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Harvey, John
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CHESAPEAKE BAY
CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2000-0157-V

IN RE: JOHN AND BETTY HARVEY

FIFTH ASSESSMENT DISTRICT

DATE HEARD: JUNE 29, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: KEVIN DOOLEY

DATE FILED: JULY 17, 2000

PLEADINGS

John and Betty Harvey, the applicants, seek a variance (2000-0157-V) to permit a dwelling addition with less buffer than required on property located along the north side of Hammarlee Road, west of Larrimore Drive, Glen Burnie.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175' of the property was notified by mail, sent to the address furnished with the application. Mr. Harvey testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicants own a single-family residence located at 245 Hammarlee Road, in the subdivision of Hammarlee Estates, Glen Burnie. The property comprises 7,500 square feet and is zoned R-5 residential with a Chesapeake Bay Critical Area designation as Intensely Developed Area (IDA). It is buffer exempt. The existing dwelling is located 41 feet from the shore. The applicants propose to construct a two-story waterfront addition (12' X 26'). The proposed addition will extend the dwelling to within 29 feet from the shore.

The Anne Arundel County Code, Article 28, Section 1A-109(c) prohibits the expansion of an existing principal structure closer to the water in a buffer exemption area. Accordingly, the proposal requires a buffer variance of 12 feet.

Kevin Dooley, a zoning analyst with the Office of Planning and Zoning, testified that the property is located within an older community and is below the minimum width for the R-5 district. Under the proposal, the dwelling would maintain the same distance to the shore as the house to the east but would be closer to the water than the house to the west. In view of the extent of the improvements, consisting of a two-story dwelling with waterfront deck addition and two detached waterfront decks, he was unable to support the application. The witness submitted the written comments of the Chesapeake Bay Critical Area Commission and the County's Environmental Section. The Commission requested that any approval be conditioned on directing roof runoff away from Furnace Branch. The Environmental Section requested that any approval be conditioned on the removal of the detached decks adjacent to and over the water.

Mr. Harvey testified that the detached deck over the water is actually a dock. He also stated that the property to the east is bulkheaded an additional 12 feet. The applicants purchased the dwelling in December, 1999. The existing waterside room is used as a combination office/living room. The purpose of the project is to provide relief from the cramped quarters. The witness indicated that the proposal would have no impact on the view from neighboring properties. He submitted letters in support of the application from area residents. There was no adverse

public testimony concerning the request.

Richard Smith, the applicants' contractor, testified that the proposed addition will be constructed within the footprint of the attached waterfront deck. He also indicated that runoff could be directed to the road side of the property.

I visited the site and the neighborhood. This is a moderately sized, well-maintained dwelling. The waterside of the dwelling is largely occupied by the three decks. One of the detached decks extends over steep slopes to the water. The other detached deck is integrated into a pier. The dwelling to the east has been renovated; the dwelling to the west is an original cottage.

The standards for granting variances are contained in Section 11-102.1. 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)(1), any variance must be the minimum necessary to afford relief. Under subsection (c)(2), the grant of the variance 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, 355 Md. 259 (1999). The factors enumerated in the variance statute “cannot be construed individually to overrule a finding of unwarranted hardship... .” White v. North, 356 Md. 31 (1999).

In White v. North, the Court of Appeals provided guidance with respect to two of the variance factors I must consider in making a determination as to unwarranted hardship. In deciding whether the variance confers a right commonly enjoyed, I am to consider “existing uses. . . established in any. . . proper manner” rather than just uses under variance procedures. In deciding whether the variance does not confer a special privilege, I am to consider “*all* similar uses in the neighboring area.” *Id* at 52.

In this case, the proposed incursion to the buffer will be no greater for the applicants’ home than for the dwelling to the east. However, the record is silent on how and when the condition for the dwelling to the east was established. Because I do not know whether it occurred in some proper manner, I am unable to

find that the variance confers a right commonly enjoyed. However, I may still consider the activity on the neighboring property in deciding whether the variance does not confer a special privilege. That is, without regard to how the condition arose, it will continue to exist. Therefore, I find that the granting of the variance is not a special privilege.

The next factor is whether the need for relief results from the applicants' own act. Regrettably, I believe it does. The applicants purchased the property with the front yard in its present configuration. They are charged with exercising due diligence in ascertaining the Critical Area requirements. If they failed to show such diligence, then their hardship is self-created and cannot serve as the basis for the variance. Considering the final subsection (b) criteria, I find and conclude that while the impact on Critical Area resources may be slight, additional encroachment in the buffer to expand the dwelling simply does not harmonize with the general spirit and intent of the program.

Considering the subsection (c)(1) criteria, the request is more than minimal. The applicants already enjoy a moderately sized, two story dwelling, decks and a pier. This is a neighborhood of mixed housing, and their home is already larger than the cottage on the property to the west.

Considering the subsection (c) (2) criteria, there was nothing to suggest that the granting of the variance will alter the essential character of the neighborhood, nor the use or development of adjacent property. Nevertheless, considering the whole record, I am unable to conclude that the granting of the variance will not be

detrimental to the public welfare.

Because I find that the criteria are not generally met, I believe the denial of the application is not an unwarranted hardship. That is, the denial is not a denial of reasonable and significant use.

ORDER

PURSUANT to the application of John and Betty Harvey, petitioning for a variance to permit a dwelling addition 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 17th day of July, 2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants' request is hereby **denied**.



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.

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

June 5, 2000

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

RE: Variance 2000-0157-V, John and Betty Harvey

Dear Mr. Dooley:

Thank you for providing information on the above referenced variance application. The applicant is requesting a variance to permit a dwelling addition with less setbacks and Buffer than required. The property is designated IDA, is Buffer Exempt, and is currently developed with a 2 story dwelling.

This office often does not oppose additions of reasonable size, provided impacts are minimized. However, this proposed 2-story addition will be located only 28 feet from the water. It will increase what already appears to be a large house to measure 66 feet by 26 feet or 1716 square feet in size. We are concerned about the large amount of impervious surface sited so close to the water. Is it possible to expand to the side of the dwelling such that this variance would not be necessary? We suggest that alternative means be explored for accommodating the applicants' request. We further recommend that any approval be conditioned on all of the roof runoff being directed away from Furnace Branch. Also, because this lot is designated IDA, the 10% pollutant reduction rule must be addressed.

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 in writing of the decision made in this case.

Sincerely,

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

LeeAnne Chandler
Natural Resources Planner

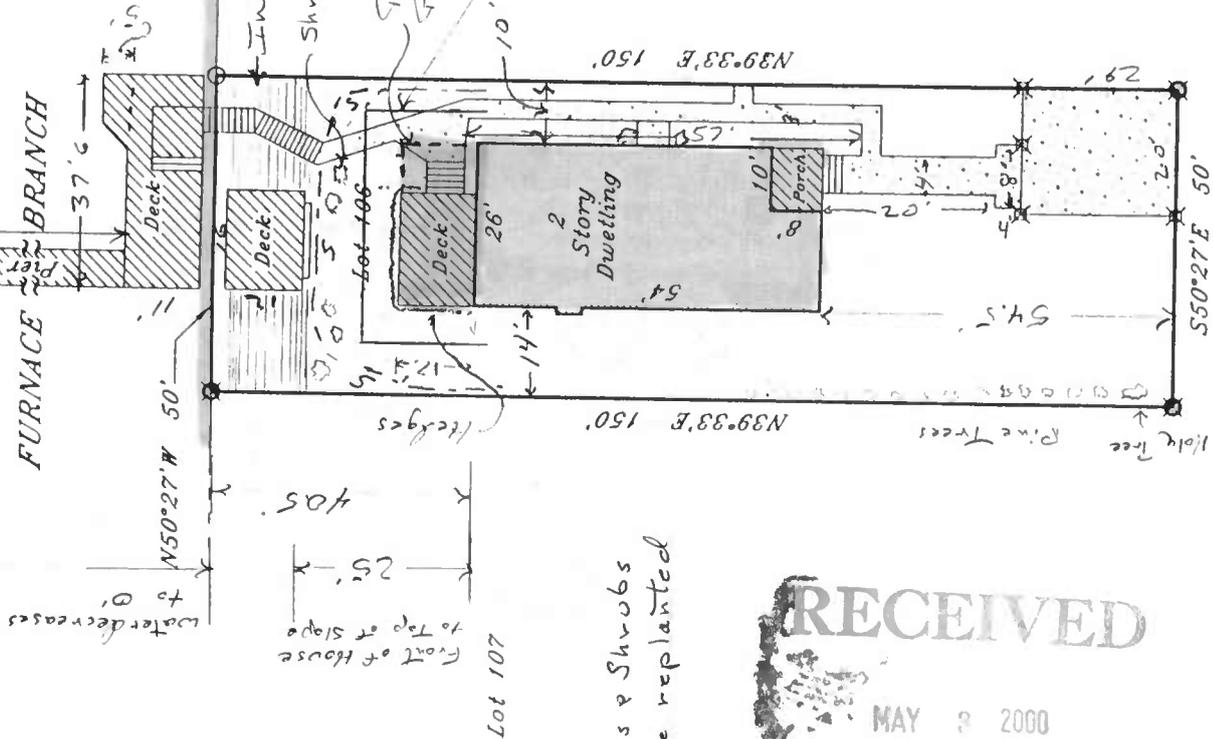
cc: AA229-00

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



Lot Number: 106
Block/Section: -
Plat Reference: Book: 21 Page: 8
Title of Plat: Plat of a Portion of Hammarlee

Water depth at end of pier is approximately 8'



Water decreases to 0'

Front of House
To Top of Slope
25'

Lot 107

Location Drawing
Scale: 1" = 30'

The plat is of benefit is to a consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or refinancing. The plat is not to be relied upon for the establishment or location of fences, garages, buildings, dwellings or other existing or future improvements nor does the plat purport to reflect setbacks or other distances with any specific level of accuracy. The plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or refinancing. The approximate location of the dwelling is shown in relation to the apparent property lines for the property known as

245 Hammarlee Road
Anne Arundel County, Maryland
William T. Matthews 11/22/99

Ruxton Design Corporation
8422 Bellona Lane
Suite 300
Towson, Maryland 21204
410-823-5000
410-823-0115fax
rdc@ruxtondesign.com www.ruxtondesign.com

Note: All Hedges & Shrubs removed will be replanted



245 HAMMARLEE ROAD
(40' Avenue on Plat)

Property lies in Flood Zone A and C
F.E.M.A. Map Panel Number 240008 0006 C, Dated 5/02/83