

AA 430-99  
VAR

Allen, Bruce & June  
99-0340

USA-S-1829-173

Letter LC  
8/19/99  
Letter LC  
10/11/99

20 D-4

161-93 Bruce  
525-94 Allen Property  
430-99 Bruce

**RECEIVED**

OCT 27 1999

CHESAPEAKE BAY  
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

**CASE NUMBER 1999-0340-V**

---

IN RE: **BRUCE ALLEN**

SECOND ASSESSMENT DISTRICT

DATE HEARD: OCTOBER 14, 1999

---

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

ZONING ANALYST: **PATRICIA A. MILEY**

---

DATE FILED: OCTOBER 25, 1999

## **PLEADINGS**

Bruce Allen, the applicant, seeks a variance (1999-0340-V) to permit a dwelling with disturbance to steep slopes and with less setbacks and buffer than required on property located along the west side of Birdbrook Trail, east of Essex Trail, Annapolis.

## **PUBLIC NOTIFICATION**

The case was advertised in accordance with the provisions of the County Code. Michael Helfrich, the applicant's engineer, testified that the property was posted for 14 days prior to the hearing.

## **FINDINGS AND CONCLUSIONS**

The applicant owns unimproved property on Birdbrook Trail, known as Lots 6 through 9, Block 52 in the subdivision of Epping Forest. The property comprises 13,800 square feet and is zoned R-1 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This is a nonwaterfront lot. The applicant proposes to construct a dwelling on steep slopes in the Critical Area and within 36 feet of the front property line.

The Anne Arundel County Code, Article 28, Section 1A-105(c) prohibits development on slopes 15 percent or greater in the LDA. Section 2-305(a)(1) requires a minimum front yard setback of 40 feet in the R-1 district. Accordingly, the proposal necessitates a variance to disturb steep slopes and a variance of four

feet to the front setback.

Patricia A. Miley, a zoning analyst with the Department of Planning and Code Enforcement, testified that the property was platted prior to the enactment of zoning and the Critical Area legislation. It is below the minimum standard as to area and width for the R-1 district. Its development is also constrained by two abutting roads and steep slopes. One-half of the site is located on steep slopes. In order to meet the 40-foot front setback, the dwelling would have to encroach further into the slopes. In the circumstances, she supported the proposal, subject to Health Department approval of the site plan.

Mr. Helfrich testified that the location of the dwelling is dictated by the septic system. The proposed structure encroaches less into steep slopes than neighboring dwellings. The dwelling has been sized in accordance with the neighborhood.

June Allen testified that she has owned the lot and the neighboring dwelling for 20 years. As a result of an accident, her mobility is limited. She plans to move from the adjacent multi-level dwelling into the new home, which will be handicapped accessible. There was no opposition to the request.

Upon review of the facts and circumstance, I find and conclude that the applicant is entitled to conditional relief from the code. Considering the zoning setback, due to unique physical conditions, consisting of the size and width of the lot, there is no reasonable possibility of developing the lot in strict conformance with the code. Considering the Critical Area variance, due to the extent of steep

slopes, a strict implementation of the program would result in an unwarranted hardship to the applicant. To literally interpret the program will deprive the applicant of the right commonly enjoyed by other properties in similar areas within the Critical Area to be developed with a single-family dwelling. Conversely, 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. There is nothing to indicate that the 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 both variances, I find and conclude that the application represents the minimum relief. The applicant is proposing a dwelling that is in character with others in the neighborhood. The application minimizes the impact to steep slopes while maintaining sufficient distance to the front lot line. There was nothing to suggest that the granting of the variance 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 conditions in the Order.<sup>1</sup>

---

<sup>1</sup>The conditions are related to satisfying the Health Department requirements as set forth in a letter dated October 13, 1999, and providing mitigation as requested by the Chesapeake Bay Critical Area Commission.

**ORDER**

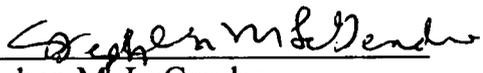
PURSUANT to the application of Bruce Allen, petitioning for a variance to permit a dwelling with disturbance to steep slopes and with less setbacks and buffer than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 25<sup>th</sup> day of October, 1999,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** a variance to permit construction of a dwelling on steep slopes and a variance of four feet to the 40-foot front setback.

The approval is subject to the following conditions:

1. The applicant shall satisfy the requirements of the Health Department as set forth in a letter dated October 13, 1999 (Attachment A).
2. The applicant shall provide mitigation at a 3:1 ratio for all disturbance.

  
Stephen M. LeGendre  
Administrative Hearing Officer

**NOTICE TO APPLICANT**

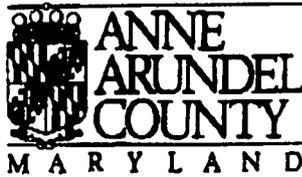
Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

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.



DEPARTMENT OF HEALTH  
J. HOWARD BEARD HEALTH SERVICES BUILDING  
3 HARRY S. TRUMAN PARKWAY  
ANNAPOLIS, MARYLAND 21401  
410-222- 7210  
FAX 410-222-7678  
TDD FOR THE HEARING IMPAIRED 410-222-7153  
[www.health.co.anne-arundel.md.us/](http://www.health.co.anne-arundel.md.us/)

October 13, 1999

FRANCES B. PHILLIPS, R.N., M.H.A.  
Health Officer

Michael Helfrich  
844 West Street  
Annapolis, MD 21401

Re: T02023775 & T02023826  
Lots 1-9 Birdbrook Trail, Epping Forest

Dear Mr. Helfrich:

The site plan submitted on October 8, 1999 is approvable when the following items are met:

1. A new water well is drilled and grouted into a confined aquifer on Lots 16-20 Birdbrook Trail and the existing water well is abandoned and sealed.
2. A new water well is drilled and grouted into a confined aquifer for Lots 1-5 Birdbrook Trail and the existing water well is abandoned and sealed.
3. A recorded easement and agreement for a well to be on Lots 1-5 for the house on Lots 6-9.

If you have any questions regarding this matter, please contact me at 410-222-7210.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Curtian".

Don Curtian, R.S.  
Soil & Site Evaluation  
Sanitary Engineering  
Division of Community and  
Environmental Health

DC/r1

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

October 1, 1999

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

**RE: Variance 1999-0340-V, Bruce and June Allen - REVISED PLANS**

Dear Mr. Dooley:

Thank you for providing the revised plans for the above referenced variance application. The applicant is requesting a variance to permit a dwelling with disturbance to steep slopes and less setbacks and Buffer than required. The property is designated LDA and is currently undeveloped. The revised plans include a handicap accessible ramp and a back deck. It also appears that the house has been slightly increased in size.

Provided these lots are properly grandfathered, this office does not oppose the siting of a single family dwelling on them. Because the newly proposed features will be within the previous limits of disturbance, it does not appear that the revised plans will cause significantly more impact. Impacts to steep slopes and the extended Buffer should be minimized as much as possible. Strict sediment and erosion controls should be provided during construction. Mitigation should be provided at a 3:1 ratio for all disturbance.

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: AA430-99

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

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 19, 1999

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

**RE: Variance 1999-0340-V, Bruce and June Allen**

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a dwelling with disturbance to steep slopes and less setbacks and Buffer than required. The property is designated LDA and is currently undeveloped.

Provided these lots are properly grandfathered, this office does not oppose the siting of a single family dwelling on them. Impacts to steep slopes and the extended Buffer should be minimized as much as possible. Strict sediment and erosion controls should be provided during construction. Mitigation should be provided at a 3:1 ratio for all disturbance.

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: AA430-99

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

