evaluated and implemented site planning alternatives such as reducing the size of the dwelling.

Approval of the variance would not alter the essential character of the neighborhood nor negatively impact the use of any adjacent property as the improvements do not violate any established set back pattern and are located well enough away from dwellings on abutting lands so as to not negatively impact these properties. The applicant has not however provided the necessary information regarding stormwater management. Consequently there is insufficient evidence to suggest that the variance will not be detrimental to the public welfare.

In conclusion, the variance is not considered to be warranted as a slightly smaller dwelling could be constructed without the need for variances nor can it be determined at this time that the variance will not be detrimental to the public welfare (i.e. adequate stormwater management).

Agency Comments

The **Anne Arundel County Department of Health** indicated they do not have an approved plan for this project. The Health Department has no objection to the request as long as a plan is submitted and approved by them.

The **Development Division** agrees that the site is severely constrained. In order to develop, both the septic and well need to be located on a separate lot, the entire house will be located within the steep slope buffer and 543 square feet of steep slopes on the site will be disturbed. The applicant has argued that the house is modest and it very well may be when located on a flat site that can accommodate a home, well and septic. But truth be told, this modest home is currently being advertised as a 4 BR 3/1 BATH home with combined interior square footage of 3600 square feet with a 12'x43' deck across the front, over the steep slopes. The home should be reduced in size to fit within the constraints of the lot. Permanent disturbance to the steep slopes should be limited, at most, to the temporary disturbance necessary for the construction of the dwelling. A modification will be required for the disturbance of the required slope buffer. Approval of a variance does not guarantee the approval of the modification. The modification decision will be subject to the requirements of 17-2-108. Mitigation and SWM must be addressed with the permit application.

The **Engineering Division of the Department Of Inspections and Permits** advised the subject application does not have the information necessary for a complete review of stormwater management. The Department provided a list of information required but not provided. Consequently, the Department cannot recommend approval of the variance.

The **State of Maryland Critical Area Commission** had no objection to the application but did indicate appropriate mitigation should be provided.

The **Soil Conservation District** had no objection to the application.

RECOMMENDATION

With regard to the standards by which a variance may be granted as set forth in Section 18-16-305 under the Anne Arundel County Code, the Office of Planning and Zoning recommends *denial* of the variance to allow 543 square feet of lands with a slope of 15% or greater to be disturbed as shown on the attached site plan.

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.