

AA 408-99  
VAR

Merryman, Richard  
99-0320

MSA-S-1829-102

Le Letter  
8/5/99

408-99

**RECEIVED**  
OCT 14 1999  
CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER 1999-0320-V**

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IN RE: **RICHARD MERRYMAN**

THIRD ASSESSMENT DISTRICT

DATE HEARD: OCTOBER 5, 1999

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ORDERED BY: **STEPHEN M. LeGENDRE**, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: **SUZANNE DIFFENDERFER**

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DATE FILED: OCTOBER 8, 1999

## **PLEADINGS**

Richard and Linda Merryman, the applicants, seek a variance (1999-0320-V) to permit a deck with less setbacks and buffer than required on property located along the north side of Smith Drive, east of Lake Drive, Arnold.

## **PUBLIC NOTIFICATION**

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

## **FINDINGS AND CONCLUSIONS**

The applicants own a single-family residence located at 1010 Smith Drive, in the subdivision of Shore Acres, Arnold. The property comprises 19,999 square feet and is zoned R-2 residential with a Chesapeake Bay Critical Area designation as Intensely Developed Area (IDA). This waterfront lot is buffer exempt. The applicants seek to construct a 23' X 11' front deck addition within 30 feet from the water. As a result of the project, the dwelling will be 64 feet long, with an east side yard measuring two feet and a west side yard measuring six feet.

The Anne Arundel County Code, Article 28, Section 1A-104(a)(1) requires a minimum 100-foot buffer from the mean high water line of tidal waters. Section 2-405 requires side yards at least seven feet wide. However, Section 10-104(e)(11) increases the side setback by 1-foot for each 10 feet or fraction of 10 feet by which the

dwelling exceeds 50 feet in length. In this case, the side setbacks increase from seven feet to nine feet. Accordingly, the proposal requires a buffer variance of 70 feet and a variance of seven feet to the east side setback and three feet to the west side setback.

Suzanne Diffenderfer, a zoning analyst with the Department of Planning and Code Enforcement, testified that the property is a long narrow lot in an old cottage community with many nonconforming structures. The width of the lot is only 40 feet at the location of the construction. As a result, any addition will require variances to the side setbacks. The deck will not increase impervious coverage within the buffer. Nonetheless, she requested that the applicants describe the purpose of the deck and show that the grant of the variance will be in harmony with the general spirit and intent of the Critical Area program.

Mr. Merryman testified that he has owned the dwelling since 1986. At present, the entrance to the dwelling is along the west side. The area of the proposed construction is planted in a lawn. The deck has been designed to conform with the architecture of the structure and will permit the enjoyment of the waterfront with no new runoff.

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 applicants 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 or other circumstances, a strict implementation of the program would result in an unwarranted hardship to the applicants; (2) a literal interpretation of the program will deprive the applicants 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 applicants 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 applicants 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.

In Anne Arundel County, Critical Area variances are measured against the unwarranted hardship standard. The issue is whether the denial of the application is a denial of "reasonable and significant use." Belvoir Farms Homeowners Association, Inc., v. North, \_\_ Md. \_\_, (1999) [No. 159, 1998 Term, filed August 2, 1999]. The factors enumerated in the variance statute "cannot be construed individually to

overrule a finding of unwarranted hardship... ." White v. North, \_\_ Md. \_\_, (1999) [No. 85, 1998 Term, filed September 14, 1999].

Upon review of the facts and circumstance, I will grant conditional relief. Considering the Critical Area variance, a waterfront deck addition is a reasonable and significant use, and its denial will be an unwarranted hardship. The variance criteria, considered as a whole, are generally met. Waterfront decks are common in the IDA; the request does not arise from the applicants' actions or surrounding land use; and with mitigation, the variance will not adversely impact Critical Area resources and will harmonize with the general spirit and intent of the program. With respect to the zoning variance, this case satisfies the test of unique physical conditions, consisting of a very narrow lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code. Considering the application as a whole, I find that the variances are the minimum necessary to afford relief. The deck is modest in dimensions. There is nothing to suggest that the granting of the variances 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. The approval shall be subject to the condition in the Order.

#### **ORDER**

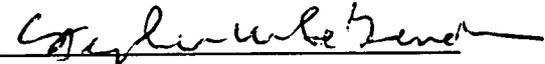
PURSUANT to the application of Richard and Linda Merryman, petitioning for a variance to permit a deck with less buffer and setbacks than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 8<sup>th</sup> day of October, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** the following variances to permit a 23' X 11' front deck addition:

1. A variance of 70 feet to the Critical Area buffer.
2. A variance of seven feet to the required 9-foot east side setback.
3. A variance of three feet to the required 9-foot west side setback.

The forgoing variances are subject to the condition that the applicants shall address the 10 percent pollutant reduction requirement to the satisfaction of PACE.

  
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

August 5, 1999

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

**RE: Variance 1999-0320-V, Richard Merryman**

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a deck with less setbacks and Buffer than required. The property is designated IDA, is Buffer Exempt and is currently developed with a single family dwelling, driveway and garage.

It is not clear from the site plan if there is already a deck on the water side of the dwelling. It is recommended that the existing deck (on the side of the house) be slightly expanded if possible, rather than further intruding further into the Buffer with a new deck. Because this parcel is designated IDA, the 10% pollutant reduction requirement should be addressed. On a lot of this size, plantings are usually sufficient to meet this requirement.

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

Sincerely,

A handwritten signature in cursive script that reads "LeeAnne Chandler".

LeeAnne Chandler  
Natural Resources Planner

cc: AA408-99

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

DATE: 07/27/1999  
TIME: 13:04:59

ANNE ARUNDEL COUNTY, MARYLAND  
PACE ZONING APPLICATION SYSTEM  
UPDATE APPLICATION REQUEST

PROGRAM ID: PNZ020C  
SCREEN ID: PNZMS20

AA408-99

APPLICATION TYPE	VARIANCE							
CASE NUMBER	TAX ACCT NBR	MAP	BLK	PARCEL	LOT	SQFT	TYPE	
1999-0320-V	3749-2907-2958	33	22	0037	148	19999.0	R	
APPLICANT NAME	MERRYMAN, RICHARD AND LINDA				APPLICATION DATE	07/26/1999		
CLASS	RESPRN	STANDARD	SETBUF	TYPE	APPLICATION FEE	150.00		
ANALYST	RMG	STATUS	OPEN	DECISION	COURT	APPEAL		
OWNER NAME/ADDRESS/PHONE					PROPERTY DESCRIPTION			
MERRYMAN, RICHARD W					IMPSLT 148			
1010 SMITH DR					1010 SMITH DR			
					SHORE ACRES			
ARNOLD	MD 21012	TELEPHONE						
PROPERTY LOCATION	150 FEET OF	FRONTAGE ON N		SIDE OF SMITH DRIVE				
	73 FEET E	OF LAKE DRIVE		IN ARNOLD				
TAX DIST	3	COUNCIL DIST	5	ZONING	R2			
WATERFRONT	N	CORNER LOT	N	CRITICAL AREA: IDA Y LDA N RCA N				
MAPS:	200	ALEX	DEED: LIBER 4289 FOLIO 425					

CLEAR-MENU RECORD SUCCESSFULLY UPDATED

PF2-HEA PF3-SIG

PF5-CNT PF6-COM

-FWD

DATE: 07/30/1999  
TIME: 07:35:22

ANNE ARUNDEL COUNTY, MARYLAND  
PACE ZONING APPLICATION SYSTEM  
UPDATE DESCRIPTION AND RECOMMENDATION DATA

PROGRAM ID: PNZ021C  
SCREEN ID: PNZMS21

CASE NUMBER	1999-0320-V	APPLICATION TYPE	VARIANCE
DESCRIPTION	A VARIANCE TO PERMIT A DECK WITH LESS SETBACKS AND BUFFER THAN REQUIRED.		

# JNJ

IMPROVEMENTS INC.  
REMODELERS/DESIGNERS

678 RITCHIE HWY. SEVERNA.PARK, MD. 21146

PHONE (410) 647-1185  
FAX (410) 544-5269

MHIC #214

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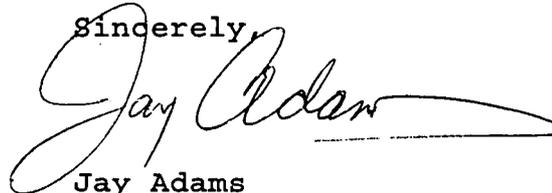
July 7, 1999

Re: Merryman Deck  
1010 Smith Drive  
Arnold, Maryland 21012

To Whom It May Concern:

The above-referenced project is to construct a 23'x11' deck attached to the existing house, and is approximately 8' above grade.

Sincerely,

A handwritten signature in cursive script that reads "Jay Adams". The signature is written in black ink and is positioned above the printed name "Jay Adams".

Jay Adams

Critical Area Report Narrative Statement

1. The predominant trees on the property are poplar trees and various indigenous shrubs.
2. The proposed method of control of rain water for the structure is to drain to natural vegetation on existing property.
3. There will be no impact on water quality and habitat due to construction. There are no requirements for storm water management, sediment control, or replanting. There are no slopes greater than 2% of the lot.
4. a) Square footage of site that is currently wooded with trees and shrubs is approximately 5,530 s.f.  
b) The total impervious area is 3,254 s.f., before work, and 3,254 s.f. after work.
5. There are no habitat protection areas on or around said property.

