

**Douglas Bourquin LLC
Land Development Consulting
4 Cindy Court, Severna Park, MD. 21146
ddbourquin@gmail.com
410-279-6053**

December 29, 2025

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

Attn: Sterling Seay, Zoning Administrator

Ref: 910 Hawkins Street, Edgewater, Vidmar Property, G02019093, B02440651, Flood Waiver #G008-25
Variance Application to request Time Extension on Case#2024-0090-V, Letter of Explanation/Justification

Dear Ms. Seay:

The above referenced project has been the subject of Case#2022-0030-V, BA 21-22V, and Case#2024-0090-V. The proposed new SFD and site work on the subject property has also been reviewed and approved under Grading Permit #G02019093 and Flood Plain Waiver #G008-25. The Building Permit #B02440651 is nearly approved apart for the payment of certain fees and the finalization of the recording of a Non-Conversion Agreement and processing of Sewer PWA's which have been submitted to I&P for preparation & processing.

The reason for this requested "second" time extension is due to the fact that we are concerned that we may not quite have the Building Permit in hand by the current Variance expiration date of 2-1-2026, which was granted on 8-1-2024, when Case#2024-0090-V was approved. Therefore, based on the detailed "Time Line" which follows below showing how we have relentlessly prosecuted the work on this project, we respectfully request that you approve this time extension request which will ensure that we will have sufficient time to complete the remaining work needed for the issuance of the Building Permit.

"Time Line" demonstrating continuous work to obtain the required Building Permit:

1. 8-1-24 Approval of Case#2024-0090-V granting time extension until 2-1-26.
2. 8-23-24 Virtual meeting with Bob Murphy and Jeff Bugno both with I&P Engineering to restart the Engineering review of the project by the 4th review Engineer.
3. Mr. Murphy and Mr. Bugno suggested that we make a pre-formal resubmission, addressing the last 5 comments from Raghu Badami, the prior I&P Engineer manager.

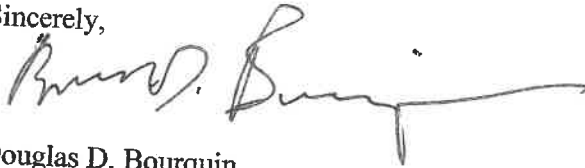
4. We made the pre-formal submittal addressing Mr. Badami's 2-18-24 comments on 9-9-24.
5. On 9-11-24 we received Mr. Bugno's first set of review comments. We worked on the Plans to resolve and address the comments and to prepare a point by point response.
6. On 2-16-25 we made a Grading Permit resubmission addressing the 9-11-24 comments.
7. The resubmittal did not get logged into the County system until 3-31-25 and on 3-31-25 we received the 2nd set of review comments from Mr. Bugno.
8. We worked on addressing/resolving the comments and prepared a point by point response letter.
9. On 4-28-25 we made a Grading Permit resubmission addressing the 3-31-25 comments.
10. On 5-28-25 we received a 3rd set of minor Engineering comments. We worked on addressing these comments and prepared a point by point response letter.
11. On 6-3-25 we made a Grading Permit resubmission addressing the 5-28-25 comments.
12. On 7-2-25 we received word that the Engineering review had been conditionally approved and we began work on the payment of fees and the posting of the Grading security.
13. The Grading Permit was issued on 10-6-25 following the payment of \$14,208.25 off-site reforestation fee-in-lieu and the payment of the on-site \$2,407.50 Forestation Agreement security and inspection fee and the posting of the \$20,266.86 Grading Bond.
14. At this point the work which was started during the summer of 2025 could resume on both the Building Plans and Permit application and on the Mayo Sewer Plans.
15. The architect finalized the Building Plans and in early October 2025, the BP application was submitted. Also, we had partnered with Surveyor Rocco Tripodi and Engineer Jerry Tolodziecki to assist with the Public Easement Plats and The Mayo Sewer Plans and on 9-24-25 we submitted the Mayo Sewer Plans and supporting documents to Mr. Jeff Bugno (I&P) for his first review.
16. We received his 1st Sewer comments on 10-8-25 and we immediately began work to resolve/address the comments.
17. On 10-16-25 we resubmitted the Sewer Plans and supporting docs to Mr. Bugno.
18. On 10-28-25 we received Mr. Bugno's 2nd round of mostly minor comments on the Sewer plans and on 10-31-25 we resubmitted to him for review/approval.
19. On 11-6-25 we received a message from Mr. Bugno that the Plans, etc. were ready to be submitted for Docu-sign approval process.
20. Between 11-7-25 and 11-17-25 the Docu-sign approval process was completed and on 11-18-25 we began work on assembling the PWA package for the sewer. We submitted the PWA package including Certificates of Title and Insurance to I&P on 12-1-25 for processing.
21. About this time, we learned that the Flood Plain waiver which was required for the Building Permit approval could be prepared and submitted.
22. We worked with the Architect and prepared the Waiver request and on 11-17-25 we submitted the Flood Plain waiver request to I&P for review.
23. On 12-5-25 the Flood Plain Waiver was conditionally approved pending the payment of the \$250 Fee which was paid on 12-8-25 and the recording of the Non-Conversion Agreement which needed the owner's signature. We sent the document to the owner Mr. Ken Vidmar, USN, stationed in San Diego, for him to sign, notarize and return for recording.

24. On 12-5-25 we also received a comment from I&P that the proposed Sewer work needed to be separated into two portions – offsite and onsite – and that two separate PWA's were needed, one for each portion.
25. On 12-7-25 to 12-15-25 we worked with the Surveyor and Engineer to prepare and certify new PWA Cost Estimates and Easement Exhibits and by 12-15-25 we had completed the docu-sign process again and were able to prepare and submit the new two PWA packages for I&P processing and preparation.
26. On 12-16-25 we met with I&P staff and submitted the two PWA packages. At that time the staff member mentioned the need to obtain an Opinion Letter from the owner's Legal Counsel regarding the owner's right to use the abutting unimproved Private Platted R/W known as Shady Drive, for access and utility to serve his 910 Hawkins Street property. We immediately contacted the owner and his attorney to get that documentation started. We have received the document from the Attorney and have submitted it to I&P for review.

We believe that we are very close to Building Permit approval and issuance but as mentioned, we are concerned that with the Holidays at the end of the year and the potential for County staff to be out of the office for Holidays or for "use or lose" annual leave days, there may not be enough time to complete the remaining processing - including the recording of the Non-conversion Agreement at the County Courthouse Land Records office. Therefore, as mentioned, we respectfully request a Variance to Art. 18-16-405(a), to extend the expiration time beyond the current 2-1-2026 Expiration date noted on the AHO 8-1-2024 decision on Case#2024-009-V. Since we are so close to having the Permit in hand, the Time Extension requested will allow more than sufficient time for I&P to complete the BP review process and issue the Building Permit.

Please contact us if you have questions or comments regarding this request. All of the required supporting Plans and documentation (Site Plan, Deed, Updated list of Property Owners, Board of Appeals BA-21-22V, AHO 2024-0090-V, and the 2024 Variance App. Letter of Explanation) is submitted herewith along with this letter, for your convenience and review. Thank you for your consideration in this matter.

Sincerely,



Douglas D. Bourquin

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER: 2024-0090-V

KENNETH VIDMAR

FIRST ASSESSMENT DISTRICT

DATE HEARD: JULY 30, 2024

ORDERED BY:

DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER

PLANNER: SARA ANZELMO

DATE FILED: AUGUST 1, 2024

PLEADINGS

Kenneth Vidmar, the applicant, seeks a variance (2024-0090-V) to allow an extension in time for the implementation and completion of a previously approved variance on property with a street address of 910 Hawkins Street, Edgewater, MD 21037.

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 300 feet of the subject property was notified by mail, sent to the address furnished with the application. Daniel Mellin submitted the affidavit of Wade Schoer indicating that the property was posted for more than 14 days prior to the hearing (Applicant's Exhibit 1). Therefore, I find and conclude that there has been compliance with the notice requirements.

FINDINGS

A hearing was held on July 30, 2024, in which witnesses were sworn and the following evidence was presented with regard to the proposed variance requested by the applicant.

The Property

The applicant owns the subject property which has frontage on the west side of Hawkins Street, north of Shady Drive, Edgewater. It is known as Lots 217 through 222 of Parcel 27 in Grid 4 on Tax Map 60 in the North Selby subdivision.

The property comprises 29,303 square feet and is zoned R2–Residential District. This lot is designated in the Chesapeake Bay Critical Area as resource conservation area (RCA). The site is undeveloped and substantially encumbered by the buffer to Brickhouse Creek.

The Proposed Work

The applicant is requesting additional time to construct a new single-family dwelling and associated facilities at the subject property.

The Anne Arundel County Code

§ 18-16-405(a) provides that a variance that is not extended or tolled expires by operation of law unless the applicant obtains a building permit within eighteen months of approval. On May 12, 2022, the Administrative Hearing Officer denied variances under Case No. 2022-0030-V. However, the applicant appealed that decision, and the Board of Appeals (BA 21-22V) ultimately granted the variances on November 18, 2022. That approval would have been valid until May 18, 2024.

The Variance Requested

The applicant seeks an 18-month extension in time in which to implement and complete the variance granted in Case No. BA 21-22V.

The Evidence Submitted At The Hearing

Findings and Recommendations of the Office of Planning and Zoning (OPZ)

Sara Anzelmo, zoning analyst with the OPZ, presented the following findings:

- This application for an extension in time was properly made on May 10, 2024, prior to the expiration of the eighteen month time period.
- While the County did not support the critical area and zoning variances requested in the 2022 case, the merits of the original variance case are not a factor when determining whether or not a time extension is warranted. Rather, a determination must be made as to whether the applicant has been diligently working towards obtaining the necessary approvals in order to proceed with the proposed development. The applicant's letter of explanation provided an extensive timeline detailing the various steps that he has taken towards obtaining his building permit. Based on this timeline, it appears that the applicant has been actively pursuing the necessary approvals.
- There is no evidence that this first request for an extension in time would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.
- Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, OPZ recommends *approval* of the variance.

Other Testimony and Exhibits

The applicant was represented at the hearing by Daniel J. Mellin, Esquire, of the law firm of Hillman, Brown & Darrow, P.A. who presented evidence through Douglas Bourquin, the applicant's engineer, that the applicant was unable to complete the application process for approvals and permits within the 18-month time period allowed by the Code. The delays caused by the complicated environmental features of the site were exacerbated by turnover at Inspections & Permits. The applicant believes that he is close to obtaining final approvals.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

DECISION

I find, based upon the evidence, that because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship and to enable the applicant to develop the lot. The evidence is clear that the applicant has been delayed in obtaining the permits necessary to complete the variance granted in Case No. BA 21-22V because of the complicated environmental features of the site.

I further find that the requested variance is the minimum variance necessary to afford relief, that the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located, 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, be contrary to acceptable clearing and replanting practices required for development in the critical area, or be detrimental to the public welfare.

ORDER

PURSUANT to the application of Kenneth Vidmar, petitioning for a variance to allow an extension in time for the implementation and completion of a previously approved variance on property with a street address of 910 Hawkins Street, Edgewater, MD 21037;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **1st day of August, 2024**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a zoning variance to the time limitation in § 18-16-405(b) to extend the time until **February 1, 2026** to obtain a building permit and to complete the work allowed in Case No. BA 21-22V.

Furthermore, County Exhibit 2, referenced in the decision and order granted in Case No. BA 21-22V is incorporated herein as if fully set forth and made a part of this Order.



Douglas Clark Hollmann
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise they will be discarded.

**RE: An Appeal from a Decision of the
Administrative Hearing Officer**

KENNETH VIDMAR

Petitioner

* **BEFORE THE**
*
* **COUNTY BOARD OF APPEALS**
*
* **OF ANNE ARUNDEL COUNTY**
*
* **CASE NO.: BA 21-22V**
* **(2022-0030-V)**
*
* **Hearing Date: August 30, 2022**
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MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal of a decision from the Administrative Hearing Officer denying variances to allow a dwelling with less setbacks and buffer than required¹, on property known as Lots 217-222, with frontage on the west side of Hawkins Street, north of Shady Drive, Edgewater.

Summary of Evidence

Mr. Doug Bourquin, the Petitioner's expert in site design and planning, testified that the property comprises approximately 29,000 square feet across 6 lots in north Selby. The proposed house would be on lots 217 and 218. The required 100-foot stream buffer impacts the entire building site. The proposal places the house 11 feet from Hawkins Street and 19 feet from Shady Drive, to minimize the impact to the non-tidal wetlands buffer. This lot is within the R2 – Residential District and a 30-foot minimum front yard setback is required. The Petitioner will connect his driveway to Hawkins Street. There are no steep slopes, and the southwest corner of the property is outside of the 100-foot stream buffer. The property will be served by a private well

¹ The Petitioner withdrew his request for a one foot height variance prior to the commencement of testimony in this appeal.

and a Mayo tank sewer disposal system. The County requires that the Mayo tank be placed in a 20-foot by 20-foot utility easement along the road frontage. Mr. Bourquin explained that stormwater will be managed with urban planter boxes approximately 75 feet from the stream. The urban planter boxes will be within the stream buffer, but outside of the wetlands. The footprint of the proposed house will measure 21 feet by 40 feet. It is an undersized single-family home, but will allow the Petitioner a house to live in. There was no way to avoid impacting the buffer, but the non-tidal wetlands are not impacted by the proposed development. The limit of disturbance is roughly 30 feet by 12 feet, and it gets wider closer to the house. There will be temporary disturbances to drill the well and install the silt fence. The permanent disturbance will comprise 1,100 square feet, including 840 square feet for the house. The granting of this variance would be smart growth because it would consolidate 6 existing lots into one lot with a modest house. The lots were created in 1932 prior to zoning and the Critical Area. The variances will not reduce forest cover because the Petitioner will be required to mitigate at a ratio of 3 to 1. Everything outside of the limits of disturbance will be placed in a conservation easement.

Mr. Aaron Keel, the Petitioner's expert in environmental consulting, testified that the site is some of the flattest terrain in the Chesapeake region. Based on the topography of the site, the overall development design, and the distance of the rain garden outlet to the stream, there will be no adverse impact on water quality. The perennial stream is not perennial due to rainfall. It is perennial due to its connection to the groundwater. He does not believe the house will impact the stream or groundwater. Forest Interior Dwelling Species ("FIDS") are a sensitive group of birds associated with forest tracts of at least 100 acres. FIDS are becoming increasingly rare. The Department of Natural Resources developed guidelines for how to develop in FIDS habitats. The proposed house would be on the edge of the FIDS habitat. The habitat will not change just because

a home is built on the edge. He believes the proposal has done the best to provide a livable structure in the smallest footprint. There are no known rare species on this property.

Mr. Kenneth Vidmar, the Petitioner, has been looking for a buildable lot that suited his purposes for about 2.5 years. He knew when he purchased the property that there were issues and included a feasibility study in the contract. Many of the builders he contacted were not interested in developing this property. This property appealed to him because he wanted to live close to nature. The house was designed long and narrow to minimize the impacts to the environment. The garage was designed to accommodate a pickup truck which he intends to purchase in the future.

Mr. Sumner Handy, a planner for the Office of Planning and Zoning ("OPZ"), testified that OPZ recommends denial of the variances. The site is encumbered by several environmentally sensitive features, Brickhouse Creek, a FIDS habitat, and it carries a designation of Resource Conservation Area, which is the most restricted of the three Critical Area designations. The footprint of the house is proposed to be 840 square feet, but Mr. Handy believes that the footprint can be reduced. The floor area would be approximately 1,680 square feet. If the footprint is reduced then the variances would be reduced, therefore the current proposal cannot be the minimum necessary. The Petitioner agreed that the 40-foot width for a single-family house is a standard dimension, if that dimension could be reduced, it follows that others could be reduced. Some variances will be necessary to develop this site, but the right to disturb the amount requested would grant the Petitioner a special privilege. The purpose of the Critical Area Program is to manage development and minimize the impact to water quality and natural resources, therefore this much disturbance cannot be the minimum necessary. Given the environmental features present, one cannot expect to construct a conventional dwelling and tradeoffs must be made. The Critical Area

Team and Critical Area Commission have concerns about the degree of buffer disturbance, flood elevation, and the presence of FIDS habitat.

Ms. Gwen Mullins, a next-door neighbor, testified that the area is very muddy. She is concerned about what will happen during and after the construction.

Ms. June Sanford, an area resident, explained that she lives on Branhum Road. She would like the Board to consider the extensive wildlife in that area.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusion

The subject site is 29,303 square feet of land with about 108 feet of road frontage on the west side of Hawkins Street. It is identified as Lots 217-222 in the North Selby subdivision. It is zoned R2 – Residential District and is in the Chesapeake Bay Critical Area and designated as RCA – Resource Conservation Area. The site is encumbered by the required buffer to Brickhouse Creek. The lot is currently undeveloped, and the Petitioner is proposing the construction of a new three-story dwelling with attached garage. The dwelling would measure 21 feet wide by 40 feet deep and include associated features and a driveway. The site will be served by a well and a Mayo system sewer.

Anne Arundel County Code (“Code”) Section 18-13-104(a) requires “a minimum 100- foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands.” Section 17-8-301 requires that development on properties containing buffers shall meet the requirements of Title 27 of the State Code of Maryland (“COMAR”). COMAR 27.01.01(B)(8)(ii) states that a buffer exists “to protect a stream, tidal wetland, tidal waters or

terrestrial environment from human disturbance.” COMAR 27.01.09(E)(1)(a)(ii) authorizes disturbance to the buffer for a new development activity or redevelopment activity by variance.

The 100-foot perennial stream buffer, nontidal wetlands and buffers thereto covers much of the subject property. The Petitioner proposes approximately 2,249 square feet of disturbance within these features with approximately 1,100 square feet being permanent disturbance. To construct the dwelling as planned, the Petitioner requires variances to the Critical Area Program and variances to the bulk regulations in the R2 District to construct within the required setbacks to the front lot line and side lot line. For ease of analysis, we shall divide our findings into two sections, one pertaining to the variances to the Critical Area Program and another regarding the variances to the setback requirements of the Bulk Regulations.

A. Critical Area Variance

Applicants seeking a variance to the Critical Area Program must satisfy an extensive list of requirements set out in the Code § 3-1-207 (b) and (e). An applicant must meet each of the variance criteria of the Code to obtain variance approval. Failure to meet just one of the criteria requires that the application be denied.

The Petitioner is first required to show that “because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program would result in an unwarranted hardship, as that term is defined in the Natural Resources Article, § 8-1808, of the State Code, to the applicant.” § 3-1-207(b)(1). Natural Resources Article, Section 8-1808 states “‘unwarranted hardship’ means 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.” The subject site consists of 6 lots and comprises approximately 29,303

square feet. The property has a flat topography with an elevation of 2 to 5± feet above sea level, contains a perennial stream and wetlands, and is encumbered by the required buffers thereto. The lots were platted in 1932. This is a legal, buildable site, however; given the proximity to Brickhouse Creek and the impact of the required setbacks, the property cannot be developed without some variance relief. We find that the Petitioner has met his burden that strict implementation will result in unwarranted hardship.

The Petitioner must also establish that a literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development, the County's Critical Area Program and its related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County. § 3-1-207(b)(2). Property owners in the Critical Area are permitted reasonable use of their property. A home is a reasonable use on a legal lot in the Critical Area. The evidence shows that much of the surrounding neighborhood has been developed. Mr. Bourquin testified that a typical house in this community measures 30 feet by 40 feet. This home would measure 21 feet by 40 feet, having a footprint of 840 square feet with 1,680 square feet of livable space. The total lot coverage proposed is 2,390 square feet with allowable lot coverage of 4,395 square feet. This is a reasonable amount of lot coverage, and the proposed dwelling is in harmony with others in the neighborhood. The Petitioner cannot develop this lot without variances given the impact of the Critical Area Program upon the site. Therefore, we find that a literal interpretation of the Critical Area Program would deprive the Petitioner of rights commonly enjoyed and find he has met his burden.

The Petitioner must show that "the granting of a variance will not confer on an applicant any special privilege that would be denied by: (i) COMAR, Title 27, or the County critical area program to other lands or structures within the County critical area...." § 3-1-207(b)(3). It is not

a special privilege to construct a home on a legal lot within the Critical Area. The proposed dwelling is modest in size and will be constructed on piers to avoid the FEMA flood levels. The Petitioner has requested a three-story dwelling with an attached garage under the dwelling which is under the amount of lot coverage allowed by the Code. The Petitioner has designed the development in such a way to ensure that disturbance is as far from Brickhouse Creek and wetlands as reasonably practicable. We find that the Petitioner has met his burden to show the variances will not confer a special privilege that would otherwise be denied by the Critical Area Program.

The Petitioner needs to establish "that the variance request: (i) is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance was filed; and (ii) does not arise from any condition relating to land or building use on any neighboring property." § 3-1-207(b)(4). The property is heavily encumbered with sensitive environmental areas and the required buffers thereto which limit the area of development to a small triangle of land near Hawkins Street. The Mayo Tank is required to be in this area. The Petitioner has not commenced construction on the lots. There are no conditions relating to land or building use on neighboring properties which compelled the instant request.

The Petitioner must "show that the granting of the variance: (i) will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area...; and (ii) will be in harmony with the general spirit and intent of the County critical area program..." § 3-1-207(b)(5). The Petitioner's property is within the Critical Area, encumbered by non-tidal wetlands, a stream, the 100-foot buffer, and contains FIDS habitat. The proposed structure is modestly sized. The Petitioner will use two urban planter box rain gardens located at least 75 feet away from the stream to manage runoff. The Petitioner will provide mitigation for any disturbance

at a 3 to 1 ratio. Lastly, the undeveloped portions of the lots would be placed in a conservation easement to ensure that the other sensitive features remain protected. The stormwater management, mitigation and conservation easement will ensure that the environment will receive a net benefit post-development.

The Petitioner's most difficult burden to meet is the requirement that he establishes "by competent and substantial evidence, [that he has] overcome the presumption contained in the Natural Resources Article, § 8-1808 of the State Code." § 3-1-207(b)(7). Under the Natural Resources Article, it is presumed "that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." Md. Code Ann., Natural Resources Art., § 8-1808(d)(2). The Maryland General Assembly has expressly recognized that the Critical Area is a "natural resource of great significance"; and that human activity in the buffer "can have a particularly immediate and adverse impact on water quality and natural habitats", and "the capacity of these shoreline and adjacent lands to withstand continuing demands without further degradation to water quality and natural habitats is limited." *Id.* § 8-1801(a). Particularly, the Legislature stated "...the new development of nonwater-dependent structures or an increase in lot coverage is presumed to be contrary to the purpose of this subtitle, because these activities may cause adverse impacts, of both an immediate and a long-term nature, to the Chesapeake and the Atlantic Coastal Bays and thus it is necessary wherever possible to maintain a buffer of at least 100 feet landward from the mean high water line of tidal waters, tributary streams, and tidal wetlands." *Id.* Not only do these statutory provisions require the Board to presume that the requested development activity does not conform to the general purpose and intent of the Critical Area Program, but they also place the

substantial burden of proof and persuasion to overcome this presumption firmly on the shoulders of an applicant for a variance. Here, the Petitioner is proposing to construct a small single-family dwelling with approximately 1,100 square feet of permanent disturbance within the Critical Area buffers. This development will create 2,390 square feet of lot coverage. The Petitioner's proposal includes conservation easements, stormwater management through urban planter boxes, and mitigation at a 3 to 1 ratio. The proposal will not increase runoff from the site. We find that the Petitioner's proposal is not contrary to the general purpose and intent of the statute, which is meant to manage and not prevent reasonable development in the Critical Area.

Next, the Petitioner has the burden of proving that "the variance is the minimum variance necessary to afford relief." § 3-1-207(e)(1). The Petitioner proposes a modest house with associated structures and limited disturbance. The house will be on piers to raise it out of the flood area and have a footprint of just 840 square feet. This lot is heavily impacted by the presence of a stream and non-tidal wetlands. Yet, the proposal only disturbs buffers and has avoided the non-tidal wetlands and has placed as much development outside of the nontidal wetlands buffer as possible. Therefore, we find that the Petitioner has proved this is the minimum necessary.

An applicant for a variance must show that granting the variance will not "alter the essential character of the neighborhood or district in which the lot is located." § 3-1-207(e)(2)(i). In this case, we have a residential neighborhood dominated by single-family homes built on elevations very close to sea level. The existing homes have a larger footprint, but the size, shape, and configuration of the proposed house would be in harmony with those nearby. The development in this lot ensures that the other lots on this site will not be developed which maintains the FIDS habitat and protects the stream, non-tidal wetlands, and other sensitive sites.

The Petitioner is also required to show that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." § 3-1-207(e)(2)(ii). The property comprises 29,000± square feet and the development will be near the edge of the property and as far as possible from the environmental features on site. The proposed home will be buffered from adjoining land uses by the area to be placed in forest conservation and the unimproved private rights of way in this community. As such, the variances will not impair the use or development of adjacent properties.

The Petitioner next must establish that the granting of the variance will neither "reduce forest cover in the limited development and resource conservations areas of the critical area" nor "be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." § 3-1-207(e)(2)(iii)-(iv). The proposed development will temporarily reduce forest cover in the Critical Area. Trees and vegetation will be removed because of this development; however, the Petitioner's proposal includes required mitigation and reforestation. The appropriate reforestation will result in greater forest cover and therefore, the Petitioner has met his burden.

Lastly, the Petitioner must establish that "the granting of the variance will not be detrimental to the public welfare." §3-1-207(e)(2)(v). The Petitioner's proposal will cause disturbance within required buffers. However, the Petitioner has maximized the distance from sensitive environmental features, located the house as far as possible out of the FIDS environment, mitigated for forest cover disturbance, provided stormwater management, and minimized the house footprint. For these reasons, the Petitioner's proposal will not be detrimental to the public welfare.

We find, therefore, that the Petitioner has met the criteria set forth in section 3-1-207 to

obtain the requested variances to disturb within the required 25-foot buffer to non-tidal wetlands, and to disturb within the required 100-foot buffer to tributary streams.

B. Bulk Regulations Variance

The Anne Arundel County Code Section 18-4-601 requires a principal structure be set back a minimum of 30 feet from a front lot line and 20 feet from a corner side lot line. The Petitioner is proposing a dwelling located as close as 11 feet from the front lot line and 18 feet from the corner side lot line, thereby necessitating variances of 19 feet and 2 feet, respectively.

The Board of Appeals may grant a variance when strict compliance of the Zoning Ordinance, in this case Code Section 18-4-601, would result in practical difficulties or unnecessary hardship. Code, § 3-1-207(a). Provided the spirit of the law is observed, public safety is secured, and substantial justice is done, a variance may be granted upon an affirmative finding that (1) "because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with" the regulation; OR (2) "because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot." *Id.* The subject property is mostly encumbered with sensitive environmental features including the 100-foot buffer, a stream, and FIDS habitat. Only a small triangle of the property is not encumbered by the buffer. The Mayo Tank must be placed in that portion of the property. The property is comprised of legal lots platted in 1932, prior to zoning and Critical Area regulations. A dwelling is lawful in the R2 District. Strict compliance with the setback regulations would force development farther into a more sensitive area. The sensitive

environmental features of this lot result in no reasonable possibility of developing the lot in strict conformance with the setback restrictions.

Even when a Petitioner meets the requirements of County Code, Section 3-1-207(a), as here, a variance may not be granted unless the Board finds that a Petitioner for a variance also meets the requirements of Section 3-1-207(e). The burden of proof and persuasion rests firmly with the Petitioner to meet all the criteria.

First, the Petitioner has the burden of proving that "the variance is the minimum variance necessary to afford relief." § 3-1-207(e)(1). As previously discussed, this property is heavily encumbered by sensitive environmental features including a stream, non-tidal wetlands, and the required buffers thereto. There is no room for a home once the setbacks are imposed upon the lot. The footprint of the dwelling, integral garage, and associated structures (driveway, stormwater management, well and septic/sewer tank) are modestly sized. The lot development is well under the maximum allowed. We find that any further reduction in the house would not avoid a variance, but would deprive the Petitioner of use of the property. The reduced front and side lot line setbacks assist the environmental features on the lot, but the reduction will not harm nearby properties. The undeveloped private road right of way provides nearby properties with a buffer that more than makes up for the reduced setbacks proposed here. Therefore, the Petitioner has met his burden to show that the requested variances are the minimum necessary.

Furthermore, the Petitioner must show that granting the variance will not "alter the essential character of the neighborhood or district in which the lot is located." § 3-1-207(e)(2)(i). In this case, the community is a residential neighborhood of single-family homes. The size, shape and configuration of the house is in harmony with those nearby. The setbacks will appear to meet

the Code criteria due to the undeveloped private rights of way adjoining the site. The variance will not change the essential character of the neighborhood.

The Petitioner must also show that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." § 3-1-207(e)(2)(ii). The Petitioner is seeking setback variances, however; this corner lot is bounded by two unimproved, private rights of way. Thus, the adjacent lots will be buffered well from the proposed development. Additionally, much of the site will be preserved with a forest conservation easement and the parcel will appear lightly developed. These variances to setbacks will not impair the use or development of adjacent properties.

The Petitioner next must establish that the granting of the variance will neither "reduce forest cover in the limited development and resource conservations areas of the critical area" nor "be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." § 3-1-207(e)(2)(iii)-(iv). The proposed development will temporarily reduce forest cover in the Critical Area. Trees and vegetation will be removed during the construction of the home and related improvements; however, the Petitioner's proposal includes required mitigation and reforestation. The appropriate reforestation will result in greater forest cover (3:1 mitigation) and therefore, the Petitioner has met his burden on these criteria.

Lastly, the Petitioner must establish that "the granting of the variance will not be detrimental to the public welfare." §3-1-207(e)(2)(v). The Petitioner is seeking setback variances to reduce impact to the sensitive environmental features on site. The dwelling will be located with a reduced corner and front-line setback, but the existing unimproved private rights of way (Shady Drive - 40 feet wide and Hawkins Street - 40 feet wide) will provide more than minimum corner and front-line setbacks. The variances will protect the environmental features, which is in the

public's interest, with no harm to adjacent parcels. The Petitioner's request will not be detrimental to the public welfare.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 18th day of NOV., 2022, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner's requests for (1) a variance to disturb the buffer to the mean high water line of tributary streams and the buffer to non-tidal wetlands ; (2) a variance of 19 feet to the minimum 30-foot setback from the front lot line; and (3) a variance of 2 feet to the minimum 20-foot setback from the corner side lot line, are hereby **GRANTED**.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

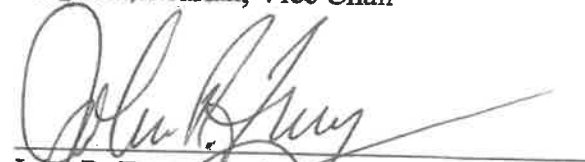
If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.


Any notice to this Board required under the Maryland Rules shall be addressed as follows:
Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Deana L. Bussey, Clerk.

NOTICE: This Memorandum of Opinion does not constitute a building or grading permit and may be valid for a limited time period. In order for the applicant to construct or retain any structures allowed by this opinion, or to perform or retain any grading allowed by this opinion, the applicant must apply for and obtain the necessary building or grading permit and any other approval that may be required to perform the work described herein within the time allotted by law or regulation.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



Scott MacMullan, Vice Chair

John R. Fury, Member

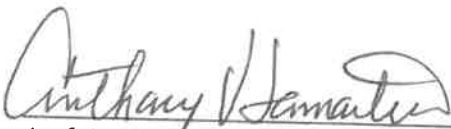
Darrin Michael Jacobs, Member

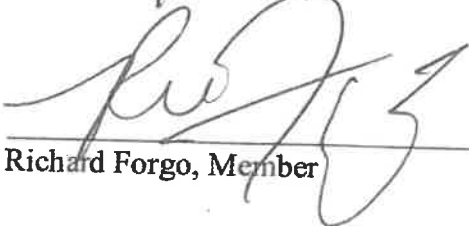
Maria K. Patterson, Member

*(Patsy Baker Blackshear, Member, did not
participate in this appeal.)*

CONCURRING

We concur with our fellow Board members to approve the requested variances. We believe the Petitioner has met all of the variance criteria for each request and should be permitted to develop this lot. We have concerns with the current stormwater management proposed for this site, however. We are unsure how two rain gardens with three bushes in each will be sufficient to properly manage the runoff from this site. The testimony presented by the audience members that the subject area is often muddy and swamp like raises concerns that the stormwater management will be ineffective. However, the evidence as provided demonstrates that the Petitioner has met his burden for a variance. Our only hope is that the County pays special attention, and the Petitioner more thoroughly investigates extensive management of the runoff from the site in the permitting stage. Therefore, we believe the variances should be approved.


Anthony V. Lamartina, Chair


Richard Forgo, Member