

**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: December 2, 2025

PREPARED BY: Sara Anzelmo
Planner

SLA

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 required 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 Lot 1 of Parcel 39 in Grid 22 on Tax Map 33 and is part of the Morgan Property subdivision.

The property is zoned R1 – Residential District. This waterfront lot on Deep Creek 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 dwelling, a pier, and other associated facilities.

PROPOSAL

The applicants seek after-the-fact approval for the construction of a patio, an adjacent retaining wall, and an outside fireplace located on the waterfront side of the house.

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 entirely within the 100-foot buffer to tidal wetlands, necessitating a variance. If approved, the actual amount of buffer disturbance would be determined at the time of 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 improvements 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 the time of 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. The fireplace was constructed 5.4 feet from the west side lot line and two feet from the southwest side lot line, necessitating variances of 10 feet and 13 feet, respectively.

§ 18-2-301(e) provides that certain uses or structures, including walls and paved or at-grade surfaces, need not comply with setback requirements. Therefore, a zoning setback variance is not required for the retaining wall or patio.

FINDINGS

The subject property is irregular in shape and exceeds the minimum 80-foot width at the front building restriction line and the minimum 30,000 square foot area required for a lot in an R1 District. The previously existing critical area lot coverage (prior to the addition of the patio, wall, and fireplace) is shown as 4,782 sf on the site plan, but is shown as 5,020 sf on the Critical Area Project Notification form. Neither of the existing coverage totals matches the coverage listed on the prior variance application, which was 4,985 sf. The post-construction (“as-built”) coverage increased to 5,562 sf per the site plan, but increased to 5,800 sf per the Critical Area Project Notification form. The applicants propose to remove coverage in order to comply with the platted maximum 4,984 square feet allowed. However, the areas intended to be removed, as shown on Sheet 2 of the site plan, would not be enough to bring the property into compliance with the maximum coverage allowance. As such, if the buffer, slope, and setback variances are approved, the applicant will be required to demonstrate compliance at the time of permitting.

The property is the subject of an open violation case (E-2022-536) relating to the construction of the patio, retaining wall, and fireplace without a permit.

The lot was a part of a larger site that had a registered nonconforming use approval for two dwellings (1997-0230-N). The property was granted a special exception to expand the nonconforming use (2005-0140-S) and a variance to allow a dwelling with less setbacks and buffer than required (2005-0141-V). In these companion cases, the applicant was granted approval to raze, relocate, and expand the registered nonconforming dwelling on the lot that is the subject of this variance. Specifically, the Administrative Hearing Officer approved an expansion from 1,775 square feet to 2,300 square feet, a buffer variance of 40 feet, and a zoning variance of 17 feet to the rear setback provisions, conditioned on no further expansion of the dwelling. Prior to constructing the replacement dwelling, the owner created a land condominium subdivision in 2011. The lot was granted a variance to lot area and lot coverage (2011-0225-V) which allowed for the subdivision of a previously nonconforming use property into two lots and a total of 18% lot coverage for the entire subdivision. The land condominium was later terminated by owner request. According to State tax assessment records, the replacement house was completed in 2013 with 3,095 sf of enclosed area plus an attached garage. A Minor Subdivision Plat (341/43) was

approved in 2016, which limited Lot 1 to a maximum lot coverage of 4,984 sf (14.11%). Finally, the property was the subject of a third critical area variance application. Under case number 2017-0036-V, approval was granted to allow an irregular two-level deck with a landing and steps to grade on the southwest corner of the dwelling within the tidal wetland buffer.

The **Development Division (Critical Area Team)** noted that several variances were required in order to allow the subdivision for this property. The subdivision was to resolve an existing non conforming situation; therefore, variance approvals for density and lot coverage were applied for and granted. From a Critical Area perspective, two variances are required in order to allow this patio/fireplace to remain and those are Buffer Disturbance and Steep Slope Disturbance. In addition, the applicant would need to resolve the overage in Lot Coverage created by the improvements to the site. Buffer Disturbance: In order to reconstruct the dwelling on this site, a variance for buffer disturbance was applied for and approved. Soon after the home was completed, an additional variance was granted to allow the construction of a two level 20' x 16' deck resulting in 600 sq ft of outdoor recreation area. In each case, the Administrative Hearing Officer found that the relief granted was the minimum necessary to afford the applicant relief. Additional relief is not warranted and cannot be supported. Steep Slopes: In the event of an after the fact variance that involves the construction of a retaining wall, the Office of Planning and Zoning routinely requires a variance unless an applicant can clearly demonstrate that an erosive condition existed or that no steep slopes existed prior to development. The information provided with this application does neither. The site plan is an “As Built” site plan meaning that it represents the conditions as they exist today; therefore, it fails to illustrate the conditions that existed on the site at the time of construction. The 2020 County Topography, which was developed prior to the installation of the patio, and the site plan submitted with the 2017 variance application both indicate that the development of the patio would have resulted in steep slope disturbance. The site plan submitted with this application appears to have been based off of the 2023 County Topography, which would have been “flattened” as a result of the installation of the patio. Steep slope disturbance would not have been supported had it been requested during the required permitting process; therefore, it cannot be supported as an after the fact request. Lot Coverage: Mr. Evan’s conclusion that the applicant receives “credit” for the portion of the driveway that serves the adjacent property is incorrect. The driveway exists entirely on Lot 1; therefore, it is included in its entirety in the lot coverage calculations for Lot 1. Per the recorded subdivision plat, this lot is permitted 4,985 sf (14.11 %) of lot coverage, slightly less (315 sf) than the standard 15% as required by the subdivision regulations. Per this application, the current permitted improvements (house, sidewalks, and driveways) result in 4,782 square feet of lot coverage. This number is unconfirmed, differs from previous applications, and will be verified at permitting. In order to obtain permit approval for the patio, 577 square feet of existing lot coverage would need to be removed while still maintaining full access to the adjacent lot. Summary: The Critical Area Team does not support the approval of the variances needed to allow the patio and fireplace structure to remain. 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 to make the home functional and provide the homeowner with outdoor recreation area. At that time, the Hearing Officer made the finding that the deck was in fact the minimum necessary to afford the applicant relief. The result of that variance approval was the reduction of the required 100’ buffer to 44’. The current request would be to allow a solid, stone patio and fireplace within that 44’ buffer, resulting in no buffer and no protection for the adjacent tidal wetland.

The **Critical Area Commission** opposes the variance to retain the patio and fireplace, as the request fails to meet six out of the seven variance standards. Allowing the applicants to retain an unpermitted patio in the Buffer does not meet the standard of unwarranted hardship, as the applicants already have 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 applicants 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. 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. The granting of this variance would confer a special privilege upon the applicants. 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. The Commission has previously and consistently opposed similar variance requests from others; therefore, granting this request would absolutely confer upon the applicants a special privilege denied to others. This request is based on actions from the applicants that resulted in a violation of the County's Critical Area program. Therefore, this request should be denied. 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. 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. 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 the 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. The Commission's full letter is provided in the County exhibits.

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.

With regard to the Critical Area variances, the County concurs with the extensive review of the Critical area variance standards and the associated comments provided by the State Critical Area Commission. The variance proposal does not satisfy six of the seven Critical Area variance standards required for approval. As such, the buffer and slope disturbance variances cannot be supported. Furthermore, even with the significant Critical Area/environmental aspects of this case removed from the equation, the applicants provided no justification for the zoning setback variance and offered no reason that the fireplace could not have been located further than two feet from the side property line. As such, the associated zoning setback variance cannot be supported.

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 was already an existing two-story deck approved via a recent Critical Area variance that provided ample room for outdoor use and enjoyment, the after-the-fact request for additional buffer and slope disturbance variances are not warranted and cannot be considered the minimum necessary to afford relief in this case.

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 and zoning variances. Should the Administrative Hearing Officer determine that a variance is warranted, any approval must be conditioned on the additional conditions provided in §18-16-305(c) and (d) as follows:

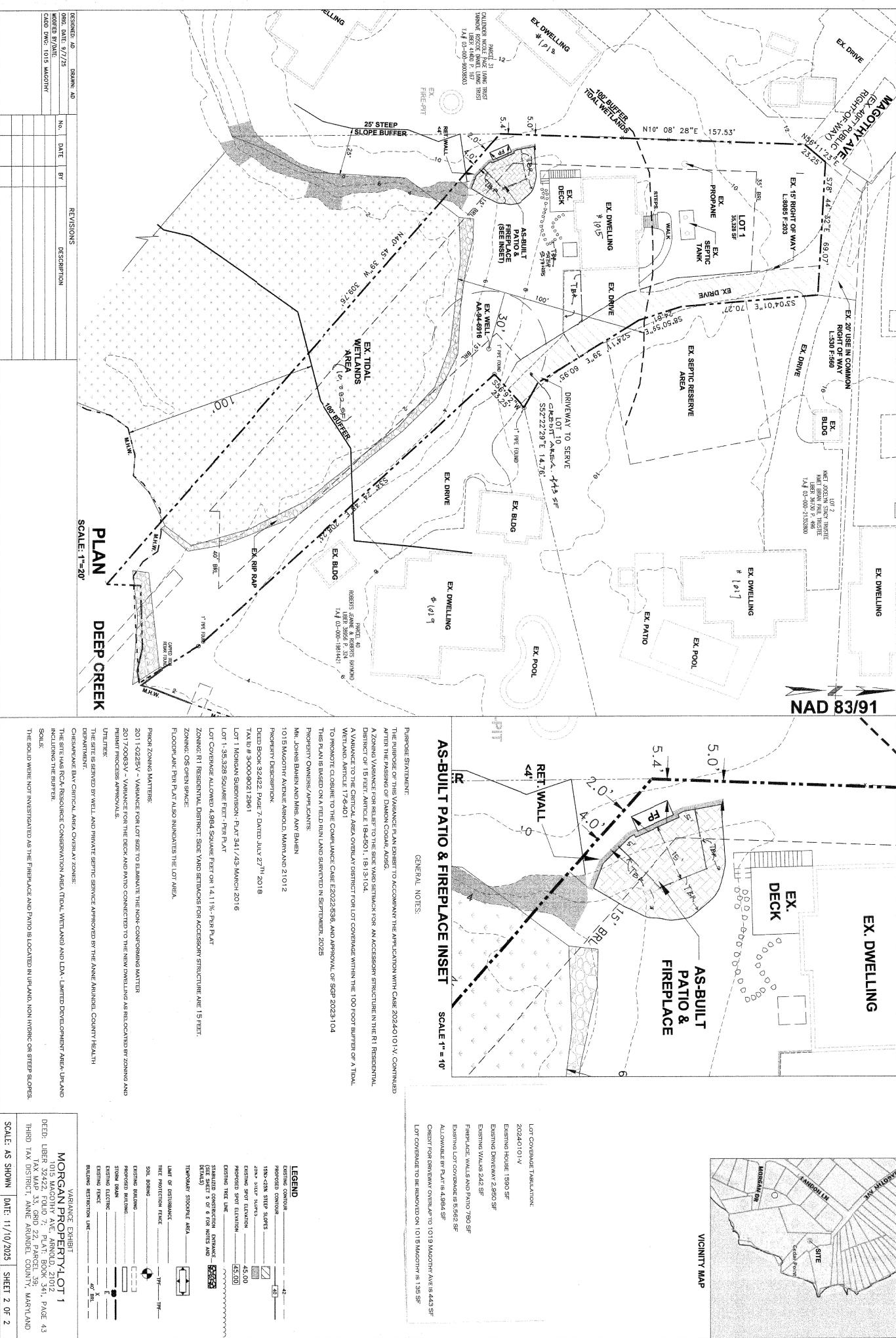
(c) Conditions for granting a variance in the critical area.

- (1) For a property with an outstanding violation the granting of a variance in the critical area under subsection (b) shall be conditioned on the applicant completing the following within 90 days of the date of decision, as applicable:
 - (i) obtaining an approved mitigation or restoration plan;
 - (ii) completing the abatement measures in accordance with the County critical area program; and
 - (iii) paying any civil fines assessed and finally adjudicated.

- (2) Notwithstanding the requirements of subsection (c)(1), the Office of Planning and Zoning may extend the time for abatement to the next planting season because of adverse planting conditions. An applicant may also be granted a 180 day extension to satisfy the conditions of a variance upon timely application to the Planning and Zoning Officer and good cause shown.

(d) Lapse. Any critical area variance granted for a property with an outstanding violation shall lapse by operation of law if the conditions of subsection (c)(1) are not satisfied within 90 days or as extended.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant 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.



EVANS~ ADVISORY~ GROUP, LLP

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ANNAPOLIS, MD. 21401

443-871-3584

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OCTOBER 31, 2025

VIA EMAIL AND HAND DELIVERED:

Ms. SARA ANZELMO, ZONING PLANNER

ANNE ARUNDEL COUNTY

OFFICE OF PLANNING AND ZONING

2664 RIVA ROAD, THIRD FLOOR

ANNAPOLIS, MARYLAND 21401

RE: 1015 MAGOTHY AVENUE ARNOLD, MARYLAND 21012

2023-0065-P - PRE-FILE

VARIANCE 2024-0101-V- HEARING SCHEDULED FOR DECEMBER 2, 2025

MR. & MRS. JOHN BAHEN ~ TAX ID # 3-000-90212961- LOT 1

DEAR Ms. ANZELMO:

ON BEHALF OF THE APPLICANTS MR. & MRS. BAHEN PLEASE ACCEPT THIS NEW PROJECT NARRATIVE, SUPPLEMENTED CRITICAL AREA REPORT AS TO STEEP SLOPES INTO THE EXISTING RECORD FOR PRESENTATION BEFORE THE ADMINISTRATIVE HEARING OFFICER ON DECEMBER 2, 2025 FOR CASE 2024-0101-V.

THIS APPLICATION WAS STARTED BY MR. DAMON COGAR OF ADSG. MR. COGAR UNFORTUNATELY PASSED AWAY DURING THE PROCESS.

IT WAS REQUESTED THAT MY OFFICE ADJUST THE RECORDS AND ASSIST THE OWNERS IN BRINGING THE PROPERTY INTO COMPLIANCE WITH THE SUPPORT OF THE OFFICE OF PLANNING AND ZONING AND THE DEPARTMENT OF INSPECTIONS AND PERMITS.

THE APPLICANTS BUILT A STACKED STONE FIREPLACE, LOW RETAINING WALLS AND A PAVER PATIO DURING THE UNFORTUNATE COVID PERIOD AS SOCIAL DISTANCING WAS A NECESSITY. THE OUTDOOR SPACE ALLOWED FOR USE AND ENJOYMENTS OF THIS PROPERTY AS COMMONLY ENJOYED BY OTHERS. THE WOOD DECK ATTACHED TO THE HOUSE DID NOT ACCOMMODATE SUCH USE DUE TO ITS SIZE.

THOSE ACCESSORY IMPROVEMENTS TO THE PROPERTY REQUIRED APPROVALS FROM THE OFFICE OF PLANNING AND ZONING AND INSPECTIONS AND PERMITS. THOSE APPROVALS ARE BEING SOUGHT WITH THIS ADJUSTED APPLICATION TO SATISFY AND CLOSE THE COMPLIANCE CASE.

THERE WAS NO CLEARING AND NO IMPACTS TO STEEP SLOPES, AS NO STEEP SLOPES ARE PRESENT ON THE LOT, OTHER THAN BEHIND THE LOW RETAINING WALLS ATTACHED TO THE FIREPLACE. THE LOW WALLS OFFERED STABILITY AND EASE OF MAINTENANCE.

ONE BASIS FOR RELIEF STEMS FROM THE UNIQUE AND IRREGULAR BOUNDARY OF THE PROPERTY AND THE UNCHARACTERISTICALLY LARGE INUNDATION OF TIDAL WETLAND, INVASIVE VEGETATION ONTO AND INTO THE PROPERTY LOCATED UPLAND OF THE MEAN HIGH WATER LINE OF DEEP CREEK, THE WETLANDS THRIVES DUE TO FREQUENT HIGHER TIDE LEVELS.

THE FIREPLACE STRUCTURE DOES NOT IMPAIR THE USE OR VIEWS FROM ADJACENT PROPERTIES, AS THE FIREPLACE IS BELOW THE ADJACENT PROPERTIES RESIDENCE AND LAWN ELEVATIONS. A SETBACK VARIANCE IS BEING SOUGHT BY THIS APPLICATION.

THE PATIO IS AN AT GRADE IMPROVEMENT AND NOT SUBJECT TO ZONING SETBACKS, HOWEVER IT IS SUBJECT TO A VARIANCE FOR COVERAGE LOCATED WITHIN THE 100 FOOT BUFFER TO A TIDAL WETLAND, AS THE PRINCIPAL STRUCTURE AND DECK ENJOYED THE SUPPORT AND APPROVALS.

THE PROPERTY IS SERVED BY WELL AND PRIVATE SEPTIC SYSTEM APPROVED BY THE ANNE ARUNDEL COUNTY HEALTH DEPARTMENT. THE SEPTIC IS A BEST AVAILABLE TECHNOLOGY BAT SYSTEM.

PRIOR VARIANCE CASE 2011-0225-V — RELIEF FROM LOT SIZE, GREATER COVERAGE AND DENSITY — PROPERTY DESIGNATED UNIT "A" LANDOMINIUM.

PRIOR VARIANCE CASE 2017-0036-V — DECK WITH LESS SETBACKS ATTACHED TO THE PRINCIPAL STRUCTURE. — PROPERTY DESIGNATED AS LOT 1- AND PRIOR TO PURCHASE.

ZONING VARIANCES:

THE APPLICANT IS SEEKING RELIEF TO STRICT COMPLIANCE WITH THE ZONING ORDINANCE FOR SIDE YARD SETBACKS IN THE R-1 ZONE DESIGNATED AS 15' FEET ARTICLE 18-4-501 BULK REGULATIONS.

THE FIRE PLACE IS A STRUCTURE AND SITS AS CLOSE AS 2 FEET FROM THE LOT BOUNDARY, REQUIRING A 13 FOOT AND A 10 FOOT SETBACK VARIANCE. THE ASSOCIATED WALLS ARE LESS THAN 4 VERTICAL FEET IN HEIGHT. THE FIREPLACE STRUCTURE IS ORIENTED TOWARD THE WATER AND DOES NOT OBSTRUCT OR IMPAIR ANY VIEW OF THE NEIGHBORING PROPERTIES.

THE APPLICANT IS SEEKING RELIEF FROM STRICT ADHERENCE TO ARTICLE 17-6-401 DEVELOPMENT IN WETLAND BUFFERS.

THERE WAS A PROVISION FOR RELIEF TO ARTICLE 17-6-403 PROHIBITING DEVELOPMENT IN STEEP SLOPES. THE CURRENT FIELD RUN LAND SURVEY DID NOT LOCATE ANY STEEP SLOPES, SO WE ARE ELIMINATING THAT RELIEF REQUEST.

COMPLIANCE CASE:

COMPLIANCE CASE E-2022-536, GRADING WITHOUT A PERMIT FOR A PATIO AND FIREPLACE WAS ISSUED.

STANDARD GRADING PLAN 2023-104- SGP — PENDING FOR AFTER THE FACT PERMISSION FOR GRADING OF AN AREA LESS THAN 5,000 SQUARE FEET AND ON SLOPES LESS THAN 5%. THIS SGP IS A NECESSARY AND REQUIRED STEP TOWARD CLOSING THE ABOVE GRADING MATTER.

IN ADDITION; THIS POINT BY POINT RESPONSE TO THE JANUARY 14, 2024 REVIEW LETTER DIRECTED TO MS. STERLING SEAY OF ANNE ARUNDEL COUNTY OFFICE OF PLANNING AND ZONING. INCLUDED IS A NEW SITE PLAN EXHIBIT, A RESULT OF A FIELD RUN SURVEY. THE PRIOR CONSULTANT AND AUTHOR MR. DAMON COGAR OF ADSG UNFORTUNATELY PASSED AWAY.

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 HARSHSHIP TO THE APPLICANT.

THE APPLICANT'S LAND IS AN IRREGULAR SHAPE LOT RESULTING IN AN AREA LESS THAN THE AREA REQUIRED IN THE R1 ZONING DISTRICT, AND IS LIMITED TO COVERAGE BELOW THE 15% ALLOWANCE, AS GRANTED BY 2011-0225-V.

FURTHER THE PRIOR OWNER SECURED A VARIANCE TO BUILD A DECK, EXPANDING THE STRUCTURE INTO THE SAME YARDS, AS TO DENY THAT REQUEST PROVED TO BE AN UNWARRANTED HARSHSHIP. THE SAME ARGUMENT APPLIES IN THIS APPLICATION.

A LITERAL INTERPRETATION OF THE LOCAL CRITICAL AREA PROGRAM WOULD DEPRIVE THE APPLICANT OF A USE OF THE LAND OR A STRUCTURE PERMITTED IN ACCORDANCE WITH THE PROVISIONS OF THE LOCAL CRITICAL AREA PROGRAM.

THE ADJACENT PROPERTIES EACH HAVE THEIR OWN OUTDOOR RECREATIONAL FACILITIES/STRUCTURES ON AND IN THE WATERFRONT YARDS OF THEIR PROPERTIES, SOME HAVE SWIMMING POOLS AND VAST PATIO SPACES AND, SOME HAVE FIRE PITS WITH PATIO AREAS.

THE GRANTING OF THE VARIANCE WOULD NOT CONFER UPON THE APPLICANT AND 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.

IN AS MUCH AS EACH ADJACENT NEIGHBOR HAS PAVED OUTDOOR RECREATIONAL FACILITIES, SUCH AS SWIMMING POOLS, PATIO'S, FIRE PITS WITH PATIO SPACES, THE DEVELOPMENT BY THE APPLICANT OF THE FIREPLACE AND PATIO IS NOT A SPECIAL PRIVILEGE, IT IS KEEPING WITHIN THE CHARACTER OF THE NEIGHBORHOOD ALONG THE WATERS OF DEEP CREEK. IT WAS BUILT DURING COVID TO PROMOTE OUTDOOR USE OF THE PROPERTY ALLOWING SOCIAL DISTANCING.

THE VARIANCE REQUEST IS NOT BASED UPON CONDITIONS OR CIRCUMSTANCES THAT ARE THE RESULT OF ACTIONS BY THE APPLICANT.

UNFORTUNATELY THIS APPLICATION IS AN "AFTER THE FACT" APPLICATION TO SEEK RELIEF FROM STRICT COMPLIANCE WITH THE ZONING AND DEVELOPMENT ORDNANCES.

THE VARIANCE REQUEST DOES NOT ARISE FROM ANY CONFORMING OR NONCONFORMING CONDITION ON ANY NEIGHBORING PROPERTY.

THIS APPLICATION IS NOT THE RESULT OF ANY CONFORMING OR NONCONFORMING CONDITION ON ANY NEIGHBORING PROPERTY.

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

ONCE A PROPOSED NON-STRUCTURAL STORMWATER WATER MANAGEMENT CONCEPT IS PRESENTED AND ACCEPTED BY INSPECTIONS AND PERMITS UNDER THE

STANDARD GRADING PLAN, THE FIREPLACE AND PATIO WILL NOT AFFECT WATER QUALITY, FISH AND PLANT HABITAT, SUCH AS THE INVASIVE FRAGMITIES.

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.

IN AS MUCH AS THE NEIGHBORING PROPERTIES HAVE SIMILAR RECREATIONAL FACILITIES, SWIMMING POOLS, PATIOS AND FIRE PITS WITH PATIO SPACES, ALL WITHOUT COMPLIANCE CONCERN, THE APPLICANTS REQUEST TO SEEK RELIEF FROM STRICT CONFORMANCE TO THE ZONING AND DEVELOPMENT ORDNANCES AND TO PERFECT THIS STRUCTURE AND PATIO AREA IS IN HARMONY WITH THE CRITICAL AREA LAWS AS APPLIED TO THIS PENINSULA.

PLEASE CONTACT ME DIRECTLY AT 443-871-3584 OR EMAIL AT
GMETSC@GMAIL.COM IF YOU HAVE ANY COMMENTS OR CONCERN REGARDING THIS MATTER.

SINCERELY



GARY M. EVANS

CC: MR. & MRS. BAHEN, OWNER/APPLICANT W ATTACHMENTS

EVANS~ ADVISORY~ GROUP, LLP

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CRITICAL AREA REPORT: 11.7.2025

THE PURPOSE OF THE VARIANCE IS TWOFOLD:

- 1.) THE ADDITIONAL LOT COVERAGE WITH THE CHESAPEAKE BAY CRITICAL AREA — TIDAL WETLAND BUFFER (100 FEET) BEYOND THE BUFFER OF THE MEAN HIGH WATERS OF DEEP CREEK
- 2.) ZONING SETBACK VARIANCE: A VARIANCE IS REQUESTED AS THE FIREPLACE, WALLS AND AT GRADE PATIO WERE INSTALLED/CONSTRUCTED WITHOUT A SURVEY AND IT HAS BEEN DETERMINED TO BE LOCATED WITHIN THE R-1 RESIDENTIAL DISTRICT ~ SIDE YARD SETBACKS OF 15 FEET. THE FIREPLACE IS ACTUALLY LOCATED AS CLOSE AS 2 FEET FROM THE LOT.

CRITICAL AREA NARRATIVE:

THE APPLICANT IS THE OWNER OF LOT 1 MORGAN PROPERTY IS THE SUBJECT OF MANY ATTEMPTS TO BECOME A LEGAL LOT, AND IT STILL FELL SHORT.

SOILS:

THE SOILS SURVEY IS MAPPED AS KEYPORT SILT LOAM COMPLEX A WELL DRAINING SOIL, BUT HIGHLY ERODIBLE.

THE SITE HAS TIDAL WETLAND MARSH INSIDE OF THE LOT BOUNDARIES.

EXISTING CONDITIONS

THE NOW KNOWN AS LOT NO. 1 IS AN R-1 RESIDENTIAL USE. THE LOT IS IRREGULAR IN ITS SHAPE AS IT WAS CARVED OUT OF ITS FORMER PARCEL 39.

THE SITE IS SERVED BY A PRIVATE SEPTIC WITH A BAT SYSTEM AND NEW DRILLED WATER WELL. THE SITE IS IN COMPLIANCE WITH THE REGULATIONS OF THE HEALTH DEPARTMENT.

THE INSTALLATION OF THE FIREPLACE AND PATIO, INSTALLED DURING COVIA DISTURBED LESS THAN 5,000 SQUARE FEET, AND IS LOCATED IN THE LAWN AREA WITH A SLOPE LESS THAN 4%.

STORMWATER MANAGEMENT

THIS OFFICE WITH THE AGREEMENT OF THE OWNERS AND INSPECTIONS AND PERMITS, A STANDARD GRADING PLAN SHOULD SUFFICE. THE PROPOSAL IS TO REPLACE THE PATIO SURFACE WITH POROUS PAVERS AND ALSO COMPENSATE FOR THE WALLS AND

AQUATIC RESOURCES

THE SUBJECT PROPERTY IS WATERFRONT ON DEEP CREEK IN ARNOLD, MARYLAND 21012. THE FIREPLACE, WALLS AND PATIO IS NOT WITHIN THE 100 FOOT BUFFER TO THE WATERS OF DEEP CREEK,

THE PROPOSED DEVELOPMENT IS WITHIN THE 100 BUFFERS OF THE TIDAL WETLAND THE ENCROACH ON TO THE LOT. THE EXISTING DWELLING AND ALL OF THE IMPROVEMENTS ARE ALSO WITHIN THE 100 BUFFER OF THOSE TIDAL WETLANDS.

VEGETATION

THE PROPERTY IS USED AS A SINGLE FAMILY RESIDENCE AND IS A MAINTAINED LAWN EXCEPT FOR THE 10,082 SQUARE FEET OF THE TIDAL MARSH AREA, A WALKING PATH ALSO A LAWN TAKES YOU TO THE DOCK AND WATER'S EDGE OF DEEP CREEK.

NO WOODLAND CLEARING OCCURRED TO INSTALL THE FIREPLACE, WALLS AND PATIO.

CONCLUSION:

AS THE LOT IS NOW A LEGAL LOT, SUBSTANDARD IN LOT SIZE AND IRREGULAR IN SHAPE AND INUNDATED WITH 10,082 SQUARE FEET OF TIDAL WETLAND MARSH, LEAVING 25,246 SQUARE FEET INCLUDING THE ENVIRONMENTAL BUFFERS.

THE FIREPLACE, WALLS AND PATIO WAS BUILT DURING COVID WHEREAS SOCIAL DISTANCING WAS MANDATED, AND OUTDOOR RECREATION SPACES BECAME A NECESSITY. THE IMPROVEMENTS DO NOT IMPACT THE USE AND ENJOYMENTS OF THE ADJACENT AND SURROUNDING PROPERTIES, ATTACHED ARE LETTERS IN SUPPORT OF THE FIREPLACE, WALLS AND PATIO SURFACES.

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

PROJECT NOTIFICATION APPLICATION

GENERAL PROJECT INFORMATION

Jurisdiction: Anne Arundel County

Date: 11/03/25

Tax Map #	Parcel #	Block #	Lot #	Section
33	39	22	1	NA

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) **MORGAN PROPERTY**

Project location/Address **1015 MARGOTHY AVE.**

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

Local case number **2024-0101-X**

Applicant: Last name **BAHEN** First name **Jack**

Company **OWNER**

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

COMPLIANCE

Local Jurisdiction Contact Information:

Last name **AACo Zoning Administration Section** First name _____

Phone # **410-222-7437** Response from Commission Required By **TBD**

Fax # _____ Hearing date **TBD**

SPECIFIC PROJECT INFORMATION

Describe Proposed use of project site:

ENZY SINGLE FAMILY RESIDENCE

Yes
Intra-Family Transfer
Grandfathered Lot

Yes
Growth Allocation
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	0.4	17,664
RCA Area	0.4	17,664
Total Area	0.81	35,328

Total Disturbed Area Acres Sq Ft
0.023 1,000

of Lots Created

	Acres	Sq Ft		Acres	Sq Ft
Existing Forest/Woodland/Trees	0.14	6,105	Existing Lot Coverage	0.13	5,020
Created Forest/Woodland/Trees	0	0	New Lot Coverage	0.017	780
Removed Forest/Woodland/Trees	0	0	Removed Lot Coverage	0.008	373
			Total Lot Coverage		

VARIANCE INFORMATION (Check all that apply)

Total: 4,984 ft

	Acres	Sq Ft		Acres	Sq Ft
Buffer Disturbance	0.023	1,000	Buffer Forest Clearing	0	0
Non-Buffer Disturbance	—	—	Mitigation	0	0

Variance Type
Buffer
Forst 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

FIREPLACE





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

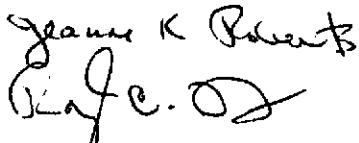
 Kind regards,

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 signature for Jeanne K. Roberts is written in cursive and appears to read "Jeanne K. Roberts". The signature for Raymond C. Roberts is also in cursive and appears to read "Raymond 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 1015 Magothy Ave

Kelly Krinetz <pzkrin00@aacounty.org>
To: "Anzelmo, Sara" <pzanze99@aacounty.org>

Thu, Nov 13, 2025 at 3:58 PM

It should be noted that several variances were required in order to allow the subdivision for this property. The subdivision for the property was to resolve an existing non conforming situation and therefore variance approvals for density and lot coverage were applied for and granted. From a Critical Area perspective, two variances are required in order to allow this patio/fireplace to remain and those are Buffer Disturbance and Steep Slope Disturbance. In addition, the applicant would need to resolve the overage in Lot Coverage created by the improvements to the site.

Buffer Disturbance

In order to reconstruct the dwelling on this site, a variance to buffer disturbance was applied for and approved. Soon after the home was completed, an additional variance was granted to allow the construction of a two level 20x16 square foot deck resulting in 600 sq ft of outdoor recreation area. In each case, the AHO found that the relief granted was the minimum necessary to afford the applicant relief. Additional relief is not warranted and cannot be supported.

Steep Slopes

In the event of an after the fact variance that involves the construction of a retaining wall, we routinely require a variance unless an applicant can clearly demonstrate that an erosive condition existed or that no steep slopes existed prior to development. The information provided with this application does neither. The site plan is an "As Built" site plan meaning that it represents the conditions as they exist today and therefore fails to illustrate the conditions that existed on the site at the time of construction. The 2020 County Topography which was developed prior to the installation of the patio and the site plan submitted with the 2017 variance application both indicate that the development of the patio would have resulted in steep slope disturbance. The site plan submitted with this application appears to have been based off of the 2023 County Topography which would have been "flattened" as a result of the installation of the patio. Steep slope disturbance would not have been supported had it been requested during the required permitting process and therefore cannot be supported as an after the fact request.

Lot Coverage

Mr. Evan's conclusion that the applicant receives "credit" for the portion of the driveway that serves the adjacent property is incorrect. The driveway exists entirely on Lot 1 and is therefore included in its entirety in the lot coverage calculations for Lot 1. Per the recorded subdivision plat, this lot is permitted 4985 (14.11 %) slightly less (315 sq ft) than the standard 15% as required by the subdivision regulations. Per this application the current permitted improvements (house, sidewalks and driveways) result in 4782 square feet of lot coverage. This number is unconfirmed and differs from previous applications and will be verified at permit. In order to obtain permit approval for the patio, 577 square feet of existing lot coverage would need to be removed while still maintaining full access to the adjacent lot.

Summary

This Department does not support the approval of the variances needed to allow the patio and fireplace structure to remain. 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 to make the home functional and provide the homeowner with outdoor recreation area. At that time, the hearing officer made the finding that the deck was in fact the minimum necessary to afford the applicant relief. The result of that variance approval was the reduction of the required 100' buffer to 44'. The current request would be to allow a solid, stone patio and fireplace within that 44' buffer resulting in no buffer and no protection for the adjacent tidal wetland.

This improvement does not meet the standards for the approval of a variance in the Critical Area and should be denied and the improvements should be removed from the buffer.



The Best Place

For All

Kelly Krinetz
Planning Administrator
Critical Area Team - Development Division
Office of Planning and Zoning
2664 Riva Road
Annapolis, MD 21401
Phone: (410) 222-7960
Email: pzkrin00@aacounty.org
www.aacounty.org



Wes Moore
Governor

Aruna Miller
Lt. Governor



Erik Fisher
Chair

Nick Kelly
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

November 14, 2025

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 5,427 square feet all within the LDA, of which the 780 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.

Additionally, 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, fireplace, 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. 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.

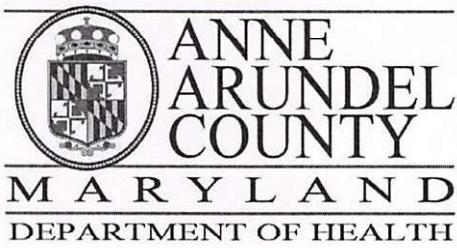
Thank you for the opportunity to provide comments. Please include this letter of opposition in your file and submit it as part of the record for this variance. Also, please notify the Commission in writing of the decision made in this case. If you have any questions about these comments, please contact 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



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

Tonii Gedin, RN, DNP
Health Officer

MEMORANDUM

TO: Sadé Medina, Zoning Applications
Planning and Zoning Department, MS-6301

FROM: Brian Chew, Program Manager *BC*
Bureau of Environmental Health

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



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