

AA 453-07 Boone, Carroll
VAR 0237

Commons
NK 8/7/57

SI 829-6310

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/

May 4, 2009

Ms. Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: **Boone Variance**
2009-0102-V

Dear Ms. Schappert:

Thank you for providing information for the above-referenced variance request. The applicant is requesting a variance to allow a dwelling addition (double deck) with less setbacks and Buffer than required. The lot is 13,500 square feet, is zoned as a Limited Developed Area (LDA), and is located within a Buffer Exemption Area (BEA). Currently, the lot is developed with a one-story house, driveway, shed, three decks, porch, walkway, covered deck, uncovered deck, shed, concrete slab, and pier. The applicant proposes to expand an existing 64-square foot deck to create a double deck, and replace a patio and steps in-kind. The deck will be located 79 feet from a tributary stream and will not extend any closer to the stream than the existing deck. The lower deck will have the same dimensions as the upper deck, while the upper deck will be constructed with a screened-in addition. Currently, the site contains 2,200 square feet of lot coverage (16.2% of the total site area); if the variance is granted, lot coverage will increase to 2,627 square feet (19.45%).

Based on the information provided, this office does not oppose the requested variance; however, do we have the following comments on this proposal:

1. Mitigation for any disturbance to the Buffer shall be provided at a 3:1 ratio, based on the limits of disturbance for construction of the deck.
2. Please have the applicant delineate the 100-foot stream Buffer on the site plan

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. If you have any questions, please contact me at (410) 260-3483.

Sincerely,

A handwritten signature in cursive script that reads "Nick Kelly".

Nick Kelly

Natural Resource Planner

cc: AA 453-07

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor



Margaret G. McHale
Chair

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Executive Director

STATE OF MARYLAND
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August 8, 2007

Ms. Suzanne Schappert
Anne Arundel County
Office of Planning and Zoning
2664 Riva Road, MS 6301
Annapolis, Maryland 21401

Re: Boone Variance
2007-0237-V

Dear Ms. Schappert:

Thank you for sending the above-referenced variance request for review and comment. The applicant is requesting a variance to allow a dwelling addition with less setbacks and Buffer than required. The lot is 13,500 square feet, is zoned as a Limited Developed Area (LDA), and is located within a Buffer Exemption Area (BEA). Currently, the lot is developed with a one-story house, driveway, shed, three decks, porch, walkway, covered deck, uncovered deck, shed, concrete slab, and pier. The applicant proposes to extend a deck that is currently built. If granted, the sizing of the deck will be 14 feet by 22 feet. The site currently contains 2,200 square feet of impervious surface (16.2% of the total site area); proposed impervious surface will increase to 2,448 square feet (18.1%) if the variance is granted.

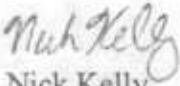
Based on the information provided, this office does not oppose the requested variance; however, do we have the following comments on this proposal:

1. The applicant should provide more information as to whether clearing will occur on-site for this project. Mitigation for any disturbance to the Buffer shall be provided at a 3:1 ratio.
2. The applicant should provide more information on the site plan showing how far from the stream the proposed deck will be located, including showing the Buffer from the stream.
3. The applicant should provide on the site plan the Critical Area Designation (LDA) and impervious surface statistics.

4. The proposed deck should be built in a pervious manner; that is, the deck must be constructed with gaps between the boards, have six inches of gravel spread underneath the deck but not compacted in order to allow stormwater to percolate, and have the deck surrounded by native vegetation (at a minimum of three feet wide and composed of evergreen shrubs or woody, deciduous plant material). Please refer to the attached sheet, taken from the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance Manual, for more information on pervious deck design.

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. If you have any questions, please contact me at (410) 260-3483.

Sincerely,



Nick Kelly

Natural Resource Planner

cc: AA 453-07

Pervious Deck Design

A deck can be constructed with gaps between the boards to achieve perviousness (Figure F.7). Additional elements to minimize subsequent runoff include 6 inches of gravel beneath the deck and plantings.

Advantages

- Simple application
- Reduces the amount of impervious cover

Limitations

- Plantings may require limited maintenance

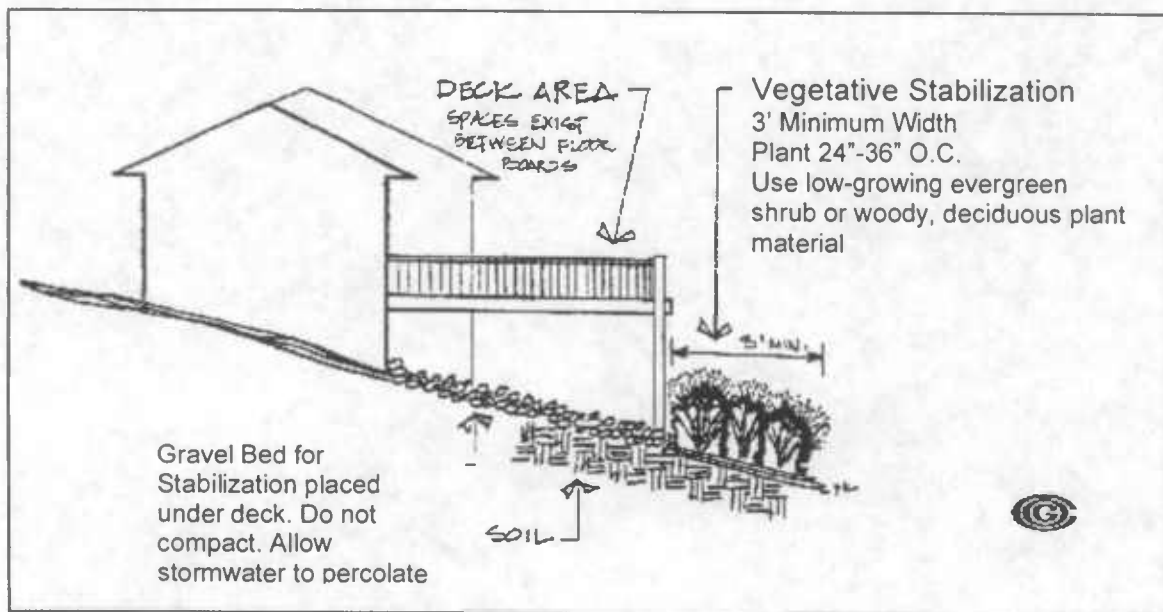


Figure F.7 Schematic of Pervious Deck Design

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2009-0102-V

CARROLL BOONE III AND MARIA BOONE

THIRD ASSESSMENT DISTRICT

DATE HEARD: JUNE 11, 2009

ORDERED BY:

**DOUGLAS CLARK HOLLMANN
ADMINISTRATIVE HEARING OFFICER**

PLANNER: PATRICIA A. COTTER

DATE FILED: JULY 1, 2009

PLEADINGS

Carroll Boone III and Maria Boone, the applicants, seek a variance (2009-0102-V) to allow a dwelling addition with less setbacks and buffer than required on property located along the south side of Harlem Avenue, west of Edgewater Road, Pasadena.

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. Carroll Boone 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

A hearing was held on June 11, 2009, in which witnesses were sworn and the following evidence was presented with regard to the proposed variances requested by the applicants.

The Property

The applicants own a single-family residence known as 457 Harlem Avenue, Pasadena, Maryland 21122. The property comprises 13,500 square feet

and is zoned R2 residential with a Chesapeake Bay Critical Area designation as limited development area (LDA).

The Proposed Work

The applicants are proposing to enclose the open area under an irregular 14-foot by 22-foot second floor deck with less buffer than required. The existing deck is located 62 feet from a tributary stream behind the subject property.

The Anne Arundel County Code

Article 18, § 18-13-104 requires that there shall be a minimum 100-foot buffer landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. The 100-foot buffer is expanded beyond 100 feet to include contiguous sensitive areas, such as slopes of 15% or greater, and hydric soils and highly erodible soils whose development may impact streams, wetlands, or other aquatic environments. If there are contiguous slopes of 15% or greater, the buffer is expanded by the greater of 4 feet for every 1% of slope or to the top of the slope, and shall include all land within 50 feet of the top of the slopes.

§ 17-8-301(b) prohibits new structures in the 100-foot buffer and expanded buffer, except for water dependent uses¹ or shore erosion protection measures.²

¹ "Water-dependent uses" is defined in §18-1-101 of the Code as having "the meaning stated in COMAR, 27.01.03.01." That section reads as follows:

Definition.

A. "Water-dependent facilities" means those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer specified in COMAR 27.01.09 [which relates to research].

B. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. These activities include, but are not

The Variance Requested

The work proposed by the applicants, therefore, will require a critical area variance to § 17-8-301(b) of 38 feet.³

The Evidence Submitted At The Hearing

Patricia A. Cotter, a planner with the Office of Planning and Zoning (OPZ), testified that the subject property is improved with a one-story dwelling, two decks, patio, and shed⁴. The subject property is nonconforming with respect to the minimum lot area requirement for a lot in an R2 district. Steep slopes are present on the property; however, the enclosed area would not impact these areas, and a variance is not required for disturbance to steep slopes. The proposed work will encroach 38 feet into the 100-foot buffer to a tributary stream behind the subject property.⁵ The proposal will bring the total impervious coverage amount to 2,627 square feet, which is within the 4,218 square-foot limitation for the lot.

This property was the subject of a previous variance application in 2007. In a decision dated September 4, 2007 (Case No. 2007-0237-V), the Administrative

limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities.

² "Shore erosion protection measures" is not defined in Article 17 or Article 18 of the Code.

³ A variance to § 18-13-104 is not required. That provision only creates the 100-foot buffer; it does not prohibit anything. It is § 17-8-301(b) that prohibits new structures in the buffer. Therefore, the variance for the work the applicants propose to carry out is to § 17-8-301(b).

⁴ It would appear that the existing east side deck is nonconforming to required setbacks, and that the existing shed was constructed over the west side lot line.

⁵ These distances were approximated from County aerial photographs, as the applicants did not delineate the exact location of the stream.

Hearing Officer granted the applicants⁶ a buffer variance of 21 feet to construct an irregularly shaped open deck measuring 14 feet by 21 feet on the rear of the dwelling.

The applicants, having built the deck approved in 2007, now propose to enclose the area below the deck to create a storage area for lawn supplies and other items. Since the applicants will be creating additional critical area lot coverage, a variance is required. (Since the additional lot coverage is not in excess of the permitted amount, no variance to the lot coverage requirements is needed.)

Upon further review of the application, it would appear that the nonconforming nature of the lot coupled with the presence of steep slopes in the rear yard qualifies as unique physical conditions inherent to the property that prevent any possibility of reasonable development of the lot in strict compliance with the Code. Clearly, a literal interpretation of the critical area program would deprive the applicants of rights commonly enjoyed by other properties in similar areas of the critical area; conversely, the granting of the variance would not confer a special privilege that the program typically denies, and with mitigation, the grant would not adversely impact critical area resources and would therefore harmonize with the general spirit and intent of the critical area program.

County aerial photographs indicate other nonconforming R2-type development is present in the neighborhood. In fact, the subject dwelling is much closer to the roadway and further from the stream than the other dwellings in the

⁶ For reasons not made clear, only Mr. Carroll Boone was an applicant in the 2007 case.

area. Ms. Cotter testified that it was the opinion of OPZ that the granting of this variance request would not alter the essential character of the neighborhood or substantially impair the use or development of adjacent properties. Furthermore, the request appears to be the minimum necessary to afford relief. The deck on this dwelling is modest in sized so the area proposed for enclosure is minimal. It will provide the applicants with a reasonable storage area outside for yard equipment.

The Soil Conservation District deferred their review to the Office of Planning and Zoning. The Department of Health offered no objection to the variance request.

The Critical Area Commission offered no objection to the variance request but commented that the applicants should delineate the 100-foot stream buffer on the site plan. Mitigation at a ratio of 3:1 should be provided for any disturbance to the buffer. This is based upon the limits of disturbance for construction of the deck.

Ms. Cotter testified that, based on the standards set forth in § 18-16-305 under which a variance may be granted, OPZ recommends that the applicants' variance request be approved.

Mr. Carroll Boone testified that the need for storage space has grown since the deck was approved, and he and his wife wanted to enclose the area beneath the deck to provide needed storage space. The structure would be no closer to the stream at the rear of the subject property than the existing deck. He showed a picture of the deck and the area to be enclosed. He said the enclosing material

would be slatted wood or some similar material that would let air pass under the deck.

There was no other testimony taken or exhibits received in the matter. The Hearing Officer did not visit the property.

DECISION

Upon review of the facts and circumstances, I find and conclude that the applicants are entitled to conditional relief from the Code.

State Requirements for Critical Area Variances

§ 8-1808(d)(2) of the Natural Resources Article, Annotated Code of Maryland, provides in subsection (ii), that “[i]n considering an application for a variance [to the critical area requirements], a local jurisdiction shall presume that the specific development in the critical area that is subject to the application and for which a variance is required does not conform to the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the jurisdiction’s program.” (Emphasis added.) “Given these provisions of the State criteria for the grant of a variance, the burden on the applicant is very high.” *Becker v. Anne Arundel County*, 174 Md.App. 114, 124; 920 A.2d 1118, 1124 (2007).

The laws and regulations governing variances, and the changes made by the Legislature in 2002 and 2004 to the critical area law, were discussed in *Becker v. Anne Arundel County, supra*, 174 Md.App. at 131; 920 A.2d at 1128:

In 2002, the General Assembly amended the [critical area] law. ... The amendments to subsection (d) provided that, (1) in order to grant a variance, the Board had to find that the applicant had satisfied each one of the variance provisions, and (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program. ... The preambles to the bills expressly stated that it was the intent of the General Assembly to overrule recent decisions of the Court of Appeals, in which the Court had ruled that, (1) when determining if the denial of a variance would deny an applicant rights commonly enjoyed by others in the critical area, a board may compare it to uses or development that predated the critical area program; (2) an applicant for a variance may generally satisfy variance standards rather than satisfy all standards; and, (3) a board could grant a variance if the critical area program would deny development on a specific portion of the applicant's property rather than considering the parcel as a whole.

In 2003, the Court of Appeals decided Lewis v. Dep't of Natural Res., 377 Md. 382, 833 A.2d 563 (2003). Lewis was decided under the law as it existed prior to the 2002 amendments (citation omitted), and held, *inter alia*, that (1) with respect to variances in buffer areas, the correct standard was not whether the property owner retained reasonable and significant use of the property outside of the buffer, but whether he or she was being denied reasonable use within the buffer, and (2) that the unwarranted hardship factor was the determinative consideration and the other factors merely provided the board with guidance. Id. at 419-23, 833 A.2d 563.

Notwithstanding the fact that the Court of Appeals expressly stated that *Lewis* was decided under the law as it existed prior to the 2002 amendments, in 2004 Laws of Maryland, chapter 526, the General Assembly again amended State law by enacting the substance of Senate Bill 694 and House Bill 1009. The General Assembly expressly stated that its intent in amending the law was to overrule *Lewis* and reestablish the understanding of unwarranted hardship that existed before being “weakened by the Court of Appeals.” In the preambles, the General Assembly recited the history of the 2002 amendments and the *Lewis* decision. The amendment changed the definition of unwarranted hardship [found in § 8-1808(d)(2)(i)] to mean 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.” (Emphasis added.)

The question of whether the applicants are entitled to the variances requested begins, therefore, with the understanding that, in addition to the other specific factors that must be considered, the applicants must overcome the presumption, “that the specific development in the critical area that is subject to the application ... does not conform to the general purpose and intent of [the critical area law].”⁷ Furthermore, the applicants carry the burden of convincing

⁷ § 8-1808(d)(2)(ii) of the Natural Resources Article. References to State law do not imply that the provisions of the County Code are being ignored or are not being enforced. If any difference exists between County law and State law, or if some State criteria were omitted from County law, State law would prevail. See, discussion on this subject in *Becker v. Anne Arundel County*, *supra*, 174 Md.App. at 135; 920 A.2d at 1131.

the Hearing Officer “that the applicants have satisfied each one of the variance provisions.”⁸ (Emphasis added.)

*Anne Arundel County's local Critical Area variance program contains 12 separate criteria. ...Each of these individual criteria must be met. If the applicant fails to meet just one of these 12 criteria, the variance is required to be denied.*⁹ *Becker v. Anne Arundel County, supra*, 174 Md.App. at 124; 920 A.2d at 1124. (Emphasis in original.)

County Requirements for Critical Area Variances

§ 18-16-305 sets forth the requirements for granting a variance for property in the Critical Area. Subsection (b) reads, in part, as follows: a variance may be granted if the Administrative Hearing Officer finds that:

- (1) 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, as that term is defined in the Natural Resources Article, § 8-1808 of the State Code, to the applicants. Subsection (b)(1).

⁸ § 8-1808(d)(4)(ii).

⁹ As explained below, the requirements for a variance from a general zoning requirement are fewer than for a variance from the critical area requirements. More importantly, the two subsections of the criteria for obtaining a variance from the zoning law, found in § 18-16-305 of the Anne Arundel County Code, are expressed in the alternative, i.e., if either ground is found to exist, the variance from the zoning law must be granted.

- (2) 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 applicants of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provision of the critical area program within the critical area of the County. Subsection (b)(2).
- (3) The granting of a variance will not confer on an applicants 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. Subsection (b)(3).
- (4) The variance request is not based on conditions or circumstances that are the result of actions by the applicants, including the commencement of development before an application for a variance was filed, and does not rise from any condition relating to land or building use on any neighboring property. Subsection (b)(4).
- (5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's critical area and will be in harmony with the general spirit and intent of the County's critical area program. Subsection (b)(5).

- (6) The applicants, by competent and substantial evidence, have overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code. Subsection (b)(7).¹⁰

Furthermore, a variance may not be granted unless it is found that: (1) the variance is the minimum variance necessary to afford relief; (2) the granting of the variance will not alter the essential character of the neighborhood or district in which the lot is located; (3) the variance will not substantially impair the appropriate use or development of adjacent property; (4) the variance will not reduce forest cover in the limited development and resource conservation areas of the critical area; (5) the variance will not be contrary to acceptable clearing and replanting practices required for development in the critical area; or (6) the variance will not be detrimental to the public welfare.

Findings - Critical Area Variances

I find, based upon the evidence, that:

- Because of the unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the subject property, i.e., the proximity of steep slopes and a stream to the rear of the subject property, and the existing improvements on it, strict implementation of the County's critical area program would result in an unwarranted hardship to the applicants that would deprive the applicants of rights commonly enjoyed by other properties in similar areas as permitted in accordance with the provisions of the critical area

¹⁰ Subsection (b)(6) refers to bogs, which are not present on the subject property.

program within the critical area of the County, i.e., the right to rebuild a pre-existing dwelling. Subsection (b)(1) and (2).

- Furthermore, the granting of the critical area variance requested will not confer on the applicants 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's critical area. There was testimony that the proposed improvements are comparable to similar dwellings in the neighborhood. Subsection (b)(3).
- I find that the critical area variance requested is not based on conditions or circumstances that are the result of actions by the applicants, 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. Subsection (b)(4).
- The granting of the critical area variance requested 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 and will be in harmony with the general spirit and intent of the County's critical area program. The proposed work will be offset by mitigation that the applicants will undertake. There was evidence that the proposed work would not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's critical area or a bog protection area and will be in harmony with the general spirit and intent of the County's critical area program. Subsection (b)(5).

- Furthermore, I find that the applicants, by competent and substantial evidence, has overcome the presumption contained in the Natural Resources Article, § 8-1808(d)(2), of the State Code [which is incorporated into § 18-16-305 subsection (b)(2)] for the reasons set forth above, and because I find that the applicants would be denied reasonable and significant use of the entire parcel or lot for which the critical area variances are requested if the proposed work was not allowed. Subsection (b)(7).

I further find that the critical area variances represent the minimum relief. There was nothing to suggest that the granting of the critical area variances would alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, reduce forest cover in the limited development and resource conservation areas of the critical area, or cause a detriment to the public welfare.

Accordingly, for the above reasons, I will grant a critical area variance to § 17-8-301(b) to allow the enclosure of the area beneath the existing deck, as indicated on the site plan for the subject property admitted into evidence at the hearing on this application as County Exhibit 2.

ORDER

PURSUANT to the application of Carroll Boone III and Maria Boone, petitioning for a variance to allow a dwelling addition with less setbacks and buffer than required, and

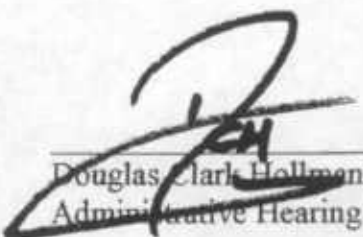
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this **1st day of July, 2009**,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicants are **granted** a variance of thirty-eight (38) feet to § 17- shown on County Exhibit 2, subject to the below-listed conditions.

Furthermore, County Exhibit 2, referenced in this decision, is incorporated herein as if fully set forth and made a part of this Order. The proposed improvements shown on County Exhibit 2 shall be constructed on the subject property in the locations shown therein.

The foregoing variance is subject to the following conditions:

- A. The applicants shall comply with any instructions and necessary approvals from the Permit Application Center, the Department of Health, and/or the Critical Area Commission.
- B. The applicants shall provide mitigation as required by the Critical Area Commission and/or the Permit Application Center.
- C. The applicants shall delineate the 100-foot stream buffer on the site plan (County Exhibit 2).


Douglas Clark Hollmann
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. **A permit for the activity that was the subject of this variance application will not be issued until the appeal period has elapsed.**

Further § 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within 18 months. 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 they will be discarded.

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2007-0237-V

CARROLL BOONE, III

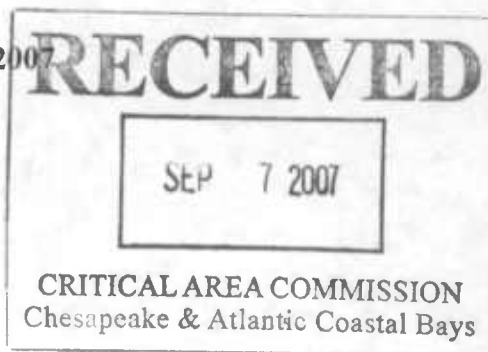
THIRD ASSESSMENT DISTRICT

DATE HEARD: AUGUST 30, 2007

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

PLANNER: **JOHN FURY**

DATE FILED SEPTEMBER 4, 2007



PLEADINGS

Carroll Boone, III, the applicant, seeks a variance (2007-0237-V) to allow a deck addition with less buffer than required on property located along the south side of Harlem Avenue, west of Edgewater Road, Pasadena.

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. Boone 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 applicant owns a single-family residence with a street address of 457 Harlem Avenue, in the subdivision of Magothy Park Beach, Pasadena. The property comprises 13,500 square feet and is zoned R2 residential with a Chesapeake Bay Critical Area designation as Limited Development Area (LDA). The request is to construct an irregular configured, open deck (14 by 22 feet) located 79 feet from a tributary stream.

Anne Arundel County Code, Article 18, Section 18-13-104(a) establishes a 100-foot buffer from tributary streams. Accordingly, the proposal requires a variance of 21 feet.

John R. Fury, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area for the district and impacted by steep slopes. The existing dwelling is 87 feet from the stream. The property meets the allowance for impervious coverage (2,448 square feet versus 4,218 square feet). The request is considered consistent with the character of the neighborhood. There were no adverse agency comments.¹ By way of conclusion, Mr. Fury supported the request.

Mr. Boone confirmed the substance of the application. The applicant is proposing a gapped board deck. The project does not require vegetative clearing. There was no other testimony in the matter.

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to relief from the code. For this Critical Area property, due to the proximity to a tributary stream, a strict implementation of the program would result in an unwarranted hardship. Under a literal interpretation of the program, the applicant would be denied the right to construct a deck addition, a right commonly enjoyed by other properties in similar areas of the Critical Area. Conversely, the granting of the variance is not a special privilege that the program typically denies. There is no indication that the request results from the actions of

¹ The Chesapeake Bay Critical Area Commission requested mitigation.

the applicant or from land use on neighboring property. Finally, with mitigation, the granting of the variance will not adversely impact Critical Area assets and harmonizes with the general spirit and intent of the program.

I further find that the variance represents the minimum relief. The deck is appropriately sized and pervious in construction. There is no clearing and the property is well below the impervious surfaces limitation. There was nothing to suggest 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 condition in the Order.

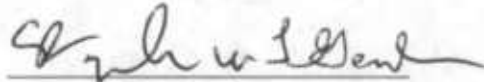
ORDER

PURSUANT to the application of Carroll Boone, III, petitioning for a variance to allow a deck 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 4th day of September, 2007,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is **granted** a buffer variance of 21 feet to allow a deck addition in accordance with the site plan.

The foregoing variance is subject to the condition that the applicant shall provide mitigation as determined by the Permit Application Center.



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 18-16-405(a) provides that a variance expires by operation of law unless the applicant obtains a building permit within eighteen months. 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.

April 27, 2009

Dear Anne Arundel County Variance Department,

We are requesting a variance for Address: 457 HARLEM AVE PASADENA, MD 21122. THE ORIGINAL VARIANCE EXPIRED (2007-0237-V). I have attached the original letter submitted for the initial variance. The only thing that differs, is we would like to construct a bottom deck with screen in addition to the top deck. The bottom will have the exact dimensions as the top deck.

We appreciate once again, you taking in consideration the hardships of our property.

Thanks

Carroll Boone III

MR. & MRS. BOONE

July 6, 2007

Dear Anne Arundel County,

We are requesting a waiver for a residential lot in order to add onto an existing deck. The lot has trees in the backyard, but will not be affected by the addition. The area surrounding the home will remain the same. We will use a silt fence to capture any debris from construction & will have supplies removed immediately following the completed project. We live in zoning R2 off of the Magothy River, lot size is 13,500.00SF rectangular shaped and the development is not getting any larger. The existing deck is 8x8. Existing Impervious is 2,200SF and the Proposed Impervious Coverage is 248SF. Total existing & Proposed Impervious Coverage is 2,448 SF.

We reside in a Rancher with one access route on the first level. In 2003, we were devastated by a fire and did not have access to another exit. The fire burned the house leaving only the frame. We were fortunate enough that everyone got out safely. We are hoping that you will grant us a waiver in order to extend our existing deck. The extension will not be deeper than the existing deck and it will not be wider than the house. We would like for the deck to meet the door we installed enabling access to another exit route. With three young children in the house and one past fire, we feel that adding the additional door and extending the deck will provide our family with the peace of mind we are seeking.

We appreciate your attention to this request and taking into consideration our hardship with not having the ability to exit our home from a different location in case we are struck with another emergency situation. We eagerly await your response.

Thanks,

Mr. & Mrs. Boone

NOTES:

1. The plat is of benefit to a consumer only insofar as it is required by lender or a title insurance company or its agent in connection with contemplated transfer, financing or refinancing;
2. The plat is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements;
3. The plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for transfer of title or securing financing or refinancing.
4. No title investigation performed by this office.
6. Accuracy to setback distances shown hereon are within 1'-0" tolerance.

NAD-83 GRID NORTH



HARLEM AVE.

S 63-33 E 100.00



CENTER OF STREAM



This Location Drawing was prepared under my direct supervision pursuant to Annotated Code of Maryland, Subtitle 13, Section 9.13.06

Melvin L. Mitchell 5-14-07

MELVIN L. MITCHELL
Property Line Surveyor No. 525

Date

ANAREX, INC.

ENGINEERS SURVEYORS
EXPEDITERS PLANNERS

303 NAJOLAS ROAD
SUITE 114

MILLERSVILLE, MD. 21108-2506



LOCATION DRAWING

LOTS 142 & 143

MAGOTHY PARK BEACH

3 rd District, Anne Arundel County, Md.
See Plat Records A.A. Ca.

PLAT REF 17

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