

AA 164-99
VAR

Krause, Edward
1999-0123-V

MSA - 51829 - 68

LH
Removal
4/2/99

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to relief from the code. This case presents a rare circumstance: the opportunity to eliminate a nonconforming use. But for the relative location of the main dwelling and the guesthouse, there would be no need for a variance. To literally interpret the Critical Area program will deprive the applicants of rights commonly enjoyed by other buffer exempt properties within the Critical Area. Conversely, the granting of the variance will not confer any special privilege that the program denies to other land or structures within the Critical Area. There is nothing to suggest that the request is based on conditions resultant of actions by the applicants; nor does it arise from conditions relating to land use on neighboring property. Finally, with mitigation, the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area; and will be in harmony with the general spirit and intent of the program. I further find that the variance is the minimum necessary to afford relief. As indicated, the construction is further from the shore than the nonconforming guesthouse. The applicants have minimally decreased impervious coverage within the buffer; but have significantly decreased the site coverage. The granting of the variance will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. Rather, the elimination of the nonconforming guesthouse will return the property to the character of the neighborhood and be beneficial to the public welfare. Because the

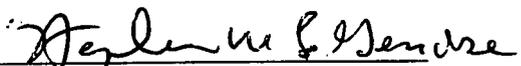
reconstructed/constructed dwelling will satisfy setbacks, there will be a positive impact on the appropriate use or development of adjacent property. The approval shall be subject to the condition in the Order.

ORDER

PURSUANT to the application of Edward and Catherine Krause, petitioning for a variance to permit a dwelling 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 4th day of June, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** a variance of 76 feet to the 100-foot Critical Area buffer. *The foregoing variance is subject to the condition that the applicants shall provide mitigation at a 3:1 ratio for all new disturbance, including the reestablishment of the remaining area between the structure and the water in native vegetation.*


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) 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.

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

April 5, 1999

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

Re: Edward Krause, 1999-0123-V

Dear Mr. Dooley:

I would like to comment on the above-referenced request to permit a dwelling that will require less setbacks and Buffer. This office offers no comment regarding the setback issue. In regard to the Buffer issue, we cannot support the request as proposed since it does not appear the applicant has minimized impacts. We could support a request where the new dwelling does not extend beyond the edge of the dwelling that will remain, and the parking area is located outside the 100-foot Buffer.

Mitigation should be at a 3:1 ratio for all new disturbance unless it can be demonstrated that the proposal will meet the County Buffer Exemption Area policy in which case mitigation as prescribed by that policy is appropriate. Mitigation on a lot designated as a BEA lot includes reestablishing the remaining area between the principal structure and the water in native vegetation in addition to mitigation for new impervious area in the Buffer. This mitigation would be planted elsewhere on the lot.

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 164-99

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

**CHESAPEAKE BAY CRITICAL AREA REPORT
657 CREEK ROAD
TAX MAP 32E, BLOCK 2, PARCEL 364**

INTRODUCTION

This is a 17,424 sq.ft. or 0.4 acre property that is located on the east side of Creek Road in Anne Arundel County, Maryland. The property is completely inside the Chesapeake Bay Critical Area Boundary and is designated as Limited Development Area (LDA). The site is not buffer exempt. The property is zoned R-5. The owners are requesting a variance to reconstruct/construct a single family dwelling within the 100 foot buffer per Article 28 1A -104(a)(1). The closest point of the house shall be 24 feet from mean high water. Note, there are presently two existing single family dwelling structures on the property. We propose to eliminate one structure and increase the nearest projection edge to 24 feet from the water. The existing structure to be removed is 15 feet from the water. Also, the proposed side yard setback will be conforming whereas presently the existing structure has a 0 setback. By combining both structures into one single family dwelling, we will also have a net decrease in impervious coverage. (See also 1A-109 (c)(1)(i)(ii) if required)

EXISTING LAND USE

There are presently two existing single family dwellings on the property at this time.

SURROUNDING LAND USE

The surrounding properties consist of single family dwellings.

SOILS

The U.S. Department of Agriculture SCS 1973 Soil Survey of Anne Arundel County, sheet 19, shows the subject property to contain the soil type:

CoE - Collington Fine Sandy Loam

FLOODPLAIN

The property is shown on the Federal Emergency Management Agency (FEMA) panel 240008 0027 C. The site is shown as Zone "A7". All proposed work is above the 100 year flood elevation of 8.0

NON-TIDAL WETLANDS

Non-tidal wetlands do not exist on-site.

TIDAL WETLANDS

The full frontage of the property is improved with a bulkhead.

BODIES OF WATER

The property does front on Cypress Creek.

STEEP SLOPES

Steep slopes of 15% and greater do exist on this site.

FOREST COVER

The predominant tree types are identified at the end of this report. The site consists of grass, areas with a few trees and shrubs.

RARE AND ENDANGERED SPECIES

There are no federally or state listed species of rare, threatened or endangered species of plants or animals on this site.

STORMWATER MANAGEMENT

The proposed runoff will be collected by gutters and downspouts and conveyed to a stabilized area on-site. There will be a net reduction in impervious area.

FOREST MITIGATION

Replanting/fee-in-lieu of will be addressed with Anne Arundel County Permit Application Center at time of building and grading permit for the any woodlands removed on-site.

DATES OF FIELD WORK

March, 1999

FOREST COVER

The Balance of the vegetation on the site is indicated below:

COMMON NAME

Wild Cherry
Sweet Gum
Oak Species
Maple
Holly

SCIENTIFIC NAME

Prunus Spp.
Liquidamber Styraciflua
Quercus Spp.
Acer Rubrum
Ilex Opaca

SHRUBS/HERBACEOUS

COMMON NAME

Poison Ivy
Wild Honey Suckle

SCIENTIFIC NAME

Txicodendron Radicans
Lonicera Dioica

SITE CALCULATIONS

1.	Site Area	17,424 Sq.Ft.
2.	Site Area in the Critical Area	17,424 Sq.Ft.
3.	Site Area Outside Critical Area	0 Sq.Ft.
4.	Existing Impervious Area	5,253 Sq.Ft.
5.	Total Existing and Proposed Impervious Area	5,251 Sq.Ft.
6.	Impervious to be removed net decrease in impervious area	2 Sq.Ft.
7.	Total Proposed Disturbance	9,900 Sq.Ft.
8.	Total Forested Area in Critical Area	11,300 Sq.Ft.
8.	Total Forested Area to Remain in Critical Area	10,900 Sq.Ft.
9.	Total Forested Area to be removed in Critical Area	400 Sq.Ft.