

BC 332-05

Leventis, Paris

VAR.

05-008

MSA-5-1829-4805

UX
Comment
4/13/05

Robert L. Ehrlich, Jr.
Governor



Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

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 3, 2005

Ms. Martha Stauss
Baltimore County DEPRM
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Re: Leventis Property, 05-008

Dear Ms. Stauss:

I have received the above-referenced variance request to extend and existing deck and attach a new gazebo within the 100-foot Buffer to Greyhound Creek. It is our understanding this is an after-the-fact request. The information provided by the applicant suggests the area of the deck addition and gazebo was the location of a pool. In discussions with County staff, it is also our understanding that the pool was not a permitted structure; therefore it should not be considered as justification for siting the proposed structures.

The site plan provided is difficult to read. I assume the information indicating 80 feet is the distance the new structures are from the shoreline of Greyhound Creek. There is no information concerning the distance of the new structures to or within a nontidal wetland buffer. It appears the applicant already enjoys two existing decks attached to the dwelling that exceed 300 square feet, perhaps more. Due to the existing uses and that the applicant is unable to meet the variance standards of the County Code, this office does not support the requested variances.

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,

A handwritten signature in cursive script that reads "Lisa A. Hoerger".

Lisa A. Hoerger
Natural Resources Planner

cc: BC 332-05

IN THE MATTER OF
LEVETIS PROPERTY; PARIS LEVENTIS -
LEGAL OWNER /APPLICANT
2702 BAUERNSCHMIDT DRIVE
BALTIMORE, MD 21221
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

RE: DENIAL OF APPLICATION FOR
CRITICAL AREA ADMINISTRATIVE
VARIANCE

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-05-150

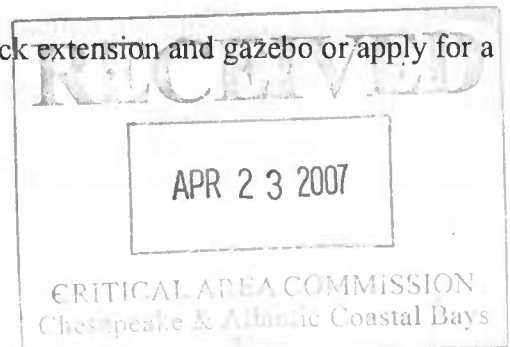
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OPINION

This case comes before the Baltimore County Board of Appeals as an appeal from the decision of the Department of Environmental Protection and Resource Management (DEPRM) in which Appellant's Petition for a Critical Area Administrative Variance was denied. Appellant requested an after-the-fact variance to allow for the extension of a deck and attached gazebo on his property located at 2702 Bauernschmidt Drive.

Background

The Appellant's property that forms the basis of this appeal is located in Essex, Maryland, near to the body of water known as Back River. The site is located within what is known as the Chesapeake Bay Critical Area. The Appellant filed a permit application wherein he requested permission for the extension of an existing deck and proposed attached gazebo within the 100-foot buffer to tidal waters. On January 18, 2005, the Appellant was notified by letter issued from the Environmental Impact Review Division of DEPRM that the deck extension and gazebo, both of which had been constructed prior to the application for the same, were impermissible because they were located within 100 feet of Greyhound Creek. The Appellant was advised that his two options were to remove the deck extension and gazebo or apply for a



variance. The Appellant filed for a variance and, on September 15, 2005, was notified by the Director of DEPRM that his request for a variance had been denied based upon the criteria for a variance as listed in COMAR 27.01.11. The County was represented by Nancy C. West, Assistant County Attorney. Appellant was not represented.

Evidence

The deck extension and gazebo construction occurred prior to Appellant's application for a permit for same. Photographs of the construction were placed into evidence by the County.

Appellant testified that he believed that the location of the construction was the only viable location on his land for such a project. Appellant contends that the construction of the gazebo was approved by DEPRM based on his conversation with an unnamed County official. The County submitted into evidence a "stop work" order issued by the County for construction of the gazebo. Appellant chose to ignore the "stop work" order and completed the construction of the gazebo.

Discussion

The Critical Area Administrative Variance requested by the Appellant can only be granted where the property meets the five (5) criteria identified in COMAR 27.01.11:

- (1) That findings are made by the local jurisdiction which demonstrate that special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program, would result in unwarranted hardship;
- (2) That a literal interpretation of this subtitle or the local Critical Area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction;
- (3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area;

(4) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property; and

(5) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations adopted in this subtitle.

The Board, after reviewing the evidence, concluded that the Appellant had failed to demonstrate that his property met the criteria. The Board concluded that no hardship was suffered by the Appellant in that there were other locations on his land where a gazebo could be constructed. Appellant's contention that the gazebo and extended deck were permissible because they were in the same location as an above-ground pool previously located on his property was rejected by the Board as not being persuasive because the pool was apparently erected without a permit. The Board further concluded that, by erecting the above-mentioned structures prior to seeking the required permits, the Appellant placed himself in the present position and therefore cannot successfully argue that any alleged hardship was created by the applicable zoning law.

Decision

For the foregoing reasons, the decision of the Department of Environmental Protection and Resource Management is hereby affirmed, and Appellants' application for a Critical Area Administrative Variance is denied.

ORDER

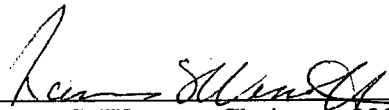
IT IS THIS, THEREFORE, THIS 20th day of April, 2007 by
the County Board of Appeals of Baltimore County

ORDERED that the decision of the Director of Environmental Protection and Resource Management denying Appellant's request for a Critical Area Variance be and the same is hereby **AFFIRMED**; and it is further

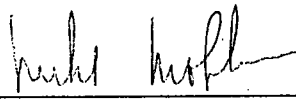
ORDERED that Appellant's application for a Critical Area Variance to allow for the extension of a deck and attached gazebo on the subject property be and the same is **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Chairman 2006



Mike Mohler



Wendell H. Grier



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

September 7, 2007

Lawrence E. Schmidt, Esquire
GILDEA & SCHMIDT LLC
600 Washington Avenue
Suite 200
Towson, MD 21204

RE: In the Matter of: *Leventis Property*
Case No. CBA-05-150 /Ruling on Petitioner's
Motion for Reconsideration

Dear Mr. Schmidt:

Enclosed please find a copy of the Ruling on Petitioner's Motion for Reconsideration issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

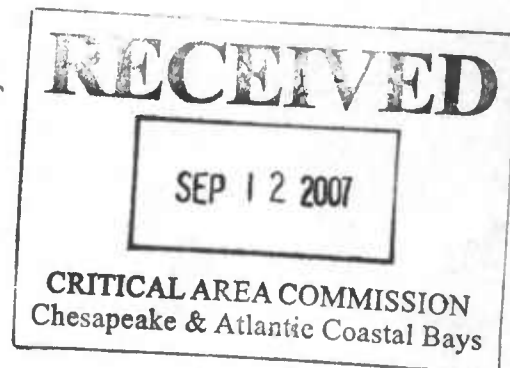
Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Paris Leventis
Regina Esslinger, Regional Planner, CBCAC
Patricia M. Farr /DEPRM
David A.C. Carroll, Director /DEPRM
Glenn Berry, Code Enforcement /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

Lisa Hoerger



IN THE MATTER OF
LEVETIS PROPERTY; PARIS LEVENTIS -
LEGAL OWNER /APPLICANT
2702 BAUERNSCHMIDT DRIVE
BALTIMORE, MD 21221
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

RE: DENIAL OF APPLICATION FOR
CRITICAL AREA ADMINISTRATIVE
VARIANCE

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-05-150
*

* * * * *
RULING ON PETITIONER'S MOTION FOR RECONSIDERATION

This matter is before the Board on a Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire, attorney for Paris Leventis, the Petitioner herein. The Motion was filed by letter dated May 21, 2007, and requests reconsideration of the decision filed by the Board on April 20, 2007.

A letter opposing the Motion for Reconsideration was filed by Nancy C. West, Assistant County Attorney, on August 27, 2007. A public deliberation was held on August 28, 2007.

Decision

The basis for the Motion for Reconsideration is basically the fact that Mr. Leventis was not represented by counsel at the hearing before the Board on April 18, 2006. Mr. Schmidt argues that additional testimony would be taken if the Board reconvened a hearing pursuant to the Motion for Reconsideration to reconsider the decision.

Ms. West argues in her letter that the Board can take judicial notice of the relevant COMAR regulations and that no expert testimony is required. With respect to the argument that the Petitioner did not have benefit of counsel, she notes that this was not raised as a concern at the time of the hearing. Finally, she states that DEPRM has carefully reviewed the variance request in light of the regulations designed to protect the Chesapeake Bay and determined that it failed to meet any of the five criteria.

The Board notes that the Notice of Assignment dated February 14, 2006 informed the Petitioner, Mr. Leventis, that a hearing was scheduled for April 18, 2006. This gave Mr. Leventis at least two months to retain counsel. The Notice of Assignment also states:

This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Leventis Property/Ruling on
Motion for Reconsideration
Case No.: CBA-05-150

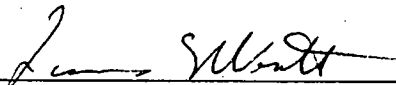
The Board feels that the fact that Mr. Leventis chose not to retain an attorney at the time of the original hearing before the Board is not sufficient basis for granting a motion for reconsideration. Mr. Leventis had ample notice of the type of hearing in which he would be involved, and was notified that he had the opportunity to retain an attorney, which he chose not to do. The Board cannot grant motions for reconsideration based solely on the fact that an individual chose not to have an attorney at the time he appeared before the Board. Granting such motions would cause additional hearings to be held in an already crowded Board schedule.

IT IS THIS, THEREFORE, THIS 7th day of *September*, 2007 by the County Board of Appeals of Baltimore County

ORDERED that the Motion for Reconsideration filed in the above matter be and is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**

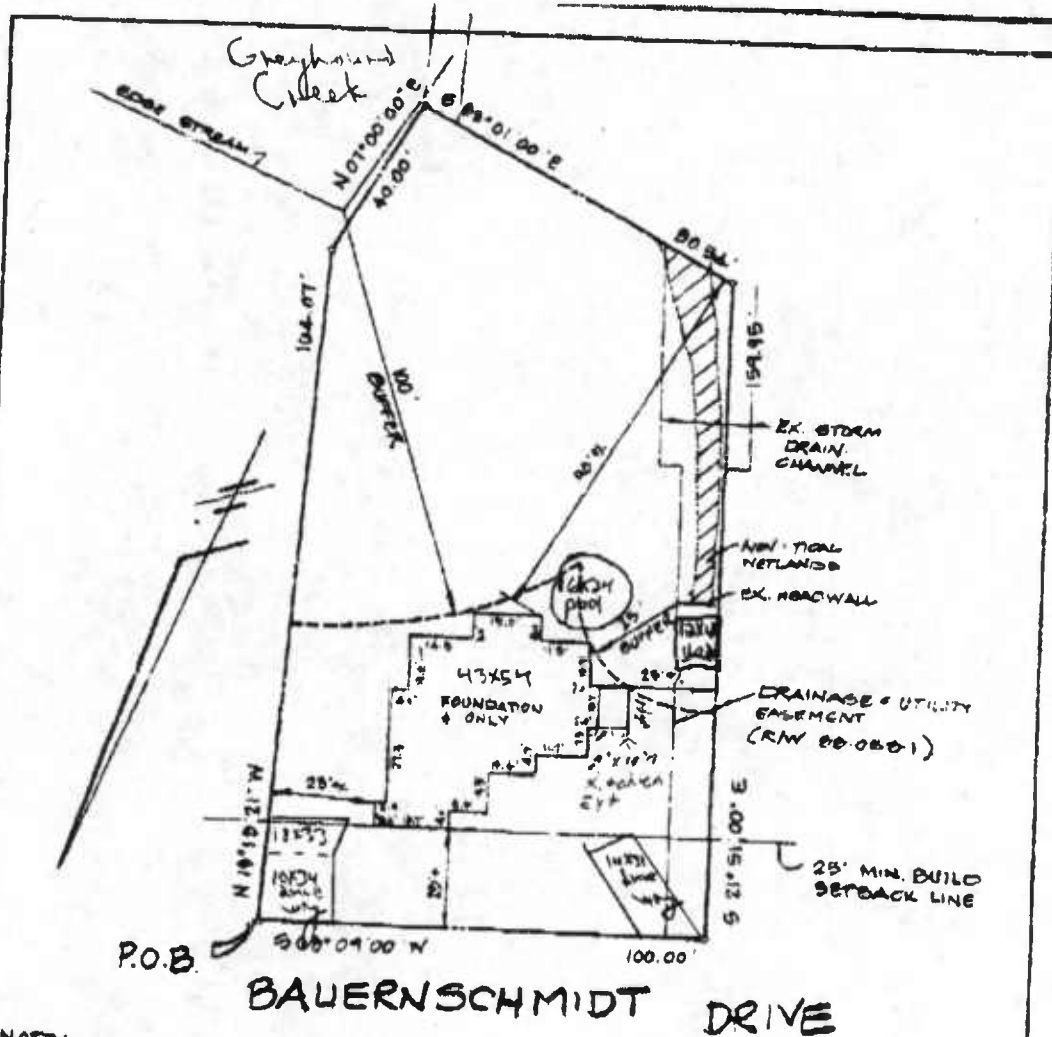


Lawrence S. Wescott, Panel Chair



Wendell H. Grier

It is to be noted that this case was heard by a panel comprised of three members of the Board of Appeals of Baltimore County; viz., Lawrence S. Wescott, Wendell H. Grier, and Mike Mohler. While the full panel signed the Board's final decision dated April 20, 2007, Mr. Mohler resigned from the Board of Appeals prior to public deliberation on this Motion.



NOTE:
 CONG. FOOTERS & CONG. BLOCK FOUNDATION ARE IN & COMPLETE.

I hereby certify that I have made a survey of this lot for the purpose of locating the measurements thereon and that they are located as shown. This plat is not intended for use in establishing property lines. I hereby certify that I have examined the current Flood Insurance Rate Map (FIRM No. 13053) for the subject property and it does not lie in an area identified by the Secretary of Housing and Urban Development as having special flood or mudslide hazards.

LOT 72
BAUERNSCHMIDT MANOR

2/11/92
 Date JAMES W. MCKEE
 REG. #0012

A 12/01
 15TH ELECT. DIST. BALTO. CO., MD.
 DEED REFERENCE: 0060/238

	LOCATION SURVEY		scale: 1" = 30'
	#2702 BAUERNSCHMIDT DRIVE		date: 2/12/92
MCKEE & ASSOCIATES, INC.		job no: 72-06	
CIVIL ENGINEERS & LAND SURVEYORS			
5 SHAWAN ROAD HUNT VALLEY, MD 21030			
(301)527-1555			
drawn by BO	checked by GCS		