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

APPLICANT: Randy & Laura Adler ASSESSMENT DISTRICT: 3rd

CASE NUMBER: 2024-0088-V COUNCILMANIC DISTRICT: 5th

HEARING DATE: July 30, 2024 PREPARED BY: Sara Anzelmo

Planner

REQUEST

The applicants are requesting a variance to perfect an accessory structure (hot tub on platform) with less setbacks than required and with new lot coverage nearer to the shoreline than the closest façade of the existing principal structure on property located at 1001 Forest Drive in Arnold.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of 8,727 square feet of land (according to the applicants' survey) and is located with approximately 100 feet of frontage on the south side of Forest Drive, 690 feet east of Burnett Avenue. It is identified as Part of Lots 163 and 164 of Parcel 37 in Block 22 on Tax Map 33 in the Shore Acres subdivision.

The property is zoned R2 – Residential District, as adopted by the comprehensive zoning for Council District 5, effective January 29, 2012. This is a waterfront lot located on Lake Placid (off of the Magothy River) that lies within the Chesapeake Bay Critical Area, is designated as LDA – Limited Development Area, and is mapped as a BMA – Buffer Modification Area. It is improved with a two-story single-family detached dwelling and other associated facilities.

PROPOSAL

The applicants seek after-the-fact approval for a 7' by 7' hot tub and associated platform located near the shoreline.

REQUESTED VARIANCES

§ 17-8-702(b)(1) of the Subdivision and Development Code provides that in a BMA – Buffer Modification Area no new lot coverage shall be placed nearer to the shoreline than the closest façade of the existing principal structure. The hot tub and associated platform have been located between the dwelling and the shoreline, necessitating a variance to perfect 49 square feet of new critical area lot coverage nearer to the shoreline.

§ 18-4-601 of the Zoning Code requires an accessory structure in an R2 District to be set back a minimum of 40 feet from the front lot line. The hot tub and platform were constructed as close as six feet from the front (waterfront) lot line, necessitating a variance of 34 feet.

FINDINGS

The subject property is undersized for the zoning district. While the lot exceeds the minimum 80-foot width required at the front building restriction line, the 8,727 square foot area is substantially smaller than the minimum 20,000 square foot size required for a lot not served by public sewer in an R2 District.

The property was the subject of a previous variance application (2020-0083-V) under which approval was granted to allow dwelling additions with less setbacks than required.

The pre-existing critical area lot coverage is reported as 2,704 square feet, and the post-construction coverage is reported as 2,754 square feet, which exceeds the maximum 2,727 square feet (31.25 %) of coverage allowed by Code. Furthermore, recent County aerial photographs from 2024 and County inspection notes from February 23, 2024 indicate that there are actually three areas of unapproved critical area lot coverage that have been added recently to the waterfront side of the lot. This variance application only seeks to remedy the hot tub and platform. However, aerials show a large, circular paver patio with a fire pit and other coverage on the waterfront side. It appears that these areas have not been accounted for on the Critical Area Project Notification worksheet. These areas of unpermitted lot coverage will have to be removed. If the hot tub and platform are approved, the applicants will need to demonstrate compliance with the maximum coverage limitation at the time of permitting.

The property is the subject of an open compliance case (E-2022-445) associated with the aforementioned three areas of unpermitted new critical area lot coverage. Inspector notes indicate that the initial case was associated with an at-grade deck constructed on the waterfront side. The structure was eventually removed, and the violation case was closed. The case has been reopened for the new areas of coverage that were added after the violation had been abated.

The applicants' letter explains that the hot tub and platform were placed on the highest point in their yard. They attest that the tide comes up from the community boat ramp next to their property and floods a good half to three quarters of the property from the road towards the water side on a regular basis. In the event that they have both a tide and a weather event combined, the tide comes up from the boat ramp and can breach the bulkhead and flood from the water side as well. The applicants conclude that the hot tub would be destroyed if located anywhere else on the lot.

The **Health Department** has reviewed the on-site sewage disposal system and well water supply system for the property and has determined that the variance request does not adversely affect these systems. Therefore, the Department has no objection to the request.

The **Critical Area Commission** commented that 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. They provided a detailed analysis of the variance standards and concluded that the applicants have failed to meet six of the seven variance standards. Therefore, the Critical

Area Commission opposes the requested variance relief. A copy of the Commission's full letter is included in the County exhibits provided to the Administrative Hearing Officer.

The **Development Division (Critical Area Team)** noted that this property has been the site of numerous building and environmental violations for development without permit approval. This request is in fact the result of actions by the applicants. There is an extensive amount of existing lot coverage on this site which not only limits opportunities for infiltration but also creates additional runoff. The applicants' information regarding the flooding events on the property further support the need to not add additional lot coverage, not to just be located on higher ground. The Critical Area Team cannot support this variance request.

For the granting of a Critical Area variance, a determination must be made as to whether, because of certain unique physical conditions peculiar to and inherent in the lot, strict implementation of the County's Critical Area Program would result in an unwarranted hardship and would prevent the applicants from developing the lot. The need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the applicants. The lack of a hot tub, which is considered to be more of a luxury than a necessity, in the BMA buffer does not constitute an unwarranted hardship.

The property already contains a dwelling and associated facilities, including substantial waterfront decking and an upper level waterfront balcony. Therefore, a literal interpretation of the County's Critical Area Program would not deprive the applicants of rights that are commonly enjoyed by other properties in similar areas. The granting of the variance would confer on the applicants a special privilege that would be denied by COMAR, Title 27.

The request is clearly based on conditions or circumstances that are the result of actions by the applicants, who knowingly placed the platform and hot tub (as well as several other areas of new lot coverage) between the house and the shoreline. They took this action even after being forced to remove other lot coverage that had previously been placed between the house and the shoreline without permission. The request does not appear to arise from any condition relating to land or building use on any neighboring property. The granting of the variance to perfect a hot tub and platform a mere six feet from the shoreline would adversely affect water quality or impact fish, wildlife, or plant habitat and would not be in harmony with the general spirit and intent of the County's Critical Area Program. In fact, as stated in the Critical Area Commission's extensive comment letter, the unpermitted lot coverage hinders the ability for vegetation to grow in the Buffer, which adversely impacts habitat and water quality benefits. The unpermitted accessory structure will exacerbate runoff and stormwater pollutants into the creek. Moreover, the applicants indicated that the property regularly floods and that the hot tub was placed at the highest point of the property as a justification to retain the hot tub in its current location. The flooding issues alone should speak to the sensitive location of this property and is reason enough to deny the location of additional lot coverage 6-feet from mean high water. 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 and have not implemented site planning alternatives.

With regard to the requirements for all variances, approval would not substantially impair the appropriate use or development of the adjacent properties, as the structure meets the minimum setback required from both side lot lines. The variance would not reduce forest cover in the

limited development area, be contrary to acceptable clearing and replanting practices, or be detrimental to the public welfare. However, a hot tub only six feet from the shoreline may alter the essential character of the neighborhood.

More importantly, the BMA - Buffer Modification Area provisions aim to "hold the line" of the existing development in areas that already contain improvements within 100 feet of the shoreline, and they are specifically intended to prohibit expansion of lot coverage in those areas. The applicants have not demonstrated that, without the proposed Critical Area variance, they would be denied reasonable and significant use of their property. Because the proposed variance is not warranted, it cannot be deemed the minimum necessary to afford relief and cannot be supported.

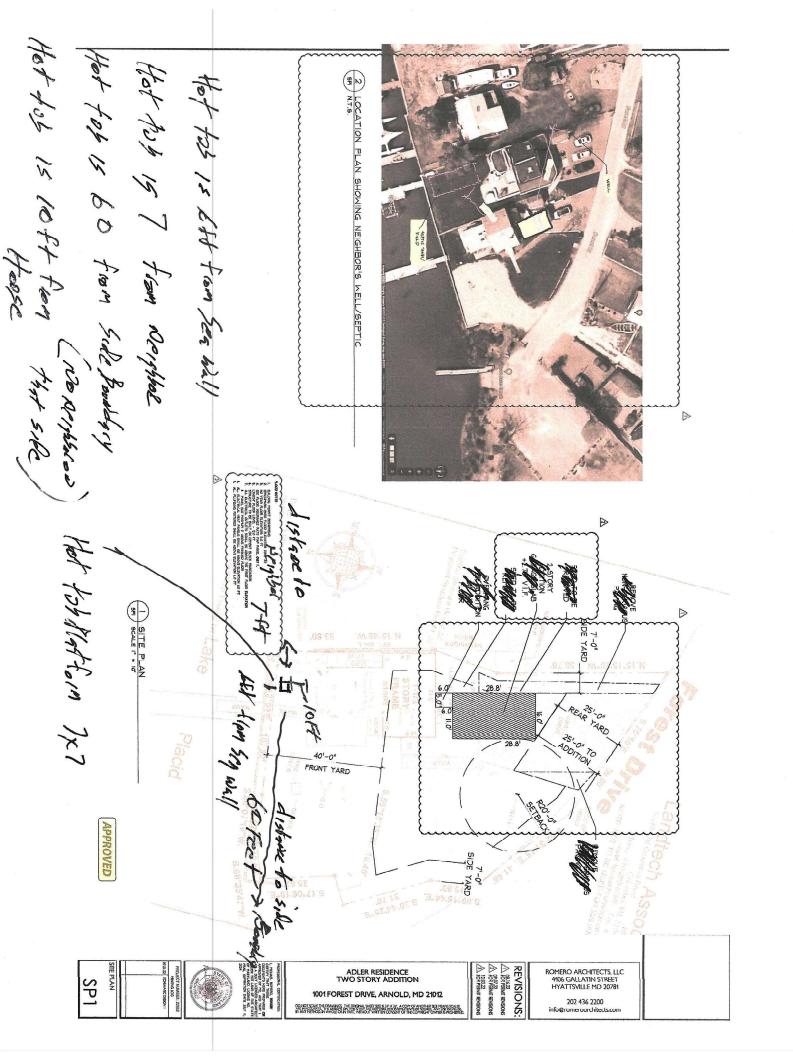
RECOMMENDATION

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends <u>denial</u> of the proposed Critical Area and zoning variances. Should the Administrative Hearing Officer determine that a variance is warranted, any approval must be conditioned on the additional conditions provided in §18-16-305(c) and (d) as follows:

(c) Conditions for granting a variance in the critical area.

- (1) For a property with an outstanding violation the granting of a variance in the critical area under subsection (b) shall be conditioned on the applicant completing the following within 90 days of the date of decision, as applicable:
 - (i) obtaining an approved mitigation or restoration plan;
 - (ii) completing the abatement measures in accordance with the County critical area program; and
 - (iii) paying any civil fines assessed and finally adjudicated.
- (2) Notwithstanding the requirements of subsection (c)(1), the Office of Planning and Zoning may extend the time for abatement to the next planting season because of adverse planting conditions. An applicant may also be granted a 180 day extension to satisfy the conditions of a variance upon timely application to the Planning and Zoning Officer and good cause shown.
- (d) **Lapse.** Any critical area variance granted for a property with an outstanding violation shall lapse by operation of law if the conditions of subsection (c)(1) are not satisfied within 90 days or as extended.

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.



Randy Adler

1001 Forest Drive, Arnold, Md., 21012

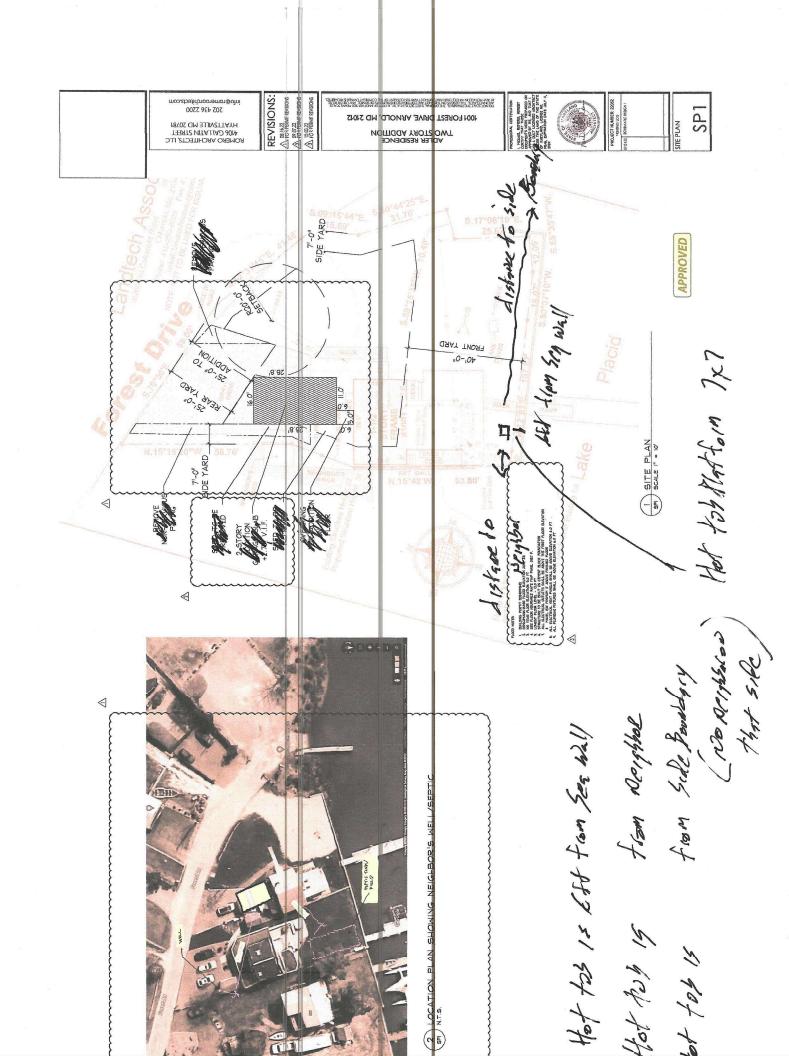
We are requesting a variance for our hot tub. As seen by supporting pictures, it is situated at the highest point of our property. This was done for several reasons- First, as shown in attached pics, tide comes up from community boat ramp next to our property and floods a good half to three quarters of our property from road towards water side on a regular basis. The tide pics shown are 3 hours before high tide, I had to go to work and could not wait for full high tide. Second, In the event we have both a tide and weather event combined, tide comes up from boat ramp and can breach the bulkhead and flood from water side as well. This has happened a few times and because we have hot tub at the highest point on our property the water flows towards the street side and hot tub not affected- anywhere else on our property the hot tub would have been destroyed. In addition, the box built from 4x4 that the hot tub is sitting on is not driven into ground, it is sitting up on blocks (as seen in pictures) so in the event of bulkhead breach the water flows under the box and water flow is not hindered in anyway.

CRITICAL AREA COMMISSION CHESAPEAKE AND ATLANTIC COASTAL BAYS 1804 WEST STREET, SUITE 100 ANNAPOLIS, MD 21401

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION Jurisdiction: Anne Arundel County Tax Map # Parcel # Block # Lot # 246 4 1 8 Tax ID: 3747900 4 9600	Date: FOR RESUBMITTAL ONLY Corrections	7
Project Name (site name, subdivision name, or other)		
Project location/Address 100/ Forest D.	rive	
City of weld	Zip 2/0/2	
Local case number		
Applicant: Last name Adlac	First name Fully	
Company		
Application Type (check all that apply): Building Permit Buffer Management Plan Conditional Use Consistency Report Disturbance > 5,000 sq ft Grading Permit Local Jurisdiction Contact Information:	Variance Rezoning Site Plan Special Exception Subdivision Other	
Last name AACo Zoning Administration Section	First name	
ALL SULL SULL SULL SULL SULL SULL SULL S	onse from Commission Required ByTBD	
Fax #	Hearing date TBD	

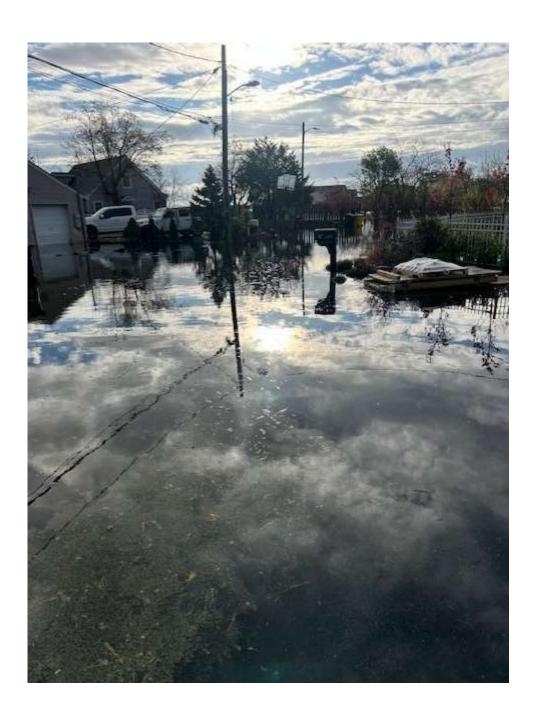
SPECIFIC PROJECT INFORMATION Describe Proposed use of project site: Enstall Hor tob Yes Yes Growth Allocation Intra-Family Transfer Buffer Exemption Area Grandfathered Lot Project Type (check all that apply) Recreational Commercial Redevelopment Consistency Report Residential Industrial Shore Erosion Control Institutional Water-Dependent Facility Mixed Use Other SITE INVENTORY (Enter acres or square feet) Acres Total Disturbed Area 8727.31 IDA Area LDA Area Hottas # of Lots Created RCA Area Total Area Sq Ft Acres Sq Ft Acres Existing Lot Coverage Existing Forest/Woodland/Trees New Lot Coverage Created Forest/Woodland/Trees Removed Lot Coverage Removed Forest/Woodland/Trees Total Lot Coverage VARIANCE INFORMATION (Check all that apply) Sq Ft Acres Sq Ft Acres Buffer Forest Clearing Buffer Disturbance Mit gation Non-Buffer Disturbance Structure Variance Type Acc. Structure Addition Buffer Barn Forest Clearing Deck **HPA** Impact Dwelling Lot Coverage Dwelling Addition **Expanded Buffer** Garage Nontidal Wetlands Gazebo Setback Patio Steep Slopes Pool Other Shed Other Revised 12/14/2006

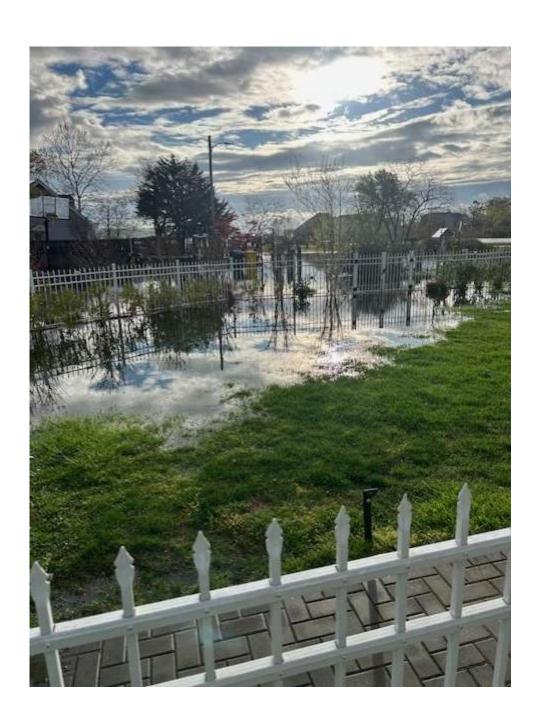




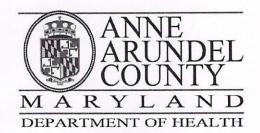












J. Howard Beard Health Services Building 3 Harry S. Truman Parkway Annapolis, Maryland 21401 Phone: 410-222-7095 Fax: 410-222-7294 Maryland Relay (TTY): 711 www.aahealth.org

Tonii Gedin, RN, DNP Health Officer

MEMORANDUM

TO:

Sadé Medina, Zoning Applications

Planning and Zoning Department, MS-6301

FROM:

Brian Chew, Program Manager

Bureau of Environmental Health

DATE:

May 24, 2024

RE:

Randy Jay Adler

1001 Forest Drive Arnold, MD 21012

NUMBER:

2024-0088-V

SUBJECT:

Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to perfect an accessory structure (hot tub) with less set backs than required and with new lot coverage nearer to the shore line than the facade of the principal structure.

The Health Department has reviewed the on-site sewage disposal and well water supply system for the above referenced property. The Health Department has determined that the proposed request does not adversely affect the on-site sewage disposal and well water supply systems. The Health Department has no objection to the above referenced request.

If you have further questions or comments, please contact Brian Chew at 410-222-7413.

cc:

Sterling Seay

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

June 3, 2024

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

Re: Adler After-The-Fact Variance (2024-0088-V)

Dear Ms. Seay:

Thank you for providing information on the above-referenced variance request to perfect an unpermitted hot tub located within the Critical Area Buffer, six feet from the mean high water. The property is a 7,300 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.

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;

Ms. Sterling Adler ATF Variance June 3, 2024 Page 2

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 owners currently have reasonable and significant use of their property without the unpermitted hot tub. 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 hot tub 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 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 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 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 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 six feet from the mean high water. The County's Inspections and Permits Division cited this property for the unpermitted construction of the accessory structure. The applicant

Ms. Sterling Adler ATF Variance June 3, 2024 Page 3

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 within the Buffer results in increased runoff, which carries with it pollutants that will negatively impact the water quality of Placid Lake, 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. Moreover, the applicant indicated in the application material that the property regularly floods and that the hot tub was placed at the highest point of the property as a justification to retain the hot tub in its current location. The flooding issues alone should speak to the sensitive location of this property and is reason enough to deny the location of additional lot coverage 6-feet from mean high water. The unpermitted lot coverage should be removed and the Buffer should be planted with species conducive to reducing the flooding issues on this site.

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 Placid Lake when there is an opportunity to relocate the unpermitted structure in a manner that complies 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

Ms. Sterling Adler ATF Variance June 3, 2024 Page 4

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 120-24

2024-0088-V

Menu Cancel Help Task
OPZ Critical Area Team
Assigned to Department
OPZ Critical Area Assigned Date 05/15/2024 Status Due Date 06/05/2024 Assigned to Kelly Krinetz Complete w/ Comments Action By Kelly Krinetz End Time Action by Department OPZ Critical Area Status Date 05/21/2024 Start Time **Hours Spent** 0.0 Comments Billable Overtime This site has been the site of numerous building and environmental violations for development without permit approval. This request in fact the result of actions by the applicant.

There is an extensive amount of existing lot coverage on this site which not only limits opportunities for infiltration but also creates additional runoff. The applicants information regarding the flooding events on the property further support the need to not add additional lot coverage not to just located on higher ground. This Office cannot support this request.
In Possession Time (hrs) Time Tracking Start Date Est. Completion Date In Possession Time (hrs)
Display E-mail Address in ACA Display Comment in ACAComment Display in ACA
No All ACA Users Record Creator Licensed Professional Contact Owner Workflow Calendar Action Updated **Estimated Hours** Task Specific Information **Expiration Date** Review Notes Reviewer Name Reviewer Phone Number Reviewer Email

