

AA 87-99  
VAR

Wolff, David  
99-0054

MSA-S1829-32

LH  
Comment  
3/16/99



Judge John C. North, II  
Chairman

Ren Serey  
Executive Director

**STATE OF MARYLAND  
CHESAPEAKE BAY CRITICAL AREA COMMISSION**

45 Calvert Street, 2nd Floor, Annapolis, Maryland 21401  
(410) 260-7516 Fax: (410) 974-5338

March 16, 1999

Mr. Kevin Dooley  
Anne Arundel County Department of Planning and Code Enforcement  
2664 Riva Road, MS 6301  
Annapolis, Maryland 21401

Re: David & Linda Wolff  
1999-0054-V

Dear Mr. Dooley:

I have received the above-referenced request to permit an addition that will require less setbacks and Buffer. We have no comment regarding the setback issue. The proposal appears to provide access to the shoreline. Given the site constraints of this lot, the proposal is reasonable. Any clearing associated with the access should be mitigated at a 2:1 ratio with native species.

Thank you for the opportunity to comment. Please include this letter in your file and submit it as part of the record for variance. Please notify the Commission of the decision made in this case.

Sincerely,

A handwritten signature in cursive script that reads 'Lisa A. Hoerger'.

Lisa A. Hoerger  
Environmental Specialist

CC: AA 87-99

Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

TTY FOR DEAF ANNAPOLIS-974-2609 D.C. METRO-586-0450



ANNE  
ARUNDEL  
COUNTY,  
MARYLAND

EXHIBIT A

2664 RIVA ROAD, P.O. Box 6675  
ANNAPOLIS, MARYLAND 21401

DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

To: Stephen LeGendre

From: Charlene L. Morgan

Subject: Case No. 1999-0054-V  
Wolff Property



Steve,

This letter is in response to your letter dated April 8, 1999 requesting this Office to address the issue of Condition Five (5) of prior cases V-141-94 and V-142-94. The variances requested in those cases were granted with conditions on June 15, 1995.

A permit to construct a pier on this property was issued on May 29, 1997. It is the view of this Office that the proposed stairs and walkway, like the pier, were not presented or addressed in the prior hearing and are considered water dependent facilities as permitted by 1A-103(e)(1). In our view, Condition five (5) addresses the deck only. The deck is referenced both before and after the sentence: "No additional support posts or footings shall be allowed." The decision does not contain a provision that prohibits any future pervious structures such as walkways and stairs.

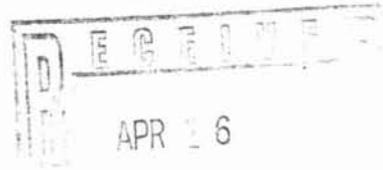
Based on the above, our recommendation of approval of the referenced variance remains unchanged. If you have any questions, please call me at 410-222-7437.

Sincerely,

A handwritten signature in cursive script that reads "Charlene L. Morgan".

Charlene L. Morgan  
Planner

April 16, 1999

2549 Carrollton Road  
Annapolis, Maryland  
21403Stephen M. LeGendre  
Administrative Hearing Officer  
Anne Arundel County  
Office of Administrative Hearing  
Arundel Center  
Annapolis, Maryland 21401

Re: Case No. 99-054-V

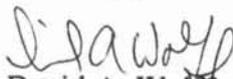
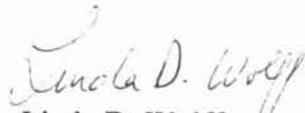
Dear Mr. LeGendre:

We were quite surprised, and of course disappointed, to receive your response to the visit to our property following what we thought was a very acceptable preliminary ruling on our variance request. Your response focuses on Conditions 5 and 6 of the case No. V-141-94 and V-142-94 and on inspection now, we agree that the condition was exceeded by installation of a fifth support post. We were presented with the document reporting Ms. Leocha's variance ruling at the time of settlement on our new house last May. However, there was no reason for us to believe that previous violations of those conditions were our responsibility. In fact some of the conditions, such as the requirement to hand dig the footings, could not be ascertained by us last May. It was my understanding that since the County allowed the transfer of the property to us that we were only to follow the conditions of the granted variance. We do, understand that we are responsible to obey the conditions set forth in the document. It is for this very reason that we presented the County with the current variance request.

The proposed construction of the stairs, low retaining walls and landing was the basis of the variance request, which is intended to seek relief from Condition 5. The request is to add support posts on the property beyond what was allowed in Ms. Leocha's ruling. The important issue is that the request is made so that we may be provided with safe access to our rear yard and to prevent further erosion of the steep hillside adjacent to our home, leading down to the dock on the South side of the house from the front of the property.

We hope that you will understand our approach and agree with our variance request.

Sincerely;

  
David A. Wolff  
Linda D. Wolffcc. Deborah M. Schwab  
cc. Charlene L. Morgan

CHESAPEAKE BAY CRITICAL AREA COMMISSION  
 45 CALVERT STREET, 2ND FLOOR  
 ANNAPOLIS, MD 21401

NOTIFICATION OF PROJECT APPLICATION

Jurisdiction: ANNE ARUNDEL Date: \_\_\_\_\_  
 Name of Project (site name, subdivision name, or other): LOT 30431 'ANNAPOLIS ROADS'  
 Local case number: \_\_\_\_\_  
 Project location/Address: 2549 CARROLLTON RD, ANNAPOLIS, MD 21403

Tax map# 57 Block# 3 Lot# 30431 Parcel# 24

Type of application:  
 (Select all applicable)

SUBDIVISION  
 SITE PLAN  
 VARIANCE:  
 Buffer    Slope   
 Imp.Surf.    Other     
 SPECIAL EXCEPTION  
 CONDITIONAL USE  
 REZONING  
 GRADING PERMIT  
 BLDG PERMIT  
 INTRAFAMILY  
 GROWTH ALLOCATION

Type of Project:  
 (Select all applicable)

RESIDENTIAL  
 COMMERCIAL  
 WATER DEPENDENT  
 FACILITY/PIER/MARINA  
 INDUSTRIAL  
 MIXED USE  
 REDEVELOPMENT  
 SHORE EROSION PROTEC.  
 AGRICULTURE  
 OTHERS \_\_\_\_\_  
 e.g. PUD

Current Use:  
 (Select all applicable)

COMMERCIAL  
 RESIDENTIAL  
 AGRICULTURE  
 FOREST/BUFFER/  
 WOODLAND  
 INDUSTRIAL  
 INSTITUTIONAL  
 OPEN SPACE/RECRE.  
 SURFACE MINING  
 VACANT  
 WATER DEPENDENT  
 FACILITY/PIER/MARINA

Describe Proposed use of project site: ADDITION OF WOOD STEPS & 6' WIDE BOARDWALK  
FROM EXIST. DECK TO DOCK & ADDITION OF WOOD STEPS & RETAINING WALLS  
TO ALLOW SAFE ACCESS FROM \_\_\_\_\_ (DOCK & PROPOSED BOARDWALK)

SITE INVENTORY OF AREA ONLY IN THE CRITICAL AREA

TOTAL ACRES IN CRITICAL AREA: 0.82  
 IDA ACRES \_\_\_\_\_ AREA DISTURBED: 1,310 SF  
 LDA ACRES \_\_\_\_\_ # LOTS CREATED: no addition  
 RCA ACRES 0.82 # DWELLING UNITS: 1 exist.  
 AGRICULTURAL LAND: \_\_\_\_\_  
 EXISTING FOREST/WOODLAND/TREES: 7,643 SF FOREST/WOODLAND/TREES REMOVED: 525 SF  
 FOREST/WOODLAND/TREES CREATED: \_\_\_\_\_ Separate Landscape Mitigation (3:1) Plan available  
 EXISTING IMPERVIOUS SURFACE: 2,374 SF PROPOSED IMPERVIOUS SURFACE: no addition  
 TOTAL IMPERVIOUS SURFACE: 2,374 SF  
 GROWTH ALLOCATION DEDUCTED: \_\_\_\_\_  
 RCA to LDA: \_\_\_\_\_ RCA to IDA: \_\_\_\_\_ LDA to IDA: \_\_\_\_\_

Local Jurisdiction Contact person: \_\_\_\_\_  
 Telephone number: \_\_\_\_\_  
 Response from Commission required by: \_\_\_\_\_ Hearing Date: \_\_\_\_\_

view of this new information, I visited the site and also requested additional input from both the applicants and Ms. Morgan.

The responses to my inquiries are appended to the opinion as Exhibits A and B. In brief, the applicants now request relief from Condition 5 of which they had actual notice. Ms. Morgan for her part states that the stairs and walkway are water dependent facilities; while Condition 5 “addresses the deck only.”

As a general rule, hardship or practical difficulty cannot be claimed by purchasers who are aware of restrictions on the property. Given the specific references to waterside support posts and footings, I find no basis to grant the variance for the boardwalk or the steps from the deck.<sup>2</sup> Even recognizing the topographical conditions of the site, I am unable to approved the variance for the waterside improvements. This is because the applicants already have the benefit of an entirely serviceable pier. While the boardwalk and the steps to the deck would certainly constitute additional amenities, their denial hardily constitutes an unwarranted hardship.

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allowed.” Under Condition 6, the prior owner was obligated to give the subsequent purchaser “actual notice ... of all conditions...”.

<sup>2</sup>Ms. Morgan’s suggestion that the boardwalk and steps to the deck constitute water dependent facilities is without merit. See, Section 1-101(72A): “Water dependent facilities” means those structures or uses associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline, such as launching ramps, hoists, lifts, marine railways, piers, pilings, marine fuel sales, wet storage of seaworthy watercraft, nature trails, crab shedding facilities, intake or discharge structures, and stormwater outfall structures”. The boardwalk and steps meet neither the letter or intent of the definition. It would appear to be an entirely novel concept to allow the interconnection of a pier to a dwelling under the guise of water dependency.

The matter of the street side improvements is arguably a little different. My site visit confirmed the difficulty of access around the dwelling and erosion of the hill side adjacent to the northwest corner of the home. In view of the specific physical conditions at this location, I find that the standards for the variances for the street side improvements have been met. This approval shall be subject to the condition in the Order.

**ORDER**

PURSUANT to the application of Linda and David Wolff, petitioning for a variance to permit additions with less setbacks and buffer than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 4<sup>th</sup> day of May, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants' request for a variance to permit a boardwalk and steps to deck in the 100-foot Critical Area buffer and expanded buffer is hereby **denied**.

FURTHER ORDERED, that the applicants' request for a variance to permit stairs above retaining walls in the 100-foot Critical Area buffer and expanded buffer and a variance of eight feet to the 25-foot rear setback is hereby **granted**.

*The foregoing variance is subject to the condition that the applicants shall provide mitigation with native plantings at a ratio of 3:1 for steep slope*