



303 Najoles Road - Suite 114
Millersville, MD 21108

APP. EXHIBIT# 1
CASE: 2025-0077-V
DATE: 7/1/25
FAX: 410-707-0022

June 16, 2025

CERTIFICATION OF POSTING OF SIGN(S)

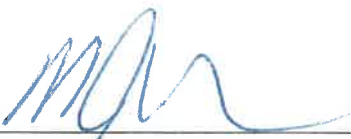
I, the undersigned, being over the age of eighteen (18) and competent to testify to matters contained herein do solemnly declare and affirm under the penalties of perjury the following:

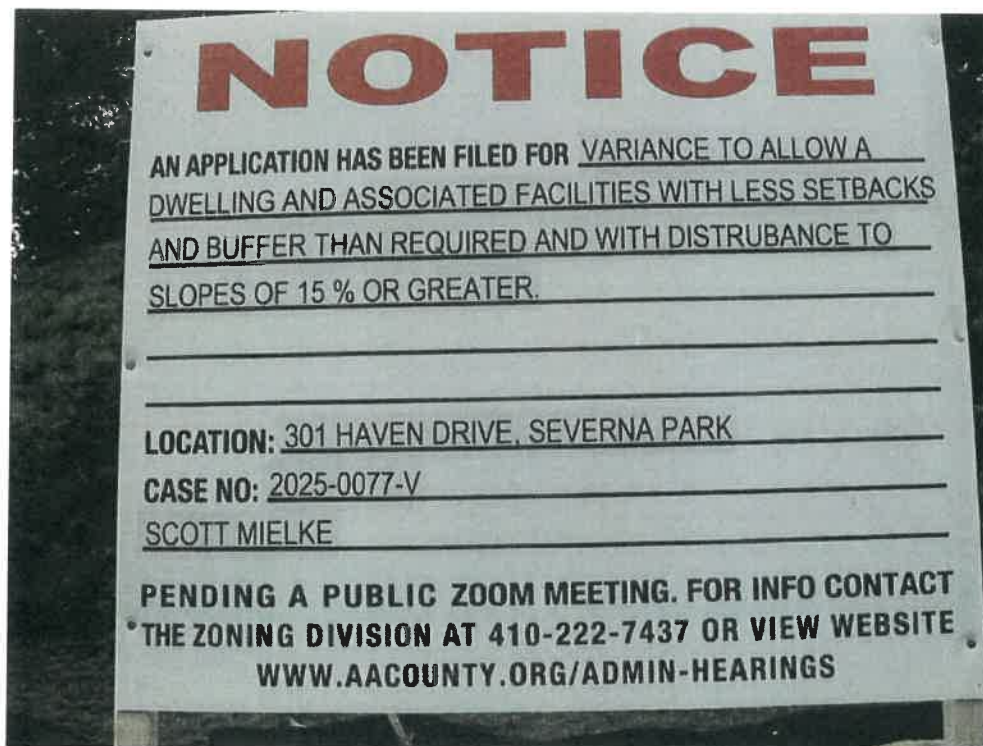
- (1) That the sign(s) in Case Number 2025-0077-V were posted on the 16th day of June, 2025.
- (2) That the location of the posted sign(s) are as follows:

**At the frontage of the property facing West Haven Drive and
at the frontage of the property facing Old Man Creek.**

Anarex, Inc.

AFFIANT:


By: **Michael J. Werner**
303 Najoles Road Suite 114
Millersville MD 21108-2512





NOTICE

AN APPLICATION HAS BEEN FILED FOR VARIANCE TO ALLOW A
DWELLING AND ASSOCIATED FACILITIES WITH LESS SETBACKS
AND BUFFER THAN REQUIRED AND WITH DISTRUBANCE TO
SLOPES OF 15 % OR GREATER.

LOCATION: 301 HAVEN DRIVE, SEVERNA PARK

CASE NO: 2025-0077-V

SCOTT MIELKE

- **PENDING A PUBLIC ZOOM MEETING. FOR INFO CONTACT
THE ZONING DIVISION AT 410-222-7437 OR VIEW WEBSITE
WWW.AACOUNTY.ORG/ADMIN-HEARINGS**

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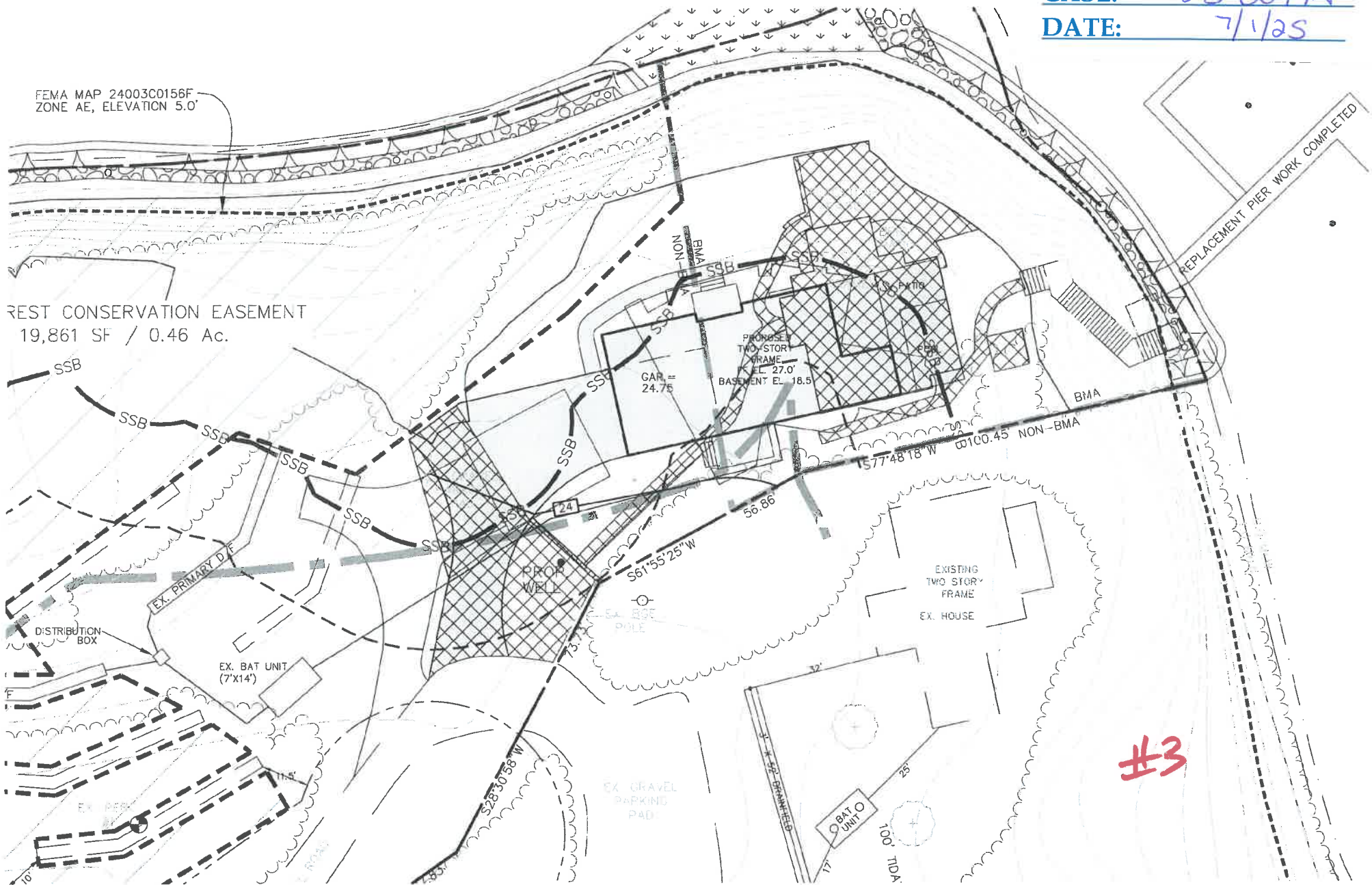
APP. EXHIBIT# 2
CASE: 2025-0077-V
DATE: 7/1/25

FEMA MAP 24003C0156F
ZONE AE, ELEVATION 5.0'

EX. FOREST CONSERVATION EASEMENT
19,861 SF / 0.46 Ac.

[illegible]

±3



APP. EXHIBIT# 4
CASE: 2025-0077-V
DATE: 7/1/25

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2017-0157-V

LISA BARLEY AND SCOTT MIELKE

THIRD ASSESSMENT DISTRICT

DATE HEARD: DECEMBER 21, 2017

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: **DONNIE DYOTT, JR.**

DATE FILED: **JANUARY 17, 2018**

PLEADINGS

Lisa Barley and Scott Mielke, the applicants, seeks a variance (2017-01 57-V) to allow a dwelling and associated facilities with less setbacks and buffer than required and with disturbance to slopes 15% or greater and disturbance within the expanded buffer on property located along the north side of West Haven Drive, northeast of Shakespeare Drive, Severna Park.¹

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 175 feet of the property was notified by mail, sent to the address furnished with the application. Scott Mielke testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS

A hearing was held on December 21, 2017, in which witnesses were sworn and the following evidence was presented with regard to the proposed variances requested by the applicants.

¹ The applicants, as contract purchasers, have a financial, contractual, or proprietary interest in the subject property as defined in § 18-16-201 and are qualified to file this application.

The Property

The subject property has a street address of 301 West Haven Drive, Severna Park, Maryland 21146. The site is shown on Parcel 904 in Block 14 on Tax Map 24 and is zoned R5-Residential District. This waterfront lot is designated in the Chesapeake Bay Critical Area as limited development area (LDA).

The Proposed Work

The applicants propose to remove the existing house and to construct a new, larger, irregularly-shaped, two-story, single-family dwelling, a detached garage, driveway, patio, and associated facilities as shown on the site plan admitted into evidence at the hearing as Applicants' Exhibit 2. The work will disturb 11,200 square feet of the 100-foot buffer and expanded buffer and 200 square feet of steep slopes.

The Anne Arundel County Code

§ 18-13-104(a) 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. Specific development criteria apply as set forth in Article 17 of this Code and COMAR. Subsection (b) - expanded buffer - provides that, except as provided in subsection (c), the 100-foot buffer shall be expanded beyond 100 feet to include slopes of 15% or greater, nontidal wetlands, nontidal wetlands of special State concern, and hydric soils or highly erodible soils.

§ 17-8-301 provides that development on properties containing buffers shall meet the requirements of COMAR, Title 27, which prohibits disturbance of the buffer.

§ 17-8-201 provides that development in the limited development area (LDA) or in the 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. All disturbance shall be limited to the minimum necessary.

The Variances Requested

The proposed work will require the following variances:

1. A critical area variance of 11,200 square feet of the 100-foot **buffer and expanded buffer** requirement in § 17-8-301(b) to allow the applicants to disturb the buffer and expanded buffer to construct the proposed work as shown on Applicants' Exhibit 2; and
2. A critical area variance to the prohibition in § 17-8-201 against disturbance to **steep slopes** to disturb 200 square feet of steep slopes to construct the proposed work as shown on Applicants' Exhibit 2.

The Evidence Submitted At The Hearing

Donnie Dyott, Jr., a Planner with the Office of Planning and Zoning (OPZ), testified that OPZ recommends that the requested variances be denied. The subject property consists of 1.18 acres of land and is located with 156 feet of frontage on the north side of West Haven Drive. It is a waterfront lot on Old Man

Creek that is currently improved with a one-story single-family dwelling, a pier with a storage shed, and associated facilities. The applicants propose to remove the existing dwelling and to construct a new, larger, irregularly-shaped, two-story single-family dwelling, a detached garage, driveway, patio, and associated facilities.

The subject property is irregular in shape and exceeds the minimum area and dimensional requirements for a lot in an R5 district (7,000 square feet required - 1.14 acres provided; 60 feet of width required; 156 feet provided). The existing critical area lot coverage is 3,387 square feet. The proposed critical area lot coverage would increase to 5,861 square feet (11.3%) which is below the 15% maximum critical area lot coverage allowed by Code.

Mr. Dyott testified that a review of the County 2016 aerial photograph shows that the nearby properties on the same side of Old Man Creek are similarly encumbered by steep slopes and are also not mapped as buffer modified. Due to the prevalence of steep slopes along the water, variances to disturb the 100-foot buffer and expanded buffer are common. OPZ found several approved variances for various development proposals located on the same side of Old Man Creek allowing disturbance to the 100-foot buffer/expanded buffer and/or steep slopes.

The applicants' letter explains that the buildable area is limited by a 19,315 square foot Forest Conservation Easement, the presence of steep slopes, and the area required for the proposed BAT septic system and two replacement system

areas. The applicants note that only approximately 487 square feet of buildable area can be developed without variances.

The property was the subject of a prior variance (Case No. 2010-0034-V) which granted approval to allow a dwelling with less buffer than required. However, the house was never constructed. The previously-approved dwelling was significantly smaller than the current proposal and was to be shifted 15 feet further from the shoreline than the dwelling being replaced. The variance granted was deemed to be the minimum necessary to afford relief at that time. While the applicants admit that the previous approval was for the construction of a more modest home, they also note that the owner intended to use the property as a small summer cottage and not as a permanent full-time residence. The current applicants plan to make the proposed dwelling a permanent full-time residence, adding that they have four children as well as elderly parents that will be moving into the home in the very near future. A first floor bedroom will be required for the elderly parents, which the applicants argue will greatly increase the first floor footprint.

Mr. Dyott testified that the applicants have reduced the dwelling footprint from the initial variance submittal by replacing the proposed dining room and home office with the first floor bedroom.

The Soil Conservation District indicated that it will provide comments during sediment control review.

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

The Department of Inspections & Permits Engineering Division commented that the subject application cannot be supported. The plan is unacceptable. No review will be done until an acceptable plan is provided.

The Cultural Resources Division commented that the subject property is located in an area of extremely high potential for archaeological resources. An historic wharf and prehistoric shell midden is in close proximity to the property, and this parcel demonstrates predictive environmental variables. The Division requires a site visit prior to approval of any ground disturbance, in order to evaluate and document potential archaeological impacts within the proposed limits of disturbance for new construction.

The Development Division (Critical Area Team) commented that any redevelopment of the property would require variances given the encumbrance of the slopes and buffer. Prior to the submission of this application, a meeting was held to discuss the original proposal. At that meeting the directive was that the applicant would need to demonstrate compliance with all of the requirements in § 18-16-305 and, at a minimum, all the improvements should be located outside of the 25-foot buffer. Revisions have been made and the dwelling is now entirely outside of the 25-foot buffer with the exception of the patio, which is situated over the existing footprint and patio areas that will be removed. The house has been

reduced by 1,033 square feet and the proposed pool has been removed. While the applicant has complied with the minimum requirement to locate the improvements outside of the 25-foot buffer, they have not complied with the directive to locate the improvements away from the shoreline and to also comply with § 18-16-305. The proposed garage and driveway could be located further from the shoreline and still comply with the required setback to the BAT unit. Although the applicant has reduced the impacts from the original application, the proposal still does not demonstrate the ability to meet the standards established for the approval of a variance application. Mitigation will be determined at the time of permitting.

The Critical Area Commission does not approve the request as proposed. The configuration and magnitude of lot coverage does not minimize impacts to the buffer. Specifically, the dwelling and patio are detached from and located channelward of the garage, impacting the buffer more than is necessary. Additionally, the limit of disturbance (LOD) extends into the steep slopes unnecessarily. Particularly, the area of the LOD lying between the “drywell to be abandoned” and the “existing dwelling and foundation to be removed” does not need to extend into the steep slopes to the magnitude that is proposed. Moreover, the proposed configuration and magnitude of lot coverage, coupled with the excessive LOD, encompasses the site to such an extent that accommodating mitigation requirements onsite is infeasible. Therefore, the redevelopment of the site, as proposed, exceeds significant and reasonable use of the entire parcel. Given that the applicant is removing most of the development onsite and

redesigning and reconstructing a new dwelling and associated amenities, the applicant has ample opportunity to reduce the amount of lot coverage and minimize steep slopes and buffer impacts and thereby create space to accommodate mitigation plantings onsite. Denying the applicant this configuration and magnitude of lot coverage and the excessively-sized LOD that unnecessarily impacts steep slopes within the buffer would absolutely not convey an unwarranted hardship. As proposed, the redevelopment of this property would degrade water quality, negatively impact fish, wildlife and plant habitat and would not be in harmony with the intent of the critical area law. The applicants have not met the standards and the request should be denied.

Mr. Dyott testified that the site is an irregularly-shaped lot that is significantly encumbered by steep slopes, the 100-foot buffer and the expanded buffer. These unique site conditions drastically restrict redevelopment, leaving a fairly small buildable area without the need for a variance. As such, a literal interpretation of the County's critical area program would deprive the applicants of rights that are commonly enjoyed by other properties in similar areas by denying the right to redevelop an existing residential lot with an allowed use. However, the proposal is excessive, and there is opportunity to minimize the variance request without creating any hardship for the applicants.

The granting of the variances as proposed may confer on an applicants a special privilege that would be denied by COMAR, Title 27. The variance request is not based on conditions or circumstances that are the result of actions by the

applicants and does not arise from any condition relating to land or building use on any neighboring property. However, the granting of the variances may 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 and should evaluate planning alternatives.

Mr. Dyott testified that with regard to the requirements for all variances, approval of the variances would not alter the essential character of the neighborhood. The variances would not substantially impair the appropriate use or development of adjacent property, as the proposed development will exceed the minimum required setbacks from all lot lines. With proper mitigation, the variances will not reduce forest cover in the limited development area, will not be contrary to acceptable clearing and replanting practices, and will not be detrimental to the public welfare.

The request as proposed is not considered to be the minimum necessary to afford relief. While buffer/expanded buffer disturbance is unavoidable, there is opportunity to minimize the proposal while still providing for an ample sized dwelling and associated facilities.

Based upon the standards set forth in § 18-16-305 under which a variance may be granted, Mr. Dyott testified that OPZ recommends denial of the requested variances.

The applicants were assisted at the hearing by Matt Forgen of M.A.F. & Associates, LLC. Evidence was presented as to the efforts of the applicants to reduce and reconfigure their proposed development of the subject property. The applicants have pulled the new dwelling away from the shoreline and are restricted in their development of the lot by steep slopes, the 100-foot buffer, the 0.44 acre forest conservation area, and the need to provide for a well and septic system. The only disturbance to steep slopes will be to replace the existing retaining wall at the north edge of the property. The buildable area without variances is 487 square feet. A reasonable dwelling and associated facilities cannot be built on the property without critical area variances. The applicants believe they have come up with the minimum relief. Mr. Forgen, who has been recognized as an expert in land planning and development, agreed.

The West Haven Homeowners Association (HOA) and others testified that the variances should be denied. Bruce Jarrell testified that he is the president of the HOA and that the HOA supported the 2010 application but are opposed to the current application because it is not the minimum relief necessary. Mr. Jarrell and the neighbors thought the home should be smaller and that fewer trees should be removed. Sharon West (311 West Haven Drive), Susan Wincek (308 West Haven Drive), and Anita Sargent (303 West Haven Drive, adjacent to the subject property), all agreed with Mr. Jarrell's testimony. They are all concerned about the size of the dwelling the applicants want to build and the loss of the vegetation that currently exists on the subject property.

Paul Spadaro testified that he is the president of the Magothy River Association which is opposed to granting the variances. The proposed work would be entirely in the 100-foot buffer and should be reduced, with the dwelling moved away from the shoreline.

Tim Abell testified that he lives across Old Man Creek from the subject property and is in favor of granting the requested variances. He added that he was the applicant, along with his wife, in Case No. 2015-0021-V in which variances were granted to allow them to redevelop their waterfront property. He said the shoreline work would improve Old Man Creek and that the proposed dwelling was not out of character for West Haven from what he can see from his home.

A letter dated December 21, 2017 from Rob Blanchfield, Jr., of Blanchfield Law Offices LLC, was received and reviewed. Mr. Blanchfield wrote that he has been retained by concerned citizens in West Haven who are opposed to the variance request submitted in this case. Mr. Blanchfield wrote that he is opposed to granting the requested variances because the proposed lot coverage was 73% greater than existing lot coverage on the site, the new lot coverage would not be entirely outside the 25% buffer, and that, among other things, the proposal was not the minimum required by the law.

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).

The Court of Appeals in *Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, et al. v. Moreland, LLC, et al*, No. 55, September Term 2010, issued January 28, 2011, reaffirmed these factors. See page of slip opinion: “Failure by the applicant to satisfy even one of the variance criteria requires the denial of the variance application. [Citing § 8-1808(d)(4)(ii) and Anne Arundel County Code § 3-1-207.] The proponent of the variance, moreover, bears the burden of proof and persuasion to overcome the presumption that granting the variance requests do not conform to the critical area law. § 8-1808(d)(3).”²

² The requirements set forth in § 3-1-207 for the Board of Appeals are virtually identical to those that govern variances granted or denied by this office. § 18-16-305.

The question of whether the applicants are entitled to the variances 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.)

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,

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 of 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).

and (6) whether the applicants have overcome the presumption in Natural Resources Article, § 8-1808(d)(2)(ii), of the State law that the variance request should be denied.

Provided that an 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 Variances

Someone once said that statistics are a lot like bikinis: what they reveal is very interesting, but what they conceal is essential. Not in this case, however.

The 2010 Decision

The former owner of the subject property was granted a variance in Case No. 2010-0034-V to raze the existing dwelling and construct a new dwelling on the site. The work authorized in 2010 was not carried out. The applicants now seek variances to allow them to build a different house (and garage) on the property. While the decision reached in 2010 is not dispositive of what can be

granted to the applicants in 2017 (because the application is different), a comparison of the decision in 2010 with what the applicants want to do in 2017 may be helpful.

The relevant portion of the site plan for the 2010 dwelling that was never built follows:



The proposed dwelling and covered porch was to be located 53 feet from the shoreline (thus, the 47-foot variance granted in that case) and was to provide approximately 1,000 square feet in interior living space. The porches front and rear would have provided an additional 576 square feet of outdoor amenities. There was to be no disturbance to steep slopes, even for removing the existing

patio shown on the 2017 site plan.⁵ The 2010 site plans,⁶ however, called for keeping the retaining wall to the north of the dwelling, thereby reducing the steep slope disturbance in that area, a decision that may have been overly optimistic. The 2017 site plans calls for the replacement of the retaining wall, which is the primary fact in 2017 driving the need for the variance to disturb steep slopes.

The 2017 Application

The 2017 site plan shows a different dwelling than the one proposed in 2010. It appears that the dwelling the applicants want to build will contain 2,046 square feet in livable space (plus the proposed patio on the waterside of the home and the proposed garage.) (Applicant's Exhibit 6.) However the size of the 2017 home is calculated, it will be approximately twice the size of the one approved in 2010.

The larger size of the new dwelling as compared to the 2010 home, however, does not dictate the variances that should be granted in 2017. This is because the property is very large for a lot in the R5 district (about six times larger than the 7,000 square feet required). Existing lot coverage is 3,387 square feet, which is lower than normal because the existing dwelling is a cottage of only 1,100 square feet. Proposed lot coverage will be 5,861 square feet, an increase of about 1,500 square feet, but this includes a garage on existing lot coverage (a driveway and parking area) which would be needed to reach a new dwelling in any

⁵ The patio to the north of the property is shown on the 2017 site plan but not on the 2010 site plan. The site is overgrown and may have been missed in 2010, or it may have been left off the 2010 site plan.

⁶ There was a site plan showing that the retaining wall was to be retained.

event. The proposed lot coverage will be 11.3% of what is allowed for this site, which is considerably below the 15% limit (25% less than what can be allowed, in fact).

The environmental features on the site (19,315 square-foot forest conservation area at the west end of the property and the steep slopes along the north and east of the property) reduce the buildable area on the site. The applicants submitted an exhibit showing that the building envelope on the property, taking both critical area and zoning setbacks into account, as well as the forest conservation area, which is off-limits, leaves only 487 square feet of buildable area. (Applicants' Exhibit 3.) In addition, the applicants need to provide a septic system with BAT unit, distribution box, and area for three septic systems.

Variances Granted For Nearby Properties

The above analysis shows that the property cannot be redeveloped with a modern livable house unless variances are granted.⁷ However, the extent of the variances still needs to be determined. A further comparison of variances granted in the neighborhood and the size of nearby houses may help narrow the relief to be granted to the applicants. The green dots on the following aerial photograph show

⁷ The number of people who are going to live in a proposed dwelling is irrelevant in deciding whether critical area variances should be granted for a structure in the critical area. *See*, Case No. 2016-0142-V, footnote 6, for a fuller discussion of this point. Also, there was testimony that the applicants have submitted at least three variations of what they want to build, each shrinking in size as they have gone through the review process. However, where you've been is of no help with deciding what variances should be granted for where you want to go. Otherwise, everyone would apply for a large elephant and agree to pare back what they want to a smaller elephant in the expectation of getting the smaller animal.

where variances and/or nonconforming cases have been granted for the properties that can be seen in the photograph:



The subject property is in the middle of the photograph. No variances have been granted in West Haven, which is the immediately surrounding area. The size of the lots in West Haven, and the decision on the part of the County Council to zone the neighborhoods in this area R5 district—the smallest zoning area in the Code—may explain the absence of any variances because no variances are needed when the lots exceed 7,000 square feet.

Starting at the bottom of the aerial photograph, there are four properties with green dots. The property farthest to the right (No. 1) was granted nonconforming status in Case No. 1996-0143-N to allow three residential structures on one lot. The next property to the left (No. 2) was granted a zoning setback variance in Case No. 1998-0010-V. The next property (No. 3) was another nonconforming case (Case No. 1998-0058-N) that allowed two residential structures on one lot and did not require a variance. The last of the four properties (No. 4) was granted a variance in Case No. 2013-0072-V to allow a pier attached to a property that did not have a principal structure on it.

The above four cases shed no light on whether the variances requested in this case should be granted. The four variance cases on Old Man Creek to the west of the subject property in Stewarts Landing also do not reveal any information that affects the decision in this case. The property closest to the subject property (No. 5) is located at 246 Tolstoy Lane. Variances to disturb steep slopes and allow a dwelling in the buffer were allowed in Case No. 1998-0145-V. New owners replaced the failing deck in Case No. 2017-0116-V with an identical deck except for stairs to the ground that were relocated. The 1998 decision allowed the work because of the shallow depth of the lot. The 2017 decision allowed the work because it was basically a replacement in-kind. There were no agency objections to the requested relief.

The owners of the second property (No. 6) were granted critical area variances in Case No. 2011-0233-V to allow them to replace the 10' x 28' deck on

the first floor and add an 8.6' x 40' second-floor balcony that will be located 65 feet from the mean high-water line to their waterfront property. There were no agency objections to the requested relief.

The owners of the third property to the west (No. 7) were granted critical area variances in Case No. 2017-0148-V to allow them to replace a failing deck. There were no agency objections to the requested relief.

The owners of the fourth property to the west (No. 8) were granted critical area variances in Case No. 1998-0072-V to allow the construction of a new dwelling in steep slopes and the buffer. There were no agency objections to the requested relief but neighborhood residents, including the President of the West Haven Improvement Association, Kevin Best, expressed concern over the size and the placement of the proposed dwelling. The proposed dwelling was reduced in width and the requested critical area variances were granted. The Hearing Officer specifically found that the house would not encroach into either of the side setbacks and will not need any setback variances and that it was located in such a way that it will be no closer to the water than the houses on either side.

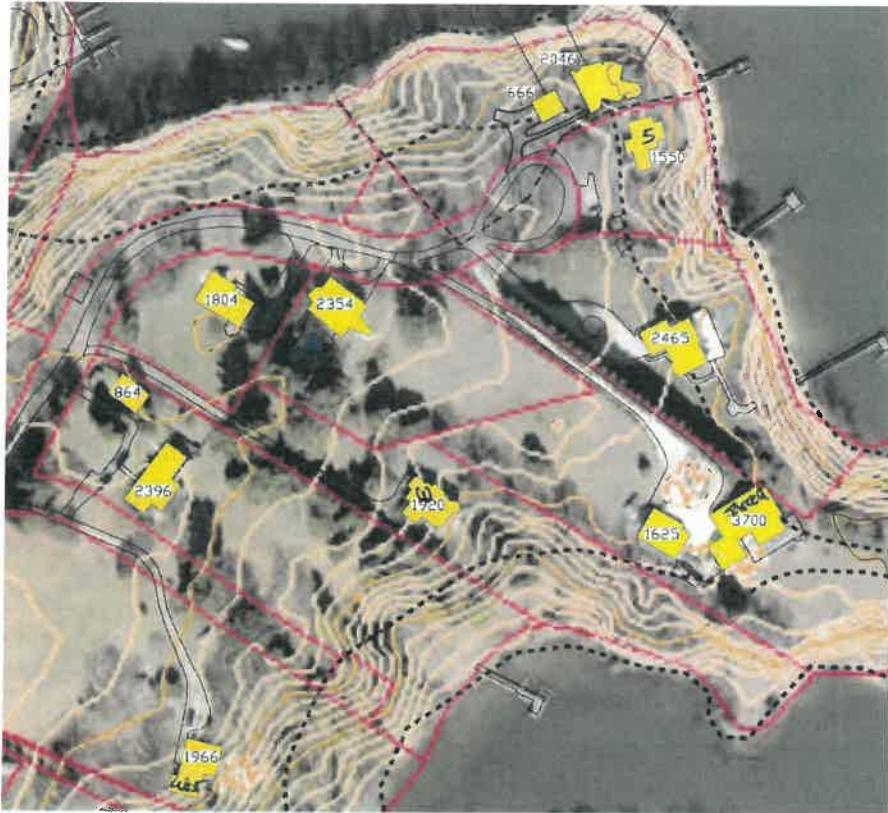
The variances granted to the two properties on the landward side of Tolstoy Lane do not help in deciding the instant case. Case No. 2007-0012-V (No. 9) granted critical area variances for a pervious deck; Case No. 2000-0181-V (No. 10) granted a zoning setback variance of 2 feet to the 20-foot rear setback requirement.

Timothy Abell, who lives across the Old Man Creek from the subject property, testified in support of the application. Mr. Abell was granted variances in Case No. 2015-0021-V (No. 11) to allow the rebuilding of various structures on his property. The property to the left (No. 12) of Mr. Abell's property was granted nonconforming use regarding rental slips and boat repairs in Case No. 1977-0055-N. The property to the left (No. 13) allowed variances to disturb steep slopes and construct a dwelling in the buffer.

Little can be gleaned from the above analysis as to whether the requested variances in this 2017 application should be granted.

The West Haven Neighborhood

West Haven, defined for this decision as the lots east and northeast of West Haven Drive, is developed with nine lots. The smallest is 0.620 acres (the property immediately adjoining the subject property) and the largest is 3.020 acres. The subject property, at 1.14 acres, is almost exactly in the middle of the lot sizes in West Haven. How many of the other lots are burdened with forest conservation easements and steep slopes is unknown. Each of the lots has been developed with different homes, as shown by the following enhanced aerial photograph showing the dwellings, accessory structures, lot lines, and steep slopes (Applicants' Exhibit 6):

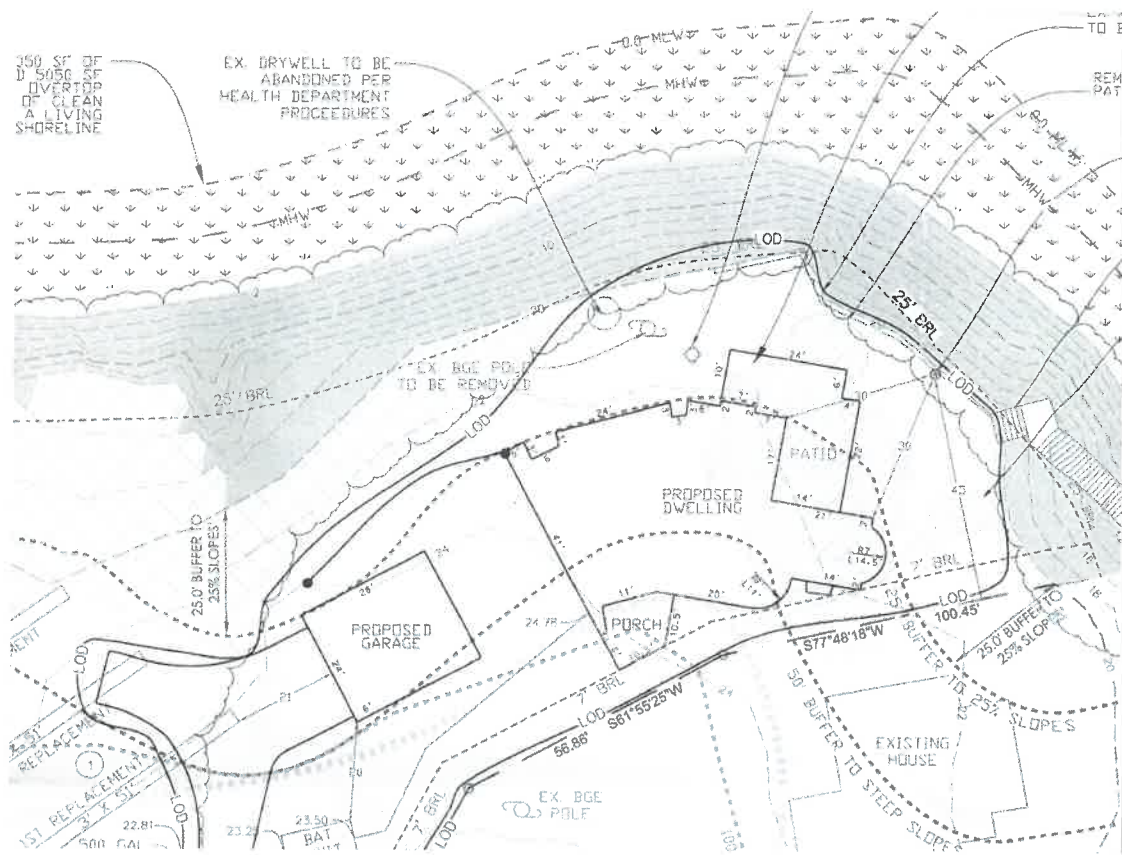


The area taken up by the various dwellings range from 864 square feet to 3,700 square feet. The size of the proposed dwelling the applicants wish to build, therefore, is not out of the range of dwellings in West Haven.

The Proposed Dwelling In 2017

The following is a snapshot of a part of the applicants' site plan⁸ showing the proposed dwelling and garage in relation to the shoreline and steep slopes:

⁸ Applicants' Exhibit 2, which is the latest iteration of the applicants' changes to their site plans.



An examination of this portion of the site plan shows that the applicants have drawn the footprint of the proposed dwelling to run along but not inside the 25-foot buffer to steep slopes, except for the patio on the waterside of the property. The new footprint is substantially on top of the footprint of the dwelling that will be razed. The expansion of the former dwelling is away from the shoreline. The waterside of the new dwelling will be farther back from the shoreline than the dwelling that will be removed. All of this supports granting the requested variances. Even so, the size of the dwelling, the patio, and the garage raise concerns not present in 2010 which need to be addressed.

The Size Of The Proposed Dwelling

The 2017 dwelling will be larger than the one approved in 2010. However, the expansion is away from the shoreline. No setback variances are needed. The façade of the new dwelling has been pulled back when compared to the dwelling that will be removed. Some of the new dwelling will be over existing lot coverage (the parking area and walkway). The total lot coverage for the site will be 25% less than what the critical area allows. The “nose” of the dwelling at the east end will be farther back from the shoreline than the footprint of Ms. Sargent’s dwelling next door. Given these factors, the size of the dwelling will be allowed.

The Patio

The patio on the waterside of the dwelling will not be approved. A pervious deck of the same dimensions will be allowed. There is no need to pave an area that could be developed with a waterside amenity—a deck—that comports with the effort to limit disturbance in the LDA.

The Garage

The garage, at 24' by 28' feet, is a standard size and will be built over existing lot coverage (the driveway and parking area for the existing dwelling). It appears that few trees will have to be removed to build the improvements proposed by the applicants. There are other properties in West Haven with garages, all larger than the garage the applicants propose.

CONCLUSION

In any event, this is a grandfathered lot with critical area and forestry requirements that affect a great deal of the property. 0.44 acres are already in forest conservation easement and the applicants propose to convert the shoreline to a living shoreline for 10,150 linear feet along their property.

Given all of the above, and the fact that the property exceeds the minimum area and dimensional requirements for a lot in an R5 district (7,000 square feet required; 1.14 acres provided: 60 feet of width required; 156 feet provided), and that the proposed critical area lot coverage will be 25% below the maximum critical area lot coverage allowed, the requested variances meet the requirements of § 18-16-305 as shown below.

Subsection (b)(1) - Unwarranted Hardship.

In *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 132-3; 920 A.2d at 1129, the Court of Special Appeals discussed the definition of unwarranted hardship found in § 8-1808(d)(3)(ii) of the Natural Resources Article in the State Code: “The amendment changed the definition of unwarranted hardship 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.’”

I find that the denial of the requested critical area variances would constitute an unwarranted hardship that would deny the applicants use of the “reasonable and significant use” of the entire parcel. 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 disturb the buffer and steep slopes to redevelop this grandfathered lot. 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 variances will not confer on the applicants any 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 property is being redeveloped in a manner that is consistent with development of other properties in West Haven. 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 variances are not 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, and do not arise from any condition relating to land or building use on any neighboring property. Therefore, I find that the applicants **have met** the requirements of subsection (b)(4).

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

The granting of the requested critical area variances 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. The proposed work will be offset by mitigation that the applicants will undertake. Therefore, I find that the applicants **have met** the requirements of subsection (b)(5).⁹

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 variances were being requested was not in conformity with the purpose and intent of the Critical Area Program."

I find that the applicants, by competent and substantial evidence, have overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State law (which is incorporated into § 18-16-305 subsection (b)(2)) for the reasons set forth above. Therefore, I find that the applicants **have met** the requirements of subsection (b)(7).¹⁰

I further find that the variances granted herein represent the minimum relief. Any house can be reduced in size. The proposed dwelling could even be

⁹ Subsection (b)(6) relates to bogs which are not a factor in this decision.

¹⁰ 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.

shifted to the west where the footprint of the garage is proposed, or even into the septic area, but this might require the septic area to be shifted to the shore side of the dwelling which would not be desirable. Eliminating the garage would reduce lot coverage but a lot of it will be constructed over existing lot coverage, and the proposed lot coverage is 25% less than what the Code can allow without variances. Moving the dwelling away from the shoreline would eliminate much of the value of a waterfront lot. With the dwelling and other improvements outside the 25-foot buffer to steep slopes, and with no room to shift the improvements to the south because of the narrowness of the lot, the proposed plan as modified by this decision represents the minimum relief needed for the applicants to develop the lot.

I further find that the proposed variances and will not alter the essential character of the neighborhood, 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, or cause a detriment to the public welfare.

ORDER

PURSUANT to the application of Lisa Barley and Scott Mielke, petitioning for a variance to allow a dwelling and associated facilities with less setbacks and buffer than required and with disturbance to slopes 15% or greater and disturbance within the expanded buffer; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **17th day of January, 2018**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted**:

1. A critical area variance of 11,200 square feet of the 100-foot **buffer and expanded buffer** requirement in § 17-8-301(b) to allow the applicants to disturb the buffer and expanded buffer to construct the proposed work (*but not the proposed patio—see Condition B below*) as shown on Applicants' Exhibit 2; and
2. A critical area variance to the prohibition in § 17-8-201 against disturbance to **steep slopes** to disturb 200 square feet of steep slopes to construct the proposed work (*but not the proposed patio—see Condition B below*) as shown on Applicants' Exhibit 2.

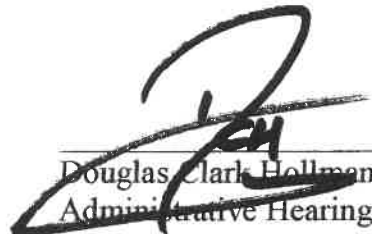
Furthermore, Applicants' Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on Applicants' Exhibit 2 shall be constructed on the subject property in the locations shown therein, with the exception of the proposed patio, as to which see below.

The foregoing variances are 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 as well as the Cultural Resources Division.

- B. The patio shown on the site plan (Applicants' Exhibit 2) shall not be built as shown. The applicants may substitute a pervious deck of the same dimensions as shown on the site plan (Applicants' Exhibit 2). Any existing lot coverage in the area of the proposed patio shall be removed and the area revegetated as determined by the the Office of Planning and Zoning, the Department of Inspections and Permits, and/or the Critical Area Commission.
- C. The applicants shall consult with the Cultural Resources Division and allow a site visit prior to approval of any ground disturbance so that the Division can evaluate and document potential archaeological impacts within the proposed limits of disturbance for new construction.



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. 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.

CO. EXHIBIT#: /
CASE: 2017-0157-V
DATE: 12/21/17

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

APPLICANT: Lisa Barley & Scott Mielke

ASSESSMENT DISTRICT: 3rd

CASE NUMBER: 2017-0157-V

COUNCILMANIC DISTRICT: 5th

HEARING DATE: December 21, 2017

PREPARED BY: Donnie Dyott Jr.
Planner

REQUEST

The applicants are requesting variances to allow a dwelling and associated facilities with less setbacks and buffer than required and with disturbance to slopes of 15% or greater on property located at 301 West Haven Drive in Severna Park.

LOCATION AND DESCRIPTION OF SITE

The subject property consists of 1.18 acres of land and is located with 156 feet of frontage on the north side of West Haven Drive; 1,000 feet north of Shakespeare Court. It is identified as Parcel 904 in Block 14 on Tax Map 24. The property is zoned R5 – Residential District, as adopted by the comprehensive rezoning of Councilmanic District 5 zoning maps, effective January 29, 2012.

The site has waterfrontage on Old Man Creek, lies entirely within the Chesapeake Bay Critical Area overlay, and is designated as LDA – Limited Development Area. It is not mapped as a BMA – Buffer Modification Area. The property is currently improved with a one-story single-family detached dwelling, a pier with a storage shed, and associated facilities.

APPLICANT'S PROPOSAL

The applicants propose to remove the existing house and to construct a new, larger, irregularly-shaped, two-story, single family dwelling, a detached garage, driveway, patio, and associated facilities.

REQUESTED VARIANCES

§ 18-13-104(a) of the Anne Arundel County Zoning Ordinance 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 18-13-104(b) provides for an expanded buffer where there are contiguous steep slopes of 15% or more and is to be expanded by the greater of four feet for every 1% of slope or to the top of the slope and shall include all land within 50 feet from the top of the slopes. Section 17-8-301 of the Subdivision 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 applicants propose development that would disturb 11,200 square feet of the buffer and expanded buffer, necessitating a variance to this provision.

2017-0157-V

§ 17-8-201(a) of the Code stipulates that development in the limited development area (LDA) may not occur within slopes of 15% or greater. Construction of the retaining wall would disturb 200 square feet of steep slopes, necessitating a variance to this provision.

§ 18-4-701 of the Code sets forth the bulk regulations for development in an R5 District. The proposed development will exceed the minimum required setbacks from all property lines; therefore, no setback variances will be necessary.

FINDINGS

The subject site is irregular in shape and far exceeds the minimum area and dimensional requirements for a lot in an R5 District. The existing critical area lot coverage is 3,387 square feet. The proposed critical area lot coverage would increase to 5,861 square feet (11.3%) which is below the 15% maximum critical area lot coverage allowed by Code.

A review of the County 2016 aerial photograph shows that the nearby properties on the same side of Old Man Creek are similarly encumbered by steep slopes and are also not mapped as buffer modified. Due to the prevalence of steep slopes along the water, variances to disturb the 100-foot buffer and expanded buffer are common. This Office found several approved variances for various development proposals located on the same side of Old Man Creek allowing disturbance to the 100-foot buffer/expanded buffer and/or steep slopes.

The applicants' letter explains that the buildable area is limited by a 19,315 square foot Forest Conservation Easement, the presence of steep slopes, and the area required for the proposed BAT septic system and two replacement system areas. The applicants note that there's only approximately 487 square feet of buildable area without requiring any variances.

The property was the subject of a prior variance (case #2010-0034-V) under which approval was granted to allow a dwelling with less buffer than required; however, the house was never constructed. The previously approved dwelling was significantly smaller than the current proposal and was to be shifted 15 feet further from the shoreline than the dwelling being replaced. The variance granted was deemed to be the minimum necessary to afford relief at that time. While the applicants admit that the previous approval was for the construction of a more modest home, they also note that the owner intended to use the property as a small summer cottage and not as a permanent full time residence. The current applicants plan to make the proposed dwelling a permanent full time residence, adding that they have four children as well as elderly parents that will be moving into the home in the very near future. A first floor bedroom will be required for the elderly parents, which the applicants argue will greatly increase the first floor footprint. The applicants have reduced the dwelling footprint from the initial variance submittal by replacing the proposed dining room and home office with the first floor bedroom.

The **Soil Conservation District** indicated that it will provide comments during sediment control review.

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

The **Department of Inspections & Permits Engineering Division** commented that the subject application cannot be supported. The plan is unacceptable. No review will be done until an acceptable plan is provided.

The **Cultural Resources Division** commented that the subject property is located in an area of extremely high potential for archaeological resources. An historic wharf and prehistoric shell midden is in close proximity to the property, and this parcel demonstrates predictive environmental variables. The Office requires a site visit prior to approval of any ground disturbance, in order to evaluate and document potential archaeological impacts within the proposed limits of disturbance for new construction.

The **Development Division (Critical Area Team)** commented that any redevelopment of the property would require variances given the encumbrance of the slopes and buffer. Prior to the submission of this application, a meeting was held to discuss the original proposal. At that meeting the directive was that the applicant would need to demonstrate compliance with all of the requirements in 18-16-305 and at a minimum all the improvements should be located outside of the 25' buffer. Revisions have been made and the dwelling is now entirely outside of the 25' buffer with the exception of the patio which is situated over the existing footprint and patio areas that will be removed. The house has been reduced by 1,033 square feet and the proposed pool has been removed. While the applicant has complied with the minimum requirement to locate the improvements outside of the 25' buffer, they have not complied with the directive to locate the improvements away from the shoreline and to also comply with 18-16-305. The proposed garage and driveway could be located further from the shoreline and still comply with the required setback to the BAT unit. Although the applicant has reduced the impacts from the original application, the proposal still does not demonstrate the ability to meet the standards established for the approval of a variance application. Mitigation will be determined at the time of permitting.

The **Critical Area Commission** cannot support the request as proposed. The configuration and magnitude of lot coverage does not minimize impacts to the buffer. Specifically, the dwelling and patio are detached from and located channelward of the garage, impacting the buffer more than is necessary. Additionally, the limit of disturbance (LOD) extends into the steep slopes unnecessarily. Particularly, the area of the LOD lying between the "drywell to be abandoned" and the "existing dwelling and foundation to be removed" does not need to extend into the steep slopes to the magnitude that is proposed. Moreover, the proposed configuration and magnitude of lot coverage, coupled with the excessive LOD, encompasses the site to such an extent that accommodating mitigation requirements onsite is infeasible. Therefore, the redevelopment of the site, as proposed, exceeds significant and reasonable use of the entire parcel. Given that the applicant is removing most of the development onsite and redesigning and reconstructing a new dwelling and associated amenities, the applicant has ample opportunity to reduce the amount of lot coverage and minimize steep slopes and buffer impacts; and thus, creating space to accommodate mitigation plantings onsite. Denying the applicant this configuration and magnitude of lot coverage and the excessively sized LOD that unnecessarily impacts steep slopes within the buffer would absolutely not convey an unwarranted hardship. As proposed, the redevelopment of this property would degrade water quality, negatively impact fish, wildlife and plant habitat and would not be in harmony with the intent of the Critical Area Law. The applicant has not met the standards and the request should be denied.

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 property, strict implementation of the County's critical area program would result in an unwarranted hardship. In this case, the site is an irregularly-shaped lot which is significantly encumbered by steep slopes, the 100-foot buffer and the expanded buffer. These unique site conditions drastically restrict redevelopment, leaving a fairly small buildable area without the need for a variance. As such, a literal interpretation of the County's critical area program would deprive the applicants of rights that are commonly enjoyed by other properties in similar areas by denying the right to redevelop an existing residential lot with an allowed use. However, the proposal is excessive, and there is opportunity to minimize that variance request without creating any hardship for the applicants.

The granting of the variance as proposed may confer on an applicants a special privilege that would be denied by COMAR, Title 27. The variance request is not based on conditions or circumstances that are the result of actions by the applicants and does not arise from any condition relating to land or building use on any neighboring property. However, the granting of the variance may 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 and should evaluate planning alternatives.

With regard to the requirements for all variances, approval of the variance would not alter the essential character of the neighborhood. The variance would not substantially impair the appropriate use or development of adjacent property, as the proposed development will exceed the minimum required setbacks from all lot lines. With proper mitigation, the variance will not reduce forest cover in the limited development area, will not be contrary to acceptable clearing and replanting practices, and will not be detrimental to the public welfare.

The request as proposed is not considered to be the minimum necessary to afford relief. While buffer/expanded buffer disturbance is unavoidable, there is opportunity to minimize the proposal while still providing for an ample sized dwelling and associated facilities.

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 variance to § 17-8-301 to allow redevelopment of the subject property with 11,200 square feet of buffer disturbance. It should be noted that this Office would support a critical area variance to § 18-13-104(a) for disturbance to slopes of 15% or greater to allow for the exact replacement/repair of the existing retaining wall, but would object to any expansion of the retaining wall that would result in an increased development area.

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.


LGR / DKD

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor



Charles C. Deegan
Chairman
Katherine Charbonneau
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

December 1, 2017

Ms. Lori Rhodes
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Co EXHIBIT # 13
CASE: 2017-0157
DATE: 12/21/17

Re: Variance Case #2017-0157; Barley, Lisa
301 West Haven Drive, Severna Park

Dear Ms. Rhodes:

Thank you for submitting the revised conceptual plan regarding the variance request referenced above. The applicant requests a variance to allow a dwelling and associated facilities with less setbacks and Buffer than required, and with disturbance to steep slopes 15% or greater. The waterfront lot is 1.18 acres in size and located in the Limited Development Area (LDA). There currently exists onsite a single family dwelling, a gravel driveway, two patios and an associated walkway, a shed, a retaining wall, access steps to a pier, a septic system, and a dry well. The applicant wishes to demolish the existing dwelling and foundation; abandon the existing septic system and dry well; remove two patios and an associated walkway; construct a new dwelling with a porch and patio; install a new well and a BAT septic system; replace the existing retaining wall and access stairs to the pier; install a sand containment groin; and create 5,050SF of low marsh and 5,050SF of high marsh overtop of 750 cubic yards of clean sand for a living shoreline. The expanded Buffer and a Forest Conservation Area encompass a significant portion of the property. The proposed placement of the new BAT septic system is located outside of the expanded Buffer; however, the majority of the proposed remaining improvements are located in the expanded Buffer. The applicant originally requested a variance to redevelop the site with 7,542SF of lot coverage. The revised plans show a reduction in lot coverage, and the elimination of the proposed pool in the Buffer, replaced with a patio twice the size of the original patio. The current lot coverage is 3,387SF (7.3%); the proposed revised lot coverage is 5,861SF (11.4%); and the allowable lot coverage is 7,739SF (15%).

While the Commission would not oppose a variance to redevelop this lot, we cannot support this request as proposed. The configuration and magnitude of lot coverage does not minimize impacts to the Buffer. Specifically, the dwelling and patio are detached from and located channelward of the garage, impacting the Buffer more than is necessary. Additionally, the limit of disturbance (LOD) extends into the steep slopes unnecessarily. Particularly, the area of the LOD lying between the "drywell to be abandoned" and the "existing dwelling and foundation to be removed" does not need to

extend into the steep slopes to the magnitude that is proposed. Moreover, the proposed configuration and magnitude of lot coverage, coupled with the excessive LOD, encompasses the site to such an extent that accommodating mitigation requirements onsite is infeasible. Therefore, the redevelopment of the site, as proposed, is not the minimum necessary to afford relief, nor does it meet unwarranted hardship. The redevelopment, as proposed, exceeds significant and reasonable use of the entire parcel. Given that the applicant is removing most of the development onsite and redesigning and reconstructing a new dwelling and associated amenities, the applicant has ample opportunity to reduce the amount of lot coverage and minimize steep slopes and Buffer impacts; and thus, creating space to accommodate mitigation plantings onsite. Denying the applicant this configuration and magnitude of lot coverage and the excessively sized LOD that unnecessarily impacts steep slopes within the Buffer would absolutely not convey an unwarranted hardship.

The proposed configuration and magnitude of lot coverage leaves inadequate land area to accommodate mitigation plantings and thereby impacts Buffer function. As proposed, the redevelopment of this property does not minimize impacts to the Buffer or steep slopes and would absolutely degrade water quality and negatively impact fish, wildlife, and plant habitat. Therefore, approving this variance request would absolutely not be in harmony with the intent of the Critical Area Law.

The applicant has not met the standards as discussed above. In order to grant the variance request, the applicant needs to demonstrate and the Hearing Officer needs to find that each variance standard has been met. The applicant's request for less Buffer than required and with disturbance to steep slopes 15% or greater, as proposed, should be denied. Thank you for the opportunity to provide comments. Please include this letter in your file and submit it as part of the record for the variance. Please notify the Critical Area Commission of the decision made in this case. If you have any questions, please contact me at 410.260.3481 or tay.harris@maryland.gov.

Sincerely,

A handwritten signature in blue ink that reads "Tay E. Harris". The signature is written in a cursive, flowing style.

Tay E. Harris
Natural Resources Planner
File: AA 415-17

For Office Use OnlyCASE # 2017-0157-VFEE PAID 250DATE 5/22/17**For Office Use Only**ZONE R5CRITICAL 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): Lisa Barley

(Applicant must have a financial, contractual, or proprietary interest in the property)

Property Address: 301 West Haven Drive Severna Park, MD 21146Property Location: 156 feet of frontage on the (N ☒ side of West Haven Drive;
(Enter Street Name)
1000 feet (SE ☒) of (Nearest intersecting street) Shakespeare Drive Court.
(Enter Street Name)12-digit Tax Account Number 3000-9000-2179 Tax District (3 ☒) Council District 5 ☒Waterfront Lot: Y ☒ N ☐ Corner Lot: Y ☐ N ☒ Deed Title Reference 15465/625Zoning District R5 Lot # N/A Tax Map 24 Block/Grid 14 Parcel 904Area 1.14 Acres (Sq Ft, or Acres) Subdivision Name West Haven

Description of Proposed Project and Variance Requested (Brief, detail fully in letter of explanation)

To demolish and construct a new SFD with in the tidal and steep slope buffers.

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.

Applicant's Signature Lisa Barley Owner's Signature Scott MielkePrint Name Lisa Barley Print Name Scott MielkeMailing Address 262 Moreau Lane Mailing Address SameCity, State, Zip Severna Park, MD 21146 City, State, Zip Work Phone 410-353-6728 Work Phone 410-703-8533Home Phone Same Home Phone SameCell Phone Same Cell Phone SameEmail Address barleylk1@verizon.net Email Address waterfrontdesign@verizon.net***** Below For Office Use Only *****Application accepted by Anne Arundel County Office of Planning and Zoning: SLA 5/24/17
Initials DateVariance to allow a dwelling and associated facilities with less setbacks and buffer than required and with disturbance to slopes of 15% or greater