

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

APPLICANT: Johns M. & Amy A. Bahen

ASSESSMENT DISTRICT: 3

CASE NUMBER: 2024-0101-V

COUNCILMANIC DISTRICT: 5

HEARING DATE: February 13, 2025

PREPARED BY: Sara Anzelmo
Planner



REQUEST

The applicants are requesting variances to perfect an accessory structure (patio with retaining wall and fireplace) with disturbance to slopes of 15% or greater and with less setbacks and buffer than required¹ on property located at 1015 Magothy Avenue in Arnold.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of 35,328 square feet of land and is located on the south side of Magothy Avenue. It is identified as Unit A of Parcel 39 in Grid 22 on Tax Map 33 and is part of the “Morgan Property” land condominium subdivision.

The property is zoned R1 – Residential District. This waterfront lot is located entirely within the Chesapeake Bay Critical Area overlay, is designated as part LDA – Limited Development Area and part RCA – Resource Conservation Area, and is mapped as part BMA – Buffer Modification Area and part standard buffer. The lot is currently improved with a two-and-a-half story, single-family, detached dwelling and other associated facilities.

PROPOSAL

The applicants seek after-the-fact approval for the construction of a semi-circular patio (30 feet in diameter), an adjacent retaining wall, and an outside fireplace on the waterfront side of the house. The total area of the patio is shown as 580 square feet on the site plan, but is shown as 700 square feet on the letter of explanation and the Critical Area Project Notification form. It is important to note that there are significant site plan discrepancies. County aerials show that the patio is not in line with the deck stairs as shown on the site plan; rather, it is located approximately 13 feet to the west and is twisted about 45 degrees +/- . The retaining wall and fireplace are not shown on the site plan at all, but the adjacent patio is much closer to the west side lot line than shown. County aerials show the fireplace near, if not partially crossing, the west side lot line. However, the specific locations of the patio, wall, and fireplace cannot be determined from the site plan.

¹ The application was initially advertised for an additional use variance to allow a new residential use in an OS - Open Space District. However, as a result of the Region 4 comprehensive zoning process, the OS - Open Space portion of the site has been reclassified as R1 - Residential District. It should be noted that, while the OS zoning was removed, the tidal wetlands that were intended to be protected by the Open Space zoning are still located on the property. One of the goals of the comprehensive zoning process was to eliminate split zoned properties and to allow the environmental regulations rather than the zoning to dictate the necessary environmental protections.

REQUESTED VARIANCES

§ 18-13-104(a) of the Anne Arundel County Zoning 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. § 17-8-301 of the Subdivision and Development Code states that development on properties containing buffers shall meet the requirements of Title 27 of the State Code of Maryland (COMAR). Section 27.01.01(B)(8)(ii) of COMAR states a buffer exists “to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.” Section 27.01.09 E.(1)(a)(ii) of COMAR authorizes disturbance to the buffer for a new development activity or redevelopment activity by variance. The patio, retaining wall, and fireplace have been constructed within the 100-foot buffer to tidal wetlands, necessitating a variance. If approved, the actual amount of buffer disturbance would be determined at permitting.

§ 17-8-201(a) provides that development in the limited development area (LDA) or resource conservation area (RCA) may not occur within slopes of 15% or greater unless development will facilitate stabilization of the slope; is to allow connection to a public utility; or is to provide direct access to the shoreline. The patio, retaining wall, and fireplace have been constructed within an area of slopes of 15% or greater, necessitating a variance. If approved the actual amount of slope disturbance would be determined at permitting.

§ 18-4-401 provides that an accessory structure eight feet in height or greater in an R1 District shall be set back a minimum of 15 feet from a side lot line; an accessory structure less than eight feet in height shall be set back a minimum of 10 feet from a side lot line. The fireplace is not shown on the site plan, and the height of the fireplace has not been provided. However, a cursory review using County aerial photographs and parcel layers shows that the fireplace is likely located within the required setback from the west side lot line. Therefore, a setback variance of an unknown quantity would be required.

FINDINGS

The subject property is irregular in shape and is undersized for the zoning district. More specifically, the 35,328 square foot area is less than the minimum 40,000 square foot lot area required for new lots in an R1 District. The previously existing critical area lot coverage was 3,525 square feet (or 9.98%). The post-construction coverage increased to 4,225 square feet (or 11.96%), which falls below the maximum 15% allowed by Code.

The property is the subject of an open compliance case (E-2022-536) relating to the construction of the patio, retaining wall, and fireplace without a permit. The property was the subject of a prior variance application (2017-0036-V) under which approval was granted to allow an irregularly shaped two-tiered deck (approximately 16’ by 20’) with a landing and steps to grade on the southwest corner of the dwelling within the tidal wetland buffer.

The applicants’ letter explains that the owner was unaware of the requirements and that the patio was placed in the most reasonable location as it actually performs two functions. The adjacent lot is several feet higher and was eroding onto the subject lot. The applicants attest that the retaining wall was constructed to eliminate the erosive condition. The patio and fireplace were added to allow the family to further enjoy the water view of the lot. The applicants conclude that the patio is placed in the only flat or open area as the rest of the lot is reserved for future possible septic

area and common use right of way for the neighbors to access their properties.

The applicants submitted three statements from neighbors showing support for the keeping of the existing structures.

The **Development Division (Critical Area Team)** noted that, in 2017, a variance was issued to allow a two level deck within the 100' buffer located approximately 44' from the edge of the tidal wetland. At that time, the hearing officer made the finding that the deck was in fact the minimum necessary to afford the applicant relief. This request is to perfect a 31' semi circular patio within that 44' buffer, resulting in a mere 14' buffer from the edge of the wetland. There is no justification to allow this patio and fireplace, and the Critical Area Team cannot support this request.

The **Critical Area Commission** commented that, while the application materials indicate that the patio and retaining wall provide slope stabilization and erosion control, a patio with a fireplace is not a slope stabilization measure and increased impacts and lot coverage on steep slopes can actually cause and exacerbate erosive conditions. The installation of appropriate slope stabilization methods, such as a standalone retaining wall, is a more appropriate method of addressing slope erosion issues. The Commission noted that six of the seven Critical Area variance standards cannot be met with this application and provided a detailed explanation of each standard in a formal four-paged letter. Of particular importance are the following statements. 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 patio and outdoor fireplace, within the Buffer and on steep slopes, increases runoff and erosion capacity, which carries with it pollutants that will negatively impact the water quality of Deep Creek, a tributary to the Magothy River and Chesapeake Bay. Granting a variance, when the lot has already been improved with the addition of a permitted attached porch, 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. The Commission opposes the variance request. A copy of the complete Critical Area Commission letter has been provided to the Administrative Hearing Officer.

The **Department of Health** does not have an approved plan for this project, but has no objection to the proposal as long as a plan is submitted and approved by the Department.

The **Soil Conservation District** reviewed the proposal and provided no comment.

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 particular property, strict implementation of the County's Critical Area Program would result in an unwarranted hardship. In this particular case, the property is encumbered with tidal wetlands, steep slopes, and their associated buffers. However, the property already has the benefit of a two-story deck that provides ample room for outdoor use and enjoyment. Therefore, an unwarranted hardship does not exist. 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, as they already have full use of their property with the existing house and associated amenities.

The granting of additional critical area variances for excess outside amenities above those previously approved by variance would confer on the applicants a special privilege that would be denied by COMAR, Title 27. The variance is based on conditions or circumstances that are the

result of actions by the applicants, as they constructed the patio, retaining wall, and fireplace without the proper permit and variance approvals. The variance does not appear to arise from any condition relating to land or building use on any neighboring property. While the applicants note an erosive condition, they should have contacted the County to make a determination as to whether a retaining wall was necessary to cure the condition and, if so, what the appropriate remedy would be. Retaining walls deemed necessary prior to construction do not require a variance. Either way, a patio and fireplace are most certainly not necessary to cure an erosive condition. The granting of the variance 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. 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 nor have they evaluated or implemented site plan alternatives.

With regard to the requirements for all variances, approval would not necessarily alter the essential character of the neighborhood, substantially impair the appropriate use or development of the adjacent properties, reduce forest cover in the limited development area or resource conservation area, be contrary to acceptable clearing and replanting practices, or be detrimental to the public welfare. However, given that there is already an existing two-story deck, approved via a recent variance, that provides ample room for outdoor use and enjoyment, the requested variance is not warranted and cannot be considered the minimum necessary to afford relief.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends ***denial*** of the proposed Critical Area 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.

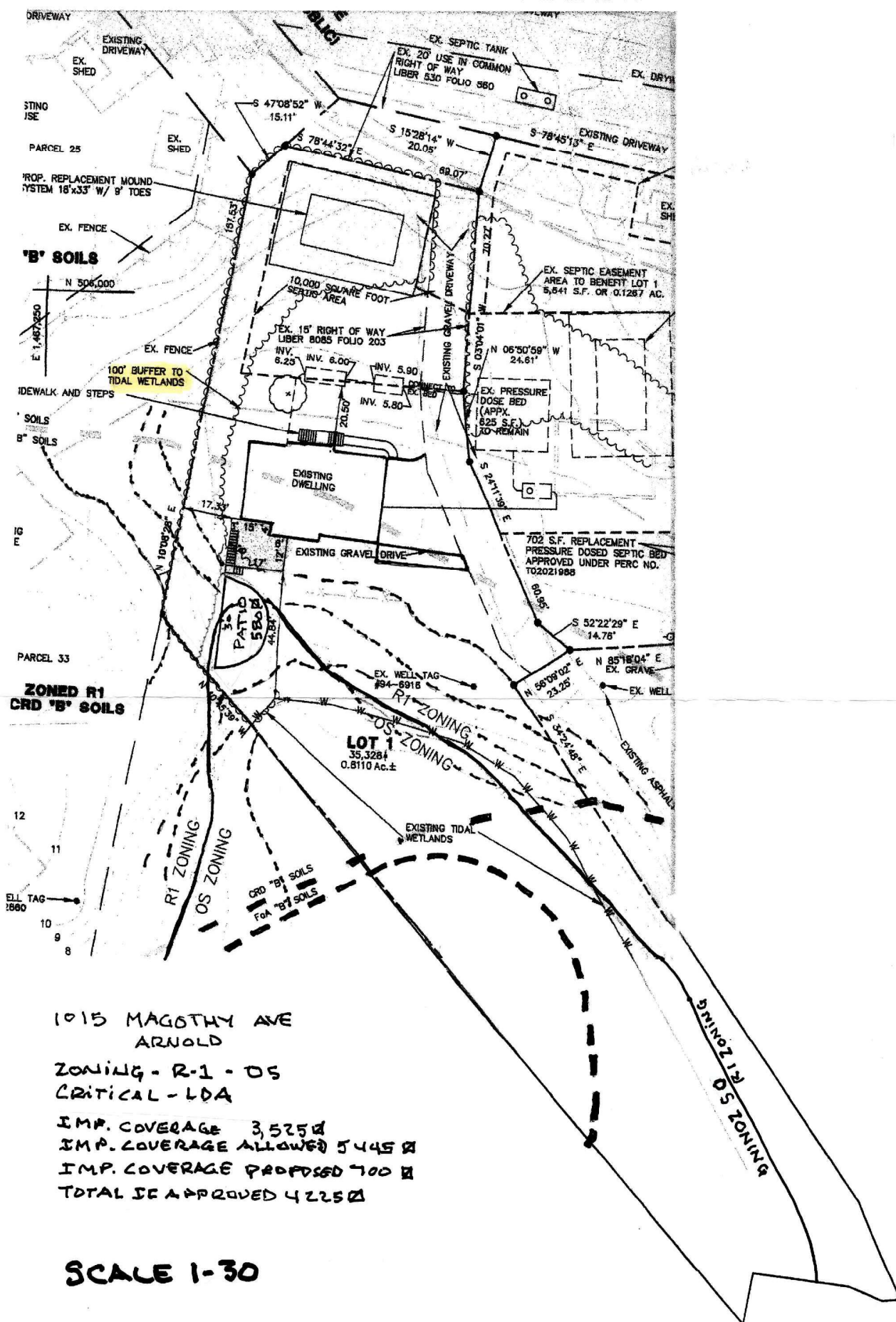
(1) For a property with an outstanding violation the granting of a variance in the critical area under subsection (b) shall be conditioned on the applicant completing the following within 90 days of the date of decision, as applicable:

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





Atlantic Development Services Group
P.O. Box 567
Crownsville, Maryland 21032-1218

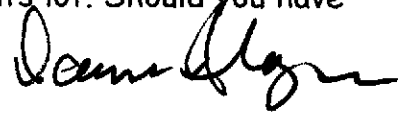
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

RE: Variance- Bahen Property Tax acct# 3000-9021-2961
1015 Magothy Ave, Arnold, Md. 21012

Dear Sir or Madam:

We are applying for a variance to allow for the placement of a stone patio in the wetland buffer and steep slope buffer. The lot is located in the Morgan Property subdivision and is in critical area. The lot is 35,328 square feet, irregular shaped waterfront lot, zoned R-1, LDA/RCA critical area designation. The house was constructed in 2013 is a two story structure on a basement. There have been changes to the lot as a result of the subdivision process. The site has been part of an earlier variance (2017-0036-V) to allow for the construction of a deck to allow access to the waterfront side of the structure. The owner has placed a stone patio (approximately 700 sq.ft.) with a fireplace and retaining wall in the front yard. Some time, after construction the county department of inspections and permits doing a inspection on an adjacent property and suggested that the code compliance division investigate. The patio was deemed a violation of several codes and required the owner to obtain a building permit. The compliant was E-2022-536 issued by Inspector Gill with the code compliance division. Upon review of this project it was apparent that at a minimum variances would be needed. If the client prevails and is granted a variance then a building permit would be applied for and persued to issuance. In order for a permit to be issued several conditions must be met. The patio is located in the 100' wetland buffer, including the steep slope buffer. While the patio is placed in basically the flattest area of the lot and is located at the base of the deck landing for access. There is a number of variances and modifacations needed. Specifically, Article 17-6-401 which prohibits development in non-tidal wetlands and their buffer, Article 17-6-403 which prohibits development in steep slopes and 25' steep slpoe buffer, Article 17-8-201 which prohibits within steep slopes of 15% of steep slopes, and Article 18-13-104 which prohibits new lot coverage in the expanded buffer, included also is the need for a

land use variance for minor construction in OS zoning affecting Article 18-9-204. The owner was unaware of the requirements as described. He finished and used the patio for sometime prior to the county contacting him regarding the need for the variances and a permit. Mr. Bahens lot is irregular in shape and as shown on the attached site plan is located in the area directly next to the deck. The topography of the lot allowed this area that the patio was placed, to be the most reasonable location as it actually performed two functions. The lot next to Mr. Bahen's lot is several feet higher, and was eroding onto his lot and so with the patio a retaining wall was constructed on one side to eliminate that erosive condition. The patio and fireplace was added to allow the family to further enjoy the water view of the lot. The patio is placed in the only flat or open area as the rest of the lot is reserved for future possible septic area and common use right of way for the neighbors to access their properties. The area is heavily stabilized and has eliminated an erosive condition. A review of adjacent properties show they also have patios and swimming pools and would not convey special privilege to Mr. Bahen's lot. Should you have any questions please feel free to contact me. Thanks, Damon Cogar





Atlantic Development Services Group
P.O. Box 567
Crownsville, Maryland 21032-1218

CHESAPEAKE BAY CRITICAL AREA REPORT

Bahen Property

1015 Magothy Ave. Arnold, Md. 21012

Tax Map 33; Grid 22; Parcel 39
Anne Arundel County Zoning: R1
Critical Area Designation: LDA
Tax Account #3000-9021-2961

April 26, 2024

I. Purpose of Variances

The applicant owns a 35,328 square foot lot in the Morgan Property subdivision in Arnold. The entire property is located within the Chesapeake Bay Critical Area and has an LDA\RCA land use designation. See the County Critical Map at the end of this report. While this site is in critical area, it is also waterfront.

The property owner desires to construct a stone outdoor patio with stone grill. Due to zoning setback regulations, a variance is necessary. The existing structure does not conform to County zoning setbacks requiring a variance to the wetland buffers requirements for any new construction in the 100 foot buffer.

II. Critical Area Narrative - Site Description

The applicant's lot is irregular in shape - (see site plan attached) with 2-story single family dwelling. The site is mostly mowed lawn with numerous plantings and one large tree.

The County Soil Survey has the site mapped with Keyport Silt Loam complex that is well draining but highly erodible soil. Complete tidal wetlands are located directly on the lot. See site plan.

III. Critical Area Narrative

A. Existing and Proposed Vegetation Coverage:

Existing Conditions: The lot is mostly lawn with numerous plantings.

Proposed Conditions: Grading performed to construct the proposed structure will be regulated by local jurisdiction and proper sediment controls will be implemented. Grading performed will be minimized to provide strict sediment control. Any planting will be implemented as necessary.

B. Stormwater Management and Water Quality:

Existing Conditions: No stormwater management is currently present on this site.

Proposed Conditions: The increase of impervious area proposed is approximately 700 square feet of additional impervious. Any stormwater management requirement would be determined at time of permit issuance process.

C. Aquatic Resources:

Existing Conditions: Water quality and aquatic resources in the Magothy River are somewhat degraded by existing surrounding development.

Proposed Conditions: While this is a waterfront lot with local regulations and proper sediment control installation and maintenance, no adverse impact on aquatic resources are anticipated as a result of improvement of this lot. The patio exists and the area around is stabilized.

D. Forest Clearing and Impervious Coverage

Existing Conditions: No "forest" cover is present on the site. Impervious area is currently approximately 2,945 square feet.

Proposed Conditions: No tree clearing is proposed. Impervious coverage will be increased, which remains below maximum allowed.

IV. Conclusions

The requested variance is necessary to allow construction of the proposed patio. No adverse impacts to fish, wildlife, and plant habitat and water quality are anticipated.

V. Site Investigation

A site investigation to obtain data to prepare this Critical Area Report was conducted on April 26, 2024 by Damon F. Cogar of Atlantic Development Services Group.

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

232

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: **ANNE ARUNDEL COUNTY**

Date: **5-23-24**

Tax Map #.	Parcel #	Block #	Lot #	Section
33	39	22		

Tax ID: **3000-9021-2941**

FOR RESUBMITTAL ONLY

Corrections ☐
Redesign ☐
No Change ☐
Non-Critical Area ☐

*Complete Only Page 1
General Project Information

Project Name (site name, subdivision name, or other) **Bahen Property**

Project location/Address **855 28
1015 MAGOTHY AVE.
855 28**

City **ARNOLD** Zip **21012**

Local case number

Applicant: Last name **BAHEN** First name **JOHN**

Company

Application Type (check all that apply):

Building Permit ☒
Buffer Management Plan ☐
Conditional Use ☐
Consistency Report ☐
Disturbance > 5,000 sq ft ☐
Grading Permit ☐

Variance ☒
Rezoning ☐
Site Plan ☐
Special Exception ☐
Subdivision ☐
Other ☐

Local Jurisdiction Contact Information:

Last name _____ First name _____

Phone # _____ Response from Commission Required By _____

Fax # _____ Hearing date _____

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

RES

Intra-Family Transfer ☐ Yes
Grandfathered Lot ☐

Growth Allocation ☐ Yes
Buffer Exemption Area ☐

Project Type (check all that apply)

Commercial ☐
Consistency Report ☐
Industrial ☐
Institutional ☐
Mixed Use ☐
Other ☐

Recreational ☐
Redevelopment ☐
Residential ☒
Shore Erosion Control ☐
Water-Dependent Facility ☐

SITE INVENTORY (Enter acres or square feet)

	Acres	Sq Ft
IDA Area		
LDA Area		35,328
RCA Area		
Total Area		35,328

Total Disturbed Area

Acres	Sq Ft
	1900

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees			Existing Lot Coverage		3525
Created Forest/Woodland/Trees			New Lot Coverage		700
Removed Forest/Woodland/Trees			Removed Lot Coverage		
			Total Lot Coverage		4,225

VARIANCE INFORMATION (Check all that apply)

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance		700	Buffer Forest Clearing		0
Non-Buffer Disturbance			Mitigation		

Variance Type

Buffer ☒
Forest Clearing ☐
HPA Impact ☐
Lot Coverage ☐
Expanded Buffer ☐
Nontidal Wetlands ☒
Setback ☒
Steep Slopes ☒
Other ☐

Structure

Acc. Structure Addition ☐
Barn ☐
Deck ☐
Dwelling ☐
Dwelling Addition ☐
Garage ☐
Gazebo ☐
Patio ☒
Pool ☐
Shed ☐
Other ☐





Letter re: Bahen fireplace

Jack Bahen <jackbahen@gmail.com>

Wed 5/22/2024 7:23 AM

To: Damon Cogar <damon@adsgonline.com>

Jack Bahen

410.980.2474

Sent from my iPhone

Begin forwarded message:

From: Nicole Callender <callendercloses@gmail.com>

Date: May 21, 2024 at 6:14:15 PM EDT

To: jackbahen@gmail.com

Dear Sir/Madam,

I hope this letter finds you well. I am writing to express my complete satisfaction and support for my neighbor's (Jack and Amy Bahens) outdoor fireplace. As a resident of Anne Arundel County and their next door neighbor, I have observed the outdoor fireplace and can confidently say that it has been a delightful addition to our neighborhood. My neighbors are considerate and responsible, ensuring that their fireplace is used in a manner that is respectful to all surrounding residents. The warmth and ambiance it provides have only enhanced our neighborhood gatherings, and it brings joy to many of us in the area. I have no issues or concerns regarding the fireplace. In fact, I enjoy the sense of community it fosters. We are fortunate to have such kind and thoughtful neighbors, and I fully support the continuation of their outdoor fireplace usage. Thank you for considering this matter. Please feel free to contact me at (410) 440-6688 or Callendercloses@gmail.com if you need further information or discussion regarding this matter. Sincerely,

Nicole Callender

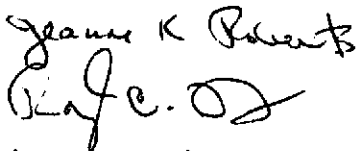
 Kind regards,

1019 Magothy Ave
Arnold, MCD 21012
May 16, 2024

To whom it may concern:

We live along the shared driveway with Johns & Amy Bahen and understand the county has concerns regarding their beautiful outdoor fireplace and patio. From our direct front porch view and perspective, it's a gorgeous addition and we have no issues with it.

Sincerely,

Handwritten signatures of Jeanne K. Roberts and Raymond C. Roberts. The first signature is "Jeanne K Roberts" and the second is "Ray C. Roberts".

Jeanne K. Roberts
Raymond C. Roberts

To whom it may concern,

We live next door to 1015 Magothy Ave, Arnold, MD and have no issues or concerns with the existing fireplace and patio. It looks fantastic.

Thank you,
David and Kim Poe
997 Landon Lane
Arnold, MD 21012

2024-0101-V

<div>Menu</div>		<div>Cancel</div>	<div>Help</div>
<div>Task</div> <div>OPZ Critical Area Team</div> <div>Assigned to Department</div> <div>OPZ Critical Area</div> <div>Action by Department</div> <div>OPZ Critical Area</div> <div>Start Time</div>		<div>Due Date</div> <div>12/25/2024</div> <div>Assigned to</div> <div>Kelly Krinetz</div> <div>Action By</div> <div>Kelly Krinetz</div> <div>End Time</div>	<div>Assigned Date</div> <div>12/04/2024</div> <div>Status</div> <div>Complete w/ Comments</div> <div>Status Date</div> <div>12/17/2024</div> <div>Hours Spent</div> <div>0.0</div> <div>Comments</div> <div>In 2017, a variance was issued to allow a two level deck within the 100' buffer located approximately 44' from the edge of the tidal wetland. At that time, the hearing officer made the finding that the deck was in fact the minimum necessary to afford the applicant relieve.</div> <div>This request is to perfect a 31' semi circular patio within that 44' buffer, resulting in a mere 14' buffer from the edge of the wetland. There is no justification to allow this patio and fireplace and this Office cannot support this request.</div> <div>In Possession Time (hrs)</div> <div>Comment Display in ACA</div> <div><input checked="" type="checkbox"/> All ACA Users</div> <div><input checked="" type="checkbox"/> Record Creator</div> <div><input checked="" type="checkbox"/> Licensed Professional</div> <div><input checked="" type="checkbox"/> Contact</div> <div><input checked="" type="checkbox"/> Owner</div> <div>Workflow Calendar</div>
<div>Time Tracking Start Date</div> <div>Display E-mail Address in ACA</div> <div>No</div>	<div>Est. Completion Date</div> <div><input checked="" type="checkbox"/> Display Comment in ACA</div>		
<div>Estimated Hours</div> <div>0.0</div>	<div>Action</div> <div>Updated</div>		
<div>Task Specific Information</div>			
<div>Expiration Date</div> <div>Reviewer Phone Number</div>		<div>Review Notes</div> <div>Reviewer Email</div>	<div>Reviewer Name</div>

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**

January 14, 2024

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

Re: Bahen - 1015 Magothy Avenue Variance (2024-0101-V)

Dear Ms. Seay,

Thank you for providing information on the above-referenced variance request to retain an unpermitted patio and retaining wall within the Critical Area Buffer. The 0.81-acre property is located within the Critical Area on lands designated as both Limited Development Area (LDA) and Resource Conservation Area (RCA). The lot coverage on this parcel totals 4,225 square feet all within the LDA, of which the 700 square foot patio with retaining wall and an outdoor fireplace is located entirely within the Critical Area 100' Buffer and within the 25' steep slope buffer. The parcel is already improved with a primary dwelling with an attached porch, walkways, and riparian access. The attached porch was authorized through a variance in 2017 to the prior property owners.

The application materials indicate that the patio and retaining wall provide slope stabilization and erosion control. A patio with a fireplace is not a slope stabilization measure and increased impacts and lot coverage on steep slopes can actually cause and exacerbate erosive conditions. The installation of appropriate slope stabilization methods, such as a standalone retaining wall, is a more appropriate method of addressing slope erosion issues.

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 opposes the Buffer variance to retain the patio and fireplace, as the request fails to meet six of the seven Critical Area 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;*

Based on the information provided, denying this variance request would not result in an unwarranted hardship.

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 driveway, riparian access, and an attached porch, which was previously permitted through a variance. Allowing the applicant to retain an unpermitted patio in the Buffer does not meet the standard of unwarranted hardship, as the applicant already has reasonable and significant use of the lot with the existing house and associated development. Therefore, if the request for the unpermitted patio and fireplace were to be denied, the applicant would **still** have reasonable and significant use of the entire lot or parcel, and the ability to employ other proper methods to appropriately stabilize a slope.

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;*

Denial of this request would not deprive the applicant the use of the land or structure permitted to others in the Critical Area.

On the contrary, approving a variance to allow unpermitted non-water dependent improvements in the Buffer to remain is not a right commonly enjoyed by other, similar properties developed under the County's Critical Area program. No property owner has the right to construct non-water dependent improvements inside of the Buffer on steep slopes per the County's current Critical Area program.

This lot was developed with the current house, driveway and riparian access. Furthermore, the previous owners were granted a variance to Critical Area law to construct a porch within the Buffer, allowing present and future property owners a reasonable outdoor amenity. Based on the ability to meet the County's Critical Area Program, no other property would have been authorized to have a patio and fireplace in the Buffer.

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 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 to others within the Critical Area, as no individual is permitted to construct non-water dependent improvements (a patio and fireplace) in the Buffer. This office has previously and consistently opposed similar variance requests from others; therefore, granting this applicant's request would absolutely 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;*

The applicant constructed a patio and retaining wall within the Buffer without permits. The applicant already has reasonable and significant use of their lot with outdoor amenities, such as a permitted porch. The applicant can employ standard slope stabilization measures on this site, such as a permitted, standalone retaining wall. In short, this request is based on actions from the applicant that resulted in a violation of the County's Critical Area program. Therefore, this request should be denied.

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*

This after-the-fact variance request does adversely affect water quality and impact fish, wildlife, and plant habitat within the Critical Area.

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 patio and outdoor fireplace, within the Buffer and on steep slopes, increases runoff and erosion capacity, which carries with it pollutants that will negatively impact the water quality of Deep Creek, a tributary to the Magothy River and Chesapeake Bay.

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 and steep slopes within the LDA 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 patio and outdoor fireplace within the Critical Area Buffer that results in increased runoff into Deep Creek and Magothy River, when the lot has already been improved with the addition of a permitted attached porch, 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)-260-3462 or jamileh.soueidan@maryland.gov.

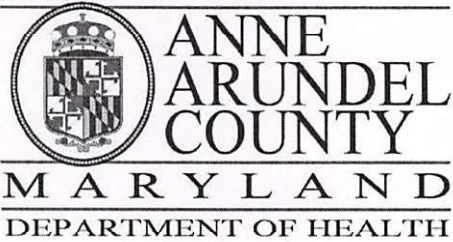
Sincerely,



Jamileh Soueidan
Natural Resources Planner

cc: Jennifer Esposito, CAC
Nick Kelly, CAC
Emily Vainieri, Office of the Attorney General
Kelly Krinetz, Anne Arundel County
Adam Brown, Anne Arundel County

File: AA 0329 - 24



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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 *BC*

DATE: December 10, 2024

RE: John M. Bahen
1015 Magothy Ave.
Arnold, MD 21012

NUMBER: 2024-0101-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has reviewed the above referenced variance to perfect a patio (patio, retaining wall, fireplace) with disturbance to slopes of 15% or greater, less setbacks and buffer than required and a use variance to allow a new residential use in the OS- Open Space District.

The Health Department does not have an approved plan for this project. The Health Department has no objection to the above referenced variance request as long as a plan is submitted and approved by the Health Department.

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

cc: Sterling Seay

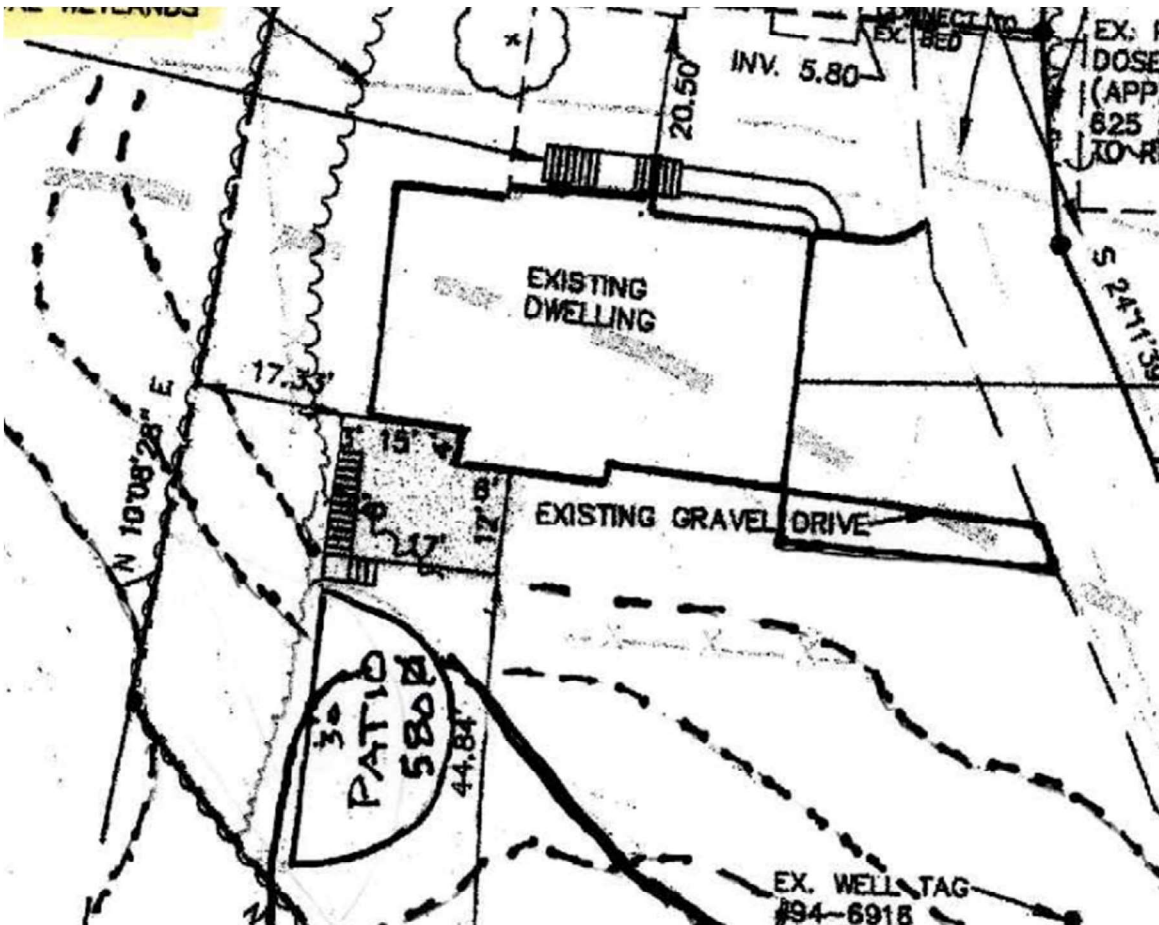
Mar 13, 2023 at 10:05:45 AM
1018 Magothy Ave
Annapolis MD 21012
United States



1010 Wagonway Ave
Arnold MD 21012
United States



Existing Conditions vs. Site Plan. Improvements on site plan do not match the improvements on the ground.





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Tax Account Number: 3000