

AA 425-05
VAR

Hepburn, George
0211

MSA-S-1829-4674

Comments
6/2/05 JL

Robert L. Ehrlich, Jr.
Governor



Martin G. Madden
Chairman

Michael S. Steele
Lt. Governor

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

June 21, 2005

Rob Konowal
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Variance 2005-0211-V George Hepurn

Dear Mr. Konowal:

Thank you for providing information on the above referenced variance. The applicant is requesting a variance to permit a dwelling addition with less setbacks and Buffer than required. The property is designated a Limited Development Area (LDA) and a Buffer Exemption Area (BEA). The property is currently developed with a single-family dwelling.

Providing the lot is properly grandfathered, this office does not oppose the variance; however impacts must be minimized and the variance the minimum necessary. Based on the information provided, we have the following comments regarding the development proposal and variance request.

- 1) As shown on the site plan, a portion of the existing dwelling is located within the Buffer, which is expanded for steep slopes.
- 2) The applicant proposes to renovate and expand the existing dwelling. It appears that the applicant has minimized impacts by limiting the area of disturbance within the Buffer to less 1,000 square feet with minimal clearing and locating most of the dwelling expansion outside the Buffer. The current proposal will result in a 3 square foot reduction in overall impervious surface coverage on the site.
- 3) Mitigation for disturbance within the Buffer should be required consistent with the provisions of the County's Buffer Exemption and Enhancement Program (Anne Arundel County Zoning Ordinance Article 28, §1A-109): for every foot of newly developed impervious surface

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Variance 2005-0211-V George Hepurn
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within the Buffer, a vegetated buffer shall be planted within the Buffer at a ratio of two times the amount of newly developed impervious surface. If there is insufficient space to accommodate all of mitigation plantings on site, mitigation can be provided elsewhere as described in the Program. Mitigation, at a ratio of 1:1 for disturbance outside the Buffer, should be provided.

- 4) Stormwater should be directed away from steep slopes to a best management practice or to a stable and densely vegetated outfall to provide water quality benefits on the site.

Thank you for the opportunity to provide comments. 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,



Julie V. LaBranche
Natural Resource Planner

AA 425-05 Hepurn

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RECEIVED

AUG 30 2005

CRITICAL AREA COMMISSION

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2005-0211-V

IN RE: GEORGE AND KAREN HEPBURN

THIRD ASSESSMENT DISTRICT

DATE HEARD: AUGUST 23, 2005

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: ROBERT KONOWAL

DATE FILED: AUGUST 25, 2005

PLEADINGS

George and Karen Hepburn, the applicants, seek a variance (2005-0211-V) to permit a dwelling addition with less buffer than required on property located along the south side of Cedar Point Road, east of Boone Trail, Severna Park.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site 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 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Hepburn 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 of 1 Cedar Point Road, in the subdivision of Linstead on the Severn, Severna Park. The property comprises 15,736 square feet and is zoned R-2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This waterfront lot on the Severn River is located in a buffer modification area. The existing dwelling is located 67 feet from mean high water. The applicants are proposing to renovate

and enlarge the dwelling. The work includes a cantilevered projection (approximately 3 by 10 feet) 64 feet from mean high water.

Anne Arundel County Code, Article 27, Section 27-13-104(a) establishes a 100-foot buffer from mean high water. However, subsection (b) creates a buffer modification area on lots created before December 1, 1985 on which the existing pattern of development prevents the 100-foot buffer from performing its protective function. Under Article 26, Section 26-8-702(b), no new impervious surface added during the expansion of an existing structure shall be placed nearer to the shoreline. Accordingly, the cantilever requires a buffer variance in the amount of three feet. (The balance of the renovations and expansion comply with the zoning and Critical Area requirements.)

Robert Konowal, a planner with the Office of Planning and Zoning, testified that the property was developed prior to the enactment of the Critical Area program. The request represents the minimum relief and is unlikely to impair the use or development of adjacent property or the character of the neighborhood. There were no adverse agency comments.¹ By way of conclusion, Mr. Konowal offered support for the application.

Mr. Hepburn testified that the cantilever consists of a dining room “bump-out”. He indicated that the request enjoys the support of his neighbors.

Mike Drum, the applicants’ engineering consultant, testified that the property is irregular in shape. There would be no net increase in impervious

¹ The Chesapeake Bay Critical Area Commission requested mitigation plantings and control of stormwater.

surfaces. The project includes sediment controls, stormwater management and reforestation. There was no other testimony in the matter.

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to relief from the code. For this Critical Area property, due to the proximity to water, a strict implementation of the program would result in an unwarranted hardship. To literally interpret the program would deny the applicants the right to expand the dwelling, a right commonly enjoyed by other properties in similar areas in the Critical Area. Conversely, the granting of the variance will not confer any special privilege that the program typically denies. There is no indication that the request results from the actions of the applicants or from land use of neighboring property. Finally, with mitigation, the variance will not adversely impact Critical Area resources and will harmonize with the general spirit and intent of the program.

I further find that the variance represents the minimum relief. This is a minor expansion toward the water. There was nothing to indicate that the granting of the variance would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare. The approval is subject to the conditions in the Order.

ORDER

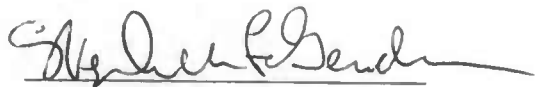
PURSUANT to the application of George and Karen Hepburn, petitioning for a variance to permit a dwelling addition with less buffer than required; and

PURSUANT to the advertising, posting of the property, and public hearing and in accordance with the provisions of law, it is this 25th day of August, 2005,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are hereby **granted** a buffer variance in the amount of three feet to permit a dwelling addition in accordance with the site plan.

The foregoing variance is subject to the following conditions:

1. There shall be no net increase in impervious coverage.
2. The applicants shall provide mitigation in accordance with the County's Buffer Modification Area Program.
3. Stormwater shall be directed away from steep slopes to a best management practice or a stable, densely vegetated outfall to provide water quality benefits on site.



Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty 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 27-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within one year. Thereafter,

the variance shall not expire so long as construction proceeds in accordance with the permit.

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



Drum, Loyka & Associates, LLC
Civil Engineers - Land Surveyors

May 24, 2005

Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, MD 21401

RE: Linstead on the Severn ~ Lot 35 & P/O Lot 34
1 Cedar Point Road
Severna Park, MD 21146
Tax map 31, Block 18, Parcel 84
Variance Case # 2005-211-V

Sir/Madam:

Enclosed please find a variance request package for the above referenced project. The subject property is located in the community of Severna Park, on Cedar Point Road and falls within the Chesapeake Bay Critical Area with an LDA land use designation. This irregularly shaped lot resides in a buffer exempt area of the waterfront of the Severn River. The property is irregular in shape and approximately 15,736-s.f. (0.36 Ac.) in area and is improved with an existing single-family dwelling. ?

The applicants are proposing to renovate, improve and construct several additions to the existing single-family dwelling. The applicants request a variance to **Article 27, Title 13-104(a)** of the Anne Arundel County Code to allow construction within the expanded buffer.

The proposed additions include: expanding the garage on the street side of the house, enclosing an existing brick patio, and slightly extending a portion of the house on the waterfront side. The removal of several existing impervious surfaces in conjunction with the proposed construction will result in a net decrease of 3 s.f. of impervious area. The lot is forested with an assortment of large mature hardwood trees. None of these trees will be removed as a result of the proposed construction. The general topography of this lot gently slopes to the western property line. However the lot drops off steeply to a low lying area along the Severn river. As a result of these slopes the critical area buffer is expanded 50' from the top of the bank. A small portion of the proposed dwelling extends into this expanded buffer.

The applicants propose to improve their aging house. The improvements are in harmony with other properties in the surrounding neighborhood. The construction will not result in an expansion in impervious area. Further, the proposed improvements will not impose any hardships on the neighbors. Considering these facts we feel the requested variance would grant minimal relief from the code. Thank you for your attention to this matter. Please contact us if we may be of further service during your review of this variance request.

Sincerely,
DRUM, LOYKA AND ASSOCIATES, LLC

Ian Dillon
Ian H. Dillon, E.I.T.
Project Engineer

209 West Street, Suite 203
Annapolis, Maryland 21401
(410) 280-3122 Fax (410) 280-1952