

AA 219-07 Rickett, John
VAR 0070

51829 - 6235

Comments 4/19/07 - Keds

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

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/

August 29, 2007

John Fury
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

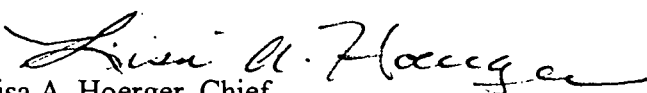
Re: BA 34-07V Rickett

Dear Mr. Fury:

We have received notice of the above-referenced appeal of the Administrative Hearing Officer's decision to deny a variance for an after-the-fact patio located partially within the Buffer. The property lies partially within a Limited Development Area (LDA) and is currently developed with a primary dwelling. Our previous comment letter indicated that due to the possibility that the applicant received conflicting information from the County regarding the need for a Buffer variance, we did not oppose the variance. However, we have reconsidered our position and recommend that if the Board does not deny the request, that the deck size be reduced to minimize intrusion into the Buffer, and any disturbance to the Buffer be mitigated at a 3:1 ratio of native Buffer plantings.

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 appeal. Also, please notify the Commission in writing of the decision made in this case.

Sincerely,


Lisa A. Hoerger, Chief
Project Evaluation Division

cc: AA 219-07



STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS

1804 West Street, Suite 100, Annapolis, Maryland 21401

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www.dnr.state.md.us/criticalarea/

April 19, 2007

Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road
Annapolis, Maryland 21401

Re: Variance 2007-0070-V Rickett

Dear Ms. Schappert:

Thank you for providing information on the above referenced variance. The applicant is requesting an after-the-fact variance to permit the continuance of a 1,200 square foot paver patio, located partially within the Buffer. The property lies partially within a Limited Development Area (LDA) and is currently developed with a primary dwelling.

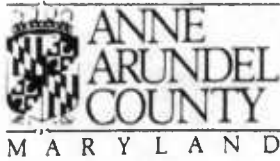
Based on the information provided, it appears that the applicant attempted to obtain the proper permits from the County prior to beginning construction on the proposed patio. While it is not clear whether the site plan originally submitted to the County was accurate in depicting the location of the proposed patio within the Buffer, it does appear that the applicant may have been given conflicting information regarding the need for a Buffer variance. We note that the property remains within the permitted impervious surface area limits and that no trees were removed from the Buffer during construction of the patio. In consideration of the circumstances surrounding this request, this office is not opposed to the granting of a variance to retain the patio in the existing footprint. However, regardless of the circumstances, construction of the patio did result in new disturbance to the Buffer and further removed an area of pervious cover formerly available to serve for water quality and habitat benefits. In addition, it appears that construction of the patio outside of the Buffer would have been feasible had the proper permits been obtained initially. Therefore, we recommend that the applicant be required to provide mitigation at a 3:1 ratio for the entire area of Buffer disturbance. This mitigation should be required as a condition of variance approval and should be provided in the form of native plantings, located within the Buffer. Given the after-the-fact nature of the request, we recommend that the mitigation plantings be required above and beyond any plantings already implemented as landscaping.

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,

Kerrie L. Gallo
Natural Resource Planner

AA 219-07



RECEIVED

DEC 21 2007

CRITICAL AREA COMMISSION

BOARD OF APPEALS
P.O. BOX 2700, 44 CALVERT ST., RM. 160
ANNAPOLIS, MARYLAND 21404
410-222-1119

December 19, 2007

**RE: Appeal to Circuit Court
BA 34-07V
John & Gloria Rickett**

To Whom It May Concern:

This is to notify you that a Petition for Judicial Review has been filed in the Circuit Court, Case No. C-2007-127780.AA, John & Gloria Rickett (BA 34-07V).

A party wishing to oppose the petition must file a response within 30 days after the date this notice was mailed, unless the Court shortens or extends the time. If you wish to file a response, it must be filed in Circuit Court.

If you have any questions, call the Circuit Court directly at 410-222-1547.

Sincerely,

Deana L. Gibbs
Asst. Clerk to the Board

cc: Clerk of the Court
Cathleen F. Ward Pratz, Esq.
Sager A. Williams, Jr., Esq.
James A. Chance, Esq.
John & Gloria Rickett
Eric E. See
Shep Tullier
Thomas Ronaldi
John Fury
Suzanne Schappert
Stephen LeGendre

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

* * * * *

PETITION OF

JOHN P. RICKETT and
GLORIA E. RICKETT
5625 Gunner Run Road
Churchton, MD 20733

BOARD OF APPEALS
DEC 19 2007

By _____

FOR JUDICIAL REVIEW OF THE DECISION
OF THE

CIVIL ACTION NO.

ANNE ARUNDEL COUNTY BOARD
OF APPEALS
44 Calvert Street - The Arundel Center
Annapolis, MD 21401

C-07-127780

IN THE MATTER OF

An Appeal From a Decision of the
Administrative hearing Officer
Case No. BA 34-07V

* * * * *

PETITION FOR JUDICIAL REVIEW

John P. and Gloria E. Rickett (the "Ricketts"), by their attorneys Sager A. Williams, Jr. and Blumenthal, Delavan & Williams, P.A., pursuant to § 604 of the Anne Arundel County Charter and Rule 7-202 of the Maryland Rules, respectfully petition the Circuit Court for judicial review of the November 14, 2007 decision of the Anne Arundel County Board of Appeals (the "Board") in Case No. BA 34-07V. In support of their petition, the Ricketts say as follows.

1. The Ricketts were the appellants, and therefore parties, before the Board in the administrative proceedings in Case No. BA 34-07V.

TRUE COPY,

Robert P. Duckworth

De. v.

FILED

2. The Ricketts are the owners of the real property, and were the original applicants for the zoning variance, involved in the proceedings before the Board in Case No. BA 34-07V.

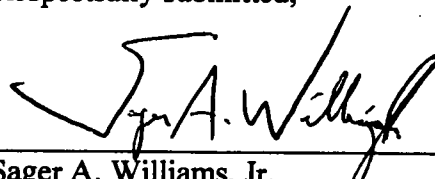
4. The Ricketts are aggrieved by the Board's November 14, 2007 decision in Case No. BA 34-07V.

5. A copy of the Board's November 14, 2007 decision is attached to this petition as "Exhibit A."

6. This petition is authorized by § 604 of the Anne Arundel County Charter.

WHEREFORE, the Ricketts respectfully request that the Circuit Court: (1) docket this petition; (2) schedule a hearing on this petition; (3) reverse the decision of the Board; and (4) grant the Ricketts such other and further relief as the Court may deem appropriate and as the nature of this petition may require.

Respectfully submitted,



Sager A. Williams, Jr.
Blumenthal, Delavan & Williams, P.A.
170 Jennifer Road, Suite 240
Annapolis, MD 21401
410-573-2900
410-573-2907 (FAX)

Counsel for John P. and Gloria E. Rickett

EXHIBIT A

**RE: An Appeal From A Decision Of The
Administrative Hearing Officer**

JOHN & GLORIA RICKETT

Petitioners

* BEFORE THE
*
* COUNTY BOARD OF APPEALS
*
* OF ANNE ARUNDEL COUNTY
*
* CASE NO.: BA 34-07V
* (2007-0070-V)

* Hearing Date: August 30, 2007
* September 26, 2007

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to perfect construction of a patio addition with less buffer than required, on property known as 5625 Gunner Run Road, Churchton.

Summary of Evidence

Mr. John Paul Rickett, resides with his wife, Ms. Gloria Rickett, at 5625 Gunner Run Road in Churchton, MD. They purchased the property in 2000. The dwelling, which was built in 1996, has a deck, patio, and pier. There is a slope that causes water to run onto the property from the road. Erosion issues were severe and affected the sides, rear, and the foundation of the house. The community does not have storm water management facilities. The Ricketts' property experiences an enormous amount of runoff. This essentially created a "barren zone," making it difficult to have any vegetation on either side of the house. Their attempts at growing grass failed, because it washed away as soon as it was planted. The southwest corner of the patio is located in this formerly wet area.

The Ricketts wanted to correct the water problem that was leading to the erosion of the foundation and providing a mosquito breeding ground. Originally, a small patio built of concrete was at the rear of the house. This was replaced with a retaining wall and the subject patio, which

measures 76 feet by 19 feet. The construction of the new patio included a drainage system. They used pavers and installed numerous plantings to help absorb water on the property. The patio comprises 1,200 square feet, with approximately 260 square feet in the Critical Area buffer. The total impervious surface on site is 3,256 square feet, which includes the patio, house, driveway and sidewalks. The construction of the patio added 617 square feet of new impervious surface in the buffer. The addition of the retaining wall and drainage system has resolved about 95% of their issues. There remains a small issue with their neighbor's storm-water runoff. The Ricketts consulted a landscaper and the County, who suggested installing a swale to channel the water away from the area. However, any construction would disturb the buffer and require a hearing.

The rainwater that falls onto the patio is absorbed into a drainage system underneath the floor that conveys it to a drain field drywell. A community path runs along the east of their property to the water. The Ricketts utilize the western portion of their patio to decrease the impact on residents using the community recreation area. Mr. Rickett stated that he is planning to do more plantings and would agree to do so as a condition of variance approval.

On questioning, Mr. Rickett testified that he submitted a site plan that did not include measurements. When the Critical Area, (CA), worksheet was submitted, the County did not comment that the southwest corner of the patio was being built partially within the buffer zone. The County told them that they didn't need a permit for the patio. The inspector visited the site after the patio was built. Although about three inspectors have visited the site, no one informed Mr. Rickett that he needed a building permit.

Mr. Shep Tullier, an expert in land planning, testified that he visited the subject property. The subdivision was approved and constructed without storm-water management. Only some of the southwest corner of the patio would be subject to the variance. Mr. Tullier believes that if

the Ricketts are not granted the variance, it would deprive them of a right commonly enjoyed by others. The Petitioners acted in good faith. When he visited the property, he noticed that all of the properties were improved with porches, patios, or some combination thereof. The variance would be the minimum necessary to afford relief. The patio has improved the site conditions. It doesn't impair the use or development of adjacent properties and is not contrary to acceptable clearing practices for Critical Area construction. It is not detrimental to the public welfare. Mr. Tullier also testified that the house next door is closer to the water than the Rickett's patio. The minimum 100-foot CA buffer requirement was in effect at the time the subdivision was built in 1990. The variance is required because of the irregular shoreline.

Mr. John Fury, a planner with the Office of Planning and Zoning (OPZ), testified that the Ricketts could have built a reasonably sized patio without infringing on the buffer. On questioning, Mr. Fury testified that the County does not require a building permit for the patio and the irregular shape of the shoreline would be a unique condition. Here, adding the patio would not alter the essential character of the neighborhood. Patios and outdoor living spaces are common on many of the properties in the community. Mr. Fury is not aware of the extent of the storm water management in the area. Whenever one adds impervious surface, there is always the potential for adverse impact. The County stipulated that the construction has captured runoff and allowed it to flow to the ground and be distributed in an ecological manner under the ground. However, the property is non-buffer exempt. The 100-foot buffer cannot be disturbed without a variance. The unique condition of the shoreline denies the Ricketts their full use of the property. Although the CA worksheet was submitted with the application, much was not filled out and it contained a few questionable items of information. The County relies on the good faith of the application and the burden is on the Petitioners to supply correct information.

Mr. Thomas Ronaldi, a Protestant, lives in a house adjacent to the Rickett property on the west side. In response to the Petitioners' testimony, Mr. Ronaldi took measurements of the cul-de-sac with a three-foot level and found that it was level with very slight rounding on the left and right side of the road. There is a culvert under the Petitioners' driveway that is almost completely blocked. The blockage prevents water from moving through it. Mr. Ronaldi testified that he cleans the culvert under his driveway every couple of years. He opined that if the Ricketts cleaned their culvert and removed the plantings, then there wouldn't be a drainage problem. The Ricketts also need to clean their gutters. He has witnessed four tropical storms and once, the Rickett's boat ended up in his backyard. He is concerned that the new structures will cause water to be flushed onto his property, causing problems and decreasing the value of his property. Mr. Ronaldi has a patio and deck also. His patio is a concrete slab that is about four inches higher than the land. The Rickett patio is about six to seven feet higher than the land. The grade of land was changed with the construction of the patio and he is concerned that it will force water onto his property.

Mr. Eric E. See, an expert in environmental planning, reviewed the County report, aerial photography, and visited the site. There was no substantial habitat where the patio has been placed. There was only lawn with a few scattered trees. He does not consider the patio impervious. Instead, it is made of pavers through which water passes to the stones below and ultimately to a drainage pipe. The majority of the water will enter the ground and the surface of the one-foot wide parapet will have minimal water runoff. All of the homes in the neighborhood have significant patios so the essential character will not be altered. The patio consists of 600 square feet of semi-impervious surface within the buffer. It has minimal impact to the total buffer on site. Only 2-3% of the on-site Critical Area buffer is impacted. The patio does not impact fish or wildlife habitat. The land is in good condition and the patio was constructed over

grass; therefore, forest cover was not reduced. Flooding comes from the topography of the area, not any particular lot. The land slopes down from the road toward the Rickett and Ronaldi properties. Mr. See doesn't believe that the water flow to the Ronaldi property will be altered by the patio. The crushed stone under the patio is there to make water seep into the ground and not flow into the creek. There is a black, flexible, drain pipe at the pier near the shoreline on the left side of the lot near the Ronaldi property. The patio's current design is better than a slab because it allows water to seep into the ground. The Rickett patio could actually provide shielding to the Ronaldi property during storm surges. Finally, the patio has no impact on other properties.

Ms. Gloria Rickett testified that the Petitioners would have applied for the variance had they known it was needed. She would accept the CAC's recommendation of 3:1 mitigation.

Mr. John Fury was recalled and testified that the County's mitigation requirements don't provide for understory plantings. If there is no space for additional plantings on site, then a fee would be assessed.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

The subject property is irregular in shape and located in the Chesapeake Bay Critical Area (CA), and designated as a Limited Development Area (LDA). The property is not located in a buffer modification area. The site is zoned R2-Residential. The Petitioners seek a variance to perfect construction of a patio addition and decorative wall with less buffer than required by the Anne Arundel County Code, (Code). See Code § 18-13-104(a) and §17-8-301(b). The Code requires a minimum 100-foot buffer landward from the mean high-water (MHW) line. Since both additions are located only eighty-five feet landward from the MHW line, they exist within the 100-foot buffer and; therefore, require a variance.

Variations in the CA require the Petitioners to satisfy an extensive list of requirements set out in the Code. *See* Code § 3-1-207. The requirements established for variations within the CA are exceptionally difficult to overcome. An applicant for a variance to the Critical Area Program must meet each and every one of the conjunctive variance requirements of the Code. *See id.* If an applicant fails to meet even one of the criteria, the variance must be denied. In the instant case, we find that the Petitioners have failed to meet their burden of proof regarding six of the variance criteria. Thus, a variance cannot be granted in this appeal.

The Petitioners must first show that "because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program . . . would result in an unwarranted hardship." *Id.* § 3-1-207(b)(1). It is clear from the testimony that the irregular shape of the shoreline and the sloping topography inherent in the Rickett property constitute unique physical conditions. For instance, Mr. Tullier pointed out that the shoreline runs at an angle inward toward the west side of the property and causes the buffer to become the greater part of the property. This is also noticeable from the site plan of the Rickett property. Mr. Fury also asserted that the irregular shape of the shoreline would be a unique condition. Mr. Rickett testified that his property slopes downward from the road and causes a substantial amount of water runoff. Mr. See's testimony and the topography shown on the site plan, all support this assertion.

While it is clear that a unique physical condition exists on the Rickett property, it remains unclear whether strict adherence to the CA requirements will constitute an unwarranted hardship on the Ricketts. Under Maryland law, an unwarranted hardship "means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested." Md. Natural Resources Code Ann. § 8-1808(d)(2). The Ricketts enjoy a beautiful home on their property and, therefore, they have not been denied the reasonable

and significant use of their property. Furthermore, they also have a huge patio for outside recreation. Only the western portion of the new patio lies within the buffer zone. The Ricketts contend that it is this western portion of the patio that is crucial for the correction of their storm water management problems. They also contend that their use of this portion of the site is necessary to prevent the disturbance of those who want to access the community recreation area to the east of their property. However, testimony given by Mr. Ronaldi suggests that some of the Ricketts' storm water management problems could be solved simply by cleaning out their gutters and culvert. While the patio has been constructed in such a way as to capture runoff and allow it to flow to the ground in an ecological way, it does not necessarily mean that the patio is the *only* means by which the Ricketts may approach their drainage dilemma. The testimony suggests that ~~there are other solutions to the storm water management problem that do not require a patio to be~~ built within the buffer. Furthermore, we find that the Ricketts could construct a similarly-sized patio on the east side and prevent disturbance of the community recreation area through other means, such as planting evergreen trees to block views. Construction of the patio farther to the east would avoid the need for a variance to the Critical Area regulations.

Requiring the Ricketts to move the section of impervious surface that encroaches upon the buffer will not deprive them of the reasonable and substantial use of their property. The testimony and evidence suggests that, although the Ricketts may not want to, it is feasible to move the above stated section of impervious out of the buffer and still allow them enjoyment of their property. Therefore, we find that disallowing construction of the patio in the western portion of the lot will not deny the Ricketts the substantial use of their *entire* parcel and therefore would not constitute an "*unwarranted hardship.*" *Id.* (emphasis added).

The Petitioners next must establish that "[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in

similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County.” *Id.* § 3-1-207(b)(2)(i). The Code also requires the Petitioners to show that “[t]he granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County’s critical area program to other lands or structures within the County critical area, or the County’s bog protection program to other lands or structures within a bog protection area.” *Id.* § 3-1-207(b)(3). The Petitioners have the burden of showing that other properties in the Critical Area, not just this neighborhood, enjoy the rights and privileges they seek to obtain in this variance request. However, they do not provide information which can properly lead us to conclude that other properties in similar areas of the CA enjoy the right that the Petitioners seek here. Although the testimony suggests that many ~~properties in this community have porches and patios~~, no evidence is offered as to whether variances were needed for those structures in the community. Such bare observations without proof that variances were granted, or that the said structures encroach upon the CA buffer, does not persuade us that the applicant will be deprived of a right enjoyed by others in the CA. Indeed, the Code does not limit its search of similar areas, lands or structures, to the immediate community. *See id.* Instead, it looks to *similar areas . . . within the critical area.*” *Id.* § 3-1-207(b)(2)(i). The Petitioners failed to set forth evidence that a denial of this variance request will deprive them of rights commonly enjoyed by other properties within the CA. *See id.* Accordingly, the Petitioners failed to persuade us that they will not incur a special privilege from a decision to grant the requested variance. Therefore, we find that the evidence presented does not satisfy these requirements. *See id.* §§ 3-1-207(b)(2)(i), (b)(3).

The Petitioners must next establish that “[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed” and “does not arise from any condition relating to land or building use on any neighboring property.” *Id.* § 3-1-207(b)(4).

The Ricketts completed a critical area worksheet prior to constructing the patio. However, it is unclear whether the site plan originally submitted was accurate as to the location of the patio. Furthermore, the applicants may have been given conflicting information regarding the need for a variance. They seek an after-the-fact variance now as a result of their actions in constructing this patio within the 100-foot buffer zone. The importance of the CA requires citizens to be particularly vigilant of limitations imposed on their property. Even though the Ricketts may have been given conflicting information regarding the required variance, it is their burden to seek the correct information before beginning construction in the CA. Conflicting information does not permit residents to begin building. If there is even a scintilla of doubt, residents should do everything in their power to ensure that their proposed construction does not violate the CA program regulations. ~~The future health of the Chesapeake Bay and our environment depend on~~ this extreme vigilance being exercised by residents within the CA.

The Ricketts contend that the western portion of the patio was built for storm water management purposes and to provide privacy for the recreation area on the eastern side of their lot. Mr. See testified, and the evidence suggests, that the flooding comes from the topography of the land and not from any one lot in particular. We cannot say that the flooding arises from any neighboring land, especially when the topography of the Rickett property itself may be the cause of their troubles. While they are relevant to the second part of this requirement, the storm water management and privacy concerns could have been brought up during the variance application process prior to constructing the patio. Therefore, we find that the Petitioners failed to satisfy this requirement. *See id.*

The next burden that the Petitioners must overcome is to show that "[t]he granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area or a bog protection area." *Id.* § 3-1-207(b)(5)(i). The subject property is a waterfront lot located in the CA. Mr. See, an expert in environmental planning in

the CA, testified that the patio does not impact fish or wildlife habitat. There is nothing in the evidence that would suggest any adverse impact on water quality or habitats. Therefore, the Petitioners have satisfied this requirement. *See id.*

The Petitioners' next burden is to establish, through "competent and substantial evidence . . . overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code." *Id.* § 3-1-207(b)(7). Under the above cited section of the Natural Resources Article, it is presumed "that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." Md. Code Ann., Natural Resources §8-1808(d)(2)(i). Along with this requirement, the Petitioners must establish that granting a variance here "will be in harmony with the general spirit and intent of the County's critical area program or bog protection program." *Id.* § 3-1-207(b)(5). The western portion of the patio lies within the 100-foot buffer zone required by the Code. As stated above, while we understand the concerns that the Ricketts have about the community recreation area, when weighed against the possibility of other solutions and the significance of the CA regulations, we find that the purpose and intent of the latter does not warrant granting a variance. *See id.* §§ 3-1-207(b)(5), (b)(7).

Likewise, although there is flooding on the Rickett property, there are other methods that could be employed to resolve these storm water management issues, which do not involve the construction of a patio that infringes on the buffer. The great importance of the CA warrants the very strict requirements set forth in the Code. Although the patio may be a sufficient solution to the storm water management issues, the Ricketts have not persuaded us that it is a necessary solution. Accordingly, we find that the Petitioners have failed to overcome the presumption

because the development does not conform to the "general purpose and intent" of the CA program. *See id.*

The subject property is not within the County's bog protection area and thus, Code Section 3-1-207(b)(6) does not apply and need not be addressed.

Next, the Petitioners have the burden of proving that "the variance is the minimum variance necessary to afford relief." Code § 3-1-207(c)(1). With an environmentally sensitive property such as this, State and County regulations require that the variance be the absolute minimum necessary to grant relief. As stated above, this variance is not the minimum necessary to solve the issues that the Ricketts have presented. The purpose of this minimum provision is to protect the CA—not the Petitioners' desire for an aesthetically appealing solution to their storm water management and privacy concerns. Since the Petitioners have not persuaded us that there is no other recourse that can be taken other than the construction of the western portion of the new patio, we find that the requested variance is not the minimum necessary to afford relief.

In addition, the Petitioners must show that the patio does not "alter the essential character of the neighborhood or district in which the lot is located." *Id.* § 3-1-207(c)(2)(i). As stated above, many of the homes in this community have patios, porches, or some combination thereof. Testimony presented by both Mr. Fury and Mr. See, suggests that the patio will not alter the essential character of the community. Thus, we find that the Petitioners have satisfied this requirement. *See id.*

The Petitioners must also show that "the granting of the variance will not substantially impair the appropriate use or development of adjacent property." *Id.* § 3-1-207(c)(2)(ii). Mr. See testified that he does not believe that water flow to Mr. Ronaldi's property will be altered at all by the construction of the patio. Mr. Ronaldi believes that the grade change caused by the installation of the patio will push water to his property if a storm surge were to occur. However,

according to Mr. Ronaldi's testimony, this has yet to occur. In light of Mr. See's testimony and his credentials as an expert in the field, we find little weight in Mr. Ronaldi's conjecture. Indeed, Mr. See's analysis reveals that the patio aids in the suppression of runoff and could actually provide shielding to the Ronaldi lot during a storm surge. In addition, Mr. See testified that the Rickett's addition is much more effective in allowing water to be dispersed into the ground than Mr. Ronaldi's concrete slab patio. Finally, Mr. Tullier also testified that the development of the patio does not impair the use or development of adjacent properties. Therefore, absent conclusive evidence of any affect on the storm water management of Mr. Ronaldi's property, we conclude that granting this variance "will not substantially impair the appropriate use of development" of Mr. Ronaldi's property. *Id.*

The Petitioners' next hurdle requires them to show that "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area." *Id.* § 3-1-207(c)(2)(iii). The Petitioners must also establish that "the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." *Id.* § 3-1-207(c)(2)(iv). Mr. See testified that the Rickett patio was constructed over a grass lawn and, therefore, no reduction in forest cover occurred. Likewise, Mr. Tullier testified that the construction of the patio was not contrary to acceptable clearing practices. Therefore, we find that the Petitioners have satisfied these two requirements also. *See id.* §§ 3-1-207(c)(2)(iii), (c)(2)(iv).

Lastly, the Petitioners must show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(2)(v). Mr. Rickett opined and Mr. Tullier agreed, that the development of the patio does not constitute a detriment to the public welfare. As stated above, it seems that many homes in the community contain patio additions, some of which, like Mr. Ronaldi's concrete slab, lie within the 100-foot buffer zone. Therefore, given the

testimony and this evidence, we find that the patio would not constitute a detriment to the public welfare except to the extent that any new impervious surface within the Critical Area buffer adds to the cumulative degradation of the Bay. *See id.*

To be granted a variance to the CA criteria, the Petitioners have the burden to satisfy each and every Code requirement. *See id.* § 3-1-207. As discussed previously in this opinion, failure to meet even *one* of the conjunctive Code provisions requires this Board to deny the requested variance. Here, the Petitioners failed to satisfy six of the applicable requirements of Section 3-1-207. Accordingly, we must deny the requested variance.

ORDER

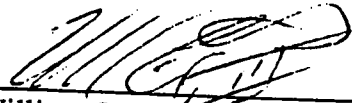
For the reasons set forth in the foregoing Memorandum of Opinion, it is this ~~17~~ day of Nov, 2007, by the County Board of Appeals of Anne Arundel County, ORDERED, that the requested variances to perfect construction of a 73' x 19' patio addition and decorative wall with less buffer than required are hereby **DENIED**.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

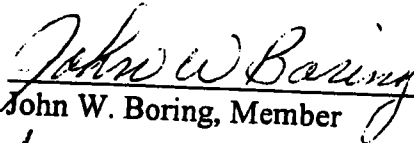
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Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

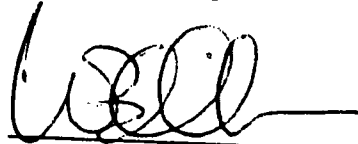
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



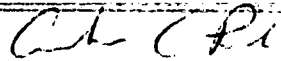
William C. Knight, III, Chairman



John W. Boring, Member



William Moulden, Member



Andrew C. Pruski, Member

(Arnold W. McKechnie, Vice Chairman, and Carroll P. Hicks, Jr., Member, did not participate in this appeal.)

GRANT



James E. Rzepkowski, Member

RE: An Appeal From A Decision Of The
Administrative Hearing Officer

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BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY
CASE NO.: BA 34-07V
(2007-0070-V)
Hearing Date: August 30, 2007
September 26, 2007

JOHN & GLORIA RICKETT

Petitioners

RECEIVED

NOV 15 2007

CRITICAL AREA COMMISSION
Chesapeake & Atlantic Coastal Bays

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to perfect construction of a patio addition with less buffer than required, on property known as 5625 Gunner Run Road, Churchton.

Summary of Evidence

Mr. John Paul Rickett, resides with his wife, Ms. Gloria Rickett, at 5625 Gunner Run Road in Churchton, MD. They purchased the property in 2000. The dwelling, which was built in 1996, has a deck, patio, and pier. There is a slope that causes water to run onto the property from the road. Erosion issues were severe and affected the sides, rear, and the foundation of the house. The community does not have storm water management facilities. The Ricketts' property experiences an enormous amount of runoff. This essentially created a "barren zone," making it difficult to have any vegetation on either side of the house. Their attempts at growing grass failed, because it washed away as soon as it was planted. The southwest corner of the patio is located in this formerly wet area.

The Ricketts wanted to correct the water problem that was leading to the erosion of the foundation and providing a mosquito breeding ground. Originally, a small patio built of concrete was at the rear of the house. This was replaced with a retaining wall and the subject patio, which

measures 76 feet by 19 feet. The construction of the new patio included a drainage system. They used pavers and installed numerous plantings to help absorb water on the property. The patio comprises 1,200 square feet, with approximately 260 square feet in the Critical Area buffer. The total impervious surface on site is 3,256 square feet, which includes the patio, house, driveway and sidewalks. The construction of the patio added 617 square feet of new impervious surface in the buffer. The addition of the retaining wall and drainage system has resolved about 95% of their issues. There remains a small issue with their neighbor's storm-water runoff. The Ricketts consulted a landscaper and the County, who suggested installing a swale to channel the water away from the area. However, any construction would disturb the buffer and require a hearing.

The rainwater that falls onto the patio is absorbed into a drainage system underneath the floor that conveys it to a drain field drywell. A community path runs along the east of their property to the water. The Ricketts utilize the western portion of their patio to decrease the impact on residents using the community recreation area. Mr. Rickett stated that he is planning to do more plantings and would agree to do so as a condition of variance approval.

On questioning, Mr. Rickett testified that he submitted a site plan that did not include measurements. When the Critical Area, (CA), worksheet was submitted, the County did not comment that the southwest corner of the patio was being built partially within the buffer zone. The County told them that they didn't need a permit for the patio. The inspector visited the site after the patio was built. Although about three inspectors have visited the site, no one informed Mr. Rickett that he needed a building permit.

Mr. Shep Tullier, an expert in land planning, testified that he visited the subject property. The subdivision was approved and constructed without storm-water management. Only some of the southwest corner of the patio would be subject to the variance. Mr. Tullier believes that if

the Ricketts are not granted the variance, it would deprive them of a right commonly enjoyed by others. The Petitioners acted in good faith. When he visited the property, he noticed that all of the properties were improved with porches, patios, or some combination thereof. The variance would be the minimum necessary to afford relief. The patio has improved the site conditions. It doesn't impair the use or development of adjacent properties and is not contrary to acceptable clearing practices for Critical Area construction. It is not detrimental to the public welfare. Mr. Tullier also testified that the house next door is closer to the water than the Rickett's patio. The minimum 100-foot CA buffer requirement was in effect at the time the subdivision was built in 1990. The variance is required because of the irregular shoreline.

Mr. John Fury, a planner with the Office of Planning and Zoning (OPZ), testified that the Ricketts could have built a reasonably sized patio without infringing on the buffer. On questioning, Mr. Fury testified that the County does not require a building permit for the patio and the irregular shape of the shoreline would be a unique condition. Here, adding the patio would not alter the essential character of the neighborhood. Patios and outdoor living spaces are common on many of the properties in the community. Mr. Fury is not aware of the extent of the storm water management in the area. Whenever one adds impervious surface, there is always the potential for adverse impact. The County stipulated that the construction has captured runoff and allowed it to flow to the ground and be distributed in an ecological manner under the ground. However, the property is non-buffer exempt. The 100-foot buffer cannot be disturbed without a variance. The unique condition of the shoreline denies the Ricketts their full use of the property. Although the CA worksheet was submitted with the application, much was not filled out and it contained a few questionable items of information. The County relies on the good faith of the application and the burden is on the Petitioners to supply correct information.

Mr. Thomas Ronaldi, a Protestant, lives in a house adjacent to the Rickett property on the west side. In response to the Petitioners' testimony, Mr. Ronaldi took measurements of the cul-de-sac with a three-foot level and found that it was level with very slight rounding on the left and right side of the road. There is a culvert under the Petitioners' driveway that is almost completely blocked. The blockage prevents water from moving through it. Mr. Ronaldi testified that he cleans the culvert under his driveway every couple of years. He opined that if the Ricketts cleaned their culvert and removed the plantings, then there wouldn't be a drainage problem. The Ricketts also need to clean their gutters. He has witnessed four tropical storms and once, the Rickett's boat ended up in his backyard. He is concerned that the new structures will cause water to be flushed onto his property, causing problems and decreasing the value of his property. Mr. Ronaldi has a patio and deck also. His patio is a concrete slab that is about four inches higher than the land. The Rickett patio is about six to seven feet higher than the land. The grade of land was changed with the construction of the patio and he is concerned that it will force water onto his property.

Mr. Eric E. See, an expert in environmental planning, reviewed the County report, aerial photography, and visited the site. There was no substantial habitat where the patio has been placed. There was only lawn with a few scattered trees. He does not consider the patio impervious. Instead, it is made of pavers through which water passes to the stones below and ultimately to a drainage pipe. The majority of the water will enter the ground and the surface of the one-foot wide parapet will have minimal water runoff. All of the homes in the neighborhood have significant patios so the essential character will not be altered. The patio consists of 600 square feet of semi-impervious surface within the buffer. It has minimal impact to the total buffer on site. Only 2-3% of the on-site Critical Area buffer is impacted. The patio does not impact fish or wildlife habitat. The land is in good condition and the patio was constructed over

grass; therefore, forest cover was not reduced. Flooding comes from the topography of the area, not any particular lot. The land slopes down from the road toward the Rickett and Ronaldi properties. Mr. See doesn't believe that the water flow to the Ronaldi property will be altered by the patio. The crushed stone under the patio is there to make water seep into the ground and not flow into the creek. There is a black, flexible, drain pipe at the pier near the shoreline on the left side of the lot near the Ronaldi property. The patio's current design is better than a slab because it allows water to seep into the ground. The Rickett patio could actually provide shielding to the Ronaldi property during storm surges. Finally, the patio has no impact on other properties.

Ms. Gloria Rickett testified that the Petitioners would have applied for the variance had they known it was needed. She would accept the CAC's recommendation of 3:1 mitigation.

Mr. John Fury was recalled and testified that the County's mitigation requirements don't provide for understory plantings. If there is no space for additional plantings on site, then a fee would be assessed.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

The subject property is irregular in shape and located in the Chesapeake Bay Critical Area (CA), and designated as a Limited Development Area (LDA). The property is not located in a buffer modification area. The site is zoned R2-Residential. The Petitioners seek a variance to perfect construction of a patio addition and decorative wall with less buffer than required by the Anne Arundel County Code, (Code). See Code § 18-13-104(a) and §17-8-301(b). The Code requires a minimum 100-foot buffer landward from the mean high-water (MHW) line. Since both additions are located only eighty-five feet landward from the MHW line, they exist within the 100-foot buffer and; therefore, require a variance.

Variances in the CA require the Petitioners to satisfy an extensive list of requirements set out in the Code. *See* Code § 3-1-207. The requirements established for variances within the CA are exceptionally difficult to overcome. An applicant for a variance to the Critical Area Program must meet each and every one of the conjunctive variance requirements of the Code. *See id.* If an applicant fails to meet even one of the criteria, the variance must be denied. In the instant case, we find that the Petitioners have failed to meet their burden of proof regarding six of the variance criteria. Thus, a variance cannot be granted in this appeal.

The Petitioners must first show that “because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the County's critical area program . . . would result in an unwarranted hardship.” *Id.* § 3-1-207(b)(1). It is clear from the testimony that the irregular shape of the shoreline and the sloping topography inherent in the Rickett property constitute unique physical conditions. For instance, Mr. Tullier pointed out that the shoreline runs at an angle inward toward the west side of the property and causes the buffer to become the greater part of the property. This is also noticeable from the site plan of the Rickett property. Mr. Fury also asserted that the irregular shape of the shoreline would be a unique condition. Mr. Rickett testified that his property slopes downward from the road and causes a substantial amount of water runoff. Mr. See's testimony and the topography shown on the site plan, all support this assertion.

While it is clear that a unique physical condition exists on the Rickett property, it remains unclear whether strict adherence to the CA requirements will constitute an unwarranted hardship on the Ricketts. Under Maryland law, an unwarranted hardship “means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.” Md. Natural Resources Code Ann. § 8-1808(d)(2). The Ricketts enjoy a beautiful home on their property and, therefore, they have not been denied the reasonable

and significant use of their property. Furthermore, they also have a huge patio for outside recreation. Only the western portion of the new patio lies within the buffer zone. The Ricketts contend that it is this western portion of the patio that is crucial for the correction of their storm water management problems. They also contend that their use of this portion of the site is necessary to prevent the disturbance of those who want to access the community recreation area to the east of their property. However, testimony given by Mr. Ronaldi suggests that some of the Ricketts' storm water management problems could be solved simply by cleaning out their gutters and culvert. While the patio has been constructed in such a way as to capture runoff and allow it to flow to the ground in an ecological way, it does not necessarily mean that the patio is the *only* means by which the Ricketts may approach their drainage dilemma. The testimony suggests that there are other solutions to the storm water management problem that do not require a patio to be built within the buffer. Furthermore, we find that the Ricketts could construct a similarly-sized patio on the east side and prevent disturbance of the community recreation area through other means, such as planting evergreen trees to block views. Construction of the patio farther to the east would avoid the need for a variance to the Critical Area regulations.

Requiring the Ricketts to move the section of impervious surface that encroaches upon the buffer will not deprive them of the reasonable and substantial use of their property. The testimony and evidence suggests that, although the Ricketts may not want to, it is feasible to move the above stated section of impervious out of the buffer and still allow them enjoyment of their property. Therefore, we find that disallowing construction of the patio in the western portion of the lot will not deny the Ricketts the substantial use of their *entire* parcel and therefore would not constitute an "*unwarranted hardship.*" *Id.* (*emphasis added*).

The Petitioners next must establish that "[a] literal interpretation of COMAR, 27.01, Criteria for Local Critical Area Program Development or the County's critical area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in

similar areas as permitted in accordance with the provisions of the critical area program within the critical area of the County.” *Id.* § 3-1-207(b)(2)(i). The Code also requires the Petitioners to show that “[t]he granting of a variance will not confer on an applicant any special privilege that would be denied by COMAR, 27.01, the County’s critical area program to other lands or structures within the County critical area, or the County’s bog protection program to other lands or structures within a bog protection area.” *Id.* § 3-1-207(b)(3). The Petitioners have the burden of showing that other properties in the Critical Area, not just this neighborhood, enjoy the rights and privileges they seek to obtain in this variance request. However, they do not provide information which can properly lead us to conclude that other properties in similar areas of the CA enjoy the right that the Petitioners seek here. Although the testimony suggests that many properties in this community have porches and patios, no evidence is offered as to whether variances were needed for those structures in the community. Such bare observations without proof that variances were granted, or that the said structures encroach upon the CA buffer, does not persuade us that the applicant will be deprived of a right enjoyed by others in the CA. Indeed, the Code does not limit its search of similar areas, lands or structures, to the immediate community. *See id.* Instead, it looks to *similar areas . . . within the critical area.*” *Id.* § 3-1-207(b)(2)(i). The Petitioners failed to set forth evidence that a denial of this variance request will deprive them of rights commonly enjoyed by other properties within the CA. *See id.* Accordingly, the Petitioners failed to persuade us that they will not incur a special privilege from a decision to grant the requested variance. Therefore, we find that the evidence presented does not satisfy these requirements. *See id.* §§ 3-1-207(b)(2)(i), (b)(3).

The Petitioners must next establish that “[t]he variance request is not based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development before an application for a variance was filed” and “does not arise from any condition relating to land or building use on any neighboring property.” *Id.* § 3-1-207(b)(4).

The Ricketts completed a critical area worksheet prior to constructing the patio. However, it is unclear whether the site plan originally submitted was accurate as to the location of the patio. Furthermore, the applicants may have been given conflicting information regarding the need for a variance. They seek an after-the-fact variance now as a result of their actions in constructing this patio within the 100-foot buffer zone. The importance of the CA requires citizens to be particularly vigilant of limitations imposed on their property. Even though the Ricketts may have been given conflicting information regarding the required variance, it is their burden to seek the correct information before beginning construction in the CA. Conflicting information does not permit residents to begin building. If there is even a scintilla of doubt, residents should do everything in their power to ensure that their proposed construction does not violate the CA program regulations. The future health of the Chesapeake Bay and our environment depend on this extreme vigilance being exercised by residents within the CA.

The Ricketts contend that the western portion of the patio was built for storm water management purposes and to provide privacy for the recreation area on the eastern side of their lot. Mr. See testified, and the evidence suggests, that the flooding comes from the topography of the land and not from any one lot in particular. We cannot say that the flooding arises from any neighboring land, especially when the topography of the Rickett property itself may be the cause of their troubles. While they are relevant to the second part of this requirement, the storm water management and privacy concerns could have been brought up during the variance application process prior to constructing the patio. Therefore, we find that the Petitioners failed to satisfy this requirement. *See id.*

The next burden that the Petitioners must overcome is to show that “[t]he granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County’s critical area or a bog protection area.” *Id.* § 3-1-207(b)(5)(i). The subject property is a waterfront lot located in the CA. Mr. See, an expert in environmental planning in

the CA, testified that the patio does not impact fish or wildlife habitat. There is nothing in the evidence that would suggest any adverse impact on water quality or habitats. Therefore, the Petitioners have satisfied this requirement. *See id.*

The Petitioners' next burden is to establish, through "competent and substantial evidence . . . overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code." *Id.* § 3-1-207(b)(7). Under the above cited section of the Natural Resources Article, it is presumed "that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program." Md. Code Ann., Natural Resources §8-1808(d)(2)(i). Along with this requirement, the Petitioners must establish that granting a variance here "will be in harmony with the general spirit and intent of the County's critical area program or bog protection program." *Id.* § 3-1-207(b)(5). The western portion of the patio lies within the 100-foot buffer zone required by the Code. As stated above, while we understand the concerns that the Ricketts have about the community recreation area, when weighed against the possibility of other solutions and the significance of the CA regulations, we find that the purpose and intent of the latter does not warrant granting a variance. *See id.* §§ 3-1-207(b)(5), (b)(7).

Likewise, although there is flooding on the Rickett property, there are other methods that could be employed to resolve these storm water management issues, which do not involve the construction of a patio that infringes on the buffer. The great importance of the CA warrants the very strict requirements set forth in the Code. Although the patio may be a sufficient solution to the storm water management issues, the Ricketts have not persuaded us that it is a necessary solution. Accordingly, we find that the Petitioners have failed to overcome the presumption

because the development does not conform to the “general purpose and intent” of the CA program. *See id.*

The subject property is not within the County’s bog protection area and thus, Code Section 3-1-207(b)(6) does not apply and need not be addressed.

Next, the Petitioners have the burden of proving that “the variance is the minimum variance necessary to afford relief.” Code § 3-1-207(c)(1). With an environmentally sensitive property such as this, State and County regulations require that the variance be the absolute minimum necessary to grant relief. As stated above, this variance is not the minimum necessary to solve the issues that the Ricketts have presented. The purpose of this minimum provision is to protect the CA—not the Petitioners’ desire for an aesthetically appealing solution to their storm water management and privacy concerns. Since the Petitioners have not persuaded us that there is no other recourse that can be taken other than the construction of the western portion of the new patio, we find that the requested variance is not the minimum necessary to afford relief.

In addition, the Petitioners must show that the patio does not “alter the essential character of the neighborhood or district in which the lot is located.” *Id.* § 3-1-207(c)(2)(i). As stated above, many of the homes in this community have patios, porches, or some combination thereof. Testimony presented by both Mr. Fury and Mr. See, suggests that the patio will not alter the essential character of the community. Thus, we find that the Petitioners have satisfied this requirement. *See id.*

The Petitioners must also show that “the granting of the variance will not substantially impair the appropriate use or development of adjacent property.” *Id.* § 3-1-207(c)(2)(ii). Mr. See testified that he does not believe that water flow to Mr. Ronaldi’s property will be altered at all by the construction of the patio. Mr. Ronaldi believes that the grade change caused by the installation of the patio will push water to his property if a storm surge were to occur. However,

according to Mr. Ronaldi's testimony, this has yet to occur. In light of Mr. See's testimony and his credentials as an expert in the field, we find little weight in Mr. Ronaldi's conjecture. Indeed, Mr. See's analysis reveals that the patio aids in the suppression of runoff and could actually provide shielding to the Ronaldi lot during a storm surge. In addition, Mr. See testified that the Rickett's addition is much more effective in allowing water to be dispersed into the ground than Mr. Ronaldi's concrete slab patio. Finally, Mr. Tullier also testified that the development of the patio does not impair the use or development of adjacent properties. Therefore, absent conclusive evidence of any affect on the storm water management of Mr. Ronaldi's property, we conclude that granting this variance "will not substantially impair the appropriate use of development" of Mr. Ronaldi's property. *Id.*

The Petitioners' next hurdle requires them to show that "the granting of the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area." *Id.* § 3-1-207(c)(2)(iii). The Petitioners must also establish that "the granting of the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area or a bog protection area." *Id.* § 3-1-207(c)(2)(iv). Mr. See testified that the Rickett patio was constructed over a grass lawn and, therefore, no reduction in forest cover occurred. Likewise, Mr. Tullier testified that the construction of the patio was not contrary to acceptable clearing practices. Therefore, we find that the Petitioners have satisfied these two requirements also. *See id.* §§ 3-1-207(c)(2)(iii), (c)(2)(iv).

Lastly, the Petitioners must show that "the granting of the variance will not be detrimental to the public welfare." *Id.* § 3-1-207(c)(2)(v). Mr. Rickett opined and Mr. Tullier agreed, that the development of the patio does not constitute a detriment to the public welfare. As stated above, it seems that many homes in the community contain patio additions, some of which, like Mr. Ronaldi's concrete slab, lie within the 100-foot buffer zone. Therefore, given the

testimony and this evidence, we find that the patio would not constitute a detriment to the public welfare except to the extent that any new impervious surface within the Critical Area buffer adds to the cumulative degradation of the Bay. *See id.* *they get it!*

To be granted a variance to the CA criteria, the Petitioners have the burden to satisfy each and every Code requirement. *See id.* § 3-1-207. As discussed previously in this opinion, failure to meet even *one* of the conjunctive Code provisions requires this Board to deny the requested variance. Here, the Petitioners failed to satisfy six of the applicable requirements of Section 3-1-207. Accordingly, we must deny the requested variance.

ORDER

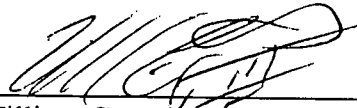
For the reasons set forth in the foregoing Memorandum of Opinion, it is this 14TH day of NOV., 2007, by the County Board of Appeals of Anne Arundel County, ORDERED, that the requested variances to perfect construction of a 73' x 19' patio addition and decorative wall with less buffer than required are hereby **DENIED**.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

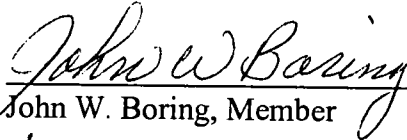
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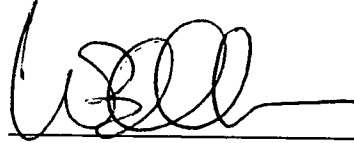
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



William C. Knight, III, Chairman



John W. Boring, Member



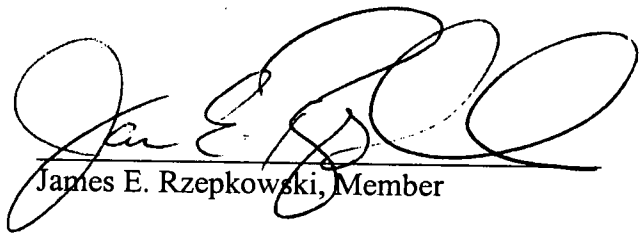
William Moulden, Member



Andrew C. Pruski, Member

(Arnold W. McKechnie, Vice Chairman, and Carroll P. Hicks, Jr., Member, did not participate in this appeal.)

GRANT



James E. Rzepkowski, Member

219-07

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0070-V

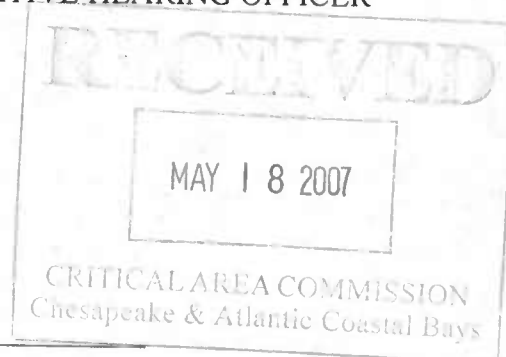
IN RE: JOHN AND GLORIA RICKETT

SEVENTH ASSESSMENT DISTRICT

DATE HEARD: MAY 1, 2007

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

PLANNER: JOHN FURY



DATE FILED MAY 16, 2007

PLEADINGS

John and Gloria Rickett, the applicants, seek a variance (2007-0070-V) to allow a patio addition with less buffer than required on property located along the south side of Gunner Run Road, south of Buccaneer Court, Churchton.

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. Rickett testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

The applicants own a single-family residence with a street address of 5625 Gunner Run Road, in the Spyglass subdivision, Churchton. The property comprises 20,105 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). This is a waterfront lot on Broadwater Creek. The request is to perfect a patio addition (73 by 19 feet) and wall located as close as 85 feet from water.

Anne Arundel County Code, Article 18, Section 18-13-104(a) establishes a 100-foot buffer from tidal waters. Accordingly, the proposal requires a buffer variance of 15 feet.

John R. Fury, a planner with the Office of Planning and Zoning, testified that the applicants were cited by the County's Office of Inspections and Permits for grading without a permit. He noted that the property is within the allowance for impervious coverage (3,256 square feet versus 6,282 square feet). He disputed that the variance standards are satisfied. Among other objections, a patio could have been constructed outside the buffer, the granting of the variance could adversely impact Critical Area assets and does not harmonize with the general spirit and intent of the program, and the relief has not been minimized. The witness summarized the agency comments. The County's Development Division opposed the application. Given the conflicting information provided to the applicants by the County, the Chesapeake Bay Critical Area Commission did not oppose the request, subject to mitigation. By way of conclusion, Mr. Fury opposed the application.

Mr. Rickett testified that the applicants contacted County representatives prior to construction and were advised that a permit was not needed but they must submit a Critical Area worksheet. The worksheet was submitted. After receiving a complaint from a neighbor, the County stopped the work and told the applicants to apply for the variance. Ms. Rickett testified that the need for the variance results from the curvature of the shoreline.

Tom Ronaldi, who resides on the adjacent property the west, testified that the patio is oversized and the applicants have raised the grade with the resultant diversion of storm surges to his property.¹

By way of rebuttal, Mr. Rickett testified that the applicants are managing their stormwater despite the flow of water from the Ronaldi property.² Ms. Rickett testified that the patio corrected a severe erosion problem – including runoff from the road – at the southwest corner of the dwelling.

There was no other testimony in the matter.

I visited the site and the neighborhood. This is a substantial dwelling (one-story over basement) with two levels of waterside decking. The waterside is accessed across steps in the side yard. The patio extends the full width of the dwelling with a retaining wall along its leading edge and plantings in front of the wall. A level lawn extends to a narrow section of bank that slopes down to the water. There is a retaining wall in the east side yard of the Ronaldi property. Both properties appear to be stabilized. Substantial homes, some with waterside amenities, characterize the neighborhood.

The standards for granting variances are contained in Section 18-16-305. Under subsection (b), for a property in the Critical Area, a variance to the Critical Area program requirements may be granted only after determining that (1) due to unique physical conditions, peculiar to the lot, a strict implementation of the

¹ Mr. Ronaldi also testified that the applicants have installed a shed near the common lot line.

² Although the shed is not part of the request, the witness indicated that it could be relocated in accordance with the Critical Area and zoning laws.

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.

The law is well settled that the applicants' burden is to satisfy each and every variance criteria. If the proof is lacking as to even one of the standards, then the relief must be denied.

While I am sympathetic to the applicants' situation, I am constrained to deny the application. Considering first the subsection (b) criteria, there is no showing that a strict application of the program deprives the applicants of rights commonly enjoyed elsewhere in the Critical Area. Rather, the grant of the request to perfect the section of patio that encroaches in the buffer confers a special

privilege that the program typically denies. Although the request is not the result of the actions of the applicants, the granting of the variance is nonetheless adverse to Critical Area assets and does not harmonize with the spirit and intent of the program.

Although it is unnecessary to consider the subsection (c) criteria, I have nonetheless done so. Given the extent of waterside decking and the extensive area of patio outside the buffer, I am unable to find that the relief has been minimized. Even though the granting of the variance will not alter the essential character of the residential neighborhood or the use or development of adjacent property, the granting of the variance is detrimental to the public welfare.

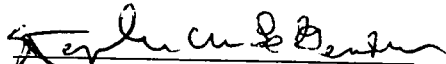
Because the applicants have not met their burden of proof, the denial of the request does not deny reasonable use and is not an unwarranted hardship.

ORDER

PURSUANT to the application of John and Gloria Rickett, petitioning for a variance to allow a patio addition with less buffer than required; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 16th day of May, 2007,

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


Stephen M. LeGenre
Administrative Hearing Officer

NOTICE TO APPLICANT

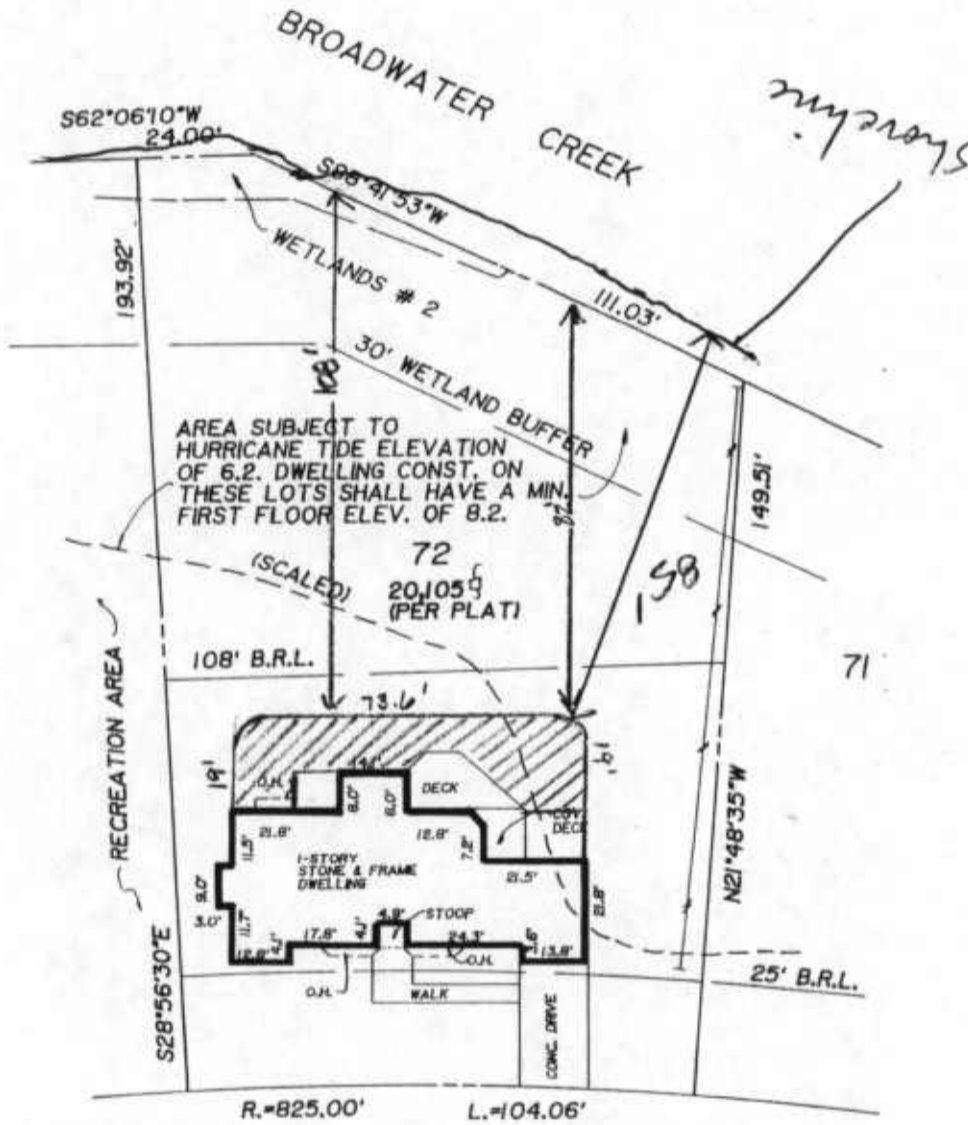
Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

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

LANDTECH ASSOCIATES, INC.

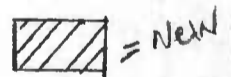
1410 CRAIN HIGHWAY N.W. SUITE 7B GLEN BURNIE, MD 21061
 (410) 268-2121 FAX (410) 553-9081

NOTE: NOT TO BE USED FOR THE ISSUANCE OF PERMITS.



PROPERTY LINE SURVEY RECOMMENDED TO DETERMINE THE EXACT LOCATION OF IMPROVEMENTS AND/OR ENCROACHMENTS, IF ANY.

GUNNER RUN ROAD



Notes

- 1) This plat is of benefit 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 re-financing
- 2) This plat is not to be relied upon for the establishment or location of fences, garages, buildings or other existing or future improvements
- 3) This 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 re-financing
- 4) No title report furnished



Certification: This is to certify that the improvements indicated hereon are located as shown

Graden A. Rogers
 GRADEN A. ROGERS Prop't L.S. MD Lic. No. 119

| | | | |
|----------------------------------|----------|----------------------|--------------------|
| LIBER | FOLIO | 5625 GUNNER RUN ROAD | |
| LOT 72 | BLOCK | SECT | PLAT TWO |
| PLAT ENTITLED SPYGLASS (REVISED) | | | |
| RECORDED IN ANNE ARUNDEL CO. | MD | SCALE 1"=40' | CASE NO. S00B749W |
| PLAT BOOK 128 | FOLIO 21 | DATE 11-22-2000 | JOB NO. GAT-100107 |