

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

**APPLICANT:** Kenneth Vidmar

**ASSESSMENT DISTRICT:** 1

**CASE NUMBER:** 2026-0001-V

**COUNCIL DISTRICT:** 7

**HEARING DATE:** February 17, 2026

**PREPARED BY:** David Russell  
Planner

DR

**REQUEST**

The applicant is seeking a variance to allow a second extension of time for the implementation and completion of a previously approved variance, on property located at 910 Hawkins Street, in Edgewater.

**LOCATION AND DESCRIPTION OF SITE**

The subject property is approximately 29,303 square feet in area, including lots 217-222, located approximately 400' north of the intersection of Hawkins Street and Calvert Street (Parcel 27, Grid 4, Map 60, Lot 217). This non-waterfront property is zoned R2 - Residential, and located entirely within the Chesapeake Bay Critical Area overlay and is designated as RCA - Resource Conservation Area. It is substantially encumbered by the buffer to Brickhouse Creek and is currently unimproved.

**PROPOSAL**

The applicant proposes to construct a new single-family detached dwelling and associated facilities at the subject property.

**REQUESTED VARIANCES**

§ 18-16-405(a) of the Anne Arundel County Zoning Ordinance provides that a variance or special exception that is not extended or tolled expires by operation of law unless the applicant obtains a building permit within eighteen months of approval.

- On March 12, 2022, under case 2022-0030-V, a variance to allow a new single family dwelling with less setbacks and buffer than required was denied. The decision was appealed.
- On August 30, 2022, under Board of Appeals case BA 21-22V a variance was granted to allow a new single family dwelling with less setbacks and buffer than required.
- On August 1, 2024, under case 2024-0090-V, a variance for an 18 month extension in time was granted

The applicant is now requesting a second extension of time for implementation of the above approved variance.

**FINDINGS**

This application for an extension in time was properly made prior to the expiration of the eighteen month time period.

Under variance case 2022-0030-V, and subsequent Board of Appeals case BA 21-22V, the applicant was granted variances to allow a new single family dwelling with less setbacks and buffer than required. On August 1, 2024, under case 2024-0090-V, a variance for an extension in time was granted, giving the applicant until February 1, 2026, to obtain a building permit and complete the work allowed under case BA 21-22V.

The applicant was unable to secure the required permits, and is now seeking a second time extension variance, to allow more time to obtain the necessary permits. The applicant's letter of explanation for the request provides a detailed timeline of continuous efforts made to obtain the required permits.

The applicant provided detailed descriptions of more than 20 back and forth correspondences with multiple County reviewers, between the dates of August 1, 2024 and December 5, 2025. From the interactions described in the letter, it appears the applicant received multiple iterations of comments and addressed each iteration of comments in a timely manner.

The applicant also mentions that 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.

Regarding the requirements for variances, there is no evidence that the granting of this second request for an extension in time will alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

**RECOMMENDATION**

Based upon the standards set forth in § 18-16-305 of the Code under which a variance may be granted, this Office recommends **approval** of a variance to §18-16-405(a) to allow an additional eighteen months for the implementation and completion of a previously approved variance.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) 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.

Val #: 0002-248943 \$336.00  
Deed - Recordation Tax - Mail  
Instrument Type: Deed

After Recording, Return To:  
Kenneth Vidmar  
Lots 217-222 Hawkins Street  
Edgewater, MD 21037

Lakeside Title Company  
File No. MD66412-PK  
Tax ID # 01-579-02875400  
Insurer: Commonwealth Land Title Insurance Company  
Property Address: Lots 217-222 Hawkins Street, Edgewater, MD 21037

111  
LR - Deed (w Taxes)  
Recording only ST20.00  
Name: vidmar  
Ref:  
LR - Deed (with Taxes)  
Surcharge 40.00  
LR - Deed State  
Transfer Tax 240.00  
LR - NR Tax - 1kd 0.00  
SubTotal: 300.00  
Total: 300.00  
10/04/2021 01:52  
CC02-WO  
#15484731 CC0501 -  
Anne Arundel  
County/CC05.01.08 -  
Register 08

**THIS DEED**, made this 27<sup>th</sup> day of July, 2021, by and between Kerry R. Muse, GRANTOR, and Kenneth Vidmar, GRANTEE.

**WITNESSETH**, That for and in consideration of the sum of **Forty Eight Thousand Dollars and No Cents (\$48,000.00)**, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the said **Kenneth Vidmar, as sole owner, his or her personal representatives and assigns**, in fee simple, all that certain lot of ground lying and being situate in the County of Anne Arundel, State of Maryland, and described as follows, that is to say:

**All that lot of ground situate in the County of Anne Arundel State of Maryland and described as follows, that is to say:**

**BEING KNOWN AND DESIGNATED** as Lots 217 and 218 in North Selby according to a map there recorded in the Land Records of Anne Arundel County, Maryland; said Lots being shown and laid out on Plat of "NORTH SELBY", Selby on the Bay, Plat #7 duly filed among the Land Records of Anne Arundel County Maryland in Plat Book No. 8, Folio 27.


**AND**

**BEING KNOWN AND DESIGNATED** as Lots 219, 220 and 222 as shown on the Plat of NORTH SELBY recorded among the Land Records of Anne Arundel County, Maryland in Plat Book FSR 3, page 39; Now in Plat Book 8, Page 27.

**AND**

**ALL** that lot of ground situate in the subdivision known as "NORTH SELBY" in the First District of Anne Arundel County, Maryland, designated as Lot Numbered Two Hundred Twenty-one (221), on Plat Number 7, which Plat is recorded among the Land Records aforesaid in Plat Book 8, Folio 27.

**BEING** that property which, by Deed dated February 2, 2014, and recorded among the Land Records of Anne Arundel County in Liber RPD 27031 at folio 123, was granted and conveyed by Kerry R. Muse, surviving tenant by the entirety of Darlene F. Muse, unto Kerry R. Muse, as sole owner.

ACCT. 1579-0287-5400  
ALL LIENS ARE PAID AS  
OF 10/01/21 A.A. COUNTY  
BY: 

10/01/21 08:30 AM C 0002 R 0002  
Val #: 0002-248942 \$460.00  
County Transfer Tax

ALSO BEING that property, which by Deed dated January 16, 2013, and recorded among the Land Records of Anne Arundel County in Liber RPD 25664 at folio 232, was granted and conveyed by Joseph P. DiGuardia and Maureen T. Delaney, unto Kerry Muse.

ALSO BEING that property, which by Deed dated December 28, 2006, and recorded among the Land Records of Anne Arundel County in Liber RPD 18641 at folio 59, was granted and conveyed by Edward B. Gibson, III, unto Kerry R. Muse and Darlene F. Muse, as tenants by the entirety.

TOGETHER WITH the buildings and improvements thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises, unto and to the use of the said Kenneth Vidmar, as sole owner, his or her personal representatives and assigns, in fee simple.

GRANTEE (BUYER) INITIALS

KV

AND the Grantor hereby covenants that he has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he will warrant specially the property hereby granted; and that he will execute such further assurances of the same as may be requisite.

[SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGE]



AS WITNESS the hand and seal of said Grantor, the day and year first above written.

Kerry R. Muse (SEAL)  
Kerry R. Muse

STATE OF Maryland CITY/COUNTY OF Anne Arundel, TO WIT:

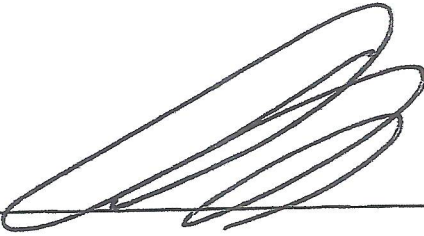
I HEREBY CERTIFY that on this 26<sup>th</sup> day of July, 2021, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Kerry R. Muse, the Grantor herein, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be his act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



[Signature]  
Notary Public  
My commission expires 8-16-23

THIS IS TO CERTIFY that the within instrument was prepared by, or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

**Beau Pichon, Esquire**

**Douglas Bourquin LLC**  
**Land Development Consulting**  
**4 Cindy Court, Severna Park, MD. 21146**  
**[ddbourquin@gmail.com](mailto: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 4<sup>th</sup> 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 2<sup>nd</sup> 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 3<sup>rd</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> 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.

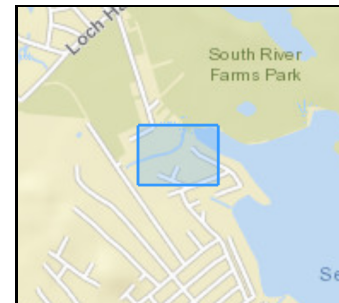
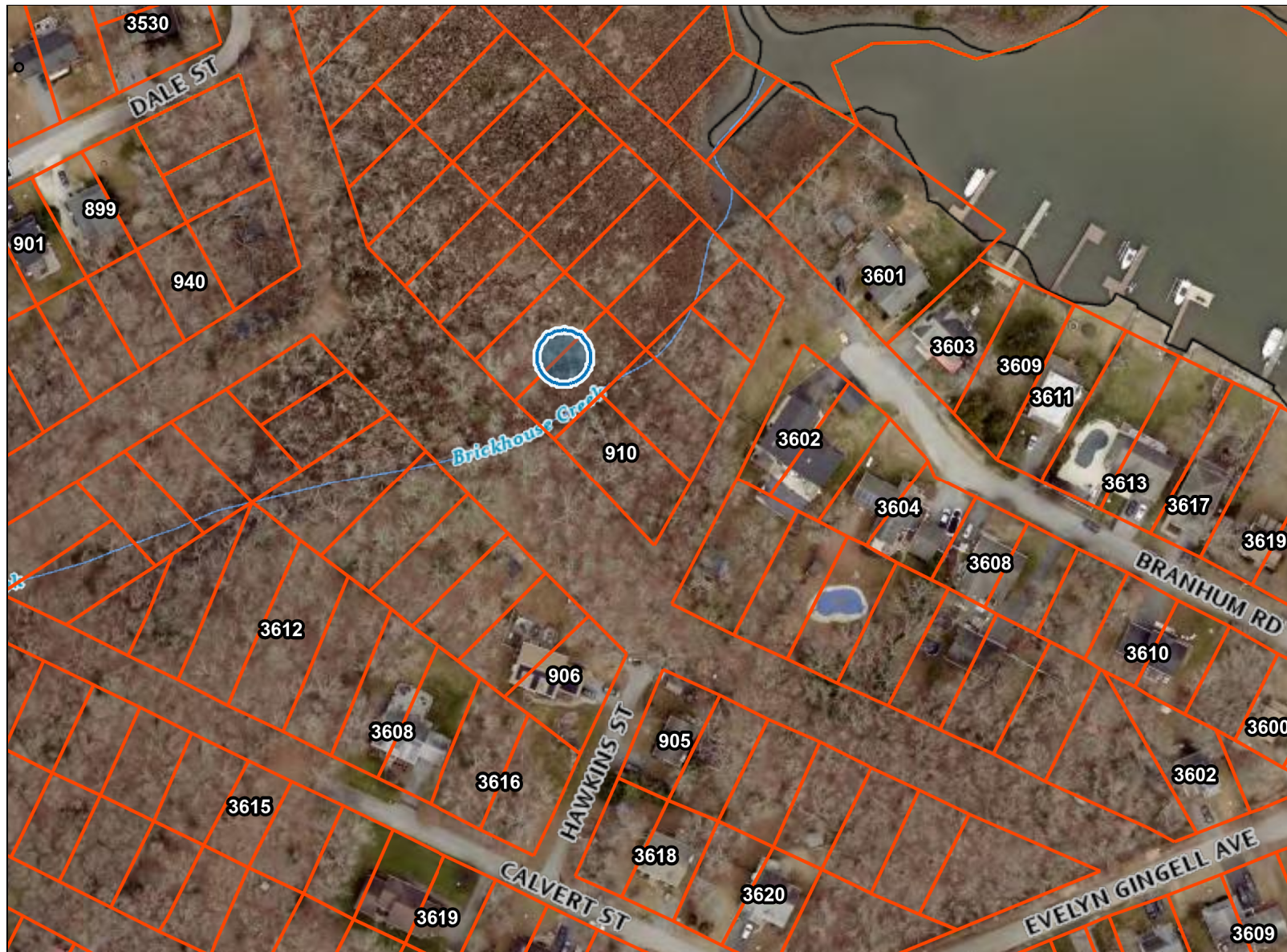
Sincerely,



Douglas D. Bourquin



# 910 HAWKINS ST



## Legend

Foundation

Addressing



Parcels



Parcels - Annapolis City



This map is a user generated static output from an Internet mapping site and is for reference only.  
Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

none



0 150 300  
ft



THIS MAP IS NOT TO BE  
USED FOR NAVIGATION

Notes

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER: 2022-0030-V**

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**KENNETH VIDMAR**

FIRST ASSESSMENT DISTRICT

DATE HEARD: APRIL 26, 2022

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ORDERED BY:

**DOUGLAS CLARK HOLLMANN**  
ADMINISTRATIVE HEARING OFFICER

PLANNER: **SUMNER HANDY**

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DATE FILED: **MAY 12, 2022**

## **PLEADINGS**

Kenneth Vidmar, the applicant, seeks a variance (2022-0030-V) to allow a dwelling with less setbacks and buffer than required on property with frontage on the west side of Hawkins Street, north of Shady Drive, Edgewater.

## **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. The applicant testified that the property was posted for more than 14 days prior to the hearing. Therefore, I find and conclude that there has been compliance with the notice requirements.

## **FINDINGS**

A hearing was held on April 26, 2022, in which the witnesses were sworn and the following was presented regarding 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 nonwaterfront 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 proposal calls to construct a new single-family dwelling and associated facilities on the subject property. The proposed dwelling measures 21' by 40' and would be three stories (first floor garage with two stories above) as shown on the site plan admitted into evidence at the hearing as County Exhibit 2. The dwelling is proposed to be located as close as 11 feet from the front lot line and 18 feet from the corner side lot line and 36.5 feet in height.

### **The Anne Arundel County Code**

§ 18-13-104(a) requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. Brickhouse Creek, and its buffer, runs through the subject property. Section 17-8-301 of the 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 27.01.09E.(1)(a)(ii) of COMAR authorizes disturbance to this buffer for a new development activity or redevelopment activity by variance. In the case of the subject property, the 100-foot perennial stream buffer covers much of the subject property. The proposed development necessitates a variance to

allow the disturbance of approximately 2,249 square feet in the buffer. If approved, the actual degree of buffer disturbance will be determined at permitting.

§ 18-4-601 requires a principal structure to be set back a minimum of 30 feet from a front lot line and 20 feet from a corner side lot line and no higher than 35 feet.

### **The Variances Requested**

The proposed work will require the following variances:

1. A critical area variance from the prohibition in § 17-8-301 against disturbing the buffer to a tributary stream to construct the proposed dwelling and associated facilities as shown on County Exhibit 2, with the actual disturbance to be determined at the time of permitting; and
2. A zoning variance of nineteen (19) feet to the 30-foot front lot line setback requirement of § 18-4-601 to allow the proposed dwelling to be constructed as close as 11 feet from the front lot line as shown on County Exhibit 2; and
3. A zoning variance of two (2) feet to the 20-foot corner side lot line setback requirement of § 18-4-601 to allow the proposed dwelling to be constructed as close as 18 feet from the corner side lot line as shown on County Exhibit 2; and
4. A zoning variance of two (2) feet to the 35-foot height limitation of § 18-4-601 to allow the proposed dwelling to be constructed as high as 36.5 feet as shown on County Exhibit 2.

## **The Evidence Submitted At The Hearing**

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

Sumner Handy, a zoning analyst with the OPZ, presented the following findings:

- At 29,303 square feet in area, the subject property meets the minimum lot area for those in the R2 district, and it exceeds the minimum 80-foot width at the front building restriction line. The property is a collection of lots - numbers 217 through 222 - that together comprise an undeveloped, wooded site at the corner of unimproved sections of Hawkins Street and Shady Drive. The applicant notes that the buffer to Brickhouse Creek covers much of the subject property, and that development of this property is not possible absent some disturbance to this perennial stream buffer and the nontidal wetland buffer.
- The applicant notes that the setback and height variances are requested to accommodate making the house more compact, which is itself necessary in order to minimize disturbance to the sensitive environmental features at the site. The applicant notes that the proposed lot coverage is limited to 2,390 square feet, below the allowable 5,445 square feet for lots of this size with an RCA designation in the critical area.
- The Critical Area Team notes the following:
  1. The subject property is in a mapped Forest Interior Dwelling Species (FIDS) Habitat. The proposed development is not in compliance with recommended FIDS development guidelines as it will create a new edge

and allow increased area for predators. The site is also impacted by hydric soils, floodplain, non-tidal wetlands, a stream and the associated buffer.

The entire site qualifies as a Habitat Protection Area.

2. Although the Critical Area Team does not often comment on Sea Level Rise, it should be noted that the flood elevation in this area is 5 and the site elevation under the home is 4.2. This development will require a driveway extension within an existing road bed. Accessibility during storm events will be limited.
  3. The granting of a variance will impact multiple environmental features that exist on the site. In addition, the applicant would need to fully address all applicable development requirements including **SWM** which may be difficult at this site.
  4. The applicant is proposing a 3-story home with an 840 square foot footprint resulting in 2,520 square feet of habitable space. Given the constraints on this site, the footprint should be reduced.
- The Critical Area Commission noted the following:
    1. The proposed project will create 2,249 square feet of disturbance within the critical area buffer. The application states “Critical Area resource impacts are mitigated via avoidance during design and no additional mitigation is required.” Please note, if the variance is granted, any disturbance within the 100-foot stream buffer must be mitigated at a 3:1 ratio for a total mitigation requirement of 6,747 square feet.



2. The proposed project will create disturbance within the 25-foot nontidal wetland buffer. The Critical Area Commission requests that Maryland Department of Environment tracking numbers and permit approvals be forwarded to that office.
  3. Based on a review of aerials for the property, FIDS habitat may be present on the site. Therefore, the applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species located onsite. If present, the applicant must adequately address any comments provided by WHS for protective measures. Specifically, should FIDS habitat be found onsite, all proposed development must adhere to the FIDS Guidance document, “A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area.”
- The Engineering Division reviewed the proposal and was unable to make a favorable recommendation from an Engineering and/or Utility review. That group noted the following:
    1. The subject application does not have the information of a complete stormwater preliminary plan. The required information for a complete review was not provided.
    2. The property will be served by public sewer and private water well.

3. The significant limiting feature of the site development is the presence of perennial stream, nontidal wetlands, floodplain and their associated buffers in lots.
4. Urban planter box rain gardens and non-rooftop disconnection has been utilized for stormwater management for water quality. However a stormwater management (SWM) report has not been provided. County reviewer cannot verify that the proposed design does not adversely affect the water quality.
5. Stormwater practices may not be located in environmental features or on their buffer.
6. Disturbance is not permitted within streams, wetlands or the associated buffers.
7. MDE authorization approval letter 21-NT-0384, plan, and wetland report is required to confirm the limit and authorization of proposed wetland or wetland buffer delineation and disturbance.
8. A tidal 100-Year Floodplain per FEM FIRM Panel: 24003C0242F exists at site. The proposed development shall meet construction guidance requirements on tidal floodplain.
9. Soil boring location is required to determine the siting and suitability of proposed practice. It appears that the proposed practice may not have adequate vertical differences (2 feet) from facility bottom to seasonal high groundwater table.

10. The applicant shall evaluate and implement site planning alternatives in accordance with 18-16-201.
  11. A sight triangle easement is required at the intersection of roads. The proposed utility easement (Mayo Tank) shall not be located with this easement.
  12. A recorded plat should include in the application to verify the ownership of unimproved road.
  13. The proposed house shall be located at the minimum depth of 18 feet from the right-of-way to have parking in the driveway.
  14. Provide a narrative to support the design. The narrative should describe how environmental site features and areas will be preserved and protected. The narrative should also include the justification of the selection of ESD practices to address stormwater management requirements.
- The Health Department does not have an approved plan for the project, but has no objection to this request so long as a plan is submitted to and approved by the Health Department.
  - For the granting of a critical area variance, a determination must be made as to whether, because of unique physical conditions, strict implementation of the County's critical area program would result in an unwarranted hardship. OPZ acknowledges that the extent of the buffer on the property makes challenging the development of the lot, and development may be impossible absent some relief from this provision of the critical area law. However, the size of the

proposed dwelling could be reduced, which would lessen the degree of disturbance in the buffer. The applicant should further evaluate site planning alternatives.

- The granting of this critical area variance may be understood to confer on the applicant a special privilege, given the extent of the buffer disturbance proposed vis-a-vis the buffer disturbance necessary to develop the lot. As a dwelling may be constructed in a manner that further minimizes buffer disturbance, denial of *this* variance request will not deprive the applicant of a right commonly enjoyed by other properties in similar areas. The variance request is not based on conditions or circumstances that are the result of actions by the applicant and does not arise from any condition relating to land or building use on any neighboring property. Granting of the variance requested may adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and, given the ability to further reduce disturbance to the buffer, would not be in harmony with the general spirit and intent of the County's critical area program.
- Accordingly, OPZ finds that the applicant has not overcome the presumption that the specific development does not conform to the general purpose and intent of the critical area law.
- For the granting of a zoning variance, a determination must be made that, because of unique physical conditions, there is no reasonable possibility of developing the lot in strict conformance with the Code, or that, because of



exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship in the development of the lot. OPZ acknowledges the applicant's intent to situate the proposed dwelling as far from the stream and nontidal wetlands and their associated buffers as possible, and that it is this effort that incentivizes the applicant to design a compact dwelling that is closer to lot lines and taller than would be allowed. However, that the dwelling's footprint could be reduced suggests that setback and height relief requests could be reduced in concert.

- With regards to the requirements for all variances, the proposal may not alter the essential character of the neighborhood. With proper mitigation, the proposal may not reduce forest cover in the RCA or be contrary to acceptable clearing and replanting practices.
- While the site plan does show stormwater management in some form, the Engineering comments identified concerns to be addressed, and that group is unable to recommend approval of the proposal at this time. Given their comments and concerns, the applicant has not provided sufficient evidence that the proposed development will not cause adverse impacts on neighboring properties, such as stormwater runoff, or that the proposal will not be detrimental to the public welfare (e.g., due to water quality impacts).
- As discussed above, there is a reasonable possibility of developing the lot with a dwelling with less relief from the Code than is requested here. OPZ

accordingly finds that the proposal is not the minimum necessary to afford relief, and must therefore recommend denial of the requested variances.

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

### **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. Evidence was presented through Douglas Bourquin of Buckhardt Engineering, LLC, and Douglas Bourquin, LLC, land development consultants, Gary Evans, a licensed civil engineer, and Aaron Keel of EnviroProjects, LLC, an expert in environmental matters and permits, that the subject property, consisting of Lots 217-222 in the North Selby subdivision (the applicant's property), is undeveloped land. Brickhouse Creek runs through the applicant's property, emptying a short distance away into Selby Bay.

The applicant plans a shallow 21-foot deep dwelling to keep development as far to the south end of the property as possible because of the environmental features that burden the site. Only 2.6% of the applicant's property is not subject to the various buffers that cross the property.

Mr. Keel testified that the Maryland Department of Engineering (MDE) has granted a license to disturb the applicant's property to build the proposed dwelling. The property is within a FIDS (Forest Interior Dwelling Species Habitat) map but Mr. Keel said he had not seen any such species on his visits to the site.

Neighbors (Anthony Harris, Anne Brown, June Sanford, Fritz Musser, Andrew Clemenko, and John and Gwen Mullins) testified that they live in the neighborhood and were opposed to allowing another home to be built on the applicant's property because of flooding that exists today and other reasons, such as preserving the habitat for the natural fauna and flora on the site. They submitted photographs of flooded conditions on the applicant's property and on nearby properties which they said were taken after light, normal rain. Surface water runs across the applicant's property from Selby Drive and Hawkins Drive to Brickhouse Creek. The neighbors thought that development of the applicant's property would interfere with that drainage and increase the flooding problems they are experiencing.

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

## **DECISION**

### **State Requirements for Critical Area Variances**

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction's program.” (Emphasis added.) “Given these provisions of the

State criteria for the grant of a variance, the burden on the applicant is very high.”

*Becker v. Anne Arundel County*, 174 Md. App. 114, 124; 920 A.2d 1118, 1124 (2007).

In *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 131; 920 A.2d at 1128, the Court of Special Appeals discussed the history of the critical area law in reviewing a decision from this County. The court’s discussion of the recent amendments to the critical area law in 2002 and 2004, and the elements that must be satisfied in order for an applicant to be granted a variance to the critical area, is worth quoting at length:

In 2002, the General Assembly amended the [critical area] law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a variance if the critical area program would deny development on a



specific portion of the applicant's property rather than considering the parcel as a whole.

...

In 2003, the Court of Appeals decided *Lewis v. Dept. of Natural Res.*, 377 Md. 382, 833 A.2d 563 (2003). *Lewis* was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia*, that (1) with respect to variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the buffer, and (2) that the unwarranted hardship factor was the determinative consideration and the other factors merely provided the board with guidance. *Id.* at 419-23, 833 A.2d 563.

Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being “weakened by the Court of Appeals.” In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. 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].”<sup>1</sup> Furthermore, the applicant carries the burden of convincing the Hearing Officer “that the applicant has satisfied each one of the variance provisions.”<sup>2</sup> (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.

In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach, et al.*, 448 Md. 112, 2016, the Court of Appeals considered an appeal claiming that a variance granted by the Worcester County Board of Appeals to allow a property owner to extend a pier across state-owned marshland from his property should not have been granted. The pier would be 80 feet longer than allowed by the Worcester County ordinance. The variance was granted. The Court of Appeals visited the

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<sup>1</sup> § 8-1808(d) (2) (ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. *See*, discussion on this subject in *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 135; 920 A.2d at 1131.

<sup>2</sup> § 8-1808(d) (4) (ii).

history of the critical area law and efforts by the Legislature to amend and clarify the law. The Court grappled with the phrase “unwarranted hardship,” and asked if “an applicant [must] demonstrate a denial of *all* reasonable and significant use of the entire property, or must the applicant show a denial of *a* reasonable and significant use of the entire property?” (At page 14.) The Court concluded, on page 28, that:

In summary, in order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance. (Emphasis added.)

#### **County Requirements for Critical Area Variances**

§ 18-16-305(b) sets forth six separate requirements (in this case) that must be met for a variance to be issued for property in the critical area. They are (1) whether a denial of the requested variance would constitute an unwarranted hardship, (2) whether a denial of the requested variance would deprive the applicants of rights commonly enjoyed by other property owners, (3) whether granting the variance would confer a special privilege on the applicants, (4) whether the application arises from actions of the applicants, or from conditions or use on neighboring properties, (5) whether granting the application would not adversely affect the environment and be in harmony with the critical area program, 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 critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

The variances sought are variances from the critical area law (buffer) and from the zoning law (setback requirements). “[A number of requests in the *Becker* decision] were for variances from the stringent critical area law. The request for a variance from the setback, however, is a request under the more lenient general zoning requirements. As indicated above, the criteria for a general zoning variance and the criteria for a critical area variance are not the same.” *Becker v. Anne Arundel County*, *supra*, 174 Md. App. at 141: 920 A.2d at 1134.

Therefore, the critical area variance must be considered separately from the general zoning or setback variances.<sup>3</sup> I will first analyze the facts in light of the critical area variance requested, and then analyze the facts in light of the zoning variances requested.

### **Findings - Critical Area Variances**

#### **Background**

The applicant's property consists of six lots in the North Selby subdivision, as shown on the following aerial photograph. The applicant proposes to construct the new dwelling on the Hawkins Road side of Lots 217 and 218.



The following aerial photograph shows the extent of the wetlands buffer:

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<sup>3</sup> “We agree that the Board should have distinguished between the critical area variance and the setback variance.” *Becker v. Anne Arundel County*, *supra*, page 174 Md. App. at 141; 920 A.2d at 1134.





The following aerial shows the 100-foot buffer to Brickhouse Creek:



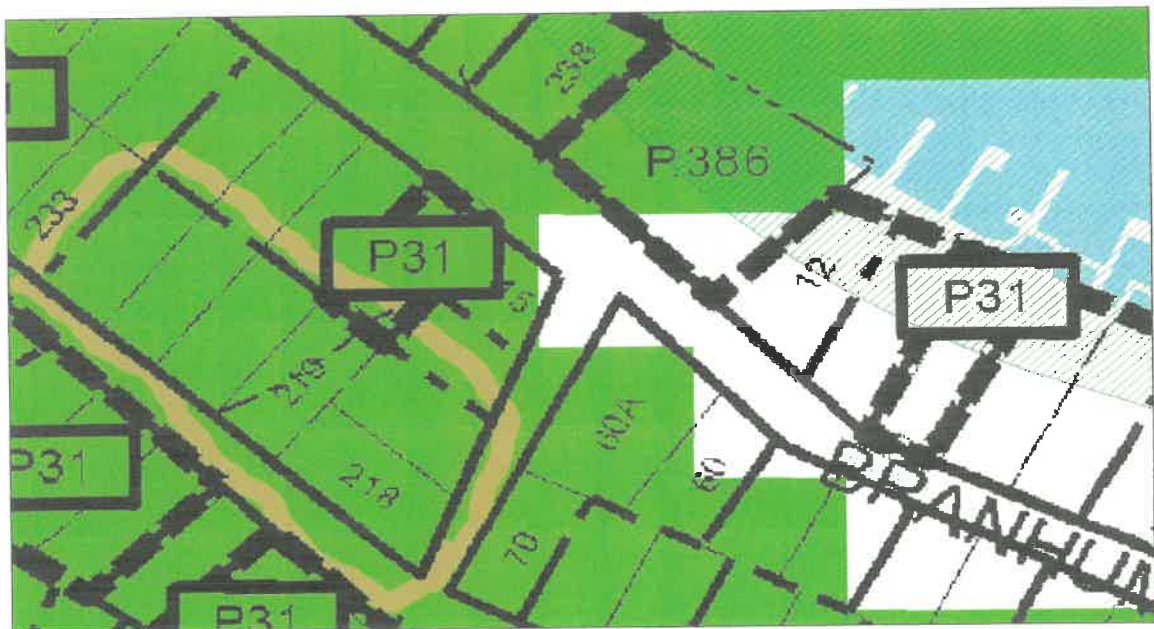
Combining the above buffers and adding the nearby 100-foot buffer to tidal waters produces the following aerial photograph where the stream buffer is shown



in green, the wetlands buffer in yellow, and the 100-foot buffer along the shore of Selby Bay in pink.



The applicant's property is also within a FIDS (Forest Interior Dwelling Species Habitat) map (the applicant's property is circled in orange/brown):



10/21/2021, 3:42:59 PM  
 State Boundary Mask Tax Map Image Forest Interior Dwelling Species  
 High : 1 Natural Heritage Areas  
 Low : 0 Sensitive Species Project Review Areas  
 County of Anne Arundel, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA | MD | MAP | MD | MAP, DoIT | MD | MAP, USDA | MD | MAP, USGS | MD | MAP, COMMERCE, DHCD, MDP, MHT, MDOT, MDT SHA, USDOT, FHWA, DoIT | MD | MAP, MDP,  
 County of Anne Arundel, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA | MD | MAP | MD | MAP, DoIT | MD | MAP, USDA | MD | MAP, USGS | MD | MAP, COMMERCE, DHCD, MDP, MHT, MDOT, MDT SHA, USDOT, FHWA, DoIT | MD | MAP, MDP,  
 Maryland Department of Natural Resources

There was testimony that the applicant's property was at the 'edge' of the FIDS Habitat, but the above exhibit shows that it is 'inside' the FIDS Habitat.<sup>4</sup>

The following drawing shows a portion of the site plan (County Exhibit 2) with the following features marked as noted:

- The existing stream in orange;
- The two-foot topo line in blue;
- The wetlands delineation in yellow;
- The four-foot topo line in blue;
- The 100-foot buffer to Brickhouse Creek in green; and
- The FEMA flood line in pink.

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<sup>4</sup> Anyone interested in FIDS can surf over to the Department of Natural Resources (DNR) website and learn more: [https://dnr.maryland.gov/criticalarea/Documents/forms\\_navbar/tweet/june\\_2000.pdf](https://dnr.maryland.gov/criticalarea/Documents/forms_navbar/tweet/june_2000.pdf).



the real world has recognized that the applicant's property is different from the other lots surrounding it.

The applicant acquired Lots 217 through 222 in July, 2021 for \$48,000.00. Whether this is a fair price is irrelevant; the applicant may have acquired them at this price as a result of shrewd bargaining. However, \$48,000 for six ostensibly buildable lots within walking distance of Selby Bay is a sign of how little value these lots have in the open real estate market.

The applicant will point out that these are grandfathered lots because they were platted before zoning came into effect in 1952 and the critical area law went into effect in 1988. The question of how property in the critical area has been platted and subdivided prior to 1985 is answered in § 27.01.02.07 of the Code of Maryland Regulations (COMAR):

.07 Grandfathering.

B. ... A local jurisdiction shall permit a single lot or parcel of land that was legally of record on the date of program approval to be developed with a single family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of the approved local program.<sup>5</sup>

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<sup>5</sup> A quick reading of this provision may lead someone to conclude that the final clause beginning "notwithstanding" limits this grandfather clause to those situations where the single-family dwelling proposed by an owner was "inconsistent with the density provisions of the approved local program," particularly in a situation like here where R5 zoning allows five houses per acre. But the provision is not so limited, and clearly permits a one-family dwelling if the lot is grandfathered.



Under the *Assateague Island* test discussed above, it is true that the applicant cannot build a dwelling anywhere on his property without variances, but this does not mean that any dwelling of any size or height may be constructed on the property. The question becomes whether the proposed dwelling is of a size and impact that it can be built in an area that is subject to a wetlands buffer, a perennial stream buffer, on land that is no higher than four feet above tidal waters at its highest, and which is within a Forest Dwelling Species Habitat. That this is too much is reinforced by the need for zoning variances as well as critical area variances (front setbacks, corner side setbacks, and height limitations). The proposed dwelling at three stories in height with a footprint of 21' by 40' is not the minimum needed for someone to develop this grandfathered lot with a single-family dwelling. What might be built on this property is speculation that this Office is not allowed to pursue.<sup>6</sup> The application will be denied.

### **The Zoning Variances**

Having dismissed the application for a variance to the critical area law, it is unnecessary to consider the request for zoning variances, which are hereby dismissed.

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<sup>6</sup> This Office has jurisdiction to decide only what is presented, not introduce new elements not put forward by the applicant and propose a different application, such as where to place a structure or how large it should be. *Steel, et al. v. Cape Corp.* 111 Md. 1, 677 A.2d 634 (1996), at 646 (a case out of this Office involving Cape St. Claire).

## **ORDER**

PURSUANT to the application of Kenneth Vidmar, the applicant, to allow a dwelling with less setbacks and buffer than required on property with frontage on the west side of Hawkins Street, north of Shady Drive, Edgewater;

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **12<sup>th</sup> day of May 2022**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the application is **denied**.



Douglas Clark Hollmann  
Administrative Hearing Officer

## **NOTICE TO APPLICANT**

Any person, firm, corporation, or governmental agency having an interest in this Decision and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals within thirty (30) days from the date of this Decision.

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

**CO. EXHIBIT#:** 1  
**CASE:** 2022-0030-V  
**DATE:** 4/26/22

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

**APPLICANT:** Kenneth Vidmar

**ASSESSMENT DISTRICT:** 1

**CASE NUMBER:** 2022-0030-V

**COUNCIL DISTRICT:** 7

**HEARING DATE:** April 26, 2022

**PREPARED BY:** Sumner Handy  
Planner

**REQUEST**

The applicant is seeking a variance to allow a dwelling with less setbacks and buffer than required on property located at the intersection of currently unimproved sections of Hawkins Street and Shady Drive in the subdivision of North Selby in Edgewater.

**LOCATION AND DESCRIPTION OF SITE**

The subject site is 29,303 square feet in area, and has about 108 feet of road frontage on the west side of Hawkins Street, 0 feet north of Shady Drive. It is identified as Lots 217 through 222 of Parcel 27 in Grid 4 on Tax Map 60 in the North Selby subdivision. The subject property is zoned R2 - Residential District and has been since the adoption of comprehensive zoning for the Seventh Council District, effective October 7, 2011.

The site is located in the Chesapeake Bay Critical Area and is designated RCA - Resource Conservation Area. The site is substantially encumbered by the buffer to Brickhouse Creek and is currently unimproved.

**APPLICANT'S PROPOSAL**

The applicant proposes to construct a new single-family detached dwelling and associated facilities at the subject property. The proposed dwelling measures 21 feet by 40 feet and would be three stories (first floor garage with two stories above) and 35 feet, 6 inches high.

**REQUESTED VARIANCES**

Section 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. Brickhouse Creek, and its buffer, runs through the subject property. Section 17-8-301 of the 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 27.01.09E.(1)(a)(ii) of

COMAR authorizes disturbance to this buffer for a new development activity or redevelopment activity by variance. In the case of the subject property, the 100-foot perennial stream buffer covers much of the subject property. The proposed development necessitates a variance to allow the disturbance of approximately 2,249 square feet in the buffer. If approved, the actual degree of buffer disturbance will be determined at permitting.

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

Section 18-4-601 also requires that a principal structure be limited to 35 feet in height. The dwelling is proposed at 36.5 feet in height, necessitating a variance of 1 foot (rounded).

### **FINDINGS**

At 29,303 square feet in area, the subject property meets the minimum lot area for those in the R2 district, and it exceeds the minimum 80-foot width at the front building restriction line. The property is a collection of lots - numbers 217 through 222 - that together comprise an undeveloped, wooded site at the corner of unimproved sections of Hawkins Street and Shady Drive. The applicants note that the buffer to Brickhouse Creek covers much of the subject property, and that development of this property is not possible absent some disturbance to this perennial stream buffer and the nontidal wetland buffer.

The applicant notes that the setback and height variances are requested to accommodate making the house more compact, which is itself necessary in order to minimize disturbance to the sensitive environmental features at the site. The applicant notes that the proposed lot coverage is limited to 2,390 square feet, below the allowable 5,445 square feet for lots of this size with an RCA designation in the Critical Area.

The **Critical Area Team** notes the following:

1. The subject property is in a mapped Forest Interior Dwelling Species (FIDS) Habitat. The proposed development is not in compliance with recommended FIDS development guidelines as it will create a new edge and allow increased area for predators. The site is also impacted by hydric soils, floodplain, non-tidal wetlands, a stream and the associated buffer. The entire site qualifies as a Habitat Protection Area.
2. Although the Critical Area Team does not often comment on Sea Level Rise, it should be noted that the flood elevation in this area is 5 and the site elevation under the home is 4.2. This development will require a driveway extension within an existing road bed. Accessibility during storm events will be limited.
3. The granting of a variance will impact multiple environmental features that exist on the site. In addition, the applicant would need to fully address all applicable development requirements including SWM which may be difficult at this site.
4. The applicant is proposing a 3-story home with an 840 square foot footprint resulting in 2,520 square feet of habitable space. Given the constraints on this site, the footprint

should be reduced.

The **Critical Area Commission** noted the following:

1. The proposed project will create 2,249 s.f. of disturbance within the Critical Area Buffer. The application states "Critical Area resource impacts are mitigated via avoidance during design and no additional mitigation is required." Please note, if the variance is granted, any disturbance within the 100' Stream Buffer must be mitigated at a 3:1 ratio for a total mitigation requirement of 6,747 s.f.
2. The proposed project will create disturbance within the 25-foot Non-tidal wetland Buffer. The Critical Area Commission requests that Maryland Department of Environment tracking numbers and permit approvals be forwarded to that office.
3. Based on a review of aerials for the property, FIDS habitat may be present on the site. Therefore, the applicant must receive a letter from the Department of Natural Resources Wildlife and Heritage Division (WHS) evaluating the property for any rare, threatened, or endangered species located onsite. If present, the applicant must adequately address any comments provided by WHS for protective measures. Specifically, should FIDS habitat be found onsite, all proposed development must adhere to the FIDS Guidance document, "A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area."

The **Engineering Division** reviewed the proposal and was unable to make a favorable recommendation from an Engineering and/or Utility review. That group noted the following:

1. The subject application does not have the information of a complete stormwater preliminary plan. The required information for a complete review was not provided.
2. The property will be served by public sewer and private water well.
3. The significant limiting feature of the site development is the presence of perennial stream, non-tidal wetlands, floodplain and their associated buffers in lots.
4. Urban planter box rain gardens and non-rooftop disconnection has been utilized for stormwater management for water quality. However a Stormwater management (SWM) report has not been provided. County reviewer cannot verify that the proposed design does not adversely affect the water quality.
5. Stormwater practices may not be located in environmental features or on their buffer.
6. Disturbance is not permitted within streams, wetlands or the associated buffers.
7. MDE authorization approval letter 21-NT-0384, plan, and wetland report is required to confirm the limit and authorization of proposed wetland or wetland buffer delineation and disturbance.
8. A tidal 100 Year Floodplain per FEM FIRM Panel: 24003C0242F exists at site. The proposed development shall meet construction guidance requirements on tidal floodplain.
9. Soil boring location is required to determine the siting and suitability of proposed practice. It appears that the proposed practice may not have adequate vertical differences (2 feet) from facility bottom to seasonal high groundwater table.
10. The applicant shall evaluate and implement site planning alternatives in accordance with 18-16-201.
11. A sight triangle easement is required at the intersection of roads. The proposed utility easement (Mayo Tank) shall not be located with this easement.

12. A recorded plat should include in the application to verify the ownership of unimproved road.
13. The proposed house shall be located at the minimum depth of 18 feet from the right-of-way to have parking in the driveway.
14. Provide a narrative to support the design. The narrative should describe how environmental site features and areas will be preserved and protected. The narrative should also include the justification of the selection of ESD practices to address stormwater management requirements.

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

For the granting of a Critical Area variance, a determination must be made as to whether, because of unique physical conditions, strict implementation of the County's critical area program would result in an unwarranted hardship. This Office acknowledges that the extent of the buffer on the property makes challenging the development of the lot, and development may be impossible absent some relief from this provision of the Critical Area law. However, the size of the proposed dwelling could be reduced, which would lessen the degree of disturbance in the buffer. The applicant should further evaluate site planning alternatives.

The granting of this Critical Area variance may be understood to confer on the applicant a special privilege, given the extent of the buffer disturbance proposed vis-a-vis the buffer disturbance necessary to develop the lot. As a dwelling may be constructed in a manner that further minimizes buffer disturbance, denial of *this* variance request will not deprive the applicant of a right commonly enjoyed by other properties in similar areas. The variance request is not based on conditions or circumstances that are the result of actions by the applicant and does not arise from any condition relating to land or building use on any neighboring property. Granting of the variance requested may adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and, given the ability to further reduce disturbance to the buffer, would not be in harmony with the general spirit and intent of the County's Critical Area Program.

Accordingly, this Office finds that the applicant has not overcome the presumption that the specific development does not conform to the general purpose and intent of the Critical Area law.

For the granting of a zoning variance, a determination must be made that, because of unique physical conditions, there is no reasonable possibility of developing the lot in strict conformance with the Code, or that, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship in the development of the lot. This Office acknowledges the applicant's intent to situate the proposed dwelling as far from the stream and nontidal wetlands and their associated buffers as possible, and that it is this effort that incentivizes the applicant to design a compact dwelling that is closer to lot lines and taller than would be allowed. However, that the dwelling's footprint could be reduced suggests that setback and height relief requests could be reduced in concert.



With regards to the requirements for all variances, the proposal may not alter the essential character of the neighborhood. With proper mitigation, the proposal may not reduce forest cover in the Resource Conservation Area or be contrary to acceptable clearing and replanting practices.

While the site plan does show stormwater management in some form, the Engineering comments identified concerns to be addressed, and that group is unable to recommend approval of the proposal at this time. Given their comments and concerns, the applicants have not provided sufficient evidence that the proposed development will not cause adverse impacts on neighboring properties, such as stormwater runoff, or that the proposal will not be detrimental to the public welfare (e.g., due to water quality impacts).

As discussed above, there is a reasonable possibility of developing the lot with a dwelling with less relief from the Code than is requested here. This Office accordingly finds that the proposal is not the minimum necessary to afford relief, and must therefore recommend denial of the requested variances.

### **RECOMMENDATION**

Based upon the standards set forth under Section 18-16-305 under which a variance may be granted, this Office recommends **denial** of:

1. a Critical Area variance to Section 17-8-301 of approximately 2,249 square feet of disturbance to the buffer;
2. Zoning variances to Section 18-4-601 of 19 and two feet, respectively, to the front and corner side setback requirements; and
3. a Zoning variance to Section 18-4-601 of 1 foot (rounded) to the principal structure height requirement.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) 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.

## For Office Use Only

CASE # 2022-0030-VFEE PAID 250-DATE 2/22/22

## For Office Use Only

ZONE R-2CRITICAL AREA: IDA    LDA    RCA ✓BMA: Yes    No ✓NO. OF SIGNS 2

## VARIANCE APPLICATION

NOTE: This form can be downloaded to your computer and filled out utilizing Adobe Reader (or similar product). It can also be printed and filled out by hand.

Applicant(s): KENNETH VIDMAR

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

Property Address: HAWKINS ST., EDGEWATER, 21037Property Location: 108± feet of frontage on the ( N, S, E, W ) side of HAWKINS ST.@ 0 feet ( N, S, E, W ) of (Nearest intersecting street) SHADY DRIVE

(Enter Street Name)

12-digit Tax Account Number 1.579.02875400Tax District ( 1ST )Council District (7TH)Waterfront Lot: Y ☐ N ☒Corner Lot: Y ☒ N ☐Deed Title Reference 37658/106Zoning District R-2Lot # 217→  
222Tax Map 60Block/Grid 4Parcel 27Area 29,303 (Sq Ft, or Acres ) Subdivision Name NORTH SELBY PLAT 7

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

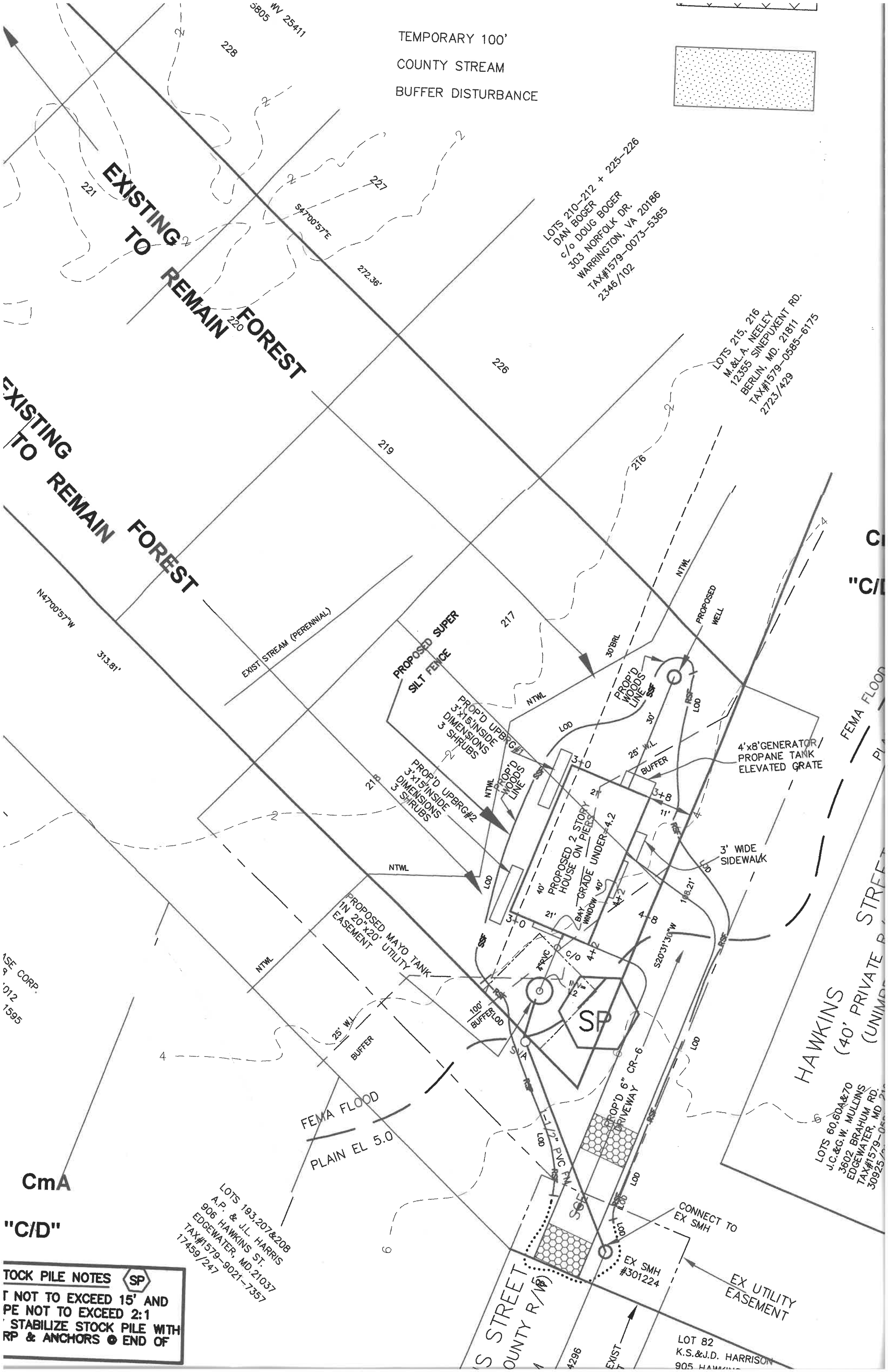
ZONING SETBACK RELIEF REQUESTED FOR FRONT & CORNER SIDE YARD.  
ZONING HEIGHT RELIEF REQUESTED FOR 35'-6" H HOUSE.

The applicant hereby certifies that he or she has a financial, contractual, or proprietary interest in the property; that he or she is authorized to make this application; that the information shown on this application is correct; and that he or she will comply with all applicable regulations of Anne Arundel County, Maryland.

Applicant's Signature X Ken VidmarOwner's Signature X Ken VidmarPrint Name KENNETH VIDMARPrint Name SAMEMailing Address 4741 ENGLISH AVE  
APT. 203Mailing Address   City, State, Zip FORT MEADE, MD. 20755City, State, Zip   Work Phone   Work Phone   Home Phone   Home Phone   Cell Phone 612.990.4626Cell Phone   Email Address kenvidmar@hotmail.comEmail Address   

\*\*\* Below For Office Use Only \*\*\*

Application accepted by Anne Arundel County Office of Planning and Zoning:   Initials   Date 2/22/22Variance to allow dwelling with less setbacks and  
buffer than required.



TEMPORARY 100'  
COUNTY STREAM  
BUFFER DISTURBANCE

EXISTING TO REMAIN FOREST

EXISTING TO REMAIN FOREST

LOTS 210-212 + 225-226  
DAN BOGER  
c/o DOUG BOGER  
303 NORFOLK DR.  
WARRINGTON, VA 20186  
TAX#1579-0073-5365  
2346/102

LOTS 215, 216  
M & L A. NEELEY  
12335 SINEPUXENT RD.  
BERLIN, MD. 21811  
TAX#1579-0585-6175  
2723/429

PROPOSED SUPER  
SILT FENCE

PROP'D UPBRG #1  
3'x15' INSIDE  
DIMENSIONS  
3 SHRUBS

PROP'D UPBRG #2  
3'x15' INSIDE  
DIMENSIONS  
3 SHRUBS

PROPOSED MAYO TANK  
1N 20'x20' UTILITY

PROPOSED 2 STORY  
HOUSE ON PIER  
BAY GRADE UNDER 4.2  
WINDOW 40'

4'x8' GENERATOR/  
PROPANE TANK  
ELEVATED GRATE

3' WIDE  
SIDEWALK

FEMA FLOOD  
PLAIN EL 5.0

LOTS 193, 207 & 208  
A.P. & J.L. HARRIS  
906 HAWKINS ST.  
EDGEWATER, MD. 21037  
TAX#1579-9021-7357  
17459/247

LOTS 60, 60A & 70  
J.C. & G.W. MULLINS  
3602 BRAHUM RD.  
EDGEWATER, MD. 21037  
TAX#1579-0585-6175  
30925/247

HAWKINS (40' PRIVATE R/W)  
(UNIMPAVED)

S STREET  
COUNTY R/W

LOT 82  
K.S. & J.D. HARRISON  
905 HAWKINS ST.  
EDGEWATER, MD. 21037  
TAX#1579-0585-6175  
30925/247

STOCK PILE NOTES  
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NOT TO EXCEED 15' AND  
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RP & ANCHORS @ END OF

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**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**  
\*  
\*

**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 required<sup>1</sup>, 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

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<sup>1</sup> 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 18<sup>th</sup> 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


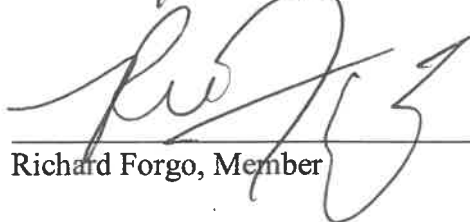
  
\_\_\_\_\_  
Scott MacMullan, Vice Chair  
\_\_\_\_\_  
John R. Fury, Member  
\_\_\_\_\_  
Darrin Michael Jacobs, Member  
\_\_\_\_\_  
Maria K. Patterson, Member

*(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

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER: 2024-0090-V**

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**KENNETH VIDMAR**

FIRST ASSESSMENT DISTRICT

DATE HEARD: JULY 30, 2024

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ORDERED BY:

**DOUGLAS CLARK HOLLMANN**  
ADMINISTRATIVE HEARING OFFICER

PLANNER: **SARA ANZELMO**

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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 **1<sup>st</sup> 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.