

LAW OFFICES OF NEIL J. RUTHER LLC

COUNSELLORS AT LAW
14307 JARRETTSVILLE PIKE
SUITE A
P.O. BOX 88
PHOENIX, MARYLAND 21131
(667) 308-2134

NRuther@Rutherlaw.net

Office of Administrative Hearings
Anne Arundel County
Attn: Douglas Hollman, Hearing Officer
Arundel Center, P.O. Box 2700
Annapolis, Maryland 21404-2700

RE: Sherwood Forest Development Lot 124
124 Edge Hill Road
Annapolis, Maryland 21404
Variance Application
Hearing Date November 17, 2022
SENT VIA ELECTRONIC TRANSMISSION


November 15, 2022

Dear Sir;

This firm represents Mr. & Mrs. John Arscott the owners of 124 B Friar Tuck Hill in Sherwood Forest, Maryland. The property abuts 124 Edge Hill Road in the Sherwood Forest Community. On or about November 7 on behalf of the Arscotts I filed a letter opposing the granting of a variance for certain improvements to that property. A hearing on the variance request is scheduled for November 17, 2022 at 10:00 AM. Since the time of my filing the opposition Mr. Arscott has had discussions with the Applicant and has received certain assurances concerning the work to be done. As a result of those discussions the Arscotts wish to withdraw their opposition to the request for variance. They have no objection to the project moving forward as requested in the application for variance.

I am by copy of this letter advising the Applicant's engineering firm of this position. Thank you for your attention to this matter.

Very truly yours



Neil J Ruther

cc: John Arscott
Drum Loyka LLC

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PRO. EXHIBIT# 1
CASE: 2022-0145-V
DATE: 11/17/22

RE: Sherwood Forest Development Lot 124
124 Edge Hill Road
Annapolis, Maryland 21404
Variance Application
Hearing Date November 17, 2022

November 7, 2022

Dear Sir;

This office represents Mr. & Mrs. John C. Arscott the owners of 124 B Friar Tuck Hill, Sherwood Forest which abuts the subject property 124 Edge Hill Road to the West. My clients object to the requested variance and urge its disapproval.

Sherwood Forest is a unique community on the shores of the Severn River founded in the early 1900's. It is densely populated with homes on very small lots which are in close proximity. It is fair to say that it would be difficult or impossible to build with that level of density under today's zoning and critical areas rules. In fact, were it not for an exception resulting from the size and shape of the lot the existing structure would violate the minimum set back requirements of the Zoning Code. Most importantly the harmony of the homes in the Forest is preserved by carefully planned and cultivated vegetation which insulates the structures from each other and provides some measure of privacy. This application violates that concept and would, if granted, set a precedent which will be very harmful to the Community.

The area between my Client's home and 124 Edge Hill Road to the east is densely wooded and covered with plants and shrubs which stabilize the soil and prevent erosion on a very steep slope between the two properties. The disturbance of that area would adversely impact not only my Client's home but several others in the immediate area. The petition for variance submitted by the owners attempts to squeeze the request into the well established and strict rules for the granting of variances, particularly the mandatory rules of §18-16-305 of the County zoning law. They cannot do so as a matter of law. That section provides in pertinent part:

(a) **Requirements for zoning variances.** The Administrative Hearing Officer may vary or modify the provisions of this article when it is alleged 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 applicant to develop the lot.

(b) **Requirements for critical or bog protection area variances.** For a property located in the critical area or a bog protection area, a variance to the requirements of the County's critical area program or the bog protection program may be granted if the Administrative Hearing Officer makes the following affirmative findings:

(1) Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program or bog protection program would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808, of the State Code, to the applicant;

(2) (i) A literal interpretation of COMAR, Title 27, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County; or

(ii) The County's bog protection program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the bog protection area of the County;

(3) The granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, Title 27, the County's critical area program to other lands or structures within the County critical area, or the County's bog protection program to other lands or structures within a bog protection area;

(4) The variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed, and does not arise from any condition relating to land or building use on any neighboring property;

(5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program or bog protection program;

(7) The applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808, of the State Code ...

The section of the Natural Resources Article of the Annotated Code of Maryland sets a high bar for those seeking a variance. §8-1808 (d) prohibits the granting of a variance of this type. It states :

(5) A variance to a local jurisdiction's critical area program may not be granted unless:

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

Md. Code Ann., Nat. Res. § 8-1808(d).

The statute defines an "unwarranted hardship" in very narrow terms.

- 1)** In this subsection, "unwarranted hardship" means 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. Md. Code Ann., Nat. Res. § 8-1808 (d) Emphasis supplied.

There is perhaps no other community in Anne Arundel County where these rules should be more strictly observed. In the justification for the variance engineers for Drum Loyka & Associates attempt to meet the statutory standards for the granting of a variance by simply inventing facts which seem to comport with those rules. In their letter of September 13, 2022 the firm addresses each of those standards to justify the application. In five numbered paragraphs beginning at page 2 the letter asserts that denial of the request would:

1. "constitute an unwarranted hardship on the applicant and deprive them of the right to redevelop, and deny reasonable and significant use of the entire property". Such an assertion is obviously false since the property contains a structure which has been occupied as a single family residence for decades. It has been occupied as a residence by the Applicant for years. To say that the owner will be deprived of any "reasonable and significant use" of the parcel without the variance flies in the face of that reality. The applicant is and has been using the property. They just want a bigger house.

2. The applicant asserts that the proposed improvements are rights which are commonly enjoyed by surrounding properties. There is no support in the letter for the notion that any of the surrounding homes have been expanded in the manner suggested in the variance Application or in violation of environmental rules.

3. Paragraph 3 of the letter asserts that the variance will not confer a “special privilege” to the applicant as “nearby properties enjoy improvements greater in scale to what is proposed” It is true that some of the surrounding homes are larger than the applicant’s. They were built that way and are not a justification for expanding a smaller home in violation of important zoning and environmental rules.

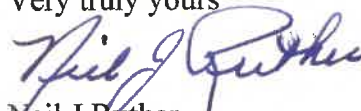
4. Paragraph 4 asserts that the variance is not based on conditions or circumstances and are the result of actions by the applicant. They most certainly are based on conditions caused by the applicant since the only condition justifying the claim is the applicant’s desire for a bigger home. That is the only thing which generates the issue in the first place and it was generated by the applicant.

5. Drum, Loyka asserts the project will not adversely affect water quality or impact fish, wildlife or plant habitat within the County’s critical area. There is no scientific data submitted to justify this conclusion. There is no description of what will be removed or destroyed except for an approximate square footage of area to be affected and there is no plan of remediation submitted. In fact there are several very large trees in the potential disturbance area which could never be replaced except for the passage of many decades.

Perhaps the most important reason to deny the requested variance is that it would establish a precedent in the Sherwood Community that stands for the proposition that any resident can apply for and get permission for a substantial enlargement of their home merely by stating that the failure to allow the expansion constitutes an “unwarranted hardship” which effectively deprives them of any reasonable use of their property. Thus a pure fiction would become the standard by which homeowners in Sherwood could justify almost any intrusion on their neighbors or the Community itself.

We urge this office to deny the variance.

Very truly yours



Neil J Ruther

cc: John and Cherie Arscott
Katie Yerman, Drum, Loyka & Associates