PRO. EXHIBIT# 1
CASE: 2025-0173-V
DATE: 11/13/25

Fernando Berra III
4690 Mountain Road
Lake Shore, Maryland 21122

Office of Administrative Hearings
Anne Arundel Circuit Court
44 Calvert Steet
Annapolis, Maryland 21401 - 2700

Re: Variance Hearing for Mr. & Ms. Hilaire – 2025-0173-V (AD 3, CD 3)

13 November 2025

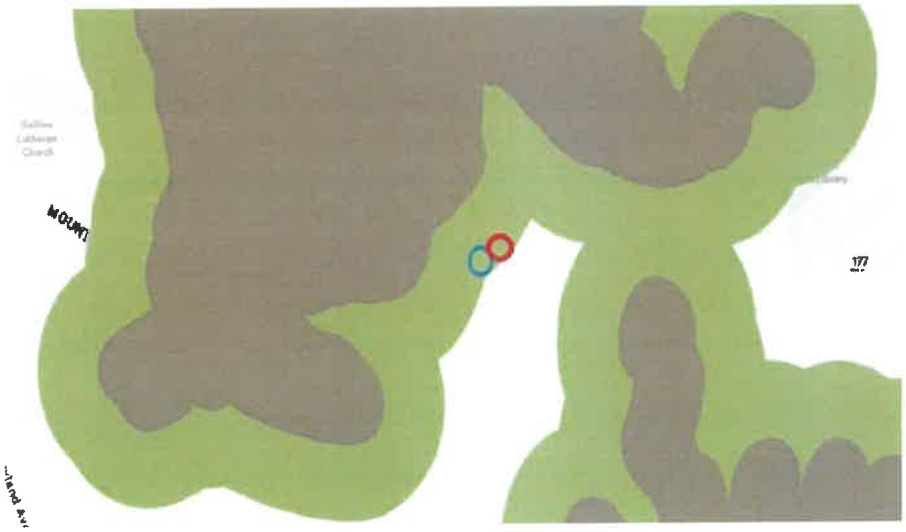
Mr. Douglas C. Hollmann:

I am writing to you to inform you that the variance application for Mr. & Mrs. Hilaire (2025-0173-V AD 3, CD 3)) is incomplete, inaccurate and deficient. There are at least three (3) violations on the property that must be satisfied before any permit can be considered or issued.

Mr. & Mrs. Hilaire property is adjacent to my property, and as such, their property has the same restrictions that my property has. Mr. & Ms. Hilaire have a forest Conservation Easement, 100' & 300' Bog Conservation Easements and 1,000' Critical Area buffer.

In a recent decision for my property, you wrote:

> *"The subject property is located in a limited activity area to Fresh Pond Bog as shown by the following aerial, which has been enhanced to show the 300-foot limited activity area in green and the bog buffer in brown. The blue circle identifies the applicants' property".* Mrs. Hilaire's property is the red circle.



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And in having such restrictions to their property, they are subject to Anne Arundel Code § 18-16-305 (b) – Requirements for critical or bog protection area variances – as you stated in a previous variance application:

> *"§ 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 bog protection 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 bog protection area program, 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 the 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 bog protection area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the bog protection area; or (6) the variance will not be detrimental to the public welfare."*

In that decision, you omitted the las two conditions:

> (7) The applicant, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808, of the State Code; and
> (8) The applicant has evaluated and implemented site planning alternatives in accordance with § 18-16-201(c). (Emphasis added)

As far as I am aware, neither Mr. nor Mrs. Hilaire met with any county personnel to evaluate and implement site planning alternatives as § 18-16-201(c) requires.

Mr. & Mrs. Hilaire indicated in their variance application that they are not removing any trees from the proposed location where the shed would be installed. However, on 25 January 2021, Mr. & Mrs. Hilaire cleared approximately 6,872 sqft and removed twenty-eight (28) trees from their property without a permit. As you know, disturbance of 5,000 sqft. and removal of trees in this area require separate permits.

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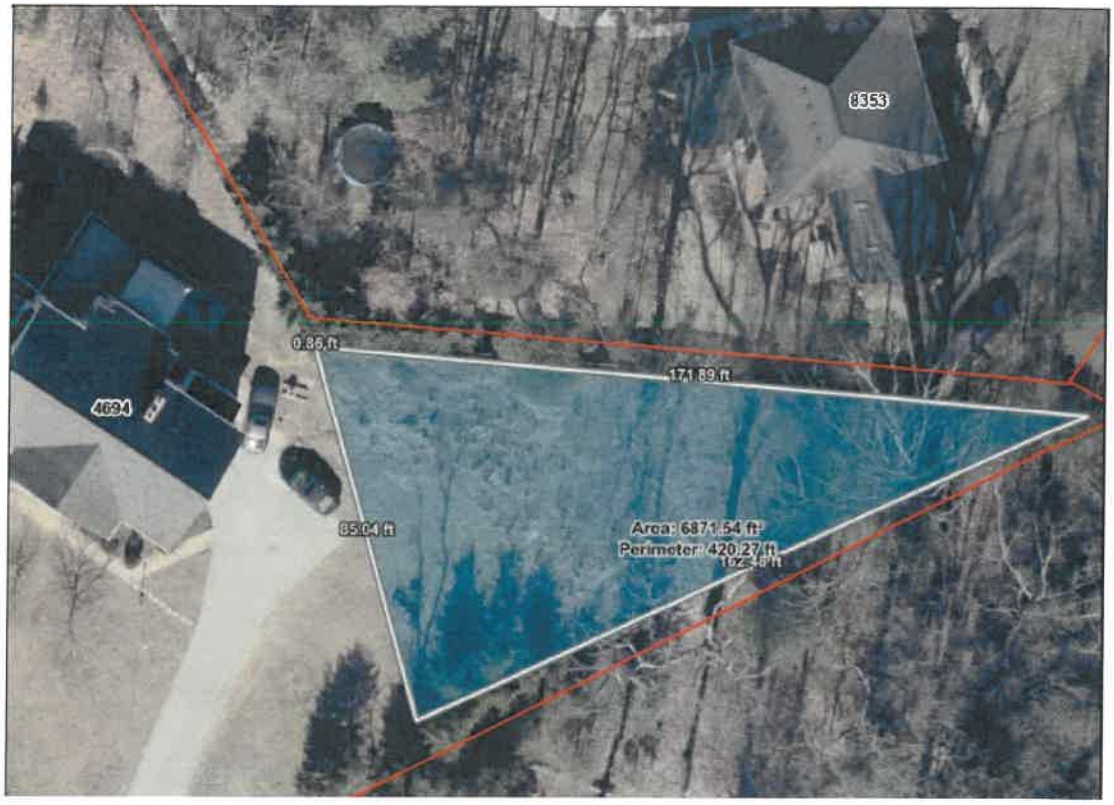

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Mr. & Ms. Hilare are required by Anne Arundel Code to satisfy any violation before any permit can be considered or issued. By removing twenty-eight (28) trees without a permit, and clearing more than 5,000 sqft, they must plant five (5) trees for every tree removed; therefore, they must plant one hundred and forty (140) trees or pay the county the cost for said 140 trees with a two (2) inch diameter as a penalty, for their violations.

Mr. Hilaire also cleared aproximatelly 3,500 sqft. and removed several trees on the Forest Conservation Easement and 300' Bog Conservation Easement. He would kill the trees and vegetation by pooring bleach into their roots to kill them – to justify removing them. However, he never had a permit to removed them either. The silver lining of this is that the county can go back and use their system to see the forestation coverage prior to September 2015 – when the Hilaires purchased the property, and compare it to the current forestation coverage. This will confim the deforestation that Mr. Hilaire committed.

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In addition, Mr. & Mrs. Hilaire also placed a metal playground adjecent to the well intake. Anne Arundel County required a setback of fifteen (15) feet away from the well intake to any structure.

In reference to the setbacks, the Anne Arundel County Inspections & Permits (I&P) and Planning and Zoning (P&Z) have always required for me to provide an engineering drawing – from an engineering company – that shows the distances and setback for all the structures. The site plan that Mr. and Mrs. Hilaire submitted is inaccurate in its measurements and it does not account for all the other required setbacks.

The areal picture below shows the location of the 10,000 sqft. septic backup area. The distance – from Mrs. & Mr. Richard P. Hayes' property line to Mr. & Mrs. Hilaire's driveway – showing approximately 25.89 ft. The AACO requires a 35' setback from a property line to any structure, and 15' from the driveway. The proposed shed is 12' by 16' – which clearly does not fit in this location, and it makes § 18-16-201(c) not only a necessity but a must.

The second picture shows that the area where the proposed shed would be placed is not flat, but at a gradient; therefore, a grading permit would be necessary in order for the shed to be on a flat ground; otherwise, the shed would be tilted. Please also note the proximity to the fence – delineating Ms. & Mr. Richard P. Heyes' property line.

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It is noteworthy to point out that Mr. & Mrs. Hilaire's front yard is also my front yard, so anything that he places there, it would be in direct sight to my property. Mr. & Mrs. Hilaire do not take care of their property at all. In the ten years that they have lived in that property, they have had a bulk of bricks sit on top of the septic and a non-functioning car parked on their driveway for nine (9) years. Mr. Hilaire cuts the grass about two to three times a year at most – letting the grass grow upto three feet. They have never power–washed their house siding – growing mold on the westside of the house; quite frankly, the property looks abandoned – except for the cars that are parked in the driveway.

Knowing the Hilaires, the shed would become an eyesore because they would not take care of it after a while, and as I mentioned before, it would also be located in what is considered my front yard – clearly violating *§ 18-16-305(c)(2)(i)* – as granting the variance would most certainly change the essential character of the neighborhood.

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Mr. & Mrs. Hilaire claimed in their permit for variance:

"*The shed is essential for securely storing equipment and materials currently exposed to the weather and are visible from the street which poses safety risks and detracts from the visual harmony of the neighborhood. The shed's placement will support the routine upkeep of the property and enhance both safety and curb appeal.*"

To my knowledge, the Anne Arundel Inspections & Permits and Planning and Zoning do not accept "Necessity" nor "Convenience" as a reason to put a structure on any property. As far as I know, Mr. & Mrs. Hilaire do not have any materials or equipment exposed to the weather no visible from the street – other than the bricks.

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Mr. & Mrs. Hilaire were supposed to post the "Notice" to their variance hearing on the public road – fourteen days prior to the hearing – as required by code. However, they failed to meet that requirement as they placed it right next to their mailbox – which is in a private access road away from Mountain Road. The sign is not noticeable from the main road. Pease also note that you cannot see either any material or equipment from that distance – as they claimed.

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This variance hearing is "to place a shed in the front yard". Mr. & Mrs. Hilaire do not address any of the other setback conflicts – nor the conservation requirements that they must to address in this hearing / permit application – requirements that we are all subject in our properties. The "necessity" nor "convenience" are not sufficient reasons to grant a variance and Mr. & Mrs. Hilaire are no suffering any "unwarranted hardship" by the county denying the variance at this time.

In addressing "unwarranted hardship", you wrote in a previous hearing:

> *"The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] 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." (Emphasis added.). The question of whether the applicant is entitled to the variance requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicant 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]. Furthermore, the applicant carries the burden of convincing the Hearing Officer "that the applicant has satisfied each one of the variance provisions. "3 (Emphasis added.) "Anne Arundel County's local critical area variance program contains ... separate criteria .... Each of these individual criteria must be met. "Becker v. Anne Arundel County, supra, 174 Md. App. at 124; 920 A.2d at 1124. (Emphasis in original.) In other words, if the applicant fails to meet just one of these criteria, the variance is required to be denied."*

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Therefore, Mr. & Mrs. Hilaire must resolve and satisfy all three (3) violations they have committed before any permit can be considered or granted – just like we all have been force to do.

I thank you for your time and concern in this matter. If you have any questions regarding this subject, please do not hesitate to contact me.

Respectfully,

Fernando Berra III
(410) 570-1171

MH/fb
Enclosure(s)
cc: