

— AA 285-99  
VAR

Geipe, David  
99-0220

MSA - S1829-119

7/1/99  
b6/112  
Cammitt

285-99

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 1999-0220-V

---

IN RE: DAVID GEIPE

THIRD ASSESSMENT DISTRICT

DATE HEARD: JULY 22, 1999

---

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: PATRICIA A. MILEY

RECEIVED

AUG 9 1999

DATE FILED: AUGUST 5, 1999

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

## **PLEADINGS**

David Geipe, the applicant, seeks a variance (1999-0220-V) to permit an accessory structure with less setbacks and buffer than required and on a lot without a principal structure on property located along the south side of Alameda Parkway, east of Riverview Avenue, Arnold.

## **PUBLIC NOTIFICATION**

The case was advertised in accordance with the provisions of the County Code. Mr. Geipe testified that the property was posted for 14 days prior to the hearing.

## **FINDINGS AND CONCLUSIONS**

This case concerns Lots 67 and 68 in the subdivision of Harmony Point/Belvedere Beach, Arnold. The property is zoned R-5 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This is a waterfront site on a cove of the Magothy River. The applicant proposes to erect a 24' X 32' X 22' garage/storage structure within 62 feet from the mean high-water line. As proposed, the structure is five feet from Alameda Parkway, the rear property line. There is no principal structure on Lots 67 and 68; however, the applicant owns a single-family dwelling on Lot 60, which lies immediately north of Lots 67 and 68, on the other side of Alameda Parkway.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1)

establishes a minimum 100-foot buffer landward from the mean high-water line of tidal waters. Section 2-507(a)(5) requires accessory structures to maintain at least 10 feet from the rear property line. Finally, Section 10-106(d) prohibits an accessory structure absent a principal structure. Accordingly, the proposed structure requires three variances:

1. A variance of 38 feet to the 100-foot Critical Area buffer;
2. A variance of five feet from the rear setback; and
3. A variance to permit an accessory structure absent a principal structure.

Patricia A. Miley, a zoning analyst with the Department of Planning and Code Enforcement, testified that the applicant has the option to administratively combine the three lots, thereby eliminating the need for the variance to permit an accessory structure absent a principal structure.<sup>1</sup> She questioned the extent of the hardship and whether the request represented the minimum relief. She reported that the Environmental Division believes the structure is out of character with the neighborhood. In the circumstances, she opposed the request.

Robert Forste testified on behalf of the applicant. The purpose of the structure is to shelter the applicant's vehicles and provide storage of computer materials for his business. Only a few trees will be removed and permitted impervious coverage will not be exceeded.

Mr. Geipe testified that he acquired the three lots in a single transaction and

---

<sup>1</sup>Although not stated in the record, the combining of the three lots would also obviate the need for the variance to the rear setback.

was heretofore unaware of the possibility of merging them into one site. At present, his vehicles block his neighbors' access. The structure will replace an 8' X 12' storage shed at the same location.

Ellis Kinler, a past commodore of the Belvedere Yacht Club, Inc., which is located adjacent to the property, testified in opposition to the request. In his view, the proposed structure is too large and too tall for a residential garage and too close to the water.

I visited the site and the neighborhood. The property is wooded and slopes to the water. This is an older, and for the most part well-maintained water privileged community. The applicant's home and the yacht club are both one-story structures. There is what appears to be a two-story storage shed on the property east of the site, albeit on a smaller footprint than this proposal.

The standards for granting variances are contained in Section 11-102.1. Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicant to develop the lot. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted if (1) due to features of the site, a strict implementation of the program would result in an unwarranted hardship to the applicant; (2) a literal interpretation of the program will deprive the applicant

of rights commonly enjoyed by other properties in similar areas within the Critical Area; (3) the granting of the variance will not confer on the applicant any special privilege that would be denied by the program to other lands within the Critical Area; (4) the variance request is not based on circumstances resultant of actions by the applicant and does not arise from conditions relating to land use on neighboring property; and (5) 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. Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may 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.

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to partial, conditional relief to the code. Considering first the zoning aspects of this case, two of the variances requested can be avoided by the expediency of merging the three lots. Considering the Critical Area aspect of the case, I find and conclude that due to the proximity to water, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program will deprive the applicant of the right commonly enjoyed by other properties in the Critical Area for a garage and storage. Conversely, the granting of the variance will not confer on the applicant any special privilege that the program denies to other lands within the Critical Area.

There was nothing to suggest that the variance request is based on circumstances resultant of actions by the applicant; nor does it arise from conditions relating to land use on neighboring property. 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.

Considering the subsection (c) criteria, I do not believe that the applicant has minimized the request. The applicant is proposing a very large accessory structure. There is none other like it in the immediate neighborhood.

Accordingly, the proposal will be modified to permit a more typical 24' X 24' X 16' two car garage. I find and conclude that the modified variance represents the minimum necessary to afford relief; and that its grant will not alter the essential character of the neighborhood, substantially impair the appropriate use of development of adjacent property, or be detrimental to the public welfare.

### **ORDER**

PURSUANT to the application of David Geipe, petitioning for a variance to permit an accessory structure with less setbacks and buffer than required and on a lot without a principal structure; and

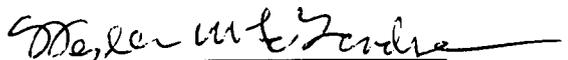
PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 5<sup>th</sup> day of August, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant's request for an accessory structure without a principal structure is hereby **denied**. Also, the applicant's request for a variance of five feet to the rear setback is hereby **denied**.

FURTHER ORDERED, that the applicant is hereby **granted** a variance of 38 feet to the 100-foot Critical Area buffer to permit a 24' X 24' X 16' accessory structure.

The foregoing variance is subject to the following conditions:

1. The applicant shall administratively combine Lots 67, 68 and 60.
2. The applicant shall provide mitigation at a 3:1 ratio of all new disturbance.
3. The accessory structure shall be served by electricity only and shall not be inhabited or eligible for conversion to habitable living space.
4. The structure shall not be used for any commercial purpose.
5. The applicant shall remove the existing storage shed.

  
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.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

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

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

May 26, 1999

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

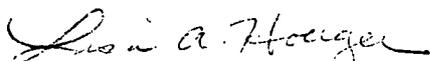
Re: David W. Geipe  
1999-0220-V

Dear Mr. Dooley:

I have received the above-referenced request to permit an accessory structure with less setbacks and Buffer and on a lot without a principal structure. This office has no comment regarding the setback or lot without a principal structure issues. In regard to the Buffer, we recommend the applicant consider reducing the footprint of the garage to minimize impacts to the Buffer. Mitigation at a 3:1 ratio is recommended for all new disturbance.

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,

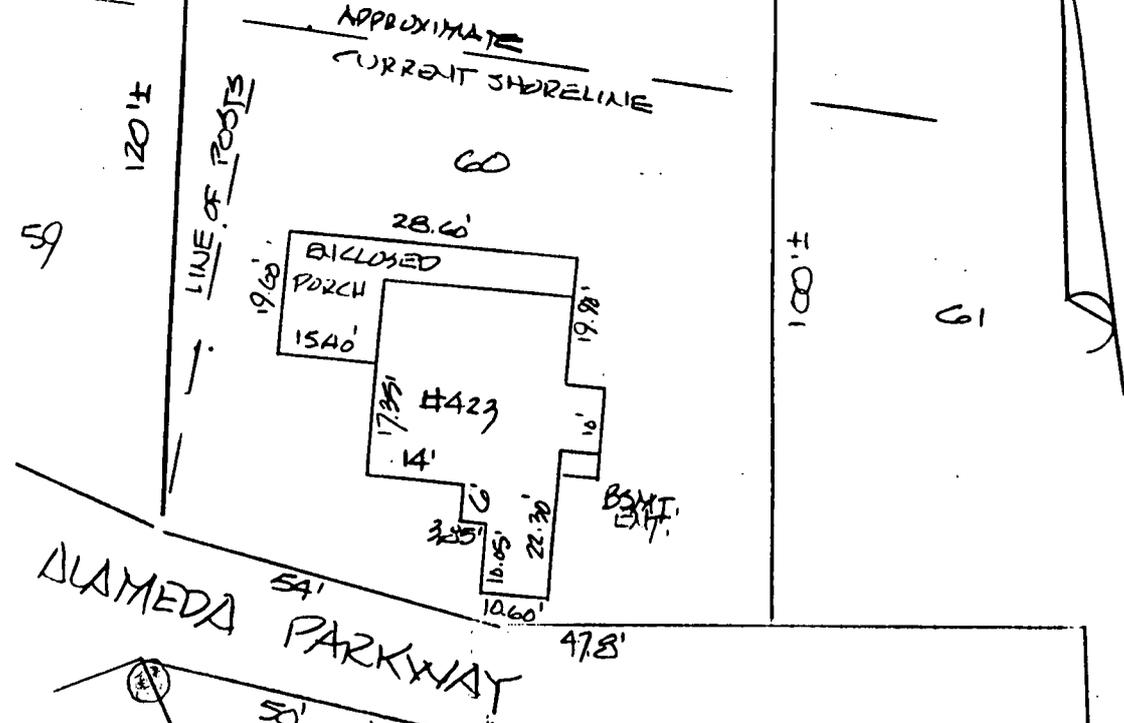
  
Lisa A. Hoerger  
Planner

cc: AA 285-99

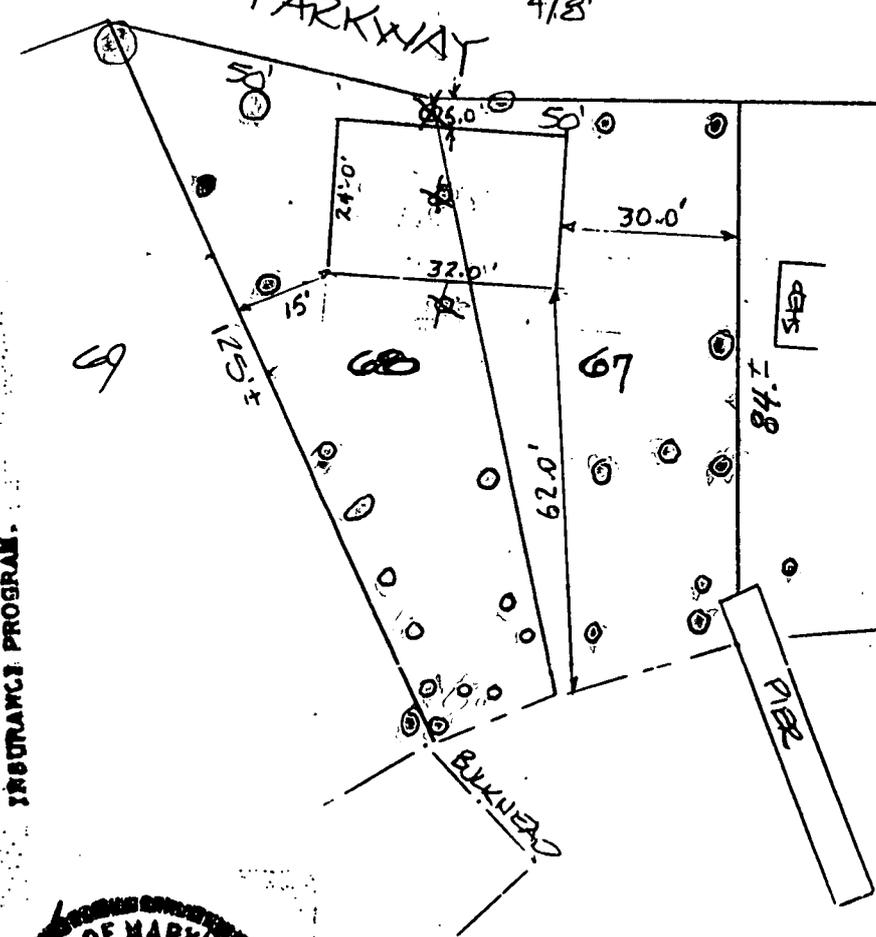
Branch Office: 31 Creamery Lane, Easton, MD 21601  
(410) 822-9047 Fax: (410) 820-5093

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





ALAMEDA PARKWAY



key  
 ⊙ = trees stant  
 ⊗ = trees to be removed

NOTE: THIS PROPERTY OR IMPROVEMENTS SHOWN HEREON DO NOT LIE WITHIN THE LIMITS OF A FLOOD HAZARD AREA AS DELINEATED ON THE MAPS OF THE NATIONAL FLOOD INSURANCE PROGRAM.



JOHN J. DOWLING  
 REGISTERED LAND SURVEYOR  
 P.O. BOX 226  
 ANNAPOLIS, MD 21404

SHEET TWO OF TWO  
 LOCATION DRAWING  
 NO. 423 ALAMEDA PARKWAY  
 LOTS 60, 67 & 68 BLK B  
 PLAT 2 HARMONY POINT  
 SCALE 1"=30' DATE 3-14-98